February 17, 2012

# ENGROSSED
# HOUSE BILL No. 1239

DIGEST OF HB 1239 (Updated February 16, 2012 11:25 am - DI 110)

**Citations Affected:** IC 5-1; IC 24-4.4; IC 24-4.5; IC 24-7; IC 24-9; IC 28-1; IC 28-2; IC 28-6.1; IC 28-6.2; IC 28-7; IC 28-8; IC 28-10; IC 28-11; IC 28-14; IC 28-15.

**Synopsis:** Financial institutions and consumer credit. Makes various changes to the laws concerning: (1) financial institutions; (2) debt management companies; (3) pawnbrokers; (4) money transmitters; (5) check cashers; (6) persons licensed under the Uniform Consumer Credit Code; (7) first lien mortgage lenders; and (8) rental purchase agreements. Repeals the definition of "office of thrift supervision" in the statutes governing the charter conversion of a: (1) building and loan association to a stock building and loan association; (2) mutual or stock savings association to a commercial bank; (3) mutual savings association to a mutual savings bank; (4) mutual or stock savings association to a stock savings bank; and (5) mutual savings bank to a stock savings bank. Changes the statute governing savings banks: (1) to repeal the definitions of "community based economic development" and "community development corporation"; and (2) to recodify the definitions in another provision of the statute. Repeals a provision that requires a savings bank to maintain 60% of its assets in certain qualified investments under the Internal Revenue Code. Repeals a provision that: (1) concerns the effect of a revocation, suspension, or surrender of a pawnbroker license on existing pawnbroker contracts; and (2) is incorporated into another provision of this bill.

**Effective:** January 1, 2012 (retroactive); July 1, 2012.


## Burton, Messmer, Riecken, Pryor

(SENATE SPONSORS — PAUL, HOLDMAN)



January 9, 2012, read first time and referred to Committee on Financial Institutions.
January 12, 2012, amended, reported — Do Pass.
January 26, 2012, read second time, ordered engrossed. Engrossed.
January 30, 2012, read third time, passed. Yeas 93, nays 1.

SENATE ACTION

February 1, 2012, read first time and referred to Committee on Insurance and Financial Institutions.
February 16, 2012, reported favorably — Do Pass.





C o p y

February 17, 2012

Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

C o p y

# ENGROSSED
# HOUSE BILL No. 1239

A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 5-1-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. The proceeds of the refunding bonds issued pursuant to this chapter shall be placed in escrow and applied, with any other available funds, to the payment on the date selected for redemption of the principal, accrued interest and any redemption premiums of the bonds being refunded, and, if so provided or permitted in the ordinance authorizing the issuance of such refunding bonds or in the trust indenture securing the same, may also be applied to the payment of any interest on such refunding bonds, and any costs of refunding. Pending such application, such escrowed proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by the United States of America, which shall mature, or which shall be subject to redemption by the holder thereof at the option of such holder, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended. In lieu of such investments, all or part of such proceeds may be placed in

interest bearing time certificates of deposits with such eligible financial institutions in the state of Indiana as the governing body shall determine or other similar arrangements may be made with such eligible financial institutions with regard thereto which will assure that such proceeds, together with the interest accruing thereon, will be available when required for the purposes intended, provided that, ~~prior written approval of the Director of the Department of Financial Institutions shall be~~ **if** required ~~whenever~~ **by the governing body,** such time certificates of deposits or other similar arrangements shall be secured to the full amount thereof by direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America of the type permitted for direct investment of the escrow fund. All interest or other income earned on such investments shall first be used to pay the interest on the refunding bonds as it becomes due. Any excess shall become a part of and held in the escrow fund. Any balance remaining in the escrow fund after redemption of all the bonds being refunded shall be deposited in the sinking fund ~~after redemption of all the bonds being refunded shall be deposited in the sinking fund~~ established for the payment of the principal and interest on the refunding bonds.

SECTION 2. IC 24-4.4-1-101, AS AMENDED BY P.L.182-2009(ss), SECTION 369, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012 (RETROACTIVE)]: Sec. 101. (a) This article shall be known and may be cited as the First Lien Mortgage Lending Act.

(b) Notwithstanding any other provision of this article or IC 24-4.5, the department may adopt emergency rules under IC 4-22-2-37.1, to remain effective until codified in the Indiana Code, in order to provide for a system of licensing creditors and mortgage loan originators that meets the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (H.R. 3221 Title V) and the interpretations of that Act issued by the Secretary of Housing and Urban Development **and the Consumer Financial Protection Bureau.**

SECTION 3. IC 24-4.4-1-102, AS AMENDED BY P.L.89-2011, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012 (RETROACTIVE)]: Sec. 102. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

(a) to permit and encourage the development of fair and economically sound first lien mortgage lending practices; and

C o p y

(b) to conform the regulation of first lien mortgage lending practices to applicable state and federal laws, rules, ~~and~~ regulations, **policies, and guidance.**

(3) A reference to a requirement imposed by this article includes reference to a related rule of the department adopted under this article.

(4) A reference to a federal law in this article is a reference to the law as in effect December 31, ~~2010.~~ **2011.**

SECTION 4. IC 24-4.4-1-202, AS AMENDED BY P.L.89-2011, SECTION 3, AND AS AMENDED BY P.L.9-2011, SECTION 1, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 202. *(a) As used in this section, "balloon payment", with respect to a mortgage transaction, means any payment that:*

*(1) the creditor requires the debtor to make at any time during the term of the mortgage;*

*(2) represents the entire amount of the outstanding balance with respect to the mortgage; and*

*(3) the entire amount of which is due as of a specified date or at the end of a specified period;*

*if the aggregate amount of the minimum periodic payments required under the mortgage would not fully amortize the outstanding balance by the specified date or at the end of the specified period. The term does not include a payment required by a creditor under a due-on-sale clause (as defined in 12 U.S.C. 1701j-3(a)) or a payment required by a creditor under a provision in the mortgage that permits the creditor to accelerate the debt upon the debtor's default or failure to abide by the material terms of the mortgage.*

*(b)* This article does not apply to the following:

(1) Extensions of credit to government or governmental agencies or instrumentalities.

(2) A first lien mortgage transaction in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.

(3) An extension of credit primarily for a business, a commercial, or an agricultural purpose.

(4) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a first lien mortgage transaction made:

(a) in compliance with the requirements of; and

(b) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from;

the Indiana housing and community development authority

C o p y

established by IC 5-20-1-3.

(5) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a first lien mortgage transaction made by an entity that exclusively uses funds provided by the United States Department of Housing and Urban Development under Title 1 of the federal Housing and Community Development Act of 1974, Public Law 93-383, as amended (42 U.S.C. 5301 et seq.).

(6) An extension of credit originated by:

(a) a depository institution;

(b) subsidiaries that are:

(i) owned and controlled by a depository institution; and

(ii) regulated by a federal banking agency; or

(c) an institution regulated by the Farm Credit Administration.

(7) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a credit union service organization that is majority owned, directly or indirectly, by one (1) or more credit unions.

(8) A first lien mortgage transaction originated by ~~(a)~~ a registered mortgage loan originator, when acting for an entity described in subsection (6). ~~or (7); or (b) an individual who: (i) performs the duties of a mortgage loan originator for an entity described in subsection (6) or (7); and (ii) is required to be registered with the NMLSR not later than July 29, 2011.~~ A privately insured state chartered credit union shall also comply with the system of mortgage loan originator registration developed by the Federal Financial Institutions Examinations Council under Section 1507 of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE).

(9) An individual who offers or negotiates terms of a mortgage transaction with or on behalf of an immediate family member of the individual.

(10) An individual who offers or negotiates terms of a mortgage transaction secured by a dwelling that served as the individual's residence.

(11) Unless the attorney is compensated by:

(a) a lender;

(b) a mortgage broker;

(c) another mortgage loan originator; or

(d) any agent of the lender, mortgage broker, or other mortgage loan originator described in clauses (a) through (c);

a licensed attorney who negotiates the terms of a mortgage

C o p y

transaction on behalf of a client as an ancillary matter to the attorney's representation of the client.

(12) ~~*Agencies, instrumentalities, and government owned corporations of*~~ The United States, *any state or local government, or any agency or instrumentality of any governmental entity,* including United States government sponsored enterprises.

*(13) A person in whose name a tablefunded transaction is closed, as described in section 301(34)(a) of this chapter. However, the exemption provided by this subsection does not apply if:*

*(a) the transaction:*

*(i) is secured by a dwelling that is a mobile home, a manufactured home, or a trailer; and*

*(ii) is not also secured by an interest in land; and*

*(b) the person in whose name the transaction is closed, as described in section 301(34)(a) of this chapter, sells the dwelling to the debtor through a retail installment contract or other similar transaction.*

~~*(13)*~~ **(14)** *A bona fide nonprofit* ~~*entity*~~ **organization** *not operating in a commercial context, as determined by the director, if the following criteria are satisfied:*

~~*(A)*~~ **(a)** *Subject to clause* ~~*(B),*~~ **(b),** *the* ~~*entity*~~ **organization** *originates only one (1) or both of the following types of mortgage transactions:*

*(i) Zero (0) interest first lien mortgage transactions.*

*(ii) Zero (0) interest subordinate lien mortgage transactions.*

~~*(B)*~~ **(b)** *The* ~~*entity*~~ **organization** *does not require, under the terms of the mortgage or otherwise, balloon payments with respect to the mortgage transactions described in clause* ~~*(A).*~~ **(a).**

~~*(C)*~~ **(c)** *The* ~~*entity*~~ **organization** *is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.*

~~*(D)*~~ **(d)** *The* ~~*entity's*~~ **organization's** *primary purpose is to serve the public by helping low income individuals and families build, repair, and purchase housing.*

~~*(E)*~~ **(e)** *The* ~~*entity*~~ **organization** *uses only:*

*(i) unpaid volunteers; or*

*(ii) employees whose compensation is not based on the number or size of any mortgage transactions that the employees originate;*

*to originate the mortgage transactions described in clause* ~~*(A).*~~ **(a).**

C o p y

~~(F)~~ **(f)** *The* ~~*entity*~~ **organization** *does not charge loan origination fees in connection with the mortgage transactions described in clause* ~~*(A).*~~ **(a).**

**(15) A bona fide nonprofit organization (as defined in section 301(37) of this chapter) if the following criteria are satisfied:**

**(a) For each calendar year that the organization seeks the exemption provided by this subdivision, the organization certifies, not later than December 31 of the preceding calendar year and on a form prescribed by the director and accompanied by such documentation as required by the director, that the organization is a bona fide nonprofit organization (as defined in section 301(37) of this chapter).**

**(b) The director determines that the organization originates only mortgage transactions that are favorable to the debtor. For purposes of this clause, a mortgage transaction is favorable to the debtor if the director determines that the terms of the mortgage transaction are consistent with terms of mortgage transactions made in a public or charitable context, rather than in a commercial context.**

SECTION 5. IC 24-4.4-1-301, AS AMENDED BY P.L.89-2011, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 301. In addition to definitions appearing in subsequent chapters of this article, the following definitions apply throughout this article:

(1) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

(a) controls;

(b) is controlled by; or

(c) is under common control with;

the person subject to this article.

(2) "Agreement" means the bargain of the parties in fact as found in the parties' language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(3) "Agricultural products" includes agricultural products, horticultural products, viticultural products, dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, any products raised or produced on farms, and any products processed or manufactured from products raised or produced on farms.

C o p y

(4) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products.

(5) "Consumer credit sale" is a sale of goods, services, or an interest in land in which:

(a) credit is granted by a person who engages as a seller in credit transactions of the same kind;

(b) the buyer is a person other than an organization;

(c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;

(d) either the debt is payable in installments or a credit service charge is made; and

(e) with respect to a sale of goods or services, either the amount financed does not exceed fifty thousand dollars ($50,000) or the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

(6) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(7) "Creditor" means a person:

(a) that **regularly** engages in the extension of first lien mortgage transactions that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and

(b) to which the obligation is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.

The term does not include a person described in subsection (34)(a) in a tablefunded transaction. A creditor may be an individual, a limited liability company, a sole proprietorship, a partnership, a trust, a joint venture, a corporation, an unincorporated organization, or other form of entity, however organized.

(8) "Department" refers to the members of the department of financial institutions.

(9) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(10) "Director" refers to the director of the department of financial institutions or the director's designee.

C o p y

(11) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

(a) condominium unit;

(b) cooperative unit;

(c) mobile home; or

(d) trailer;

that is used as a residence.

(12) "Employee" means an individual who is paid wages or other compensation by an employer required under federal income tax law to file Form W-2 on behalf of the individual.

(13) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(14) "First lien mortgage transaction" means:

(a) a **consumer** loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage **or a land contract** (or another ~~equivalent~~ consensual security interest **equivalent to a mortgage or a land contract)** that constitutes a first lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed. ~~The term does not include a land contract.~~

(15) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(16) "Individual" means a natural person.

(17) "Licensee" means a person licensed as a creditor under this article.

(18) "Loan" includes:

(a) the creation of debt by:

(i) the creditor's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor; or

(ii) the extension of credit by a person who engages as a seller in credit transactions primarily secured by an interest in land;

(b) the creation of debt by a credit to an account with the creditor upon which the debtor is entitled to draw immediately; and

C o p y

(c) the forbearance of debt arising from a loan.

(19) "Loan brokerage business" means any activity in which a person, in return for any consideration from any source, procures, attempts to procure, or assists in procuring, a mortgage transaction from a third party or any other person, whether or not the person seeking the mortgage transaction actually obtains the mortgage transaction.

(20) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under this article. For purposes of this subsection, the term "clerical or support duties" may include, after the receipt of an application, the following:

(a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction.

(b) The communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:

(i) offering or negotiating loan rates or terms; or

(ii) counseling consumers about mortgage transaction rates or terms.

(21) "Mortgage loan originator" means an individual who, for compensation or gain, or in the expectation of compensation or gain, **regularly** engages in taking a mortgage transaction application or in offering or negotiating the terms of a mortgage transaction that either is made under this article or under IC 24-4.5 or is made by an employee of a person licensed or exempt from licensing under this article or under IC 24-4.5, while the employee is engaging in the loan brokerage business. The term does not include the following:

(a) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed or exempt from licensing under this article.

(b) Unless the person or entity is compensated by:

(i) a creditor;

(ii) a loan broker;

(iii) another mortgage loan originator; or

(iv) any agent of a creditor, a loan broker, or another mortgage loan originator described in items (i) through (iii);

a person or entity that performs only real estate brokerage

C o p y

activities and is licensed or registered in accordance with applicable state law.

(c) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D)).

(22) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.

(23) "Mortgage transaction" means:

(a) a **consumer** loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage **or a land contract** (or another ~~equivalent~~ consensual security interest **equivalent to a mortgage or a land contract)** on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed. ~~The term does not include a land contract.~~

(24) "Nationwide Mortgage Licensing System and Registry" or "NMLSR" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of creditors and mortgage loan originators.

(25) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

(26) "Organization" means a corporation, a government or government subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated organization, or any other entity, however organized.

(27) "Payable in installments", with respect to a debt or an obligation, means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(28) "Person" includes an individual or an organization.

(29) "Principal" of a mortgage transaction means the total of:

(a) the net amount paid to, receivable by, or paid or payable for the account of the debtor; and

(b) to the extent that payment is deferred, amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees if not included in clause (a).

C o p y

(30) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.

(c) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).

(d) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.

(e) Offering to engage in any activity, or act in any capacity, described in this subsection.

(31) "Registered mortgage loan originator" means any individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(b) is registered with, and maintains a unique identifier through, the NMLSR.

(32) "Residential real estate" means any real property that is located in Indiana and on which there is located or intended to be constructed a dwelling.

(33) "Revolving first lien mortgage transaction" means a first lien mortgage transaction in which:

(a) the creditor permits the debtor to obtain advances from time to time;

(b) the unpaid balances of principal, finance charges, and other appropriate charges are debited to an account; and

(c) the debtor has the privilege of paying the balances in installments.

(34) "Tablefunded" means a transaction in which:

(a) a person closes a first lien mortgage transaction in the person's own name as a mortgagee with funds provided by one

C o p y

(1) or more other persons; and

(b) the transaction is assigned, not later than one (1) business day after the funding of the transaction, to the mortgage creditor providing the funding.

(35) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

(36) "Land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.

**(37) "Bona fide nonprofit organization" means an organization that the does the following, as determined by the director, under criteria established by the director:**

**(a) Maintains tax exempt status under Section 501(c)(3) of the Internal Revenue Code.**

**(b) Promotes affordable housing or provides home ownership education or similar services.**

**(c) Conducts the organization's activities in a manner that serves public or charitable purposes.**

**(d) Receives funding and revenue and charges fees in a manner that does not encourage the organization or the organization's employees to act other than in the best interests of the organization's clients.**

**(e) Compensates the organization's employees in a manner that does not encourage employees to act other than in the best interests of the organization's clients.**

**(f) Provides to, or identifies for, debtors mortgage transactions with terms that are favorable to the debtor (as described in section 202(b)(15) of this chapter) and comparable to mortgage transactions and housing assistance provided under government housing assistance programs.**

**(g) Maintains certification by the United States Department of Housing and Urban Development or employs counselors who are certified by the Indiana housing and community development authority.**

**(38) "Regularly engaged", with respect to a person who extends or originates first lien mortgage transactions, refers to a person who:**

**(a) extended or originated more than five (5) first lien mortgage transactions in the preceding calendar year; or**

**(b) extends or originates, or will extend or originate, more than five (5) first lien mortgage transactions in the current**

C o p y

**calendar year if the person did not extend or originate more than five (5) first lien mortgage transactions in the preceding calendar year.**

SECTION 6. IC 24-4.4-2-201, AS AMENDED BY P.L.89-2011, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 201. (1) A creditor or mortgage servicer shall provide, in writing, an accurate payoff amount for a first lien mortgage transaction to the debtor not later than seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's written request for the accurate payoff amount. A payoff statement provided by a creditor or mortgage servicer under this subsection must ~~include~~ **show** the date the statement was prepared and ~~the payoff amount as of that date, including an itemization of~~ **itemize the unpaid principal balance and** each fee, charge, or other sum included within the payoff amount. A creditor or mortgage servicer who fails to provide an accurate payoff amount is liable for:

(a) one hundred dollars ($100) if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's first written request; and

(b) the greater of:

(i) one hundred dollars ($100); or

(ii) the loan finance charge that accrues on the first lien mortgage transaction from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate payoff amount is provided;

if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer fails to comply with subdivision (a).

(2) This subsection applies to a first lien mortgage transaction, or the refinancing or consolidation of a first lien mortgage transaction, that:

(a) is closed after June 30, 2009; and

(b) has an interest rate that is subject to change at one (1) or more times during the term of the first lien mortgage transaction.

A creditor in a transaction to which this subsection applies may not contract for and may not charge the debtor a prepayment fee or penalty.

C o p y

(3) This subsection applies to a first lien mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than five (5) business days (excluding legal public holidays, Saturdays, and Sundays) after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days (excluding legal public holidays, Saturdays, and Sundays) after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. The thirty (30) day period described in this subsection may be extended for not more than fifteen (15) business days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the thirty (30) day period, the creditor, the servicer, or the creditor's agent notifies the debtor of the extension and the reason the extension is needed. Payment accepted by a creditor, servicer, or creditor's agent in connection with a short sale constitutes payment in full satisfaction of the first lien mortgage transaction unless the creditor, servicer, or creditor's agent obtains:

(a) the following statement: "The debtor remains liable for any amount still owed under the first lien mortgage transaction."; or

(b) a statement substantially similar to the statement set forth in subdivision (a);

acknowledged by the initials or signature of the debtor, on or before the date on which the short sale payment is accepted. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a first lien mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the first lien mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 7. IC 24-4.4-2-402, AS AMENDED BY P.L.89-2011, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 402. (1) The department shall receive and act on all applications for licenses to engage in first lien mortgage transactions. Applications must be made as prescribed by the director.

C o p y

**If, at any time, the information or record contained in:**

**(a) an application filed under this section; or**

**(b) a renewal application filed under section 403 of this chapter;**

**is or becomes inaccurate or incomplete in a material respect, the applicant shall promptly file a correcting amendment with the department.**

(2) A license may not be issued unless the department finds that the professional training and experience, financial responsibility, character, and fitness of:

(a) the applicant and any significant affiliate of the applicant;

(b) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and

(c) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant;

are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

(3) The director is entitled to request evidence of compliance with this section at:

(a) the time of application;

(b) the time of renewal of a license; or

(c) any other time considered necessary by the director.

(4) Evidence of compliance with this section must include:

(a) criminal background checks, as described in section 402.1 of this chapter, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for any individual described in subsection (2);

(b) credit histories as described in section 402.2 of this chapter;

(c) surety bond requirements as described in section 402.3 of this chapter;

(d) a review of licensure actions in Indiana and in other states; and

(e) other background checks considered necessary by the director.

(5) For purposes of this section and in order to reduce the points of contact that the director has to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting and distributing information to and from any source as directed by the director.

(6) The department may deny an application under this section if the director of the department determines that the application was

C o p y

submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(7) Upon written request, the applicant is entitled to a hearing on the question of the qualifications of the applicant for a license in the manner provided in IC 4-21.5.

(8) The applicant shall pay the following fees at the time designated by the department:

(a) An initial license fee as established by the department under IC 28-11-3-5.

(b) An annual renewal fee as established by the department under IC 28-11-3-5.

(c) Examination fees as established by the department under IC 28-11-3-5.

(9) A fee as established by the department under IC 28-11-3-5 may be charged for each day a fee under subsection 8(b) or 8(c) is delinquent.

(10) Except in a transaction approved under section 406 of this chapter, a license issued under this section is not assignable or transferable.

SECTION 8. IC 24-4.4-2-402.4, AS ADDED BY P.L.35-2010, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 402.4. (1) Subject to subsection (6), the director shall designate the NMLSR to serve as the sole entity responsible for:

(a) processing applications and renewals for licenses under this article;

(b) issuing unique identifiers for licensees and entities exempt from licensing under this article that employ a licensed mortgage loan originator under this article; and

(c) performing other services that the director determines are necessary for the orderly administration of the department's licensing system under this article.

(2) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director shall regularly report significant or recurring violations of this article to the NMLSR.

(3) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director may report complaints received regarding licensees under this article to the NMLSR.

(4) The director may report publicly adjudicated licensure actions against a licensee to the NMLSR.

(5) The director shall establish a process in which licensees may challenge information reported to the NMLSR by the department.

(6) The director's authority to designate the NMLSR under

C o p y

subsection (1) is subject to the following:

(a) Information stored in the NMLSR is subject to the confidentiality provisions of IC 5-14-3 and IC 28-1-2-30. A person may not:

(i) obtain information from the NMLSR, unless the person is authorized to do so by statute;

(ii) initiate any civil action based on information obtained from the NMLSR if the information is not otherwise available to the person under any other state law; or

(iii) initiate any civil action based on information obtained from the NMLSR if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(b) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential under IC 28-1-2-30 and that are:

(i) furnished by the director, the director's designee, or a licensee; or

(ii) otherwise obtained by the NMLSR;

are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director may use the documents, materials, or other information available to the director in furtherance of any action brought in connection with the director's duties under this article.

(c) Disclosure of documents, materials, and information:

(i) to the director; or

(ii) by the director;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(d) Information provided to the NMLSR is subject to IC 4-1-11.

(e) This subsection does not limit or impair a person's right to:

(i) obtain information;

(ii) use information as evidence in a civil action or proceeding; or

(iii) use information to initiate a civil action or proceeding;

if the information may be obtained from the director or the director's designee under any law.

(f) Except as otherwise provided in **the federal Housing and Economic Recovery Act of 2008** (Public Law 110-289, Section 1512), the requirements under any federal law or IC 5-14-3

C o p y

regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or IC 5-14-3.

(g) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies, as established by rule or order of the director.

(h) Information or material that is subject to a privilege or confidentiality under subdivision (f) is not subject to:

(i) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(ii) subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(i) Any provision of IC 5-14-3 that concerns the disclosure of:

(i) confidential supervisory information; or

(ii) any information or material described in subdivision (f);

and that is inconsistent with subdivision (f) is superseded by this section.

(j) This section does not apply with respect to information or material that concerns the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a person described in section 402(2) of this chapter and that is included in the NMLSR for access by the public.

(k) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered reasonable by the director. In determining whether an NMLSR processing fee is reasonable, the director shall:

(i) require review of; and

C o p y

(ii) make available;

the audited financial statements of the NMLSR.

**(7) Notwithstanding any other provision of law, any:**

**(a) application, renewal, or other form or document that:**

**(i) relates to licenses issued under this article; and**

**(ii) is made or produced in an electronic format;**

**(b) document filed as an electronic record in a multistate automated repository established and operated for the licensing or registration of mortgage lenders, brokers, or loan originators; or**

**(c) electronic record filed through the NMLSR;**

**is considered a valid original document when reproduced in paper form by the department.**

SECTION 9. IC 24-4.4-2-403, AS AMENDED BY P.L.35-2010, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 403. (1) A license issued under this article must be renewed through the NMLSR not later than December 31 of each calendar year. The minimum standards for license renewal for a creditor include the following:

(a) The creditor has continued to meet the surety bond requirement under section 402.3 of this chapter.

(b) The creditor has filed the creditor's ~~annual~~ call report in a manner that satisfies section 405(4) of this chapter.

(c) The creditor has paid all required fees for renewal of the license.

(d) The creditor and individuals described in section 402(2) of this chapter **have certified to the department that they** continue to meet all the standards for licensing contained in section 402 of this chapter.

**(e) The creditor has provided in the creditor's renewal application:**

**(i) any information describing material changes in the information contained in the creditor's original application for licensure, or in any previous application, including any previous renewal application; and**

**(ii) any other information the director requires in order to evaluate the renewal of the license issued under this article.**

(2) A license issued by the department authorizing a person to engage in first lien mortgage transactions as a creditor under this article may be revoked or suspended by the department if the person fails to:

(a) file any renewal form required by the department; or

(b) pay any license renewal fee described under section 402 of

C o p y

this chapter;

not later than sixty (60) days after the due date.

(3) A person whose license is revoked or suspended under this section may do either of the following:

(a) Pay all delinquent fees and apply for reinstatement of the license.

(b) Appeal the revocation or suspension to the department for an administrative review under IC 4-21.5-3. Pending the decision resulting from the hearing under IC 4-21.5-3 concerning the license revocation or suspension, the license remains in force.

**(4) If, at any time, the information or record contained in:**

**(a) an original application for licensure filed under section 402 of this chapter; or**

**(b) a renewal application filed under this section;**

**is or becomes inaccurate or incomplete in a material respect, the applicant shall promptly file a correcting amendment with the department.**

SECTION 10. IC 24-4.4-2-404, AS AMENDED BY P.L.35-2010, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 404. (1) The department may issue to a person licensed **as a creditor** to engage in first lien mortgage transactions ~~as a creditor~~ an order to show cause why the person's license should not be revoked or suspended for a period determined by the department. ~~The~~

**(2) An** order **issued under subsection (1)** must: ~~state~~

**(a) include:**

**(i) a statement of** the place, **date,** and time for a meeting with the department, ~~that is~~ **which date may** not **be** less than ten (10) days from the date of the order;

**(ii) a description of the action contemplated by the department; and**

**(iii) a statement of the facts or conduct supporting the issuance of the order; and**

**(b) be accompanied by a notice stating that the licensee is entitled to:**

**(i) a reasonable opportunity to be heard; and**

**(ii) show the licensee's compliance with all lawful requirements for retention of the license;**

**at the meeting described in subdivision (a)(i).**

**(3)** After the meeting **described in subsection (2)(a)(i),** the department ~~shall~~ **may** revoke or suspend the license if the department finds that:



C o p y

(a) the licensee has repeatedly and willfully violated:

(i) this article or any rule, order, or guidance document ~~lawfully~~ adopted or issued ~~under this article;~~ **by the department;** or

(ii) any other state or federal law, regulation, or rule applicable to first lien mortgage transactions;

(b) the licensee does not meet the licensing qualifications contained in section 402 of this chapter; ~~or~~

**(c) the licensee obtained the license for the benefit of, or on behalf of, another person;**

**(d) the licensee knowingly or intentionally made material misrepresentations to, or concealed material information from, the department; or**

~~(c)~~ **(e)** facts or conditions exist ~~which would clearly have justified the department in refusing to grant a license had the facts or conditions been known to exist at the time the application for the license was made.~~ **that, had they existed at the time the licensee applied for the license, would have been grounds for the department to deny the issuance of the license.**

~~(2) Except as provided in section 403 of this chapter, a revocation or suspension of a license is not authorized under this article unless before instituting proceedings to suspend or revoke the license, the department gives notice to the licensee of the conduct or facts that warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.~~

~~(3) If the department finds that probable cause for revocation of a license exists and that enforcement of this article requires immediate suspension of the license pending investigation, the department may, after a hearing with the licensee upon five (5) days written notice to the licensee, enter an order suspending the license for not more than thirty (30) days.~~

(4) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and notify the licensee of:

**(a)** the revocation or suspension;

**(b) if a suspension has been ordered, the duration of the suspension;**

**(c) the procedure for appealing the revocation or suspension under IC 4-21.5-3-5; and**

**(d) any other terms and conditions that apply to the revocation or suspension.**

Not later than five (5) days after the entry of the order, the department

C o p y

shall deliver to the licensee a copy of the order and the findings supporting the order.

(5) Any person holding a license **as a creditor** to engage in first lien mortgage transactions ~~as a creditor~~ may relinquish the license by notifying the department in writing of the relinquishment. However, a relinquishment under this ~~paragraph~~ **subsection** does not affect the person's liability for acts previously committed and coming within the scope of this article.

(6) If the director determines it to be in the public interest, the director may pursue revocation of a license of a licensee that has relinquished the license under subsection (5).

(7) ~~A~~ **If a person's license is revoked, suspended, or relinquished, the** revocation, suspension, or relinquishment ~~of a license~~ does not impair or affect ~~the~~ **any** obligation ~~of~~ **owed by any person under** any preexisting lawful contract. ~~between: (a) the person, whose license has been revoked, suspended, or relinquished; and (b) any debtor.~~

~~(8) The department may reinstate a license or terminate a suspension of a license to a person whose license has been revoked or suspended if the director determines that, at the time the determination is made, there is no fact or condition that exists that clearly would justify the department in refusing to reinstate a license.~~

~~(9)~~ **(8)** If the director ~~(a)~~ has just cause to believe an emergency exists from which it is necessary to protect the interests of the public, ~~or (b) determines that a license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license;~~ the director may proceed with the revocation of ~~the~~ **a** license **through an emergency or another temporary order** under ~~IC 4-21.5-3-6.~~ **IC 4-21.5-4.**

SECTION 11. IC 24-4.4-2-404.1, AS ADDED BY P.L.35-2010, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 404.1. (1) If the director determines that a director, an officer, or an employee of a creditor:

(a) has committed a violation of a statute, a rule, a final cease and desist order, any condition imposed in writing by the director in connection with the granting of any application or other request by the creditor, or any written agreement between the creditor and the director or the department;

(b) has committed fraudulent or unconscionable conduct; or

(c) has been convicted of ~~or has pleaded guilty or nolo contendere to~~ a felony under the laws of Indiana or any other jurisdiction;

the director, subject to subsection (2), may issue and serve upon the officer, director, or employee a notice of the director's intent to issue an

C o p y

order removing the person from the person's office or employment, an order prohibiting any participation by the person in the conduct of the affairs of any creditor, or an order both removing the person and prohibiting the person's participation.

(2) A violation, practice, or breach specified in subsection (1) is subject to the authority of the director under subsection (1) if the director finds any of the following:

(a) The interests of the creditor's customers could be seriously prejudiced by reason of the violation or practice.

(b) The violation, practice, or breach involves personal dishonesty on the part of the officer, director, or employee involved.

(c) The violation, practice, or breach demonstrates a willful or continuing disregard by the officer, director, or employee for state and federal laws and regulations, and for the consumer protections contained in this article.

(3) A person who ~~(a)~~ has been convicted of ~~or (b) has pleaded guilty or nolo contendere to;~~ a felony under the laws of Indiana or any other jurisdiction may not serve as an officer, a director, or an employee of a creditor, or serve in any similar capacity, unless the person obtains the written consent of the director.

(4) A creditor that willfully permits a person to serve the creditor in violation of subsection (3) is subject to a civil penalty of five hundred dollars ($500) for each day the violation continues.

**(5) A creditor shall give the department written notice of the resignation, discharge, or termination of an employee, independent contractor, or agent against whom allegations were made that accused the employee, independent contractor, or agent of:**

**(a) violating this article or other laws, regulations, rules, or industry standards of conduct applicable to first lien mortgage transactions; or**

**(b) fraud, dishonesty, theft, or the wrongful taking of property.**

**The creditor shall provide the department the notice required under this subsection not later than thirty (30) days after the effective date of the resignation, discharge, or termination.**

SECTION 12. IC 24-4.4-2-405, AS AMENDED BY P.L.35-2010, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 405. (1) Every licensee shall maintain records in a manner that will enable the department to determine whether the licensee is complying with this article. The record keeping system of a licensee is sufficient if the licensee makes the required information reasonably available. The department shall determine the sufficiency

C o p y

of the records and whether the licensee has made the required information reasonably available. The department shall be given free access to the records wherever the records are located. Records concerning any first lien mortgage transaction shall be retained for two (2) years after the making of the final entry relating to the transaction, but in the case of a revolving first lien mortgage transaction, the two (2) years required under this subsection is measured from the date of each entry relating to the transaction.

(2) The unique identifier of any person originating a mortgage transaction must be clearly shown on all mortgage transaction application forms and any other documents as required by the director.

(3) Every licensee shall use automated examination and regulatory software designated by the director, including third party software. Use of the software consistent with guidance and policies issued by the director is not a violation of IC 28-1-2-30.

(4) Each:

(a) creditor licensed by the department under this article; and

(b) entity that is exempt from licensing under this article and that employs one (1) or more licensed mortgage originators;

shall submit to the NMLSR reports of condition, which must be in a form and must contain information as required by the NMLSR.

(5) Each:

(a) creditor licensed by the department under this article; and

(b) entity exempt from licensing under this article that employs licensed mortgage loan originators;

shall file with the department additional financial statements relating to all first lien mortgage transactions originated by the licensed creditor or the exempt entity as required by the department, but not more frequently than annually, in the form prescribed by the department.

(6) A licensed creditor shall file notification with the department if the licensee:

(a) has a change in name, address, or any of its principals;

(b) opens a new branch, closes an existing branch, or relocates an existing branch;

(c) files for bankruptcy or reorganization; or

(d) is subject to revocation or suspension proceedings by a state or governmental authority with regard to the licensed creditor's activities;

not later than thirty (30) days after the date of the event described in this subsection.

(7) A licensee shall file notification with the department if the licensee or any director, executive officer, or manager of the licensee

C o p y

has been convicted of ~~or pleaded guilty or nolo contendere to~~ a felony under the laws of Indiana or any other jurisdiction. The licensee shall file the notification required by this subsection not later than thirty (30) days after the date of the event described in this subsection.

(8) A licensee shall file notification with the department if the licensee or any director, executive officer, or manager of the licensee has had the person's authority to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry revoked or suspended by Indiana or by any other state, federal, or foreign governmental agency or self regulatory organization. The licensee shall file the notification required by this subsection not later than thirty (30) days after the date of the event described in this subsection.

SECTION 13. IC 24-4.5-1-102, AS AMENDED BY P.L.89-2011, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012 (RETROACTIVE)]: Sec. 102. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

(a) to simplify, clarify, and modernize the law governing retail installment sales, consumer credit, small loans, and usury;

(b) to provide rate ceilings to assure an adequate supply of credit to consumers;

(c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;

(d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;

(e) to permit and encourage the development of fair and economically sound consumer credit practices;

(f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act **and to applicable state and federal laws, rules, regulations, policies, and guidance;** and

(g) to make uniform the law, including administrative rules among the various jurisdictions.

(3) A reference to a requirement imposed by this article includes reference to a related rule or guidance of the department adopted pursuant to this article.

(4) A reference to a federal law in this article is a reference to the

C o p y

law as in effect December 31, ~~2010.~~ **2011.**

(5) This article applies to a transaction if the director determines that the transaction:

(a) is in substance a disguised consumer credit transaction; or

(b) involves the application of subterfuge for the purpose of avoiding this article.

A determination by the director under this paragraph must be in writing and shall be delivered to all parties to the transaction. IC 4-21.5-3 applies to a determination made under this paragraph.

(6) The authority of this article remains in effect, whether a licensee, an individual, or a person subject to this article acts or claims to act under any licensing or registration law of this state, or claims to act without such authority.

(7) A violation of a state or federal law, regulation, or rule applicable to consumer credit transactions is a violation of this article.

(8) The department may enforce penalty provisions set forth in 15 U.S.C. 1640 for violations of disclosure requirements applicable to mortgage transactions.

SECTION 14. IC 24-4.5-1-202, AS AMENDED BY P.L.89-2011, SECTION 11, AND AS AMENDED BY P.L.9-2011, SECTION 2, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 202. *(a) As used in this section, "balloon payment", with respect to a mortgage transaction, means any payment that:*

*(1) the creditor requires the debtor to make at any time during the term of the mortgage;*

*(2) represents the entire amount of the outstanding balance with respect to the mortgage; and*

*(3) the entire amount of which is due as of a specified date or at the end of a specified period;*

*if the aggregate amount of the minimum periodic payments required under the mortgage would not fully amortize the outstanding balance by the specified date or at the end of the specified period. The term does not include a payment required by a creditor under a due-on-sale clause (as defined in 12 U.S.C. 1701j-3(a)) or a payment required by a creditor under a provision in the mortgage that permits the creditor to accelerate the debt upon the debtor's default or failure to abide by the material terms of the mortgage.*

*(b)* This article does not apply to the following:

(1) Extensions of credit to government or governmental agencies or instrumentalities.

(2) The sale of insurance by an insurer, except as otherwise

C o p y

provided in the chapter on insurance (IC 24-4.5-4).

(3) Transactions under public utility, municipal utility, or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.

(4) The rates and charges and the disclosure of rates and charges of a licensed pawnbroker established in accordance with a statute or ordinance concerning these matters.

(5) A sale of goods, services, or an interest in land in which the goods, services, or interest in land are purchased primarily for a purpose other than a personal, family, or household purpose.

(6) A loan in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.

(7) An extension of credit primarily for a business, a commercial, or an agricultural purpose.

(8) An installment agreement for the purchase of home fuels in which a finance charge is not imposed.

(9) Loans made, insured, or guaranteed under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(10) Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(11) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3, IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a loan made:

(A) in compliance with the requirements of; and

(B) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from;

the Indiana housing and community development authority established by IC 5-20-1-3.

(12) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3, IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a subordinate lien mortgage transaction made by an entity that exclusively uses funds provided by the United States Department of Housing and Urban Development under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383, as amended (42 U.S.C. 5301 et seq.).

*(13) The United States, any state or local government, or any agency or instrumentality of any governmental entity, including United States government sponsored enterprises.*

C o p y

*~~(13)~~* **(14)** *A bona fide nonprofit ~~entity~~* **organization** *not operating in a commercial context, as determined by the director, if the following criteria are satisfied:*

*(A) Subject to clause (B), the ~~entity~~* **organization** *originates only one (1) or both of the following types of mortgage transactions:*

*(i) Zero (0) interest first lien mortgage transactions.*

*(ii) Zero (0) interest subordinate lien mortgage transactions.*

*(B) The ~~entity~~* **organization** *does not require, under the terms of the mortgage or otherwise, balloon payments with respect to the mortgage transactions described in clause (A).*

*(C) The ~~entity~~* **organization** *is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.*

*(D) The ~~entity's~~* **organization's** *primary purpose is to serve the public by helping low income individuals and families build, repair, and purchase housing.*

*(E) The ~~entity~~* **organization** *uses only:*

*(i) unpaid volunteers; or*

*(ii) employees whose compensation is not based on the number or size of any mortgage transactions that the employees originate;*

*to originate the mortgage transactions described in clause (A).*

*(F) The ~~entity~~* **organization** *does not charge loan origination fees in connection with the mortgage transactions described in clause (A).*

**(15) A bona fide nonprofit organization (as defined in section 301.5(45) of this chapter) if the following criteria are satisfied:**

**(a) For each calendar year that the organization seeks the exemption provided by this subdivision, the organization certifies, not later than December 31 of the preceding calendar year and on a form prescribed by the director and accompanied by such documentation as required by the director, that the organization is a bona fide nonprofit organization (as defined in section 301.5(45) of this chapter).**

**(b) The director determines that the organization originates only mortgage transactions that are favorable to the debtor. For purposes of this clause, a mortgage transaction is favorable to the debtor if the director determines that the terms of the mortgage transaction are**

C o p y

**consistent with terms of mortgage transactions made in a public or charitable context, rather than in a commercial context.**

SECTION 15. IC 24-4.5-1-301.5, AS AMENDED BY P.L.89-2011, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 301.5. In addition to definitions appearing in subsequent chapters in this article, the following definitions apply throughout this article:

(1) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

(a) controls;

(b) is controlled by; or

(c) is under common control with;

the person subject to this article.

(2) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(4) "Average daily balance" means the sum of each of the daily balances in a billing cycle divided by the number of days in the billing cycle, and if the billing cycle is a month, the creditor may elect to treat the number of days in each billing cycle as thirty (30).

(5) "Closing costs" with respect to a subordinate lien mortgage transaction includes:

(a) fees or premiums for title examination, title insurance, or similar purposes, including surveys;

(b) fees for preparation of a deed, settlement statement, or other documents;

(c) escrows for future payments of taxes and insurance;

(d) fees for notarizing deeds and other documents;

(e) appraisal fees; and

(f) fees for credit reports.

(6) "Conspicuous" refers to a term or clause when it is so written that a reasonable person against whom it is to operate ought to have

C o p y

noticed it.

(7) "Consumer credit" means credit offered or extended to a consumer primarily for a personal, family, or household purpose.

(8) "Consumer credit sale" is a sale of goods, services, or an interest in land in which:

(a) credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;

(b) the buyer is a person other than an organization;

(c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;

(d) either the debt is payable in installments or a credit service charge is made; and

(e) with respect to a sale of goods or services, either the amount financed does not exceed fifty thousand dollars ($50,000) or the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

Unless the sale is made subject to this article by agreement (IC 24-4.5-2-601), "consumer credit sale" does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement or except as provided with respect to disclosure (IC 24-4.5-2-301), debtors' remedies (IC 24-4.5-5-201), providing payoff amounts (IC 24-4.5-2-209), and powers and functions of the department (IC 24-4.5-6) a sale of an interest in land which is a first lien mortgage transaction.

(9) "Consumer loan" means a loan made by a person regularly engaged in the business of making loans in which:

(a) the debtor is a person other than an organization;

(b) the debt is primarily for a personal, family, or household purpose;

(c) either the debt is payable in installments or a loan finance charge is made; and

(d) either:

(i) the principal does not exceed fifty thousand dollars ($50,000); or

(ii) the debt is secured by an interest in land or by personal property used or expected to be used as the principal dwelling of the debtor.

Except as described in IC 24-4.5-3-105, the term does not include a first lien mortgage transaction.

(10) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

C o p y

(11) "Creditor" means a person:

(a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable by written agreement in more than four (4) installments (not including a down payment); and

(b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.

(12) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(13) "Director" means the director of the department of financial institutions or the director's designee.

(14) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

(a) condominium unit;

(b) cooperative unit;

(c) mobile home; or

(d) trailer;

that is used as a residence.

(15) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program.

(16) "Employee" means an individual who is paid wages or other compensation by an employer required under federal income tax law to file Form W-2 on behalf of the individual.

(17) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(18) "First lien mortgage transaction" means:

(a) a **consumer** loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage **or a land contract** (or another ~~equivalent~~ consensual security interest **equivalent to a mortgage or a land contract)** that constitutes a first lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed. ~~The term does not include a land contract.~~

C o p y

(19) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(20) "Individual" means a natural person.

(21) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

(a) by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;

(b) by the lender's payment or agreement to pay the debtor's obligations; or

(c) by the lender's purchase from the obligee of the debtor's obligations.

(22) "Licensee" means a person licensed as a creditor under this article.

(23) "Loan brokerage business" means any activity in which a person, in return for any consideration from any source, procures, attempts to procure, or assists in procuring, a mortgage transaction from a third party or any other person, whether or not the person seeking the mortgage transaction actually obtains the mortgage transaction.

(24) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under this article. For purposes of this subsection, the term "clerical or support duties" may include, after the receipt of an application, the following:

(a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction.

(b) The communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:

(i) offering or negotiating loan rates or terms; or

(ii) counseling consumers about mortgage transaction rates or terms.

An individual engaging solely in loan processor or underwriter activities, shall not represent to the public through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other

C o p y

promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(25) "Mortgage loan originator" means an individual who, for compensation or gain, or in the expectation of compensation or gain, **regularly** engages in taking a mortgage transaction application or in offering or negotiating the terms of a mortgage transaction that either is made under this article or under IC 24-4.4 or is made by an employee of a person licensed or exempt from licensing under this article or under IC 24-4.4, while the employee is engaging in the loan brokerage business. The term does not include the following:

(a) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed or exempt from licensing under this article.

(b) Unless the person or entity is compensated by:

(i) a creditor;

(ii) a loan broker;

(iii) another mortgage loan originator; or

(iv) any agent of the creditor, loan broker, or other mortgage loan originator described in items (i) through (iii);

a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law.

(c) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D)).

(26) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.

(27) "Mortgage transaction" means:

(a) a **consumer** loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage **or a land contract** (or another ~~equivalent~~ consensual security interest **equivalent to a mortgage or a land contract)** on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed. ~~The term does not include a land contract.~~

(28) "Nationwide Mortgage Licensing System and Registry", or "NMLSR", means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of creditors and mortgage loan originators.

C o p y

(29) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

(30) "Official fees" means:

(a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or

(b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) that would otherwise be payable.

(31) "Organization" means a corporation, a government or governmental subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated organization, or any other entity, however organized.

(32) "Payable in installments" means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(33) "Person" includes an individual or an organization.

(34) "Person related to" with respect to an individual means:

(a) the spouse of the individual;

(b) a brother, brother-in-law, sister, or sister-in-law of the individual;

(c) an ancestor or lineal descendants of the individual or the individual's spouse; and

(d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(35) "Person related to" with respect to an organization means:

(a) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(b) a director, an executive officer, or a manager of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

(c) the spouse of a person related to the organization; and

(d) a relative by blood or marriage of a person related to the organization who shares the same home with the person.

(36) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed, unless and until evidence is introduced that would support a finding of its nonexistence.

C o p y

(37) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.

(c) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).

(d) Engaging in any activity for which a person is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.

(e) Offering to engage in any activity, or act in any capacity, described in this subsection.

(38) "Registered mortgage loan originator" means any individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(b) is registered with, and maintains a unique identifier through, the NMLSR.

(39) "Regularly engaged", with respect to a person who extends consumer credit, refers to a person who:

(a) extended consumer credit:

(i) more than twenty-five (25) times; or

(ii) ~~at least one (1) time~~ **more than five (5) times** for a mortgage transaction secured by a dwelling;

in the preceding calendar year; or

(b) extends or will extend consumer credit:

(i) more than twenty-five (25) times; or

(ii) ~~at least one (1) time~~ **more than five (5) times** for a mortgage transaction secured by a dwelling;

in the current calendar year, if the person did not meet the numerical standards described in subdivision (a) in the preceding calendar year.

C o p y

(40) "Residential real estate" means any real property that is located in Indiana and on which there is located or intended to be constructed a dwelling.

(41) "Seller credit card" means an arrangement that gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or from that person and any other person. The term includes a card that is issued by a person, that is in the name of the seller, and that can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

(42) "Subordinate lien mortgage transaction" means:

(a) a **consumer** loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage **or a land contract** (or another ~~equivalent~~ consensual security interest **equivalent to a mortgage or a land contract)** that constitutes a subordinate lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed. ~~The term does not include a land contract.~~

(43) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

(44) "Land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.

**(45) "Bona fide nonprofit organization" means an organization that does the following, as determined by the director under criteria established by the director:**

**(a) Maintains tax exempt status under Section 501(c)(3) of the Internal Revenue Code.**

**(b) Promotes affordable housing or provides home ownership education or similar services.**

**(c) Conducts the organization's activities in a manner that serves public or charitable purposes.**

**(d) Receives funding and revenue and charges fees in a manner that does not encourage the organization or the organization's employees to act other than in the best interests of the organization's clients.**

**(e) Compensates the organization's employees in a manner that does not encourage employees to act other than in the best interests of the organization's clients.**

C o p y

**(f) Provides to, or identifies for, debtors mortgage transactions with terms that are favorable to the debtor (as described in section 202(b)(15) of this chapter) and comparable to mortgage transactions and housing assistance provided under government housing assistance programs.**

**(g) Maintains certification by the United States Department of Housing and Urban Development or employs counselors who are certified by the Indiana housing and community development authority.**

SECTION 16. IC 24-4.5-2-209, AS AMENDED BY P.L.89-2011, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 209. (1) Subject to the provisions on rebate upon prepayment (section 210 of this chapter), the buyer may prepay in full the unpaid balance of a consumer credit sale, refinancing, or consolidation at any time without penalty.

(2) At the time of prepayment of a credit sale not subject to the provisions of rebate upon prepayment (section 210 of this chapter), the total credit service charge, including the prepaid credit service charge, may not exceed the maximum charge allowed under this chapter for the period the credit sale was in effect.

(3) The creditor or mortgage servicer shall provide, in writing, an accurate payoff amount for the consumer credit sale to the debtor within seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer credit sale payoff amount. A payoff statement provided by a creditor or mortgage servicer under this subsection must ~~include~~ **show** the date the statement was prepared and ~~the payoff amount as of that date, including an itemization of~~ **itemize the unpaid principal balance and** each fee, charge, or other sum included within the payoff amount. A creditor or mortgage servicer who fails to provide the accurate consumer credit sale payoff amount is liable for:

(A) one hundred dollars ($100) if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's first written request; and

(B) the greater of:

(i) one hundred dollars ($100); or

(ii) the credit service charge that accrues on the sale from the date the creditor or mortgage servicer receives the first written

C o p y

request until the date on which the accurate consumer credit sale payoff amount is provided;

if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with clause (A).

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

(4) As used in this subsection, "mortgage transaction" ~~does not include a land contract and~~ means a consumer credit sale in which a mortgage **or a land contract** (or another ~~equivalent~~ consensual security interest **equivalent to a mortgage or a land contract)** that constitutes a lien is created or retained against land upon which there is constructed or intended to be constructed a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. This subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than five (5) business days (excluding legal public holidays, Saturdays, and Sundays) after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days (excluding legal public holidays, Saturdays, and Sundays) after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. The thirty (30) day period described in this subsection may be extended for not more than fifteen (15) business days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the thirty (30) day period, the creditor, the servicer, or the creditor's agent notifies the debtor of the extension and the reason the extension is needed. Payment accepted by a creditor, servicer, or creditor's agent in connection with a short sale constitutes payment in full satisfaction of the mortgage transaction unless the creditor, servicer, or creditor's agent obtains:

(a) the following statement: "The debtor remains liable for any

C o p y

amount still owed under the mortgage transaction."; or

(b) a statement substantially similar to the statement set forth in subdivision (a);

acknowledged by the initials or signature of the debtor, on or before the date on which the short sale payment is accepted. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 17. IC 24-4.5-2-602 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 602. (1) A "consumer related sale" is a sale of goods, services, or an interest in land **in** which: ~~is not subject to the provisions of this article applying to consumer credit sales and in which the amount financed does not exceed fifty thousand dollars ($50,000) if the buyer is a person other than an organization.~~

**(a) credit is granted by a person that is not regularly engaged as a seller in credit transactions of the same kind;**

**(b) the buyer is a person other than an organization;**

**(c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;**

**(d) either the debt is payable in installments or a credit service charge is made; and**

**(e) with respect to a sale of goods or services, either the amount financed does not exceed fifty thousand dollars ($50,000) or the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.**

(2) With respect to a consumer related sale not made pursuant to a revolving charge account, the parties may contract for an amount comprising the amount financed and a credit service charge not in excess of twenty-one percent (21%) per year calculated according to the actuarial method on the unpaid balances of the amount financed.

(3) With respect to a consumer related sale made pursuant to a revolving charge account, the parties may contract for a credit service charge not in excess of that permitted by the provisions on credit service charge for revolving charge accounts (IC 24-4.5-2-207).

**(4) A person engaged in consumer related sales is not required to comply with IC 24-4.5-6-201 through IC 24-4.5-6-203.**

SECTION 18. IC 24-4.5-3-209, AS AMENDED BY P.L.89-2011,

C o p y

SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 209. Right to Prepay - (1) Subject to the provisions on rebate upon prepayment (section 210 of this chapter), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty. With respect to a consumer loan that is primarily secured by an interest in land, a lender may contract for a penalty for prepayment of the loan in full, not to exceed two percent (2%) of any amount prepaid within sixty (60) days of the date of the prepayment in full, after deducting all refunds and rebates as of the date of the prepayment. However, the penalty may not be imposed:

(a) if the loan is refinanced or consolidated with the same creditor;

(b) for prepayment by proceeds of any insurance or acceleration after default; or

(c) after three (3) years from the contract date.

(2) At the time of prepayment of a consumer loan not subject to the provisions of rebate upon prepayment (section 210 of this chapter), the total finance charge, including the prepaid finance charge but excluding the loan origination fee allowed under section 201 of this chapter, may not exceed the maximum charge allowed under this chapter for the period the loan was in effect. For the purposes of determining compliance with this subsection, the total finance charge does not include the following:

(a) The loan origination fee allowed under section 201 of this chapter.

(b) The debtor paid mortgage broker fee, if any, paid to a person who does not control, is not controlled by, or is not under common control with, the creditor holding the loan at the time a consumer loan is prepaid.

(3) The creditor or mortgage servicer shall provide, in writing, an accurate payoff amount for the consumer loan to the debtor within seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer loan payoff amount. A payoff statement provided by a creditor or mortgage servicer under this subsection must ~~include~~ **show** the date the statement was prepared and ~~the payoff amount as of that date, including an itemization of~~ **itemize the unpaid principal balance and** each fee, charge, or other sum included within the payoff amount. A creditor or mortgage servicer who fails to provide the accurate consumer loan payoff amount is liable for:

C o p y

(a) one hundred dollars ($100) if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's first written request; and

(b) the greater of:

(i) one hundred dollars ($100); or

(ii) the loan finance charge that accrues on the loan from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer loan payoff amount is provided;

if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with subdivision (a).

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

(4) As used in this subsection, "mortgage transaction" means a consumer ~~credit~~ loan in which a mortgage **or a land contract** (or another ~~equivalent~~ consensual security interest **equivalent to a mortgage or a land contract)** that constitutes a lien is created or retained against land upon which there is constructed or intended to be constructed a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. This subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than five (5) business days (excluding legal public holidays, Saturdays, and Sundays) after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days (excluding legal public holidays, Saturdays, and Sundays) after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. The thirty (30) day period described in this subsection may be

C o p y

extended for not more than fifteen (15) business days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the thirty (30) day period, the creditor, the servicer, or the creditor's agent notifies the debtor of the extension and the reason the extension is needed. Payment accepted by a creditor, servicer, or creditor's agent in connection with a short sale constitutes payment in full satisfaction of the mortgage transaction unless the creditor, servicer, or creditor's agent obtains:

(a) the following statement: "The debtor remains liable for any amount still owed under the mortgage transaction."; or

(b) a statement substantially similar to the statement set forth in subdivision (a);

acknowledged by the initials or signature of the debtor, on or before the date on which the short sale payment is accepted. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 19. IC 24-4.5-3-503, AS AMENDED BY P.L.89-2011, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 503. (1) The department shall receive and act on all applications for licenses to make consumer loans. Applications must be as prescribed by the director of the department of financial institutions. **If, at any time, the information or record contained in:**

**(a) an application filed under section 502 of this chapter or section 502.1 of this chapter; or**

**(b) a renewal application filed under section 503.6 of this chapter;**

**is or becomes inaccurate or incomplete in a material respect, the applicant shall promptly file a correcting amendment with the department.**

(2) A license shall not be issued unless the department finds that the professional training and experience, financial responsibility, character, and fitness of:

(a) the applicant and any significant affiliate of the applicant;

(b) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and

(c) if known, each person directly or indirectly owning of record

C o p y

or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant; are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

(3) The director is entitled to request evidence of compliance with this section at:

(a) the time of application;

(b) the time of renewal of a license; or

(c) any other time considered necessary by the director.

(4) Evidence of compliance with this section concerning a person licensed under section 502 of this chapter may include and for a person licensed under section 502.1 of this chapter must include:

(a) criminal background checks as described in section 503.1 of this chapter, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for any individual described in subsection (2);

(b) credit histories as described in section 503.2 of this chapter;

(c) surety bond requirements as described in section 503.3 of this chapter;

(d) a review of licensure actions in Indiana and other states; and

(e) other background checks considered necessary by the director.

(5) For purposes of this section and in order to reduce the points of contact that the director may have to maintain under this section, the director may use the NMLSR as a channeling agent for requesting and distributing information to and from any source as directed by the director.

(6) The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(7) Upon written request, the applicant is entitled to a hearing on the question of the qualifications of the applicant for a license as provided in IC 4-21.5.

(8) The applicant shall pay the following fees at the time designated by the department:

(a) An initial license fee as established by the department under IC 28-11-3-5.

(b) Examination fees as established by the department under IC 28-11-3-5.

(c) An annual renewal fee as established by the department under IC 28-11-3-5.

(9) A fee as established by the department under IC 28-11-3-5 may

C o p y

be charged for each day a fee under subsection (8)(b) or (8)(c) is delinquent.

(10) The licensee may deduct the fees required under subsection (8)(a) and (8)(c) from the filing fees paid under IC 24-4.5-6-203.

(11) Except in a transaction approved under section 515 of this chapter, a license issued under this section is not assignable or transferable.

SECTION 20. IC 24-4.5-3-503.4, AS ADDED BY P.L.35-2010, SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 503.4. (1) Subject to subsection (6), the director shall designate the NMLSR to serve as the sole entity responsible for:

(a) processing applications and renewals for licenses under section 502.1 of this chapter;

(b) issuing unique identifiers for licensees under section 502.1 of this chapter and for entities exempt from licensing under this article that employ licensed mortgage loan originators; and

(c) performing other services that the director determines necessary for the orderly administration of the department's licensing system under section 502.1 of this chapter.

(2) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director shall regularly report significant or recurring violations of this article related to subordinate lien mortgage transactions to the NMLSR.

(3) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director may report complaints received regarding licensees under this article related to subordinate lien mortgage transactions to the NMLSR.

(4) The director may report publicly adjudicated licensure actions against licensees under section 502.1 of this chapter to the NMLSR.

(5) The director shall establish a process in which persons licensed in accordance with section 502.1 of this chapter may challenge information reported to the NMLSR by the department.

(6) The director's authority to designate the NMLSR under subsection (1) is subject to the following:

(a) Information stored in the NMLSR is subject to the confidentiality provisions of IC 28-1-2-30 and IC 5-14-3. A person may not:

(i) obtain information from the NMLSR unless the person is authorized to do so by statute;

(ii) initiate any civil action based on information obtained from the NMLSR if the information is not otherwise available to the person under any other state law; or

C o p y

(iii) initiate any civil action based on information obtained from the NMLSR if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(b) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential under IC 28-1-2-30 and that are:

(i) furnished by the director, the director's designee, or a licensee; or

(ii) otherwise obtained by the NMLSR;

are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director may use the documents, materials, or other information available to the director in furtherance of any action brought in connection with the director's duties under this article.

(c) Disclosure of documents, materials, and information:

(i) to the director; or

(ii) by the director;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(d) Information provided to the NMLSR is subject to IC 4-1-11.

(e) This subsection does not limit or impair a person's right to:

(i) obtain information;

(ii) use information as evidence in a civil action or proceeding; or

(iii) use information to initiate a civil action or proceeding;

if the information may be obtained from the director or the director's designee under any law.

(f) Except as otherwise provided in the federal Housing and Economic Recovery Act of 2008, Public Law 110-289, Section 1512, the requirements under any federal law or IC 5-14-3 regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided

C o p y

by federal law or IC 5-14-3.

(g) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by rule or order of the director.

(h) Information or material that is subject to a privilege or confidentiality under subdivision (f) is not subject to:

(i) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(ii) subpoena, discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(i) Any provision of IC 5-14-3 that concerns the disclosure of:

(i) confidential supervisory information; or

(ii) any information or material described in subdivision (f);

and that is inconsistent with subdivision (f) is superseded by this section.

(j) This section does not apply with respect to information or material that concerns the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a person licensed in accordance with section 502.1 of this chapter and described in section 503(2) of this chapter and that is included in the NMLSR for access by the public.

(k) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered reasonable by the director. In determining whether an NMLSR processing fee is reasonable, the director shall:

(i) require review of; and

(ii) make available;

the audited financial statements of the NMLSR.

**(7) Notwithstanding any other provision of law, any:**

**(a) application, renewal, or other form or document that:**

**(i) relates to licenses issued under this article; and**

**(ii) is made or produced in an electronic format;**

**(b) document filed as an electronic record in a multistate automated repository established and operated for the**

C o p y

**licensing or registration of mortgage lenders, brokers, or loan originators; or**

**(c) electronic record filed through the NMLSR;**

**is considered a valid original document when reproduced in paper form by the department.**

SECTION 21. IC 24-4.5-3-503.6, AS AMENDED BY P.L.89-2011, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 503.6. (1) A license issued under this article must be renewed not later than December 31 of each calendar year. A license issued under section 502.1 of this chapter must be renewed through the NMLSR. The minimum standards for license renewal for a creditor include the following:

(a) If the creditor is licensed in accordance with section 502 of this chapter, the creditor has:

(i) paid all required fees for renewal of the license; and

(ii) filed all reports and information required by the director.

(b) If the creditor is licensed under section 502.1 of this chapter, the following:

(i) The creditor has continued to meet the surety bond requirement under section 503.3 of this chapter.

(ii) The creditor has filed the creditor's ~~annual~~ call report in a manner that satisfies section 505(4) of this chapter.

(iii) The creditor has paid all required fees for renewal of the license.

(iv) The creditor and individuals described in section 503(2) of this chapter **have certified to the department that they** continue to meet all the standards for licensing established under section 503 of this chapter.

(v) The creditor has filed all reports and information required by the director.

**(vi) The creditor has provided in the creditor's renewal application any information describing material changes in the information contained in the creditor's original application for licensure, or in any previous application, including any previous renewal application, along with any other information the director requires in order to evaluate the renewal of the license issued under this article.**

(2) A license issued by the department authorizing a person to engage as a creditor in consumer loans or consumer credit sales under this article may be revoked or suspended by the department if the person fails to:

(a) file any renewal form required by the department; or

C o p y

(b) pay any license renewal fee described under section 503(8)(c) of this chapter;

not later than sixty (60) days after the due date.

(3) A person whose license is revoked or suspended under this section may do either of the following:

(a) Pay all delinquent fees and apply for reinstatement of the license.

(b) Appeal the revocation or suspension to the department for an administrative review under IC 4-21.5-3.

Pending the decision from a hearing under IC 4-21.5-3 concerning license revocation or suspension, a license remains in force.

**(4) If, at any time, the information or record contained in:**

**(a) an original application for licensure filed under section 502 or 502.1 of this chapter; or**

**(b) a renewal application filed under this section;**

**is or becomes inaccurate or incomplete in a material respect, the applicant shall promptly file a correcting amendment with the department.**

SECTION 22. IC 24-4.5-3-504, AS AMENDED BY P.L.35-2010, SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 504. (1) The department may issue to a person licensed to:

**(a)** make consumer loans; or

**(b)** engage in consumer credit sales that are mortgage transactions;

an order to show cause why the license should not be revoked or suspended for a period determined by the department. ~~The~~

**(2) An** order ~~shall state~~ **issued under subsection (1) must:**

**(a) include:**

**(i) a statement of** the place, **date,** and time for a meeting with the department, ~~that is no~~ **which date may not be** less than ten (10) days from the date of the order;

**(ii) a description of the action contemplated by the department; and**

**(iii) a statement of the facts or conduct supporting the issuance of the order; and**

**(b) be accompanied by a notice stating that the licensee is entitled to:**

**(i) a reasonable opportunity to be heard; and**

**(ii) show the licensee's compliance with all lawful requirements for retention of the license;**

**at the meeting described in subdivision (a)(i).**

C o p y

**(3)** After the meeting **described in subsection (2)(a)(i),** the department ~~shall~~ **may** revoke or suspend the license if the department finds that:

(a) the licensee has repeatedly and willfully violated:

**(i)** this article or any rule, order, or guidance document ~~lawfully made pursuant to this article;~~ **adopted or issued by the department; or**

~~(b) the licensee has repeatedly and willfully violated~~ **(ii)** any other state or federal ~~consumer credit~~ laws, rules, or regulations **applicable to consumer credit transactions;**

~~(c)~~ **(b)** the licensee does not meet the licensing qualifications under section 503 of this chapter; ~~or~~

**(c) the licensee obtained the license for the benefit of, or on behalf of, a person who does not qualify for the license;**

**(d) the licensee knowingly or intentionally made material misrepresentations to, or concealed material information from, the department; or**

~~(d)~~ **(e)** facts or conditions exist ~~which would clearly have justified the department in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made.~~ **that, had they existed at the time the licensee applied for the license, would have been grounds for the department to deny the issuance of the license.**

~~(2) Except as provided in section 503.6(2) and 503.6(3) of this chapter, no revocation or suspension of a license is lawful unless prior to institution of proceedings by the department notice is given to the licensee of the facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.~~

~~(3) If the department finds that probable cause for revocation of a license exists and that enforcement of this article requires immediate suspension of the license pending investigation, the department may, after a hearing upon five (5) days written notice to the licensee, enter an order suspending the license for not more than thirty (30) days.~~

(4) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and forthwith notify the licensee of:

**(a)** the revocation or suspension;

**(b) if a suspension has been ordered, the duration of the suspension;**

**(c) the procedure for appealing the revocation or suspension under IC 4-21.5-3-5; and**



C o p y

**(d) any other terms and conditions that apply to the revocation or suspension.**

~~Within~~ **Not later than** five (5) days after the entry of the order the department shall deliver to the licensee a copy of the order and the findings supporting the order.

(5) Any person holding a license to make consumer loans may relinquish the license by notifying the department in writing of its relinquishment, but this relinquishment ~~shall~~ **does** not affect the person's liability for acts previously committed **and coming within the scope of this article.**

(6) If the director determines it is in the public interest, the director may pursue revocation of a license of a licensee that has relinquished the license under subsection (5).

(7) ~~No~~ **If a person's license is revoked, suspended, or relinquished, the** revocation, suspension, or relinquishment ~~of a license shall~~ **does not** impair or affect ~~the~~ **any** obligation ~~of~~ **owed by any person under** any preexisting lawful contract. ~~between the licensee and any debtor.~~

~~(8) The department may reinstate a license or terminate a suspension of a license to a person whose license has been revoked or suspended if the director determines that, at the time the determination is made, no fact or condition then exists which clearly would have justified the department in refusing to reinstate a license.~~

~~(9)~~ **(8)** If the director ~~(a)~~ has just cause to believe an emergency exists from which it is necessary to protect the interests of the public, ~~or (b) determines that the license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license;~~ the director may proceed with the revocation of ~~the~~ **a** license **through an emergency or another temporary order** under ~~IC 4-21.5-3-6.~~ **IC 4-21.5-4.**

SECTION 23. IC 24-4.5-3-505, AS AMENDED BY P.L.35-2010, SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 505. (1) Every creditor required to be licensed under this article shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the department to determine whether the licensee is complying with the provisions of this article. The record keeping system of a licensee shall be sufficient if the licensee makes the required information reasonably available. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. The department shall be given free access to the records wherever located. The records pertaining to any loan shall be retained for two (2) years after making

C o p y

the final entry relating to the loan, but in the case of a revolving loan account the two (2) years is measured from the date of each entry. A person licensed or required to be licensed under this chapter is subject to IC 28-1-2-30.5 with respect to any records maintained by the person.

(2) The unique identifier of any person originating a mortgage transaction must be clearly shown on all mortgage transaction application forms and any other documents as required by the director.

(3) Every licensee that engages in mortgage transactions shall use automated examination and regulatory software designated by the director, including third party software. Use of the software consistent with guidance documents and policies issued by the director is not a violation of IC 28-1-2-30.

(4) Each:

(a) creditor that is licensed by the department under this article and that engages in mortgage transactions; and

(b) entity that is exempt from licensing under this article and that employs one (1) or more licensed mortgage loan originators;

shall submit to the NMLSR a call report, which must be in the form and contain information the NMLSR requires.

(5) Every creditor required to be licensed under this article shall file with the department a composite report as required by the department, but not more frequently than annually, in the form prescribed by the department relating to all consumer loans made by the licensee. The department shall consult with comparable officials in other states for the purpose of making the kinds of information required in the reports uniform among the states. Information contained in the reports shall be confidential and may be published only in composite form. The department may impose a fee in an amount fixed by the department under IC 28-11-3-5 for each day that a creditor fails to file the report required by this subsection.

(6) A creditor required to be licensed under this article shall file notification with the department if the licensee:

(a) has a change in name, address, or principals;

(b) opens a new branch, closes an existing branch, or relocates an existing branch;

(c) files for bankruptcy or reorganization; or

(d) is subject to revocation or suspension proceedings by a state or governmental authority with regard to the licensee's activities;

not later than thirty (30) days after the date of the event described in this subsection.

(7) Every licensee shall file notification with the department if the licensee or any director, executive officer, or manager of the licensee

C o p y

has been convicted of ~~or pleaded guilty or nolo contendere to~~ a felony under the laws of Indiana or any other jurisdiction. The licensee shall file the notification required by this subsection not later than thirty (30) days after the date of the event described in this subsection.

SECTION 24. IC 24-4.5-3-602 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 602. ~~Definition: "Consumer Related Loan"; Rate of Loan Finance Charge —~~ (1) A "consumer related loan" is a loan **in** which ~~is not subject to the provisions of IC 24-4.5 applying to consumer loans and in which the principal does not exceed fifty thousand dollars ($50,000) if the debtor is a person other than an organization.~~ **the following apply:**

**(a) The loan is made by a person who is not regularly engaged as a lender in credit transactions of the same kind.**

**(b) The debtor is a person other than an organization.**

**(c) The debt is primarily for a personal, family, or household purpose.**

**(d) Either the debt is payable in installments or a loan finance charge is made.**

**(e) Either:**

**(i) the principal does not exceed fifty thousand dollars ($50,000); or**

**(ii) the debt is secured by an interest in land or by personal property used or expected to be used as the principal dwelling of the debtor.**

(2) With respect to a consumer related loan, including one made pursuant to a revolving loan account, the parties may contract for the payment by the debtor of a loan finance charge not in excess of that permitted by the provisions on loan finance charge for consumer loans other than supervised loans (IC 24-4.5-3-201).

**(3) A person engaged in consumer related loans is not required to comply with:**

**(a) the licensing requirements set forth in section 503 of this chapter; or**

**(b) IC 24-4.5-6-201 through IC 24-4.5-6-203.**

SECTION 25. IC 24-4.5-6-102, AS AMENDED BY P.L.35-2010, SECTION 64, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 102. (a) IC 24-4.5-6-101 through IC 24-4.5-6-117 apply to persons who: ~~in this state:~~

(1) make or solicit consumer credit sales, consumer leases, consumer loans, consumer related sales (IC 24-4.5-2-602), and consumer related loans (IC 24-4.5-3-602); or

(2) directly collect payments from or enforce rights against

C o p y

debtors arising from sales, leases, or loans specified in subsection (1), wherever they are made.

(b) For purposes of IC 24-4.5-6-101 through IC 24-4.5-6-117:

(1) "Consumer credit sale" includes a sale that is a first lien mortgage transaction if the sale is otherwise a consumer credit sale.

(2) "Consumer loan" includes a loan that is a first lien mortgage transaction if the loan is otherwise a consumer loan.

SECTION 26. IC 24-4.5-6-106, AS AMENDED BY P.L.35-2010, SECTION 66, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 106. (1) In administering this article and in order to determine whether the provisions of this article are being complied with by persons engaging in acts subject to this article, the department may examine the records of persons and may make investigations of persons as may be necessary to determine compliance. Records subject to examination under this section include the following:

(a) Training, operating, and policy manuals.

(b) Minutes of:

(i) management meetings; and

(ii) other meetings.

(c) Other records that the department determines are necessary to perform its investigation or examination.

The department may also administer oaths or affirmations, subpoena witnesses, and compel the attendance of witnesses, including directors, executive officers, managers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person subject to this article. The department may also adduce evidence, and require the production of any matter which is relevant to the investigation. The department shall determine the sufficiency of the records maintained and whether the person has made the required information reasonably available. The records pertaining to any transaction subject to this article shall be retained for two (2) years after making the final entry relating to the consumer credit transaction, but in the case of a revolving loan account or revolving charge account, the two (2) years is measured from the date of each entry.

(2) The department's examination and investigatory authority under this article includes the following:

(a) The authority to require a creditor to refund overcharges resulting from the creditor's noncompliance with the terms of ~~a subordinate lien mortgage transaction.~~ **consumer credit sales, consumer leases, or consumer loans.**

C o p y

(b) The authority to require a creditor to comply with the **prepayment** penalty provisions set forth in IC 24-4.5-3-209.

(c) The authority to investigate complaints filed with the department by debtors.

(3) If the department:

(a) investigates; or

(b) examines the books and records of;

a person that is subject to IC 24-4.5-6-201, IC 24-4.5-6-202, and IC 24-4.5-6-203, the person shall pay all reasonably incurred costs of the investigation or examination in accordance with the fee schedule adopted by the department under IC 28-11-3-5. However, the person is liable for the costs of an investigation or examination under this subsection only to the extent that the costs exceed the amount of the filing fees paid most recently under IC 24-4.5-6-203. Any costs required to be paid under this subsection shall be paid not later than sixty (60) days after the person receives a notice from the department of the costs being assessed. The department may impose a fee, in an amount fixed by the department under IC 28-11-3-5, for each day that the assessed costs are not paid, beginning on the first day after the sixty (60) day period described in this subsection.

(4) The department shall be given free access to the records wherever located. In making any examination or investigation authorized by this article, the director may control access to any documents and records of the licensee or person under examination or investigation. The director may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where the documents are usually kept. During the period of control, the licensee or person may not remove or attempt to remove any of the documents and records except under a court order or with the consent of the director. Unless the director has reasonable grounds to believe the documents or records of the licensee or person have been, or are, at risk of being altered or destroyed for purposes of concealing a violation of this article, the licensee or person being examined or investigated is entitled to access to the documents or records as necessary to conduct the licensee's or person's ordinary business affairs. If the person's records are located outside Indiana, the records shall be made available to the department at a convenient location within Indiana, or the person shall pay the reasonable and necessary expenses for the department or its representative to examine them where they are maintained. The department may designate comparable officials of the state in which the records are located to inspect them on behalf of the department.

C o p y

(5) Upon a person's failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all affected persons, the department may apply to any civil court with jurisdiction for an order compelling compliance.

(6) The department shall not make public the name or identity of a person whose acts or conduct the department investigates pursuant to this section or the facts disclosed in the investigation, but this subsection does not apply to disclosures in actions or enforcement proceedings pursuant to this article.

(7) If a creditor contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the creditor and be subject to the department's routine examination procedures, the person that provides the service to the creditor shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any creditor that is licensed under this article and that receives services from the person refusing the examination to:

(a) discontinue receiving one (1) or more services from the person; or

(b) otherwise cease conducting business with the person.

SECTION 27. IC 24-4.5-6-119, AS ADDED BY P.L.35-2010, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 119. (a) Subject to subsection (b), if the director determines that a director, an officer, or an employee of a creditor:

(1) has committed a violation of a statute, a rule, a final cease and desist order, a condition imposed in writing by the director in connection with the grant of an application or other request by the creditor, or a written agreement between the creditor and the director or the department;

(2) has committed fraudulent or unconscionable conduct; or

(3) has been convicted of ~~or has pleaded guilty or nolo contendere to~~ a felony under the laws of Indiana or any other jurisdiction;

the director may issue and serve upon the person a notice of charges and of the director's intent to issue an order removing the person from the person's office or employment, an order prohibiting participation by the person in the conduct of the affairs of any creditor, or an order both removing the person and prohibiting the person's participation.

(b) A violation, practice, or breach described in subsection (a) is subject to the authority of the director under subsection (a) if the

C o p y

director finds any of the following:

(1) The interests of the creditor's customers could be seriously prejudiced by reason of the violation, practice, or breach.

(2) The violation, practice, or breach involves personal dishonesty on the part of the officer, director, or employee involved.

(3) The violation, practice, or breach demonstrates a willful or continuing disregard by the officer, director, or employee for state or federal law and regulations, and for the consumer protections contained in this article.

(c) A person who ~~(1)~~ has been convicted of ~~or (2) has pleaded guilty or nolo contendere to;~~ a felony under the laws of Indiana or any other jurisdiction may not serve as an officer, a director, or an employee of a creditor, or serve in any similar capacity, unless the person obtains the written consent of the director.

(d) A creditor that willfully permits a person to serve the creditor in violation of subsection (c) is subject to a civil penalty of five hundred dollars ($500) for each day the violation occurs.

**(e) A creditor shall give the department written notice of the resignation, discharge, or termination of an employee, independent contractor, or agent against whom allegations were made that accused the employee, independent contractor, or agent of:**

**(1) violating this article or other laws, regulations, rules, or industry standards of conduct applicable to consumer credit transactions; or**

**(2) fraud, dishonesty, theft, or the wrongful taking of property.**

**The creditor shall provide the department the notice required under this subsection not later than thirty (30) days after the effective date of the resignation, discharge, or termination.**

SECTION 28. IC 24-4.5-6-202, AS AMENDED BY P.L.35-2010, SECTION 81, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 202. (1) Persons that are subject to this section and sections 201 and 203 of this chapter shall file notification with the department within thirty (30) days after commencing business in Indiana and thereafter on an annual basis, on the date set forth in subsection (2). The notification shall state the:

(a) name of the person;

(b) name in which business is transacted if different from subdivision (a);

(c) address of principal office, which may be outside Indiana; and

(d) address of all offices or retail stores, if any, in Indiana at which consumer credit sales, consumer leases, or consumer loans

C o p y

are made, or in the case of a person taking assignments of obligations, the offices or places of business within Indiana at which business is transacted.

(2) A person required to be licensed under this article shall file the notification required by subsection (1) not later than December 31 of each year. All other persons subject to this section shall file the notification required by subsection (1) not later than January 31 of each year.

(3) Persons subject to sections 201 and 203 of this chapter and this section shall notify the department not later than thirty (30) days after the person:

(a) has a change in name, address, or principals;

(b) opens a new branch, closes an existing branch, or relocates an existing branch;

(c) files for bankruptcy or reorganization;

(d) is notified that the person is subject to revocation or suspension proceedings by a state or governmental authority with regard to the person's activities; or

(e) has been convicted of ~~or pleaded guilty or nolo contendere to~~ a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

SECTION 29. IC 24-4.5-6-203, AS AMENDED BY P.L.90-2008, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 203. (1) Persons required to file notification who are sellers, lessors, or lenders shall pay a fee in an amount and at intervals to be prescribed by the director under IC 28-11-3-5. The fee shall be a ~~uniform~~ **set** amount for each one hundred thousand dollars ($100,000), or part thereof, in excess of one hundred thousand dollars ($100,000), of the original unpaid balances arising from consumer credit sales, consumer leases, and consumer loans made in Indiana and held either by the seller, lessor, or lender for more than thirty (30) days after the inception of the sale, lease, or loan giving rise to the obligations, or by an assignee who has not filed notification. A refinancing of a sale, lease, or loan resulting in an increase in the amount of an obligation is a new sale, lease, or loan to the extent of the increase. In prescribing the fee, the department shall consider the costs and expense incurred or estimated to be incurred by the department in the administration of this article, including, but not limited to, the supervision, regulation, and examination of persons subject to the provisions of the article.

(2) Persons required to file notification who are assignees shall pay a fee as prescribed and fixed by the department under subsection (1) on

C o p y

the unpaid balances at the time of the assignment of obligations arising from consumer credit sales, consumer leases, and consumer loans made in Indiana taken by assignment during the preceding calendar year, but an assignee need not pay a fee with respect to an obligation on which the assignor or other person has already paid a fee.

(3) Persons required to file notification who are assignors shall pay a fee as prescribed by the department under subsection (1) on the unpaid balances at the time of the assignment of obligations arising from consumer credit sales, consumer leases, and consumer loans made in Indiana during the preceding calendar year unless the assignee has already paid the fees.

(4) Persons required to renew a license under ~~IC 24-4.5-3-503~~ **IC 24-4.5-3-503.6** may deduct the fees paid under ~~IC 24-4.5-3-503(7)(a) through IC 24-4.5-3-503(7)(c)~~ **IC 24-4.5-3-503(8)(b) and IC 24-4.5-3-503(8)(c), as applicable,** from fees paid under this section.

(5) A person that is required to file notification under IC 24-4.5-6-202 shall pay a fee at the same rate as prescribed and fixed by the department under subsection (1) on the original unpaid balances of all closed end credit obligations originating from the person's place of business during the time preceding the notification as specified under subsection (1), unless the fees for the obligations have been paid by another person.

SECTION 30. IC 24-4.5-7-402, AS AMENDED BY P.L.35-2010, SECTION 84, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 402. (1) A lender is prohibited from making a small loan to a borrower if the total of:

(a) the principal amount and finance charges of the small loan to be issued; plus

(b) any other small loan balances that the borrower has outstanding with any lender;

exceeds twenty percent (20%) of the borrower's monthly gross income.

(2) A small loan may be secured by only one (1) check or authorization to debit the borrower's account per small loan. The check or electronic debit may not exceed the amount advanced to or on behalf of the borrower plus loan finance charges contracted for and permitted.

(3) A borrower may make partial payments in any amount on the small loan without charge at any time before the due date of the small loan.

**(4)** After ~~each~~ **any** payment is made on a small loan, whether the payment is **made** in part or in full **before, on, or after the due date of the small loan,** the lender shall give a signed and dated receipt to the

C o p y

borrower making a payment showing the amount paid and the balance due on the small loan.

~~(4)~~ **(5)** The lender shall provide to each borrower a copy of the required loan documents before the disbursement of the loan proceeds.

~~(5)~~ **(6)** A borrower may rescind a small loan without cost by paying the cash amount of the principal of the small loan to the lender not later than the end of the business day immediately following the day on which the small loan was made.

~~(6)~~ **(7)** A lender shall not enter into a renewal with a borrower. If a loan is paid in full, a subsequent loan is not a renewal.

SECTION 31. IC 24-7-8-4, AS AMENDED BY P.L.35-2010, SECTION 94, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4. (a) A lessor required to file a notification with the department under section 1 of this chapter shall pay to the department the following fees:

(1) A fee fixed by the department under IC 28-11-3-5 with the initial notification filed with the department.

(2) A fee fixed by the department under IC 28-11-3-5 for each place of business operated by the lessor on December 31 of the preceding year with each annual notification subsequently filed with the department.

(b) In addition to the fee required under subsection (a)(2), if the department examines the books and records of the lessor, the lessor shall pay to the department all reasonably incurred costs of the examination in accordance with the fee schedule adopted by the department under IC 28-11-3-5.

(c) The department may impose a fee fixed by the department under IC 28-11-3-5 for each day a lessor is late in:

(1) submitting the information required under IC 24-7-8-2; or

(2) paying a fee under subsection (a) **or (b).**

SECTION 32. IC 24-9-3-6, AS AMENDED BY P.L.89-2011, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. (a) A creditor may not charge a fee for informing or transmitting to a person the balance due to pay off a home loan or to provide a written release upon prepayment. A creditor must provide, in writing, a payoff balance not later than seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the request is received by the creditor. A payoff statement provided by a creditor under this subsection must ~~include~~ **show** the date the statement was prepared and ~~the payoff amount as of that date, including an itemization of~~ **itemize the unpaid principal balance and** each fee, charge, or other sum included within the payoff amount. For

C o p y

purposes of this subsection, "fee" does not include actual charges incurred by a creditor for express or priority delivery of home loan documents to the borrower if such delivery is requested by the borrower.

(b) This subsection applies to a home loan, or the refinancing or consolidation of a home loan, that:

(1) is closed after June 30, 2009; and

(2) has an interest rate that is subject to change at one (1) or more times during the term of the home loan.

A creditor in a transaction to which this subsection applies may not contract for and may not charge the borrower a prepayment fee or penalty.

(c) This subsection applies to a home loan with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than five (5) business days (excluding legal public holidays, Saturdays, and Sundays) after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days (excluding legal public holidays, Saturdays, and Sundays) after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. The thirty (30) day period described in this subsection may be extended for not more than fifteen (15) business days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the thirty (30) day period, the creditor, the servicer, or the creditor's agent notifies the debtor of the extension and the reason the extension is needed. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a home loan is sold for an amount that is less than the amount of the borrower's outstanding obligation on the home loan. A creditor, a servicer, or a creditor's agent that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 33. IC 24-9-3-7, AS AMENDED BY P.L.89-2011, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7. (a) As used in this section, "mortgage

C o p y

transaction" includes the following:

(1) A home loan subject to this article.

(2) To the extent allowed under federal law, a loan described in IC 24-9-1-1 that is secured by a mortgage **or a land contract** (or another ~~equivalent~~ consensual security interest **equivalent to a mortgage or a land contract)** on real estate in Indiana on which there is located or will be located a structure or structures:

(A) designed primarily for occupancy of one (1) to four (4) families; and

(B) that is or will be occupied by a borrower as the borrower's principal dwelling.

(3) A first lien mortgage transaction (as defined in IC 24-4.4-1-301) subject to IC 24-4.4.

(4) A consumer credit sale subject to IC 24-4.5-2 in which a mortgage **or a land contract** (or another ~~equivalent~~ consensual security interest **equivalent to a mortgage or a land contract)** that constitutes a lien is created or retained against land:

(A) that is located in Indiana; and

(B) upon which there is constructed or intended to be constructed a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(5) A consumer credit loan subject to IC 24-4.5-3 in which a mortgage **or a land contract** (or another ~~equivalent~~ consensual security interest **equivalent to a mortgage or a land contract)** that constitutes a lien is created or retained against land:

(A) that is located in Indiana; and

(B) upon which there is constructed or intended to be constructed a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(6) A loan in which a mortgage **or a land contract** (or another ~~equivalent~~ consensual security interest **equivalent to a mortgage or a land contract)** that constitutes a lien is created or retained against land:

(A) that is located in Indiana;

(B) upon which there is constructed or intended to be constructed a dwelling that is not or will not be used by the borrower primarily for personal, family, or household purposes; and

(C) that is classified as residential for property tax purposes.

The term includes a loan that is secured by land in Indiana upon which there is constructed or intended to be constructed a dwelling that is purchased by or through the borrower for

C o p y

investment or other business purposes.

(7) A reverse mortgage transaction that is secured by real estate in Indiana on which there is located a structure that is occupied by a borrower as the borrower's principal dwelling.

~~The term does not include a land contract.~~

(b) As used in this section, "real estate transaction" means the sale or lease of any legal or equitable interest in real estate:

(1) that is located in Indiana;

(2) upon which there is constructed or intended to be constructed a dwelling; and

(3) that is classified as residential for property tax purposes.

(c) A person may not do any of the following:

(1) Divide a home loan transaction into separate parts with the intent of evading a provision of this article.

(2) Structure a home loan transaction as an open-end loan with the intent of evading the provisions of this article if the home loan would be a high cost home loan if the home loan had been structured as a closed-end loan.

(3) Engage in a deceptive act in connection with a mortgage transaction or a real estate transaction.

(4) Engage in, or solicit to engage in, a real estate transaction or a mortgage transaction without a permit or license required by law.

(5) With respect to a real estate transaction or a mortgage transaction, represent that:

(A) the transaction has:

(i) certain terms or conditions; or

(ii) the sponsorship or approval of a particular person or entity;

that it does not have and that the person knows or reasonably should know it does not have; or

(B) the real estate or property that is the subject of the transaction has any improvements, appurtenances, uses, characteristics, or associated benefits that it does not have and that the person knows or reasonably should know it does not have.

(6) Maintain or offer to maintain an account for the receipt of funds for the payment of real estate taxes and insurance unless the person is any of the following:

(A) Any of the following that is chartered under the laws of a state or the United States:

(i) A bank.

copy

(ii) A savings and loan association.
(iii) A credit union.
(iv) A savings bank.
(B) The creditor in a mortgage transaction.
(C) A mortgage servicer acting on behalf of the creditor in a mortgage transaction.
(D) A closing agent (as defined in IC 27-7-3.7-1).
(7) Fail to provide the notice required under subsection (d), within the time specified in subsection (d), if the person is a seller in a real estate transaction described in subsection (d).

(d) This subsection applies to a real estate transaction that involves a land contract between the seller and the buyer in the transaction. If the real estate that is the subject of the transaction is subject to any encumbrance, including any tax lien, foreclosure action, legal judgment, or other encumbrance affecting the title to the real estate, the seller must provide written notice by certified mail, return receipt requested, of the encumbrance to the buyer:
(1) not later than the time the land contract is executed, if the encumbrance is created before or at the time the land contract is executed; or
(2) not later than ten (10) business days after the encumbrance is created, if the encumbrance is created after the land contract is executed.

SECTION 34. IC 24-9-7-2, AS AMENDED BY P.L.181-2006, SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. Political subdivisions may not:
(1) enact, issue, or enforce ordinances, resolutions, regulations, orders, requests for proposals, or requests for bids pertaining to financial or lending activities, including ordinances, resolutions, and rules that disqualify persons from doing business with a municipality and that are based upon lending terms or practices; or
(2) impose reporting requirements or any other obligations upon persons regarding financial services or lending practices or upon subsidiaries or affiliates that:
(A) are subject to the jurisdiction of the department of financial institutions;
(B) are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, ~~the Office of Thrift Supervision,~~ the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade

C o p y

Commission, or the United States Department of Housing and Urban Development;

(C) are chartered by the United States Congress to engage in secondary market mortgage transactions;

(D) are created by the Indiana housing and community development authority; or

(E) originate, purchase, sell, assign, securitize, or service property interests or obligations created by financial transactions or loans made, executed, originated, or purchased by persons referred to in clauses (A), (B), (C), or (D).

SECTION 35. IC 28-1-1-3, AS AMENDED BY P.L.89-2011, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. Unless a different meaning is required by the context, the following definitions apply throughout this article:

(1) "Financial institution" means any bank, trust company, corporate fiduciary, savings association, credit union, savings bank, bank of discount and deposit, or industrial loan and investment company organized or reorganized under the laws of this state, and includes licensees under IC 24-4.4 and IC 24-4.5.

(2) "Bank" or "bank or trust company" means a financial institution organized or reorganized as a bank, bank of discount and deposit, or trust company under the laws of this state with the express power to receive and accept deposits of money subject to withdrawal by check, and possessing such other rights and powers granted by the provisions of this article in express terms or by implication. The term "bank" or "bank or trust company" does not include a savings association, credit union, or industrial loan and investment company.

(3) "Domestic corporation" means a corporation formed under the laws of this state, and "foreign corporation" means every other corporation.

(4) "Articles of incorporation" includes both the original articles of incorporation and any and all amendments thereto, except where the original articles of incorporation only are expressly referred to, and includes articles of merger and consolidation, and, in the case of corporations organized before July 1, 1933, articles of reorganization, and all amendments thereto.

(5) "Incorporator" means one (1) of the signers of the original articles of incorporation.

(6) "Subscriber" means one who subscribes for shares of stock in a financial institution.

(7) "Shareholder" means one who is a holder of record of shares

C o p y

of stock in a financial institution.
(8) "Capital stock" means the aggregate amount of the par value of all shares of capital stock.
(9) "Capital" means the aggregate amount paid in on the shares of capital stock of a financial institution issued and outstanding.
(10) "Capital and surplus" or "unimpaired capital and unimpaired surplus" has the meaning set forth in 12 CFR 32.2.
(11) "Assets" includes all of the property and rights of every kind of a financial institution, and the term "fixed assets" means such assets as are not intended to be sold or disposed of in the ordinary course of business.
(12) "Principal office" means that office maintained by the financial institution in this state, the address of which is required by the provisions of this article to be kept on file in the office of the secretary of state.
(13) "Subscription" means any written agreement or undertaking, accepted by a financial institution, for the purchase of shares of capital stock in the financial institution.
(14) "Department" means the department of financial institutions.
(15) "Member" means a member of the department of financial institutions.
(16) "Branch" means any office, agency, **mobile unit, messenger service,** or other place of business ~~other than the principal office of a financial institution,~~ at which deposits are received, checks paid, or money lent. **The term does not include:**

**(A) the principal office of a bank;**
**(B) the principal office of an affiliate;**
**(C) a branch of an affiliate;**
**(D) an automated teller machine;**
**(E) a night depository;**
**(F) a temporary facility authorized in IC 28-2-13-22.5;**
**(G) a loan production office;**
**(H) a deposit production office; or**
**(I) other service delivery mechanisms not considered by the director to be a branch.**

(17) "Subsidiary" means any foreign or domestic corporation or limited liability company in which the parent bank, savings bank, savings association, or industrial loan and investment company had at least eighty percent (80%) ownership before July 1, 1999, or is formed or acquired in accordance with IC 28-13-16 after June 30, 1999.
(18) "Savings bank" means a financial institution that:

C o p y

(A) was organized, reorganized, or operating under IC 28-6 (before its repeal) before January 1, 1993;
(B) is formed as the result of a conversion under:
(i) IC 28-1-21.7;
(ii) IC 28-1-21.8;
(iii) IC 28-1-21.9; or
(iv) IC 28-1-30; or
(C) is incorporated under IC 28-12.

(19) "Corporate fiduciary" means a financial institution whose primary business purpose is to engage in the trust business (as defined in IC 28-14-1-8) and the execution and administration of fiduciary accounts as a nondepository trust company incorporated under Indiana law.

SECTION 36. IC 28-1-2-23, AS AMENDED BY P.L.89-2011, SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 23. (a) A corporation or an individual acting directly, indirectly, or through or in concert with one (1) or more other corporations or individuals may not acquire control of any bank, trust company, stock savings bank, holding company, corporate fiduciary, or industrial loan and investment company unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days following receipt of an application to issue a notice approving the proposed change in control. The application shall contain the name and address of the corporation, individual, or individuals who propose to acquire control.

(b) The period for approval under subsection (a) may be extended:

(1) in the discretion of the director for an additional thirty (30) days; and

(2) not to exceed two (2) additional times for not more than forty-five (45) days each time if:

(A) the director determines that the corporation, individual, or individuals who propose to acquire control have not submitted substantial evidence of the qualifications described in subsection (c);
(B) the director determines that any material information submitted is substantially inaccurate; or
(C) the director has been unable to complete the investigation of the corporation, individual, or individuals who propose to acquire control because of any delay caused by or the inadequate cooperation of the corporation, individual, or individuals.

C o p y

(c) The department shall issue a notice approving the application only after it has become satisfied that both of the following apply:

(1) The corporation, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the bank, trust company, stock savings bank, bank holding company, corporate fiduciary, or industrial loan and investment company in a legal and proper manner.

(2) The interests of the stockholders, depositors, and creditors of the bank, trust company, stock savings bank, bank holding company, corporate fiduciary, or industrial loan and investment company and the interests of the public generally will not be jeopardized by the proposed change in control.

(d) As used in this section, "holding company" means any company (as defined in IC 28-2-15-5 before July 1, 1992, and as defined in IC 28-2-16-5 beginning July 1, 1992) that directly or indirectly controls one (1) or more state chartered financial institutions.

(e) As used in this section, "control", "controlling", "controlled by", or "under common control with" means possession of the power directly or indirectly to:

(1) direct or cause the direction of the management or policies of a bank, a trust company, a holding company, a corporate fiduciary, or an industrial loan and investment company, whether through the beneficial ownership of voting securities, by contract, or otherwise; or

(2) vote at least twenty-five percent (25%) of voting securities of a bank, a trust company, a holding company, a corporate fiduciary, or an industrial loan and investment company, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.

(f) The director may determine, in the director's discretion, that subsection (a) does not apply to a transaction if the director determines that the direct or beneficial ownership of the bank, trust company, stock savings bank, holding company, corporate fiduciary, or industrial loan and investment company will not change as a result of the transaction.

(g) The president or other chief executive officer of a financial institution or holding company shall report to the director any transfer or sale of shares of stock of the financial institution or holding company that results in direct or indirect ownership by a stockholder or an affiliated group of stockholders of at least ten percent (10%) of the outstanding stock of the financial institution or holding company. The report required by this ~~section~~ **subsection** must be made not later

C o p y

than ten (10) days after the **president or other chief executive officer becomes aware of the** transfer of the shares of stock on the books of the financial institution or holding company.

**(h) To assist the department in making a determination under subsection (c), the director may conduct any investigation the director determines is warranted, including any background check described in IC 28-11-5-4.5.**

**(i) This subsection applies to a transaction described in 12 CFR 303.83(b)(1), including the following:**

**(1) The acquisition of voting shares through inheritance.**

**(2) The acquisition of voting shares through a bona fide gift.**

**(3) The acquisition of voting shares in satisfaction of a debt previously contracted in good faith, other than the acquisition of a defaulted loan secured by a controlling amount of the voting securities of a bank, trust company, stock savings bank, bank holding company, corporate fiduciary, or industrial loan and investment company.**

**In a transaction to which this subsection applies, the acquiring person shall use the person's best effort to comply with the requirements of this section. However, it is not a violation of this section if the acquiring person is not able to satisfy the requirements of this section and notifies the department of the acquisition not later than thirty (30) calendar days after the acquisition and provides any relevant information requested by the department. This subsection does not limit the authority of the department to conduct any investigation necessary to approve or disapprove the transaction under subsection (c).**

SECTION 37. IC 28-1-5-2, AS AMENDED BY P.L.35-2010, SECTION 111, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) Every corporation has the capacity to act that is possessed by a natural person, but has the authority to perform only those acts that are necessary, convenient, or expedient to accomplish the purposes for which it is formed and that are not repugnant to law.

(b) Subject to any limitations or restrictions imposed by law or by the articles of incorporation, each corporation has the following general rights, powers, and privileges:

(1) To continue as a corporation, under its corporate name, for the period limited in its articles of incorporation, or, if the period is not so limited, then perpetually.

(2) To sue and be sued in its corporate name.

(3) To have a corporate seal and to alter such seal at its pleasure.

C o p y

(4) To acquire, own, hold, use, lease, mortgage, pledge, sell, convey, or otherwise dispose of property, real and personal, tangible and intangible, in the manner and to the extent hereinafter provided.

(5) To borrow money and to mortgage or pledge its property to secure the payment thereof, in the manner and to the extent hereinafter provided; but no financial institution having power to accept deposits of money shall pledge any of the assets of such financial institution as security for the safekeeping and prompt payment of any money so deposited, except that any such financial institution may, for the safekeeping and prompt payment of any money so deposited, give security of the kind authorized by any statute of this state or by the Congress of the United States. Notwithstanding this subdivision, a financial institution may receive deposits of state and federal public funds and may pledge securities or other assets for the repayment of deposits if the pledge is permitted by applicable law or regulation.

(6) To conduct business in this state and elsewhere.

(7) To appoint such officers and agents as the business of the corporation may require and to do the following with respect to any officers or agents appointed:

(A) Define their duties.

(B) Fix their compensation, which may include compensation paid pursuant to any plan of deferred compensation approved by the corporation's board of directors.

(C) Enter into employment contracts with the corporation's officers and agents which set forth terms and conditions of employment.

(D) Provide the corporation's officers, agents, and employees with individual or group life insurance.

(E) Procure and maintain in effect for the benefit of the bank, insurance on the life or lives of designated officers or directors.

(8) To make bylaws for the government and regulation of its affairs.

(9) To cease doing business and to dissolve and surrender its corporate franchise.

(10) To do all acts and things necessary, convenient, or expedient to carry out the purposes for which it is formed.

(c) Subject to any limitations or restrictions that the department **or a federal regulator** may impose by **regulation,** rule, ~~or~~ policy, **or guidance,** each corporation may purchase and hold life insurance as

C o p y

follows:

(1) Life insurance purchased or held in connection with employee compensation or benefit plans approved by the corporation's board of directors.

(2) Life insurance purchased or held to recover the cost of providing preretirement or postretirement employee benefits approved by the corporation's board of directors.

(3) Life insurance on the lives of borrowers.

(4) Life insurance held as security for a loan.

(5) Life insurance that a national bank may purchase or hold under 12 U.S.C. 24 (Seventh).

SECTION 38. IC 28-1-7-1, AS AMENDED BY P.L.35-2010, SECTION 112, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) As used in this chapter, "corporation" means:

(1) a bank;

(2) a trust company;

(3) a corporate fiduciary;

(4) a savings bank organized, reorganized, or formed as a result of a conversion after December 31, 1992;

(5) a savings association; or

(6) an industrial loan and investment company that maintains federal deposit insurance.

**(b) As used in this chapter, "shareholder", with respect to a:**

**(1) mutual savings bank; or**

**(2) mutual saving association;**

**refers to a member of the mutual savings bank or mutual savings association.**

~~(b)~~ **(c)** Any two (2) or more corporations that are organized or reorganized under the laws of any state (as defined in IC 28-2-17-19) or of the United States may merge into one (1) of such corporations, or may consolidate into a new corporation, to be organized under IC 28-12, by complying with the provisions of this chapter.

~~(c)~~ **(d)** A savings bank organized before January 1, 1993, may under section 25 of this chapter merge, consolidate, or join together with a bank or trust company. Except as provided in section 25 of this chapter, all other provisions of this chapter apply to the merger, consolidation, or joining together.

~~(d)~~ **(e)** A corporation organized or reorganized under the laws of a state (as defined in IC 28-2-17-19) or of the United States may merge or consolidate with one (1) or more of its affiliates (as defined in IC 28-1-18.2-1) by complying with all the provisions of this chapter. In

C o p y

effecting a merger or consolidation between a corporation and an affiliate, this chapter applies as if the affiliate were a corporation except that a noncorporation survivor of a merger or consolidation does not retain powers of the corporation.

SECTION 39. IC 28-1-7-4, AS AMENDED BY P.L.35-2010, SECTION 113, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4. (a) After the resolutions approving a joint agreement of merger have been adopted by the board of directors of each of the corporations, such resolutions and joint agreement shall be submitted for approval by the department. **Subject to any approvals required under federal law,** the department may, in its discretion, approve or disapprove the resolution and joint agreement.

(b) In deciding whether to approve or disapprove a resolution and joint agreement under this section, the department shall consider the following factors:

(1) Whether the institutions subject to the proposed transaction are operated in a safe, sound, and prudent manner.

(2) Whether the financial condition of any institution subject to the proposed transaction will jeopardize the financial stability of any other institutions subject to the proposed transaction.

(3) Whether the proposed transaction under this chapter will result in an institution that has inadequate capital, unsatisfactory management, or poor earnings prospects.

(4) Whether the proposed transaction, in the department's judgment and considering the available information under the prevailing circumstances, will result in an institution that is more favorable to the stakeholders than if the entities were to remain separate.

(5) Whether the management or other principals of the institution that will result from the proposed transaction under this chapter are qualified by character and financial responsibility to control and operate in a legal and proper manner the resulting institution.

(6) Whether the institutions subject to the proposed transaction under this chapter furnish all the information the department requires in reaching the department's decision.

SECTION 40. IC 28-1-7-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 21. **(a) This section does not apply to a shareholder of a:**

**(1) mutual savings bank; or**

**(2) mutual savings association;**

**that is the subject of a proposed merger or consolidation under this**

C o p y

**chapter.**

~~(a)~~ **(b)** A shareholder entitled to vote on the adoption of an agreement of merger or consolidation may dissent from the merger or consolidation and obtain payment of the value of the shareholder's shares in the manner provided in this section.

~~(b)~~ **(c)** If a proposed merger or consolidation is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this section.

~~(c)~~ **(d)** A shareholder who desires to assert dissenters' rights under this section must:

(1) deliver to the corporation before the vote is taken written notice of the shareholder's demand for payment for the shareholder's shares if the proposed action is effected; and

(2) not vote the shareholder's shares in favor of the proposed action.

~~(d)~~ **(e)** If the merger or consolidation is effected, the surviving or new corporation shall pay to the shareholder, upon surrender of the certificate or certificates representing the shareholder's shares, the value of the shares as of the day before the date on which the vote was taken approving the merger or consolidation. A shareholder failing to satisfy the requirements of subsection ~~(c)~~ **(d)** is not entitled to payment for the shareholder's shares under this section. Immediately after the vote is taken approving the merger or consolidation, the shareholder, except as otherwise provided in subsection ~~(c),~~ **(f),** is entitled to payment only as provided in this section, ceases to be a shareholder, and is not entitled to vote or to exercise any other rights of a shareholder.

~~(e)~~ **(f)** A demand for payment made under subsection ~~(c)~~ **(d)** may not be withdrawn unless the corporation consents to the withdrawal. With respect to a shareholder who has made a demand for payment, the right of the shareholder to be paid the value of his shares ceases and his status as a shareholder is restored without prejudice to any corporate proceedings which may have been taken during the interim, and the shares held by the shareholder shall be treated for all purposes as if no objection and demand had been made by the shareholder, if:

(1) the shareholder's request to withdraw the shareholder's demand is consented to by the corporation;

(2) the merger or consolidation is abandoned;

(3) the shareholders revoke the authority to effect the merger or consolidation;

(4) a petition for the determination of value by a court is not filed

C o p y

within the time provided in this section; or

(5) a court of competent jurisdiction determines that the shareholder is not entitled to the relief provided by this section.

~~(f)~~ **(g)** Within ten (10) days after the merger or consolidation is effected, the surviving or new corporation shall mail or deliver written notice of the date of that action to each dissenting shareholder who has made demand under this section. For purposes of giving this notice, the corporation shall use the shareholder's address which appears on the corporate records. In the notice the corporation shall include a written offer to the shareholder to pay for the shareholder's shares at a specified price considered by the corporation to be the value of them. If within thirty (30) days after the date on which the merger or consolidation was effected the value of the shares is agreed upon between a dissenting shareholder and the surviving or new corporation, the surviving or new corporation shall make payment to the shareholder for the shares. The surviving or new corporation shall make the payment within ninety (90) days after the date on which the merger or consolidation was effected, upon surrender of the certificate or certificates representing the shares. Upon payment of the agreed value, the dissenting shareholder ceases to have any interest in the shares.

~~(g)~~ **(h)** If within the period of thirty (30) days a dissenting shareholder and the surviving or new corporation do not so agree, then either the corporation or the dissenting shareholder may file a petition in any circuit or superior court in the county in Indiana where the principal office of the corporation is located requesting that the court determine the value of the shares. However, the petition must be filed within ninety (90) days after the effective date of the merger or consolidation. Two (2) or more dissenting shareholders may join as plaintiffs or be joined as defendants in the action, and two (2) or more actions may be transferred and consolidated to avoid inconsistent results and promote judicial economy. The jurisdiction of the court is plenary and exclusive.

~~(h)~~ **(i)** The court shall render judgment against the surviving or new corporation for payment of an amount equal to the value of each dissenting share multiplied by the number of dissenting shares that any dissenting shareholder who is a party is entitled to require the surviving or new corporation to purchase. The judgment is payable only upon the endorsement and delivery to the surviving or new corporation of the certificates for the shares described in the judgment. Any party may appeal from the judgment.

~~(i)~~ **(j)** Within twenty (20) days after the merger or consolidation is effected, the shareholder shall submit the certificate or certificates

C o p y

representing the shareholder's shares to the corporation for notation on the certificate or certificates that demand for payment has been made. The shareholder's failure to do so, at the option of the corporation, terminates the shareholder's rights under this section unless a court of competent jurisdiction, for good and sufficient cause shown, otherwise directs. If shares represented by a certificate on which notation has been so made are transferred, each new certificate issued for those shares shall bear a similar notation together with the name of the original dissenting holder of the shares, and a transferee of the shares acquires by the transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the value of the shares.

SECTION 41. IC 28-1-7.1-8, AS ADDED BY P.L.89-2011, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8. A majority of the board of directors of a depository financial institution with mutual ownership must adopt a plan of voluntary supervisory conversion. The plan adopted must include the following:

(1) The name and address of the depository financial institution.

(2) The name and address of each proposed purchaser of conversion shares and a description of that purchaser's relationship to the depository financial institution.

(3) The title, per unit par value, number, and per unit and aggregate offering price of shares that the converted depository financial institution will issue.

(4) The number and percentage of shares that each investor will purchase or acquire in a merger or other combination.

(5) The aggregate number and percentage of shares that each director or officer of the converted depository financial institution, and any affiliates **(as defined in IC 28-1-18.2-1)** or associates **(as defined in 12 CFR 563b.25)** of the director or officer, will purchase.

(6) A description of any liquidation account to be established in connection with the voluntary supervisory conversion.

(7) Certified copies of all resolutions of the board of directors of the depository financial institution relating to the conversion.

SECTION 42. IC 28-1-7.1-9, AS ADDED BY P.L.89-2011, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. The following information and documents must be included in an application for a voluntary supervisory conversion made to the department:

(1) Evidence establishing that the depository financial institution

C o p y

with mutual ownership meets the eligibility requirements set forth in this chapter.

(2) An opinion of qualified, independent counsel or of an independent, certified public accountant concerning the tax consequences of the conversion, or an IRS ruling indicating that the transaction qualifies as a tax free reorganization.

(3) A plan of voluntary supervisory conversion that complies with section 8 of this chapter.

(4) A business plan, when required by the department.

(5) The depository financial institution's most recent audited financial statements and call report.

(6) A detailed explanation of how the current capital levels make the depository financial institution eligible to engage in a voluntary supervisory conversion under this chapter.

(7) A description of the estimated conversion expenses.

(8) Evidence supporting the value of any noncash asset contributions. Appraisals must be acceptable to the department and each noncash asset must meet all other department policy guidelines.

(9) Pro forma financial statements that reflect the effects of the transaction. The depository financial institution must identify its tangible, core, and risk based capital levels and show the adjustments necessary to compute the pro forma capital levels. The depository financial institution must prepare its pro forma statements in conformance with department regulations and policy.

(10) The proposed articles of incorporation and bylaws, if any, of the depository financial institution formed as a result of the voluntary supervisory conversion.

(11) The proposed stock certificate form, if any, for the depository financial institution formed as a result of the voluntary supervisory conversion.

(12) A copy of any agreements between the depository financial institution formed as a result of the voluntary supervisory conversion and proposed purchasers.

(13) A copy and description of all existing and proposed employment contracts. The depository financial institution formed as a result of the voluntary supervisory conversion must include information describing the term, salary, and severance provisions of the contract, the identity and background of the officer or employee to be employed, and the amount of any conversion shares to be purchased by the officer or employee or his or her

C o p y

affiliates **(as defined in IC 28-1-18.2-1)** or associates **(as defined in 12 CFR 563b.25).**

(14) Any:

(A) required filings under federal law; or

(B) waivers of compliance with federal law obtained as a result of conflicts with state law.

(15) Applications for permission to organize a stock association and for approval of a merger, if applicable, and a copy of any application for Federal Home Loan Bank membership or FDIC insurance of accounts, if applicable.

(16) A statement describing any other applications required under federal or state banking laws for all transactions related to the conversion, copies of all dispositive documents issued by regulatory authorities relating to the applications, and, if requested by the department, copies of the applications and related documents.

(17) A description of any of the features of the application that do not conform to the requirements of this section, including any request for waiver of such requirements.

**(18) An opinion of counsel acceptable to the department as to the legality of the voluntary supervisory conversion.**

**(19) Any other information or documents requested by the director.**

SECTION 43. IC 28-1-8-0.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 0.7. As used in this chapter, "shareholder", with respect to a:**

**(1) mutual savings bank; or**

**(2) mutual saving association;**

**refers to a member of the mutual savings bank or mutual savings association.**

SECTION 44. IC 28-1-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. ~~Any bank, trust company, corporate fiduciary, savings bank organized after December 31, 1992, bank of discount and deposit, or building and loan association~~ **A corporation** may sell, lease, exchange, or otherwise dispose of all or substantially all of its property and assets, including good will, by complying with the provisions of this chapter.

SECTION 45. IC 28-1-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. A sale, lease, exchange, or other disposition described in section 1 of this chapter must first be proposed by the board of directors by the adoption of a

C o p y

resolution that:

(1) sets forth the terms and conditions of the sale, lease, exchange, or other disposition; and

(2) directs that the proposed disposition be submitted to a vote of the ~~stockholders~~ **shareholders** at the annual meeting or a special meeting.

The meeting shall be called by the resolution and notice of the meeting shall be given in the manner provided in IC 28-13-5-8.

SECTION 46. IC 28-1-8-3, AS AMENDED BY P.L.35-2010, SECTION 114, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. (a) Before a proposed disposition described in section 1 of this chapter is submitted to a vote of the shareholders, the resolution proposing the disposition shall be submitted for the approval of the department.

(b) **Subject to section 5(c) of this chapter, and any approvals required under federal law,** the department may approve a resolution if the corporation has and will have assets in excess of the corporation's liabilities and either of the following applies:

(1) The corporation intends to merge out of existence under IC 28-1-7-1.

(2) The corporation intends to voluntarily dissolve under IC 28-1-9.

**(c) An officer or a director of a corporation whose proposed disposition is approved by the department under subsection (b) may not negotiate for or receive any economic benefit in connection with any sale of assets under this chapter, except for:**

**(1) compensation and other benefits paid to the officer or director and to officers and directors of the purchasing institution in the ordinary course of business;**

**(2) any economic benefit realized by all shareholders as a result of the disposition; or**

**(3) any economic benefit received as part of a compensation or benefit plan existing at the time of the disposition and approved before the initiation of sale negotiations.**

~~(c)~~ **(d)** If the department approves a resolution submitted under this section, the department shall:

(1) write or stamp on the resolution:

(A) the words "Approved by the Department of Financial Institutions of the State of Indiana"; and

(B) the date of the approval; and

(2) place the impression of the seal of the department and the signature of the director or the director's authorized designee

C o p y

beneath the approval stamp.

SECTION 47. IC 28-1-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. (a) **Subject to subsection (c),** the rights of dissenting shareholders in **the** case of a merger or consolidation, as set forth in IC 28-1-7-21, apply to the sale, lease, exchange, or other disposition of the property and assets of a corporation under this chapter. Any dissenting shareholder shall have such rights and remedies as provided for in IC 28-1-7-21.

(b) For purposes of the application of IC 28-1-7-21 to this chapter, the "effective date" of a sale, lease, exchange, or other disposition under this chapter, within the meaning of IC 28-1-7-21, ~~shall be~~ **is** the date upon which the disposition was authorized by the shareholders of the corporation.

**(c) In a proposed disposition described in section 3(b) of this chapter, if the corporation that is the subject of the proposed disposition is a mutual savings bank or a mutual savings association, the rights and remedies for dissenting shareholders set forth in IC 28-1-7-21 do not apply.**

SECTION 48. IC 28-1-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. (a) Subject to the approval of the department, a ~~(1) bank; (2) trust company; (3) corporate fiduciary; (4) savings bank; or (5) savings association;~~ **corporation** may purchase all or substantially all of the assets of one (1) or more **other** corporations that are organized or reorganized under the laws of any state (as defined in IC 28-2-17-19) or the United States.

(b) After the board of directors of a corporation agrees to purchase all or substantially all of the assets of one (1) or more corporations, the board resolution approving the purchase and an application in the form prescribed by the director of the department must be submitted for approval by the department.

(c) **Subject to any approvals required under federal law,** the department, in its discretion, may approve or disapprove an application and **a** board resolution submitted under subsection (b). In deciding whether to approve or disapprove the board resolution and application, the department shall consider the following factors:

(1) Whether the institutions subject to the proposed transaction are operated in a safe, sound, and prudent manner.

(2) Whether the financial condition of any institution subject to the proposed transaction will jeopardize the financial stability of any other institutions subject to the proposed transaction.

(3) Whether the proposed transaction under this chapter will result in an institution that has inadequate capital, unsatisfactory

C o p y

management, or poor earnings prospects.

(4) Whether the management or other principals of the institution that will result from the proposed transaction under this chapter are qualified by character and financial responsibility to control and operate in a legal and proper manner the resulting institution.

(5) Whether the public convenience and advantage will be served by the resulting institution after the proposed transaction.

(6) Whether the institutions subject to the proposed transaction under this chapter furnish all of the information the department requires in reaching the department's decision.

**(7) If deposits are to be transferred as part of the proposed transaction, whether the resulting institution will maintain adequate federal deposit insurance or such other deposit insurance as approved by the director.**

(d) The approval of the department of the purchase of all or substantially all of the assets of one (1) or more corporations is not required under this section if the resulting corporation is a corporation organized or reorganized under the laws of:

(1) a state (as defined in IC 28-2-17-19) other than Indiana; or

(2) the United States.

SECTION 49. IC 28-1-11-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) In addition to the general rights, privileges, and powers conferred by ~~IC 28-1-4~~ **IC 28-1-5** through IC 28-1-9 and subject to the limitations and restrictions contained in this article and in the articles of incorporation, every bank or trust company shall possess and may exercise the rights, privileges, and powers enumerated in this chapter.

(b) Unless the language used specifically indicates otherwise, the terms "bank or trust company" and "bank and trust company" as used in IC 28-1-11 through IC 28-1-20 mean any bank or trust company organized under this article and any bank of discount and deposit, loan and trust and safe deposit company, or trust company organized under any statute enacted prior to February 24, 1933.

~~(c) As used in this chapter, "community based economic development" refers to activities that seek to address economic causes of poverty within specific geographic areas, revitalizing the economic and social base of low income communities through activities that include:~~

~~(1) affordable housing development;~~

~~(2) small business and micro-enterprise support;~~

~~(3) commercial, industrial, and retail revitalization, retention, and expansion;~~



C o p y

~~(4) capacity development and technical assistance support for community development corporations;~~
~~(5) employment and training efforts;~~
~~(6) human resource development; and~~
~~(7) social service enterprises.~~
~~(d) As used in this chapter, "community development corporation" means a private, nonprofit corporation:~~
~~(1) whose board of directors is comprised primarily of community representatives and business, civic, and community leaders; and~~
~~(2) whose principal purpose includes the provision of:~~
~~(A) housing;~~
~~(B) community-based economic development projects; and~~
~~(C) social services;~~
~~that primarily benefit low-income individuals and communities.~~

SECTION 50. IC 28-1-11-3.1, AS AMENDED BY P.L.35-2010, SECTION 116, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3.1. (a) Any bank or trust company shall have the power to discount, negotiate, sell and guarantee promissory notes, bonds, drafts, acceptances, bills of exchange, and other evidences of debt; to buy and sell, exchange, coin and bullion; to loan money; to borrow money and to issue its notes, bonds, or debentures to evidence any such borrowing and to mortgage, pledge, or hypothecate any of its assets to secure the repayment thereof; to receive savings deposits and deposits of money subject to check, and deposits of securities or other personal property from any person or corporation, upon such terms as may be agreed upon by the parties; to contract for and receive on loans and discounts the highest rate of interest allowed by the laws of this state to be contracted for and received by individuals; to accept, for payment at a future date, drafts drawn upon it by its customers and to issue letters of credit authorizing the holders thereof to draw drafts upon it or its correspondents at sight or on time, however, the letter of credit must state a specific expiration date; and to exercise all the powers incidental and proper or which may be necessary and usual in carrying on a general banking business, but it shall have no right to issue bills to circulate as money.

(b) Subject to such regulations, **rules, policies, and guidance** as the department finds to be necessary and proper, any bank or trust company shall have the following powers:

(1) To make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance by the federal housing administrator, and to obtain such insurance.

C o p y

(2) To make such loans secured by mortgages on real property or leasehold, as the federal housing administrator insures or makes a commitment to insure, and to obtain such insurance.

(3) To purchase, invest in, and dispose of notes or bonds secured by mortgage or trust deed insured by the federal housing administrator or debentures issued by the federal housing administrator, or bonds or other securities issued by national mortgage associations.

(4) To extend credit to any state agency, with the approval of the department, notwithstanding any other provisions or limitations of IC 28-1. No law of this state prescribing the nature, amount, or form of security or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made, shall be deemed to apply to loans, advances of credit, or purchases made pursuant to subdivisions (1), (2), and (3) and this subdivision.

(5) To purchase, take, hold, and dispose of notes, and mortgages securing such notes, made to any joint stock land bank heretofore incorporated, in any case in which not less than ninety-nine percent (99%) of the stock of said joint stock land bank is owned by the bank or trust company at the time such notes or mortgages be acquired by the bank or trust company; and upon dissolution of any such joint stock land bank, or at any stage in the process of such dissolution, any bank or trust company then owning not less than ninety-nine percent (99%) of the stock of such joint stock land bank may take, hold, and dispose of any notes, mortgages, or other assets of such joint stock land bank of whatsoever nature, including real estate, wheresoever situated, which such joint stock land bank shall assign, transfer, convey, or otherwise make over to such bank or trust company by way of final or partial distribution of its assets to its stockholders upon such dissolution or in connection with the process of such dissolution. No law of this state prescribing the nature, amount, location, or form of security, or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loan or advances of credit may be made, or prescribing any ratio between the amount of any loan and the appraised value of the security for such loan, or requiring periodical reductions of the principal of any loan, shall be deemed to apply to loans, notes,

C o p y

mortgages, real estate, or other assets mentioned in this subdivision.

(6) To adopt stock purchase programs for employees and to grant options to purchase, and to issue and sell, shares of its capital stock to its employees, or to a trustee on their behalf (which may be the bank or trust company issuing such capital stock), without first offering the same to its shareholders, for such consideration, not less than par value, and upon such terms and conditions as shall be approved by its board of directors and by the holders of a majority of its shares entitled to vote with respect thereto, and by the department. In the absence of actual fraud in the transaction, the judgment of the directors as to the consideration for the issuances of such options and the sufficiency thereof shall be conclusive. Any bank or trust company exercising the powers granted in this subsection may, to the extent approved by the department, have authorized and unissued stock required to fulfill any stock option or other arrangement authorized herein.

(7) Subject to such restrictions as the department may impose, to become the owner or lessor of personal or real property acquired upon the request and for the use of a customer and to incur such additional obligations as may be incident to becoming an owner or lessor of such property.

(8) To purchase or construct buildings and hold legal title thereto to be leased to municipal corporations or other public authorities, for public purposes, having resources sufficient to make payment of all rentals as they become due. Each lease agreement shall provide that upon expiration, the lessee will become the owner of the building.

(8.1) Subject to the prior written approval of the department, and notwithstanding section 5 of this chapter, to purchase, hold, and convey real estate which is:

(A) improved or to be improved by a single, freestanding building; and

(B) to be used, in part, as a branch or the principal office of that bank or trust company and, in part, as rental property for one (1) or more lessees.

Unless a written extension of time is given by the department, the bank or trust company shall open the branch or principal office within two (2) years from the acquisition date of the real estate. If the bank or trust company does not open a branch or its principal office on the real estate in that time period or if the bank or trust company removes its branch or principal office from the

C o p y

real estate, the bank or trust company shall divest itself of all interest in the real estate within five (5) years from the acquisition date of the real estate, if a branch was not opened, or five (5) years from the removal date of the branch office, whichever applies. Except with the written approval of the department, the sum invested in real estate and buildings used for the convenient transaction of its business as provided in this subdivision shall not exceed fifty percent (50%) of the capital and surplus of the bank or trust company as provided in section 5 of this chapter.

~~(9) Except as provided in subsections (c) and (d), and subject to subsection (e), to invest directly or indirectly in community development corporations and projects of a predominantly civic, community, or public nature, including equity investments in corporations, limited partnerships, limited liability companies, or other entities organized for such purposes. Investments by a bank or trust company under this subdivision may not exceed:~~

~~(A) in any one (1) project, two percent (2%); and~~

~~(B) in the aggregate, five percent (5%);~~

~~of the capital and surplus of the bank or trust company. As used in this subdivision and in subsection (c), "capital and surplus" has the meaning set forth in IC 28-1-1-3(10).~~

~~(10)~~ **(9)** Subject to section 3.2 of this chapter, to exercise the rights and privileges (as defined in section 3.2(a) of this chapter) that are or may be granted to national banks domiciled in Indiana.

~~(c) Investments by a bank or trust company under subsection (b)(9) may exceed the limit set forth in subsection (b)(9)(B) if the director determines that:~~

~~(1) the aggregate investments by the bank or trust company under subsection (b)(9) in excess of five percent (5%) of the capital and surplus of the bank or trust company will not pose a significant risk to the affected deposit insurance fund; and~~

~~(2) the bank or trust company is adequately capitalized.~~

~~However, in no case shall the aggregate investments by a bank or trust company under subsection (b)(9) exceed ten percent (10%) of the capital and surplus of the bank or trust company.~~

~~(d) Investments by a bank or trust company under subsection (b)(9) in equity investments qualifying for the new markets tax credits under 26 U.S.C. 45D or other programs approved by the director:~~

~~(1) are not subject to the limit set forth in subsection (b)(9)(A); and~~

~~(2) may exceed the limit set forth in subsection (b)(9)(B) if the director determines that:~~



C o p y

~~(A) the aggregate equity investments qualifying for the new markets tax credit or other programs that are:~~

~~(i) made by the bank or trust company under subsection (b)(9); and~~

~~(ii) in excess of five percent (5%) of the capital and surplus of the bank or trust company;~~

~~will not pose a significant risk to the affected deposit insurance fund; and~~

~~(B) the bank or trust company is adequately capitalized.~~

~~However, in no case shall the aggregate equity investments qualifying for the new markets tax credit or other programs and made by a bank or trust company exceed fifteen percent (15%) of the capital and surplus of the bank or trust company.~~

~~(e) A bank or trust company shall not make any investment under subsection (b)(9) if the investment would expose the bank or trust company to unlimited liability.~~

~~(f)~~ **(c)** Any rule made and promulgated under and pursuant to this section may apply to one (1) or more banks or trust companies or to one (1) or more localities in the state as the department, in its discretion, may determine.

SECTION 51. IC 28-1-11-4, AS AMENDED BY P.L.89-2011, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4. (a) Except as otherwise provided in this article, the business of dealing in investment securities by any bank or trust company is limited to purchasing and selling securities without recourse, solely upon the order and for the account of customers and in no event for its own account. A bank or trust company may not underwrite or guarantee all or any part of any issue of securities other than obligations issued or guaranteed by or on behalf of the state or any political subdivision of the state or any agency or instrumentality of either. A bank or trust company may purchase for its own account and sell investment securities under such limitations and restrictions as the department prescribes by **regulation,** rule, **policy, or guidance,** but in no event may the total amount of the investment securities of any one (1) obligor or maker, purchased or held by a bank or trust company for its own account, exceed at any time ten percent (10%) of the amount of the total equity capital of the bank or trust company. The limitations imposed by this section do not apply to the direct or indirect obligations of the United States or the direct obligations of a United States territory or insular possession or of the state of Indiana or any municipal corporation or taxing district in Indiana. A bank or trust company may purchase for its own account and sell shares of stock in federal or state

C o p y

chartered small business investment companies that have received a permit or license to operate under the federal Small Business Investment Act (15 U.S.C. 681). However, a bank or trust company may not acquire shares in any small business investment company if, upon the making of that acquisition, the aggregate amount of shares in small business investment companies then held by the bank would exceed five percent (5%) of its total equity capital.

(b) A bank or trust company may purchase for its own account and sell:

(1) shares of open-end investment companies the portfolios of which consist solely of securities that are eligible for purchase and sale by national banking associations; and

(2) collateralized obligations that are eligible for purchase and sale by national banking associations. However, a bank or trust company may purchase for its own account and sell the obligations only to the extent that a national banking association can purchase and sell those obligations.

(c) A bank or trust company may deposit its funds in:

(1) a federally chartered savings association; or

(2) a savings association or other entity organized and operated according to federal law or the laws of any state or the District of Columbia;

the accounts of which are insured by the Federal Deposit Insurance Corporation.

(d) A bank or trust company may not purchase for its own account any bond, note, or other evidence of indebtedness that is commonly designated as a security that is speculative in character or that has speculative characteristics. For the purposes of this subsection, a security is speculative or has speculative characteristics if at the time of purchase the security:

(1) is rated below the first four (4) rating classes by a generally recognized security rating service;

(2) is in default; or

(3) is otherwise considered speculative by the director.

(e) A bank or trust company may purchase for its own account a security that is not rated by a generally recognized security rating service if:

(1) the bank or trust company at the time of purchase obtains financial information that is adequate to document the investment quality of the security; and

(2) the security is not otherwise considered speculative by the director.

C o p y

(f) Except as otherwise authorized by this title, a bank or trust company may not purchase any share of stock of a corporation that is not a subsidiary of that bank or trust company unless the purchase is considered expedient to prevent loss from a debt previously contracted in good faith. Any shares of stock thus acquired by a bank or trust company that would not have been eligible for purchase shall be sold and disposed of within six (6) months from the date of acquisition unless the director grants an extension of time for the sale and disposition.

(g) Notwithstanding any other provision of this article, a bank or trust company may purchase for its own account shares of stock of a banker's bank insured by the Federal Deposit Insurance Corporation or a holding company that owns or controls a banker's bank insured by the Federal Deposit Insurance Corporation. For the purposes of this subsection, a "banker's bank" is a bank (as defined in IC 28-2-14-2):

(1) the stock of which is owned exclusively by other banks (as defined in IC 28-2-14-2), or by a bank holding company the stock of which is owned exclusively by other banks (as defined in IC 28-2-14-2); and

(2) that is engaged exclusively in providing services to other banks (as defined in IC 28-2-14-2), and to their officers, directors, and employees.

A bank's or trust company's holdings of the stock of an insured banker's bank or of a holding company that owns or controls an insured banker's bank may not exceed ten percent (10%) of the capital and surplus of the bank or trust company. A bank or trust company may not purchase the stock of an insured banker's bank or of a holding company that owns or controls an insured banker's bank if, after the purchase, the bank or trust company would own more than five percent (5%) of any class of voting securities of the banker's bank or holding company.

(h) Notwithstanding any other provision of this article, a bank or trust company may invest in a casualty insurance company organized solely for the purpose of insuring banks, trust companies, and bank holding companies and their officers and directors from and against liabilities, including those covered by bankers' blanket bonds and director and officer liability insurance and other public liability insurance. The investment must take the form of:

(1) the purchase for the bank's or trust company's own account of shares of stock of the casualty insurance company or shares of stock of an association of banks organized for the purpose of funding the casualty insurance company; or

(2) loans to such an association of banks.

C o p y

The total investment of any bank or trust company under this subsection may not exceed five percent (5%) of the capital and surplus of the bank or trust company.

(i) Any bank or trust company may establish or acquire a subsidiary that engages in:

(1) the sale, distribution, or underwriting of securities issued by investment companies (as defined in Section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3); or

(2) the underwriting or distribution of securities backed by or representing an interest in mortgages.

(j) As used in this section, "total equity capital" means unimpaired capital stock, unimpaired surplus, unimpaired undivided profits, subordinated debt that has been approved by the state or federal regulatory agencies, and one hundred percent (100%) of loan reserves.

(k) The department may define an investment security by department policy or by rule.

(l) A bank or trust company may establish a trading account for the purchase and resale of securities that are otherwise eligible for purchase or resale by the bank or trust company. The trading account must comply with the requirements established by policy or rule of the department.

(m) A bank or trust company that purchases a security for its own account shall maintain sufficient records of the security to allow the security to be properly identified by the department for examination purposes.

SECTION 52. IC 28-1-11-14 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 14. (a) As used in this section, "community based economic development" refers to activities that seek to address economic causes of poverty within specific geographic areas, revitalizing the economic and social base of low income communities through activities that include:**

**(1) affordable housing development;**

**(2) small business and micro-enterprise support;**

**(3) commercial, industrial, and retail revitalization, retention, and expansion;**

**(4) capacity development and technical assistance support for community development corporations;**

**(5) employment and training efforts;**

**(6) human resource development; and**

**(7) social service enterprises.**

**(b) As used in this section, "community development**

C o p y

**corporation" means a private, nonprofit corporation:**

**(1) whose board of directors is comprised primarily of community representatives and business, civic, and community leaders; and**

**(2) whose principal purpose includes the provision of:**

**(A) housing;**

**(B) community based economic development projects; and**

**(C) social services;**

**that primarily benefit low-income individuals and communities.**

**(c) As used in this section, "capital and surplus" has the meaning set forth in IC 28-1-1-3(10).**

**(d) Subject to the limitations of this section, other laws, and any regulation, rule, policy, or guidance adopted by the department concerning investments in community based economic development, any bank or trust company may invest directly or indirectly in equity investments in a corporation, a limited partnership, a limited liability company, or another entity organized as:**

**(1) a community development corporation;**

**(2) an entity formed primarily to support community based economic development;**

**(3) an entity qualifying for the new markets tax credits under 26 U.S.C. 45D; or**

**(4) an entity approved by the director as being formed for a predominantly civic, community, or public purpose and that:**

**(A) primarily benefits low and moderate income individuals;**

**(B) primarily benefits low and moderate income areas;**

**(C) primarily benefits areas targeted for redevelopment by a government entity; or**

**(D) is a qualified investment under 12 CFR 25.23 for purposes of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.).**

**(e) Except as provided in subsection (f), the aggregate of all equity investments by a bank or trust company under subsection (d) may not exceed:**

**(1) five percent (5%) of the capital and surplus of the bank or trust company without the prior written approval of the director; and**

**(2) fifteen percent (15%) of the capital and surplus of the bank or trust company under any circumstances.**

C o p y

**(f) In determining whether to permit the aggregate of all equity investments by a bank or trust company under subsection (d) to exceed five percent (5%) of the capital and surplus of the bank or trust company under subsection (e)(1), the director shall consider whether:**

**(1) the aggregate of all equity investments under subsection (d) will pose a significant risk to the affected deposit insurance fund; and**

**(2) the bank or trust company is adequately capitalized.**

**(g) A bank or trust company shall not make any investment under this section if the investment would expose the bank or trust company to unlimited liability.**

SECTION 53. IC 28-1-13-1.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1.5. (a) The total loans and extensions of credit by a bank to a person outstanding at one (1) time and not fully secured, as determined in a manner consistent with subsection (b), by collateral having a market value at least equal to the amount of the loan or extension of credit may not exceed fifteen percent (15%) of the unimpaired capital and unimpaired surplus of the bank.

(b) The total loans and extensions of credit by a bank to a person outstanding at one (1) time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding may not exceed ten percent (10%) of the unimpaired capital and unimpaired surplus of the bank. The limitation in this subsection is separate from and in addition to the limitation contained in subsection (a).

**(c) The total loans and extensions of credit by a bank includes any credit exposure to a person arising from a derivative transaction (as defined in 12 U.S.C. 84(b)(3)) between the bank and the person.**

SECTION 54. IC 28-1-21.4-5 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 5. As used in this chapter, "office of thrift supervision" refers to the primary federal regulator of savings associations.~~

SECTION 55. IC 28-1-21.4-5.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 5.1. As used in this chapter, "primary federal regulator" means the federal agency primarily responsible for the regulation of:**

**(1) savings associations; or**

**(2) savings association holding companies;**

C o p y

**organized under the laws of any state or the United States.**

SECTION 56. IC 28-1-21.4-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. (a) The department shall prescribe procedures for charter conversions under this chapter.

(b) The procedures prescribed by the department must include the following:

(1) The savings association must prepare and submit a conversion plan to the department that provides the terms and conditions of the charter conversion as required by the department. The conversion plan must stipulate the manner of distribution of stock.

(2) The conversion plan must be adopted by at least a majority of the board of directors of the savings association.

(3) Upon approval of a plan of charter conversion by the board of directors of the savings association, the conversion plan and a certified copy of the resolution of the board of directors approving the conversion plan shall be submitted to the department for approval.

(4) The conversion plan must be conditioned upon the approval of at least a majority of the total number of votes eligible to be cast at a regular or special meeting of the voting parties. In obtaining the approval of the conversion plan by the voting parties, the converting savings association shall provide to the voting parties the information regarding the conversion plan that the department requires. In determining the information that must be provided, the department shall give due consideration to the requirements of the ~~office of thrift supervision~~ regulations **of the primary federal regulator** relating to proxy statements governed by Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n).

(5) The savings association shall provide to the department the additional relevant information requested by the department in connection with the conversion plan.

SECTION 57. IC 28-1-21.6-5 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 5. As used in this chapter, "office of thrift supervision" means the primary federal regulator of savings associations or successors of savings associations (as defined in 12 U.S.C. 1462(a) (FIRREA Section 301)).~~

SECTION 58. IC 28-1-21.6-5.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 5.1. As used in this chapter, "primary federal regulator" means the federal agency primarily responsible for the regulation of:**



C o p y

**(1) savings associations; or**

**(2) savings association holding companies;**

**organized under the laws of any state or the United States.**

SECTION 59. IC 28-1-21.6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8. Any savings association may, upon approval of the department and, if required by federal law, the ~~office of thrift supervision,~~ **primary federal regulator,** effect a charter conversion.

SECTION 60. IC 28-1-21.6-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. The department shall prescribe procedures for charter conversions. The procedures prescribed by the department must include the following:

(1) The savings association shall prepare and submit a plan of charter conversion to the department that provides the terms and conditions of the charter conversion as required by the department. However, if the plan of charter conversion complies with the requirements of the ~~Office of Thrift Supervision,~~ **primary federal regulator,** the plan shall be considered adequate. In the case of a charter conversion by a mutual savings association, the plan of charter conversion shall stipulate the manner of distribution of stock in conformance with ~~Office of Thrift Supervision~~ **the primary federal regulator's** regulations.

(2) The plan of charter conversion must be adopted by not less than a majority of the board of directors of the savings association.

(3) Upon approval of a plan of charter conversion by the board of directors of the savings association, the plan of charter conversion and a certified copy of the resolution of the board of directors approving the plan of charter conversion shall be submitted to the department for approval.

(4) The plan of charter conversion shall be conditioned upon the approval of not less than a majority of the total number of votes cast at a regular or special meeting of the voting parties. In obtaining the approval of the plan of charter conversion by the voting parties, the converting savings association shall provide to the voting parties the information regarding the plan of charter conversion that the department requires. In determining the information that must be provided, the department shall give due consideration to the requirements of the ~~Office of Thrift Supervision and~~ **primary federal regulator's** regulations relating to proxy statements governed by Section 14 of the Securities and Exchange Act of 1934 (15 U.S.C. 78n).

C o p y

(5) The savings associations shall provide to the department the additional relevant information requested by the department in connection with the plan of charter conversion.

SECTION 61. IC 28-1-21.7-5 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 5. As used in this chapter, "office of thrift supervision" means the primary federal regulator of savings associations or successors of savings associations (as defined in 12 U.S.C. 1462(a) (FIRREA Section 301)).~~

SECTION 62. IC 28-1-21.7-5.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 5.1. As used in this chapter, "primary federal regulator" means the federal agency primarily responsible for the regulation of:**

**(1) savings associations; or**

**(2) savings association holding companies;**

**organized under the laws of any state or the United States.**

SECTION 63. IC 28-1-21.7-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8. Any savings association may, upon approval of the department and, if required by federal law, the ~~office of thrift supervision,~~ **primary federal regulator,** effect a mutual bank conversion.

SECTION 64. IC 28-1-21.7-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. The department shall prescribe procedures for mutual bank conversions. The procedures prescribed by the department must include the following:

(1) The savings association shall prepare and submit a plan of mutual bank conversion to the department that provides the terms and conditions of the mutual bank conversion as required by the department. However, if the plan of mutual bank conversion complies with the requirements of the ~~Office of Thrift Supervision,~~ **primary federal regulator,** the plan shall be considered adequate.

(2) The plan of mutual bank conversion must be adopted by not less than a majority of the board of directors of the savings association.

(3) Upon approval of a plan of mutual bank conversion by the board of directors of the savings association, the plan of mutual bank conversion and a certified copy of the resolution of the board of directors approving the plan of mutual bank conversion shall be submitted to the department for approval.

(4) The plan of mutual bank conversion shall be conditioned upon the approval of not less than a majority of the total number of

C o p y

votes cast at a regular or special meeting of the voting parties. The method used to notify the voting parties of the meeting held to consider a plan of mutual bank conversion must be approved by the director of the department. The director may require the converting savings association to provide the voting parties with information regarding the plan of mutual bank conversion.

(5) The savings association shall provide to the department the additional relevant information requested by the department in connection with the plan of mutual bank conversion.

SECTION 65. IC 28-1-21.8-3 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 3. As used in this chapter, "Office of Thrift Supervision" refers to the primary federal regulator of savings associations.~~

SECTION 66. IC 28-1-21.8-3.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 3.1. As used in this chapter, "primary federal regulator" means the federal agency primarily responsible for the regulation of:**

**(1) savings associations; or**

**(2) savings association holding companies;**

**organized under the laws of any state or the United States.**

SECTION 67. IC 28-1-21.8-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. (a) The department shall prescribe procedures for stock savings bank conversions.

(b) The procedures prescribed by the department must include the following:

(1) The savings association must prepare and submit a conversion plan to the department that provides the terms and conditions of the stock savings bank conversion as required by the department. The resulting stock savings bank is not required to register its stock under the Securities and Exchange Act of 1934 (15 U.S.C. 77b et seq.) unless required by other applicable laws or regulations. A conversion plan is sufficient if it complies with the requirements of the ~~Office of Thrift Supervision.~~ **primary federal regulator.** In case of a stock savings bank conversion by a mutual savings association, the conversion plan must specify the manner of distribution of stock in conformance with the ~~Office of Thrift Supervision~~ **primary federal regulator's** regulations unless otherwise provided in this chapter.

(2) The conversion plan must be adopted by not less than a majority of the board of directors of the savings association.

(3) Upon approval of the conversion plan by the board of directors of the savings association, the conversion plan and a

Copy

certified copy of the resolution of the board of directors approving the conversion plan must be submitted to the department for approval.

(4) The conversion plan must be conditioned on the approval of not less than a majority of the total number of votes eligible to be cast at a regular or special meeting of the voting parties. In obtaining the approval of the conversion plan by the voting parties, the converting savings association shall provide to the voting parties the information regarding the conversion plan required by the department. In determining the information that must be provided, the department shall give due consideration to the requirements of the ~~Office of Thrift Supervision~~ **primary federal regulator's** regulations relating to proxy statements governed by Section 14 of the Security and Exchange Act of 1934 (15 U.S.C. 78n).

(5) The savings association shall provide to the department additional relevant information requested by the department regarding the conversion plan.

(c) Voting parties have the voting rights provided by the bylaws or charter of the converting savings association.

SECTION 68. IC 28-1-21.9-5 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 5. As used in this chapter, "Office of Thrift Supervision" means the primary federal regulator of savings associations.~~

SECTION 69. IC 28-1-21.9-5.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 5.1. As used in this chapter, "primary federal regulator" means the federal agency primarily responsible for the regulation of:**

**(1) savings associations (as defined in IC 28-15-1-11); or**

**(2) savings association holding companies;**

**organized under the laws of any state or the United States.**

SECTION 70. IC 28-1-21.9-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. (a) The department shall prescribe procedures for charter conversions under this chapter.

(b) The procedures prescribed by the department must include the following:

(1) The savings bank must prepare and submit a conversion plan to the department that provides the terms and conditions of the charter conversion as required by the department. The conversion plan shall stipulate the manner of distribution of stock.

(2) The conversion plan must be adopted by not less than a majority of the board of directors of the savings bank.

C o p y

(3) Upon approval of a plan of charter conversion by the board of directors of the savings bank, the conversion plan and a certified copy of the resolution of the board of directors approving the conversion plan shall be submitted to the department for approval.

(4) The conversion plan shall be conditioned upon the approval of not less than a majority of the total number of votes eligible to be cast at a regular or special meeting of the voting parties. In obtaining the approval of the conversion plan by the voting parties, the converting savings bank shall provide to the voting parties the information regarding the conversion plan that the department requires. In determining the information that must be provided, the department shall give due consideration to the requirements of the ~~Office of Thrift Supervision~~ **primary federal regulator's** regulations relating to proxy statements governed by Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n).

(5) The savings bank shall provide to the department the additional relevant information requested by the department in connection with the conversion plan.

SECTION 71. IC 28-1-29-4, AS AMENDED BY P.L.35-2010, SECTION 121, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4. (a) The department may ~~revoke or suspend any license issued under this chapter for the following causes: (1) Conviction of or a plea of guilty or nolo contendere to a felony under the laws of Indiana or any other jurisdiction. (2) Violation of any of the provisions of this chapter. (3) Fraud or deceit in procuring the issuance of a license or renewal under this chapter. (4) Indulging in a continuous course of unfair conduct. (5) Insolvency, bankruptcy, receivership, or assignment for the benefit of creditors by a licensee. (6) Licensee lending money to any contract debtor that has subscribed to the licensee's services. (7) Except as provided in subsection (c), offering to pay or give any cash, gift, bonus, premiums, reward, or other compensation to any person for referring any prospective customer to the licensee. (8) Except as provided in subsection (d), receiving any cash, gift, bonus, premium, reward, or other compensation from any person other than the contract debtor in connection with the licensee's activities as a licensee. (9) Licensee requiring a debtor to purchase or agree to purchase a policy of insurance from which licensee receives a fee or other remuneration. (10) If the licensee violates any reasonable rule or regulation made by the department under and within the authority of this chapter. (11) Misleading advertising or representing that the licensee can provide~~

Copy

~~protection from legal recourse or suits of creditors. (12) Engaging in an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information. (13) Providing a contract debtor less than the full benefit of a compromise of a debt arranged by the licensee. (14) Furnishing legal advice or performing legal services, unless the person furnishing the advice or performing the services: (A) is licensed to practice law; and (B) has been engaged by a debtor to provide legal services to the debtor. (15) A fact or condition exists that, if the fact or condition had existed when the licensee applied for licensure as a debt management company, would have been a reason for denying the license. (b) Except as provided in section 4.1 of this chapter, the denial, revocation, or suspension shall be made only after specific charges have been filed in writing, under oath, with the department or by the department, whereupon a hearing shall be had as to the reasons for such denial, revocation, or suspension and a certified copy of the charges shall be served on the licensee or the applicant for license not less than ten (10) days prior to the hearing. (c) Notwithstanding subsection (a)(7), a licensee may reduce the fees of a contract debtor who is a client of the licensee if the contract debtor refers a prospective customer to the licensee. (d) Notwithstanding subsection (a)(8), a licensee may receive a fair share creditor fee, based on disbursements made to the creditor, from a contract debtor's creditors. If any creditor refuses to pay the fair share creditor fee, the creditor must still be included in the contract debtor's payment plan.~~ **issue to a licensee an order to show cause why the licensee's license should not be revoked or suspended for a period determined by the department.**

**(b) An order issued under subsection (a) must:**

**(1) include:**

**(A) a statement of the place, date, and time for a meeting with the department, which date may not be less than ten (10) days from the date of the order;**

**(B) a description of the action contemplated by the department; and**

**(C) a statement of the facts or conduct supporting the issuance of the order; and**

**(2) be accompanied by a notice stating that the licensee is entitled to:**

**(A) a reasonable opportunity to be heard; and**

**(B) show the licensee's compliance with all lawful requirements for retention of the license;**

**at the meeting described in subdivision (1)(A).**

C o p y

**(c) After the meeting described in subsection (b)(1)(A), the department may revoke or suspend the license if the department finds that:**

**(1) the licensee has repeatedly and willfully violated:**

**(A) this chapter or any rule, order, or guidance document adopted or issued by the department; or**

**(B) any other state or federal law, regulation, or rule applicable to debt management companies;**

**(2) the licensee does not meet the licensing qualifications set forth in section 5 of this chapter;**

**(3) the licensee obtained the license for the benefit of, or on behalf of, a person who does not qualify for the license;**

**(4) the licensee knowingly or intentionally made material misrepresentations to, or concealed material information from, the department; or**

**(5) facts or conditions exist that, had they existed at the time the licensee applied for the license, would have been grounds for the department to deny the issuance of the license.**

**(d) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and notify the licensee of:**

**(1) the revocation or suspension;**

**(2) if a suspension has been ordered, the duration of the suspension;**

**(3) the procedure for appealing the revocation or suspension under IC 4-21.5-3-5; and**

**(4) any other terms and conditions that apply to the revocation or suspension.**

**Not later than five (5) days after the entry of the order, the department shall deliver to the licensee a copy of the order and the findings supporting the order.**

**(e) Any person holding a license to operate a debt management company may relinquish the license by notifying the department in writing of the relinquishment. However, a relinquishment under this subsection does not affect the person's liability for acts previously committed and coming within the scope of this chapter.**

**(f) If the director determines it to be in the public interest, the director may pursue revocation of a license of a licensee that has relinquished the license under subsection (e).**

**(g) If a person's license is revoked, suspended, or relinquished, the revocation, suspension, or relinquishment does not impair or affect any obligation owed by any person under any existing**

C o p y

**agreement or contract.**

~~(c)~~ **(h)** If the director of the department ~~(1)~~ has just cause to believe an emergency exists from which it is necessary to protect the interests of the public, ~~or (2) determines that the license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license;~~ the director may proceed with the revocation of ~~the~~ **a** license **through an emergency or another temporary order** under ~~IC 4-21.5-3-6.~~ **IC 4-21.5-4.**

SECTION 72. IC 28-1-29-7.7, AS AMENDED BY P.L.89-2011, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7.7. (a) A licensee may not furnish debt management services to a debtor unless:

(1) the licensee has prepared a budget analysis; and

(2) if the debtor is to make regular, periodic payments, the licensee:

(A) has prepared a plan for the debtor;

(B) has made a determination, based on the licensee's analysis of the information provided by the debtor and otherwise available to the licensee, that the plan is suitable for the debtor and the debtor will be able to meet the payment obligations under the plan; and

(C) believes that each creditor of the debtor listed as a participating creditor in the plan will accept payment of the debtor's debts as provided in the plan.

(b) Before a debtor enters into an agreement with a licensee to engage in a plan, the licensee shall:

(1) provide the debtor with a copy of the budget analysis and plan required by subsection (a) in a form that identifies the licensee and that the debtor may keep whether or not the debtor enters into the agreement;

(2) inform the debtor of the availability, at the debtor's option, of assistance provided through a toll free communication system or in person, where reasonably available to residents in Indiana, regarding the budget analysis and plan required by subsection (a); and

(3) with respect to all creditors identified by the debtor or otherwise known by the licensee to be creditors of the debtor, provide the debtor with a list of:

(A) creditors that the licensee expects to participate in the plan and grant concessions;

(B) creditors that the licensee expects to participate in the plan but not grant concessions;

C o p y

(C) creditors that the licensee expects not to participate in the plan; and

(D) all other creditors.

(c) Before a debtor enters into an agreement with a licensee, the licensee shall, in a written form that is provided to the debtor separately, that contains no other information, and that the debtor may keep whether or not the debtor enters into the agreement, provide the following information to the debtor ~~(1) The licensee's name and business address of the licensee. (2) The following disclosure~~ in clear and conspicuous type, surrounded by black lines:

"IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) We may receive compensation for our services from your creditors.

~~(3) Nonpayment of your debts under our program may:~~

~~(A) hurt your ability to obtain credit;~~

~~(B) lead your creditors to increase finance and other charges; and~~

~~(C) lead your creditors to undertake activity, including lawsuits, to collect the debts.~~

~~(4) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.~~

_____

(Name and business address of licensee)".

**(d) If during the term of a debt management agreement a creditor that is a participating creditor in the plan agrees to reduce the amount owed by the debtor, the licensee must, not later than fourteen (14) days after the date the creditor agrees to the reduction, provide the following disclosure in clear and conspicuous type, surrounded by black lines:**

**"IMPORTANT INFORMATION FOR YOU TO CONSIDER**

**(1) (Description of the terms of the reduction).**

**(2) Reduction of debt as described in item (1) above may result in taxable income to you, even though you will not actually receive any money.".**

SECTION 73. IC 28-1-29-8, AS AMENDED BY P.L.89-2011, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8. (a) An agreement between a licensee and a debtor must:

C o p y

(1) be in a written form;
(2) be dated and signed by the licensee and the debtor;
(3) include the name of the debtor and the address where the debtor resides;
(4) include the name, business address, and telephone number of the licensee;
(5) be delivered to the debtor immediately upon formation of the agreement; and
(6) disclose the following:
(A) The services to be provided.
(B) The amount or method of determining the amount of all fees, individually itemized, to be paid by the debtor.
(C) The schedule of payments to be made by or on behalf of the debtor, including the amount of each payment, the date on which each payment is due, and an estimate of the date of the final payment.
(D) If a plan provides for regular periodic payments to creditors:
(i) each creditor of the debtor to which payment will be made, the amount owed to each creditor, and any concessions the licensee reasonably believes each creditor will offer; and
(ii) the schedule of expected payments to each creditor, including the amount of each payment and the date on which the payment will be made.
(E) Each creditor that the licensee believes will not participate in the plan and to which the licensee will not direct payment.
(F) The manner in which the licensee will comply with the licensee's obligations under section 9(j) of this chapter.
(G) A statement that:
(i) the licensee may terminate the agreement for good cause, upon return of unexpended money of the debtor;
(ii) the debtor may cancel the agreement as provided in section 8.6 of this chapter; and
(iii) the debtor may contact the department with any questions or complaints regarding the licensee.
(H) The address, telephone number, and Internet address or web site of the department.

(b) For purposes of subsection (a)(5), delivery of an electronic record occurs when:
(1) the record is made available in a format in which the debtor may retrieve, save, and print the record; and

C o p y

(2) the debtor is notified that the record is available.

(c) An agreement must provide that:

(1) the debtor has a right to terminate the agreement at any time without penalty, notwithstanding the close-out fee as permitted by section ~~8.3(d)~~ **8.3(e)** of this chapter, or obligation, by giving the licensee written or electronic notice, in which event:

(A) the licensee shall refund all unexpended money that the licensee or the licensee's agent has received from or on behalf of the debtor for the reduction or satisfaction of the debtor's debt; and

(B) all powers of attorney granted by the debtor to the licensee are revoked and ineffective;

(2) the debtor authorizes any bank insured by the Federal Deposit Insurance Corporation in which the licensee or the licensee's agent has established a trust account to disclose to the department any financial records relating to the trust account;

(3) the licensee shall notify the debtor within five (5) days after learning of a creditor's final decision to reject or withdraw from a plan under the agreement; and

(4) the notice under subdivision (3) must include:

(A) the identity of the creditor; and

(B) a statement that the debtor has the right to modify or terminate the agreement.

(d) All creditors must be notified of the debtor's and licensee's relationship.

(e) A licensee shall give to the contract debtor a dated receipt for each payment, at the time of the payment, unless the payment is made by check, money order, or automated clearinghouse withdrawal as authorized by the contract debtor.

(f) A licensee shall, upon cancellation by a contract debtor of the agreement, notify immediately in writing all creditors in the debt management plan of the cancellation by the contract debtor.

(g) A licensee may not enter into an agreement with a debtor unless a thorough, written budget analysis of the debtor indicates that the debtor can reasonably meet the payments required under a proposed plan. The following must be included in the budget analysis:

(1) Documentation and verification of all income considered. All income verification must be dated not more than sixty (60) days before the completion of the budget analysis.

(2) Monthly living expense figures, which must be reasonable for the particular family size and part of the state.

(3) Documentation and verification, by a current credit bureau

C o p y

report, current debtor account statements, or direct documentation from the creditor, of monthly debt payments and balances to be paid outside the plan.

(4) Documentation and verification, by a current credit bureau report, current debtor account statements, or direct documentation from the creditor, of the monthly debt payments and current balances to be paid through the plan.

(5) The date of the budget analysis and the signature of the debtor.

(h) A licensee may not enter into an agreement with a contract debtor for a period longer than sixty (60) months. Every thirty (30) months, the licensee shall complete a thorough, written budget analysis of the contract debtor to ensure the debt management plan is still suitable for the contract debtor and the contract debtor will be able to meet the payment obligations under the plan. ~~When~~ **If** adjustments are needed to change the indebtedness listed in the agreement, the licensee ~~may~~ **shall** execute a new agreement **or modify, in writing, the existing agreement,** using the revised figures. **If during the term of the original agreement, the agreement is modified in writing or a new agreement is executed,** a licensee:

(1) may not increase the amount of the monthly fee as originally calculated under section 8.3(c)(2) of this chapter; and

(2) must decrease the amount of the monthly fee as originally calculated under section 8.3(c)(2) of this chapter if applying the percentage specified in section 8.3(c)(2)(A) of this chapter to the new monthly amount of indebtedness to be paid through the licensee (as of the date of the review under this subsection) would result in an amount that is less than seventy-five dollars ($75) in any month.

~~during the term of the original debt management plan agreement.~~

(i) A licensee may provide services under this chapter in the same place of business in which another business is operating, or from which other products or services are sold, if the director issues a written determination that:

(1) the operation of the other business; or

(2) the sale of other products and services;

from the location in question is not contrary to the best interests of the licensee's contract debtors.

(j) A licensee without a physical location in Indiana may:

(1) solicit sales of; and

(2) sell;

additional products and services to Indiana residents if the director issues a written determination that the proposed solicitation or sale is

C o p y

not contrary to the best interests of contract debtors.

(k) A licensee shall maintain a toll free communication system, staffed at a level that reasonably permits a contract debtor to speak to a counselor, debt specialist, or customer service representative, as appropriate, during ordinary business hours.

(l) A debt management company shall act in good faith in all matters under this chapter.

SECTION 74. IC 28-1-29-8.3, AS AMENDED BY P.L.89-2011, SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8.3. (a) Except as otherwise permitted by this section, a licensee may not:

(1) impose, directly or indirectly, a fee or other charge on a debtor; or

(2) receive money from or on behalf of a debtor for debt management services.

(b) A licensee may not impose charges or receive payment for debt management services until:

(1) the licensee and the debtor have agreed upon a plan and have signed an agreement that complies with sections 8, 8.6, and 9.5 of this chapter; and

(2) at least one (1) payment has been made to a creditor under the plan.

All creditors must be notified of the debtor's and licensee's relationship.

(c) If a debtor assents to a plan, the licensee may charge the following:

(1) A set up fee of not more than fifty dollars ($50) for consultation, obtaining a credit report, and setting up an account. Acceptance of a plan payment **by a creditor** constitutes agreement by the creditor to the plan. A set up fee under this subdivision may not be collected until the debtor, or the licensee on behalf of the debtor, has made at least one (1) payment to a creditor under the plan.

(2) **Subject to subsection (d),** a monthly service fee of the lesser of:

(A) not more than fifteen percent (15%) of the amount the contract debtor agrees to pay through the licensee, divided into equal monthly payments over the term of the agreement; or

(B) not more than seventy-five dollars ($75) in any month.

The monthly service fee under this subdivision may be charged for any one (1) month or part of a month. The amount of a set up fee under subdivision (1) may not be included in the calculation of the monthly service fee.

C o p y

**(d) If during the term of the original agreement, the agreement is modified in writing or a new agreement is executed, a licensee:**

**(1) may not increase the amount of the monthly fee as originally calculated under subsection (c)(2); and**

**(2) must decrease the amount of the monthly fee as originally calculated under subsection (c)(2) if applying the percentage specified in subsection (c)(2)(A) to the monthly amount of indebtedness to be paid through the licensee as of the date of the modification of the original agreement or the execution of the new agreement, as applicable, would result in an amount that is less than seventy-five dollars ($75) in any month.**

~~(d)~~ **(e)** Upon cancellation by a contract debtor or termination of payments by a contract debtor, a licensee may ~~not~~ withhold for the licensee's own benefit **not** more than one hundred dollars ($100), which may be accrued as a close-out fee.

~~(e)~~ **(f)** A licensee may not charge a contract debtor more than one (1) set up fee or one (1) ~~cancellation~~ **close-out fee** unless the contract debtor leaves the services of the licensee for more than six (6) months.

~~(f)~~ **(g)** With respect to any additional charge not specifically provided for in this section, the licensee must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit conferred on the contract debtor in connection with the charge. Supporting documents may be required by the department. The department shall determine whether the charge:

(1) would be imposed in relation to some benefit conferred on the consumer; and

(2) is reasonable in relation to the benefit conferred.

An additional charge is not permitted unless approved by the department.

~~(g)~~ **(h)** For purposes of this chapter, the terms of an agreement commence on the date on which the agreement is made.

~~(h)~~ **(i)** A licensee may assess a charge of not more than twenty-five dollars ($25) for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the contract debtor.

~~(i)~~ **(j)** Any fee charged by the licensee to the debtor under this section for services rendered by the licensee, other than the fees described under subsection ~~(c),~~ **(f),** is not considered a debt owed by the debtor to the licensee.

SECTION 75. IC 28-1-29-9, AS AMENDED BY P.L.89-2011, SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



C o p y

JULY 1, 2012]: Sec. 9. (a) All money paid to a licensee by or on behalf of a contract debtor for distribution to creditors under a plan is held in trust. ~~On or~~ Before the close of the same banking day the funds are received, the licensee shall deposit the money in a trust account established for the benefit of the contract debtor to whom the licensee is furnishing debt management services.

(b) A licensee shall do the following:

(1) Maintain separate records of account for each individual to whom the licensee is furnishing debt management services.

(2) Disburse money paid by or on behalf of the contract debtor to creditors of the contract debtor as disclosed in the agreement.

(3) Make remittances not later than thirty (30) days after initial receipt of funds. After the initial receipt of funds, remittances shall be made not later than thirty (30) days after receipt of funds, less fees and costs, unless the reasonable payment of one (1) or more of the contract debtor's obligations requires that the funds be held for a longer period to accumulate a sum certain. For purposes of this section, the close-out fee set forth in section ~~8.3(d)~~ **8.3(e)** of this chapter is not considered an obligation of the contract debtor.

(4) Retain in the contract debtor's trust account, for charges, an amount less than or equal to the sum of one (1) month's fee as permitted by section 8.3(c)(2) of this chapter plus the close-out fee as permitted by section ~~8.3(d)~~ **8.3(e)** of this chapter, unless a greater amount is approved in writing by the department.

(5) Promptly:

(A) correct any payments that are not made or that are misdirected as a result of an error by the licensee or other person in control of the trust account; and

(B) reimburse the contract debtor for any costs or fees imposed by a creditor as a result of the failure to pay or misdirection.

(c) A licensee may not commingle money in a trust account established for the benefit of a contract ~~debtors~~ **debtor** to whom the licensee is furnishing debt management services with money of other persons.

(d) A trust account must at all times have a cash balance equal to the sum of the balances of each contract debtor's account.

(e) If a licensee has established a trust account under subsection (a), the licensee shall reconcile the trust account at least every thirty (30) days after receipt of the bank statement. The reconciliation must compare the cash balance in the trust account with the sum of the balances in each contract debtor's account. If the licensee or the

C o p y

licensee's designee has more than one (1) trust account, each trust account must be individually reconciled.

(f) If a licensee or a licensee's employee discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the licensee or the licensee's employee shall ~~(1)~~ immediately notify the department in writing. ~~and (2)~~ Unless the department by **regulation,** rule, **policy, or guidance** provides otherwise, **the licensee shall** give notice to the department describing the remedial action taken or to be taken not later than five (5) days after the licensee or the licensee's employee discovers, or has a reasonable suspicion of, the embezzlement or other unlawful appropriation.

(g) If a contract debtor terminates an agreement or it becomes reasonably apparent to a licensee that a plan has failed, the licensee shall promptly refund to the contract debtor all money paid by or on behalf of the contract debtor that has not been paid to creditors less the fee that is payable to the licensee under section 8.3(e) of this chapter.

(h) Before relocating a trust account from one (1) bank to another, a licensee shall inform the department of the name, business address, and telephone number of the new bank. As soon as practicable, the licensee shall inform the department of the account number of the trust account at the new bank.

(i) At least once every three (3) months the licensee shall render an accounting to the contract debtor which must itemize the total amount received from the contract debtor, the total amount paid each creditor, the amount of charges deducted, and any amount held in reserve. A licensee shall provide such an accounting to a contract debtor not later than seven (7) days after written demand, but is not required to provide more than three (3) such accountings per six (6) month period.

(j) Upon the completion or termination of a contract between a licensee and a contract debtor, the licensee shall provide to the contract debtor a statement:

(1) indicating that the licensee no longer holds funds in trust for the contract debtor; and

(2) listing the name and address of:

(A) each creditor paid in full; and

(B) any creditors remaining unpaid.

SECTION 76. IC 28-2-13-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 26. (a) A bank, trust company, corporate fiduciary, or savings bank organized under the laws of Indiana **or the laws of any other state or the United States** may establish a trust office to exercise its powers as a fiduciary to conduct business in any location that is approved by the department.

C o p y

Before the department approves a trust office to exercise powers as a fiduciary under this subsection, it must determine to its satisfaction that the bank, trust company, corporate fiduciary, or savings bank will have adequate capital, sound management, and adequate future earnings prospects after the establishment of the trust office.

(b) A trust office established under this section by a bank, trust company, or savings bank shall not:

(1) receive deposits;

(2) pay checks; or

(3) lend money;

at the trust office.

SECTION 77. IC 28-2-14-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) As used in this chapter, "bank" means a financial institution:

(1) that has been organized or reorganized under the laws of the United States or the state of Indiana;

(2) that has its principal office in Indiana; and

(3) that:

(A) is an "insured bank" (as defined in Section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) or is eligible to make application to become an insured depository institution under Section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815); or

(B) is a stock savings bank that was formed as a result of a conversion under IC 28-1-21.8 or IC 28-1-21.9 or incorporated under IC 28-12.

(b) Except as provided in subsection (a)(3)(B), the term "bank" does not include:

(1) any institution that has been or is chartered ~~by the Federal Home Loan Bank Board or the Office of Thrift Supervision;~~ **or regulated as a federal savings association or federal savings bank under Section 5 of the Home Owners Loan Act (12 U.S.C. 1464);**

(2) institutions of the "Farm Credit System" as described in 12 U.S.C. 2001 through 2260, which include the Farm Credit Banks, the Federal Land Bank Associations, the Production Credit Associations, the Banks for Cooperatives, and any other institution that may become a part of the Farm Credit System, as chartered by and subject to the supervision of the Farm Credit Administration; or

(3) any other institution that has been organized or reorganized as a savings association, credit union, or industrial loan and

Copy

investment company.

SECTION 78. IC 28-2-16-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) As used in this chapter, "bank" means a financial institution:

(1) that has been organized or reorganized under the laws of the United States, any state of the United States, or the District of Columbia; and

(2) that:

(A) is an "insured bank" (as defined in Section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) or is eligible to make application to become an insured depository institution under Section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815); or

(B) is a stock savings bank that was formed as a result of conversion under IC 28, incorporated under IC 28-12, or organized or reorganized under the laws of any other state of the United States.

(b) Except as provided in subsection (a)(2)(B), the term "bank" does not include:

(1) any institution that has been or is chartered ~~by the Federal Home Loan Bank Board or the Office of Thrift Supervision;~~ **or regulated as a federal savings association or federal savings bank under Section 5 of the Home Owners Loan Act (12 U.S.C. 1464);**

(2) institutions of the "Farm Credit System" as described in 12 U.S.C. 2001 through 2260, which include the Farm Credit Banks, the Federal Land Bank Associations, the Production Credit Associations, the Banks for Cooperatives, and any other institution that may become a part of the Farm Credit System, as chartered by and subject to the supervision of the Farm Credit Administration; or

(3) any other institution that has been organized or reorganized as a savings association, a credit union, or an industrial loan and investment company.

SECTION 79. IC 28-2-17-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. As used in this chapter, "bank supervisory agency" means:

(1) any agency of another state with primary responsibility for organizing and supervising banks; and

(2) the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, ~~the Office of Thrift Supervision,~~ and any

C o p y

successor to these agencies.

SECTION 80. IC 28-2-18-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. As used in this chapter, "bank supervisory agency" means any of the following:

(1) Any agency of another state with primary responsibility for organizing and supervising banks.

(2) The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, ~~the Office of Thrift Supervision,~~ and any successor to these agencies.

SECTION 81. IC 28-6.1-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) This section applies only to a savings bank (whether in stock or mutual form of ownership) that was:

(1) formed as a result of conversion under IC 28-1-21.7, IC 28-1-21.8, or IC 28-1-21.9 after December 31, 1992;

(2) incorporated under IC 28-12; or

(3) formed as a result of conversion under IC 28-1-30.

(b) A savings bank described in subsection (a) is governed by IC 28-13 in addition to this article.

(c) A reference in this article to formation and operation by a board means formation by conversion and operation by an elected board of directors.

(d) As to a mutual savings bank, a reference in IC 28-13-5, IC 28-13-6, IC 28-1-7, **IC 28-1-7.1,** ~~or~~ IC 28-1-8, **or IC 28-1-9** to shareholders and shareholders' meetings means members and members' meetings.

**(e) Notwithstanding subsection (d), in a proposed disposition described in IC 28-1-8-3(b) of this chapter, the rights and remedies for dissenting shareholders set forth in IC 28-1-7-21 do not apply.**

SECTION 82. IC 28-6.1-2-2.4 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 2.4. "Community based economic development" refers to activities that seek to address economic causes of poverty within specific geographic areas, revitalizing the economic and social base of low income communities through activities that include:~~

~~(1) affordable housing development;~~

~~(2) small business and micro-enterprise support;~~

~~(3) commercial, industrial, and retail revitalization, retention, and expansion;~~

~~(4) capacity development and technical assistance support for community development corporations;~~

~~(5) employment and training efforts;~~



Copy

~~(6) human resource development; and~~

~~(7) social service enterprises.~~

SECTION 83. IC 28-6.1-2-2.5 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 2.5. "Community development corporation" means a private, nonprofit corporation:~~

~~(1) whose board of directors is comprised primarily of community representatives and business, civic, and community leaders; and~~

~~(2) whose principal purpose includes the provision of:~~

~~(A) housing;~~

~~(B) community-based economic development projects; and~~

~~(C) social services;~~

~~that primarily benefit low-income individuals and communities.~~

SECTION 84. IC 28-6.1-6-14, AS AMENDED BY P.L.57-2006, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 14. (a) A savings bank may solicit and write insurance as an insurance producer or a broker for any insurance company authorized to do business in the state or states where the insurance producer or broker operates.

(b) A savings bank or its affiliate (as defined in IC 28-6.2-1-4) may act as an insurance producer for the sale of any life insurance policy or annuity contract issued by a life insurance company (as defined in IC 27-1-2-3) authorized to do business in the state or states where the insurance producer operates.

(c) A savings bank or its affiliate that acts as an insurance producer for the sale of a life insurance policy or an annuity contract under subsection (b):

(1) is subject to all requirements of IC 27 with respect to the insurance producer's activity in Indiana; and

(2) must comply with the disclosure requirements under IC 27-1-38.

(d) A savings bank or its affiliate may not condition:

(1) an extension of credit;

(2) a lease or sale of real or personal property;

(3) the performance of a service; or

(4) the amount charged for:

(A) extending credit;

(B) leasing or selling real or personal property; or

(C) performing services;

upon a person's purchase of a life insurance policy or an annuity contract from the savings bank or its affiliate.

(e) This section does not prohibit a savings bank or its affiliate from requiring that a person, as a condition to a transaction, obtain a life

C o p y

insurance policy from an insurance company acceptable to the savings bank or its affiliate.

(f) Subject to any limitations or restrictions that the department **or a federal regulator** may impose by **regulation,** rule, ~~or~~ policy, **or guidance,** a savings bank may purchase and hold life insurance as follows:

(1) Life insurance purchased or held in connection with employee compensation or benefit plans approved by the savings bank's board.

(2) Life insurance purchased or held to recover the cost of providing preretirement or postretirement employee benefits approved by the savings bank's board.

(3) Life insurance on the lives of borrowers.

(4) Life insurance held as security for a loan.

(5) Life insurance that a national bank may purchase or hold under 12 U.S.C. 24 (Seventh).

SECTION 85. IC 28-6.1-7-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 11. **(a) As used in this section, "community based economic development" refers to activities that seek to address economic causes of poverty within specific geographic areas, revitalizing the economic and social base of low income communities through activities that include:**

**(1) affordable housing development;**

**(2) small business and micro-enterprise support;**

**(3) commercial, industrial, and retail revitalization, retention, and expansion;**

**(4) capacity development and technical assistance support for community development corporations;**

**(5) employment and training efforts;**

**(6) human resource development; and**

**(7) social service enterprises.**

**(b) As used in this section, "community development corporation" means a private, nonprofit corporation:**

**(1) whose board of directors is comprised primarily of community representatives and business, civic, and community leaders; and**

**(2) whose principal purpose includes the provision of:**

**(A) housing;**

**(B) community based economic development projects; and**

**(C) social services;**

**that primarily benefit low income individuals and communities.**

C o p y

~~(a)~~ **(c)** As used in this section, ~~"surplus" means the sum of the following: (1) The remainder of: (A) capital surplus, undivided profits, reserves for contingencies and other capital reserves (excluding accrued dividends on perpetual and limited life preferred stock), minority interests in consolidated subsidiaries, and allowances for loan and lease losses; minus (B) intangible assets. (2) Purchased mortgage servicing rights. (3) Mandatory convertible debt to the extent of twenty percent (20%) of the sum of capital, capital surplus, and purchased mortgage servicing rights. (4) Other mandatory convertible debt, limited life preferred stock, and subordinated notes and debentures to the extent that the debt, stock, notes, and debentures qualify as "tier II capital" under 12 CFR 325.~~ **"capital and surplus" has the meaning set forth in IC 28-1-1-3(10).**

~~(b)~~ **(d) Subject to the limitations of this section, other laws, and any regulation, rule, policy, or guidance adopted by the department concerning investments in community based economic development,** a savings bank may invest **directly or indirectly** in ~~community development corporations and projects of a predominantly civic, community, or public nature, including equity investments in corporations or limited liability companies organized for such purposes. Investments by a savings bank under this subsection shall not exceed: (1) in any one (1) project, two percent (2%); and (2) in the aggregate, five percent (5%);~~
~~of the capital and surplus of the savings bank, unless the director makes the determination set forth in subsection (c). (c) Investments by a savings bank under subsection (b) may exceed the limit set forth in subsection (b)(2) if the director determines that: (1) the aggregate investments by the savings bank under subsection (b) in excess of five percent (5%) of the capital and surplus of the savings bank will not pose a significant risk to the affected deposit insurance fund; and (2) the savings bank is adequately capitalized. However, in no case shall the aggregate investments by a savings bank under subsection (b) exceed ten percent (10%) of the capital and surplus of the savings bank.~~ **equity investments in a corporation, a limited partnership, a limited liability company, or another entity organized as:**

**(1) a community development corporation;**

**(2) an entity formed primarily to support community based economic development;**

**(3) an entity qualifying for the new markets tax credits under 26 U.S.C. 45D; or**

**(4) an entity approved by the director as being formed for a predominantly civic, community, or public purpose and that:**



C o p y

**(A) primarily benefits low and moderate income individuals;**

**(B) primarily benefits low and moderate income areas;**

**(C) primarily benefits areas targeted for redevelopment by a government entity; or**

**(D) is a qualified investment under 12 CFR 25.23 for purposes of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.).**

**(e) Except as provided in subsection (f), the aggregate of all equity investments by a savings bank under subsection (d) may not exceed:**

**(1) five percent (5%) of the capital and surplus of the savings bank without the prior written approval of the director; and**

**(2) fifteen percent (15%) of the capital and surplus of the savings bank under any circumstances.**

**(f) In determining whether to permit the aggregate of all equity investments by a savings bank under subsection (d) to exceed five percent (5%) of the capital and surplus of the savings bank under subsection (e)(1), the director shall consider whether:**

**(1) the aggregate of all equity investments under subsection (d) will pose a significant risk to the affected deposit insurance fund; and**

**(2) the savings bank is adequately capitalized.**

~~(d)~~ **(g)** A savings bank shall not make any investment under ~~subsection (b)~~ **this section** if the investment would expose the savings bank to unlimited liability.

SECTION 86. IC 28-6.1-9-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. (a) The total loans and extensions of credit by a savings bank to a person outstanding at one (1) time and not fully secured, as determined in a manner consistent with subsection (b), by collateral having a market value at least equal to the amount of the loan or extension of credit may not exceed fifteen percent (15%) of the unimpaired capital and unimpaired surplus of the savings bank.

(b) The total loans and extensions of credit by a savings bank to a person outstanding at one (1) time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding may not exceed ten percent (10%) of the unimpaired capital and unimpaired surplus of the savings bank. The limitation in this subsection is separate from and in addition to the limitation contained in subsection (a).

C o p y

**(c) The total loans and extensions of credit by a savings bank includes any credit exposure to a person arising from a derivative transaction (as defined in 12 U.S.C. 84(b)(3)) between the savings bank and the person.**

SECTION 87. IC 28-6.1-9-13 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 13. (a) This section does not apply to a savings bank organized, reorganized, or operating under IC 28-6 (before its repeal) before January 1, 1993.~~

~~(b) A savings bank shall maintain sixty percent (60%) of its assets in investments that qualify under 26 U.S.C. 7701(a)(19).~~

SECTION 88. IC 28-6.1-10-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. (a) Subject to subsection (b), a savings bank may purchase for its own account and sell investment securities under limitations and restrictions the department prescribes by **regulation,** rule, **policy, or guidance.**

(b) The total amount of the investment securities of any one (1) obligor or maker, purchased or held by any savings bank for its own account may not at any time exceed ten percent (10%) of the amount of the total equity capital of the savings bank.

SECTION 89. IC 28-6.1-12-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) As used in this chapter, "bank" means a financial institution that is either of the following:

(1) A bank that:

(A) has been organized or reorganized under the laws of the United States, any state of the United States, or the District of Columbia; and

(B) is an "insured bank" (as defined in Section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) eligible to make application to become an insured depository institution under Section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815).

(2) Notwithstanding subsection (b), a savings bank formed as a result of conversion.

(b) The term does not include any of the following:

(1) An institution that has been or is chartered ~~by the Federal Home Loan Bank Board or the Office of Thrift Supervision.~~ **or regulated as a federal savings association or federal savings bank under Section 5 of the Home Owners Loan Act (12 U.S.C. 1464).**

(2) Institutions of the "Farm Credit System" as described in 12 U.S.C. 2001 through 2260, which include the Farm Credit Banks,

C o p y

the Federal Land Bank Associations, the Production Credit Associations, the Banks for Cooperatives, and any other institution that may become a part of the Farm Credit System, as chartered by and subject to the supervision of the Farm Credit Administration.

(3) Another institution that has been organized or reorganized as a savings association, a credit union, or an industrial loan and investment company.

SECTION 90. IC 28-6.2-1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 12. As used in this chapter, "mutual holding company" means a mutual savings bank holding company that:

(1) is:

**(A)** organized under IC 28-6.2-2 or converted under IC 28-6.2-7-6; ~~and~~ **or**

**(B) organized under the laws of any other state or the United States; and**

(2) has control over:

(A) any savings bank; or

(B) any company that is or becomes a mutual holding company under this article.

SECTION 91. IC 28-6.2-2-1.5, AS ADDED BY P.L.90-2008, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1.5. **(a) As used in this section, "primary federal regulator" means the federal agency primarily responsible for the regulation of mutual holding companies (as defined in IC 28-6.2-1-12).**

**(b)** A mutual savings bank may, upon application to and with the approval by the department and the ~~Office of Thrift Supervision,~~ **primary federal regulator,** reorganize as a federal mutual holding company by undertaking a transaction or series of transactions substantially similar to those set forth in section 1 of this chapter.

SECTION 92. IC 28-7-1-9, AS AMENDED BY P.L.89-2011, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. (a) A credit union has the following powers:

(1) To issue shares of its capital stock to its members. No commission or compensation shall be paid for securing members or for the sale of shares.

(2) To make loans to officers, directors, or committee members under sections 17.1 and 17.2 of this chapter.

(3) To invest in any of the following:

(A) Bonds, notes, or certificates that are the direct or indirect

C o p y

obligations of the United States, or of the state, or the direct obligations of a county, township, city, town, or other taxing district or municipality or instrumentality of Indiana and that are not in default.

(B) Bonds or debentures issued by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449) or the Home Owners' Loan Act (12 U.S.C. 1461 through 1468).

(C) Obligations of national mortgage associations issued under the authority of the National Housing Act.

(D) Mortgages on real estate situated in Indiana which are fully insured under Title 2 of the National Housing Act (12 U.S.C. 1707 through 1715z).

(E) Obligations issued by farm credit banks and banks for cooperatives under the Farm Credit Act of 1971 (12 U.S.C. 2001 through 2279aa-14).

(F) ~~In~~ Savings and loan associations, other credit unions that are insured under section 31.5 of this chapter, and certificates of indebtedness or investment of an industrial loan and investment company if the association or company is federally insured. Not more than twenty percent (20%) of the assets of a credit union may be invested in the shares or certificates of an association or company, nor more than forty percent (40%) in all such associations and companies.

(G) Corporate credit unions.

(H) Federal funds or similar types of daily funds transactions with other financial institutions.

(I) Shares or certificates of an open-end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 15 U.S.C. 80a-3 and 15 U.S.C. 80a-4 through 15 U.S.C. 80a-64), if all of the following conditions are met:

(i) The fund's assets consist of and are limited to securities in which a credit union may invest directly.

(ii) The credit union has an equitable and undivided interest in the underlying assets of the fund.

(iii) The credit union is not liable for acts or obligations of the fund.

(iv) The credit union's investment in any one (1) fund does not exceed fifteen percent (15%) of the amount of the credit union's net worth.

(J) For a credit union that is well capitalized (as defined in Part

C o p y

702 of the Rules and Regulations of the National Credit Union Administration, 12 CFR 702), investment securities, as may be defined by a statute or a policy or rule of the department and subject to the following:

(i) The department may prescribe, by policy or rule, limitations or restrictions on a credit union's investment in investment securities.

(ii) The total amount of any investment securities purchased or held by a credit union may never exceed at any given time ten percent (10%) of the capital and surplus of the credit union. However, the limitations imposed by this item do not apply to investments in the direct or indirect obligations of the United States or in the direct obligations of a United States territory or insular possession, or in the direct obligations of the state or any municipal corporation or taxing district in Indiana.

(iii) A credit union may not purchase for its own account any bond, note, or other evidence of indebtedness that is commonly designated as a security that is speculative in character or that has speculative characteristics. For the purposes of this item, a security is speculative or has speculative characteristics if at the time of purchase the security is in default, is rated below the first four (4) rating classes by a generally recognized security rating service, or is otherwise considered speculative by the director.

(iv) A credit union may purchase for its own account a security that is not rated by a generally recognized security rating service if the credit union at the time of purchase obtains financial information that is adequate to document the investment quality of the security and if the security is not otherwise considered speculative by the director.

(v) A credit union that purchases a security for its own account shall maintain sufficient records of the security to allow the security to be properly identified by the department for examination purposes.

(vi) Except as otherwise authorized by this title, a credit union may not purchase any share of stock of a corporation. If a credit union possesses stock or another equity investment as a result of a loan default, the credit union shall dispose of the investment within a reasonable period that does not exceed one (1) year or a longer period if approved by the department.

C o p y

(vii) Subject to items (i) through (iv), a credit union may purchase yankee dollar deposits, eurodollar deposits, banker's acceptances, deposit notes, bank notes with original weighted average maturities of less than five (5) years, and investments in obligations of, or issued by, any state or political subdivision (including any agency, corporation, or instrumentality of a state or political subdivision).

(K) Collateralized obligations that are eligible for purchase and sale by federal credit unions. However, a credit union may purchase for its own account and sell the obligations only to the extent that a federal credit union can purchase and sell those obligations.

(4) With the prior approval of the department, and subject to the limitations of this subsection, a credit union may organize, invest in, or loan money to a credit union service organization (as defined in Part 712 of the regulations of the National Credit Union Administration, 12 CFR 712). A credit union may not loan or invest in a credit union service organization if the aggregate amount of all such loans or investments in a particular credit union service organization is greater than ten percent (10%) of the capital, surplus, and unimpaired shares of the credit union without the prior written approval of the department. A credit union may organize, invest in, or loan money to a credit union service organization described in this subdivision only if the following requirements are met:

(A) The credit union service organization is adequately capitalized or has a reasonable plan for adequate capitalization if the credit union service organization is to be formed or is newly formed.

(B) The credit union service organization is structured and operated as a separate legal entity from the credit union.

(C) The credit union obtains a written legal opinion that the credit union service organization is structured and operated in a manner that limits the credit union's potential liability for the debts and liabilities of the credit union service organization to not more than the loss of money invested in or loaned to the credit union service organization by the credit union.

(D) The credit union service organization agrees in writing to prepare financial statements and provide the financial statements to the credit union at least quarterly, and to the department upon request.

(E) The credit union service organization agrees in writing to

C o p y

obtain an audit of the credit union service organization from a certified public accountant at least annually and provide a copy of each audit report to the credit union, and to the department upon request. A wholly owned credit union service organization is not required to obtain a separate annual audit if the credit union service organization is included in the annual consolidated audit of the credit union that is the credit union service organization's parent.

(F) The credit union service organization operates in compliance with all applicable federal and state laws.

(5) To deposit its funds into:

(A) depository institutions that are federally insured; or

(B) state chartered credit unions that are privately insured by an insurer approved by the department.

(6) To purchase, hold, own, or convey real estate as may be conveyed to the credit union in satisfaction of debts previously contracted or in exchange for real estate conveyed to the credit union.

(7) To own, hold, or convey real estate as may be purchased by the credit union upon judgment in its favor or decrees of foreclosure upon mortgages.

(8) To issue shares of stock and upon the terms, conditions, limitations, and restrictions and with the relative rights as may be stated in the bylaws of the credit union, but no stock may have preference or priority over the other to share in the assets of the credit union upon liquidation or dissolution or for the payment of dividends except as to the amount of the dividends and the time for the payment of the dividends as provided in the bylaws.

(9) To charge the member's share account for the actual cost of a necessary locator service when the member has failed to keep the credit union informed about the member's current address. The charge shall be made only for amounts paid to a person or concern normally engaged in providing such service, and shall be made against the account or accounts of any one (1) member not more than once in any twelve (12) month period.

(10) To transfer to an accounts payable account, a dormant account, or a special account share accounts which have been inactive, except for dividend credits, for a period of at least two (2) years. The credit union shall not consider the payment of dividends on the transferred account.

(11) To invest in fixed assets with the funds of the credit union. An investment in fixed assets in excess of five percent (5%) of its

C o p y

assets is subject to the approval of the department. A credit union may rent excess space at the credit union's main office or branch as a source of income.

(12) To establish branch offices, upon approval of the department, provided that all books of account shall be maintained at the principal office.

(13) To pay an interest refund on loans proportionate to the interest paid during the dividend period by borrowers who are members at the end of the dividend period.

(14) To purchase life savings and loan protection insurance for the benefit of the credit union and its members, if:

(A) the coverage is placed with an insurance company licensed to do business in Indiana; and

(B) no officer, director, or employee of the credit union personally benefits, directly or indirectly, from the sale or purchase of the coverage.

(15) To sell and cash negotiable checks, travelers checks, and money orders for members.

(16) To purchase members' notes from any liquidating credit union, with written approval from the department, at prices agreed upon by the boards of directors of both the liquidating and the purchasing credit unions. However, the aggregate of the unpaid balances of all notes of liquidating credit unions purchased by any one (1) credit union shall not exceed ten percent (10%) of the purchasing credit union's capital and surplus unless special written authorization has been granted by the department.

(17) To exercise such incidental powers necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

(18) To act as a custodian or trustee of any trust created or organized in the United States and forming part of a tax advantaged savings plan which qualifies or qualified for specific tax treatment under Section 223, 401(d), 408, 408A, or 530 of the Internal Revenue Code, if the funds of the trust are invested only in share accounts or insured certificates of the credit union.

(19) To issue shares or insured certificates to a trustee or custodian of a pension plan, profit sharing plan, or stock bonus plan which qualifies for specific tax treatment under Sections 401(d) or 408(a) of the Internal Revenue Code.

(20) ~~A credit union may~~ **To** exercise any rights and privileges that are:

(A) granted to federal credit unions; but

C o p y

(B) not authorized for credit unions under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

if the credit union complies with section 9.2 of this chapter.

(21) To sell, pledge, or discount any of its assets. However, a credit union may not pledge any of its assets as security for the safekeeping and prompt payment of any money deposited, except that a credit union may, for the safekeeping and prompt payment of money deposited, give security as authorized by federal law.

(22) To purchase assets of another credit union and to assume the liabilities of the selling credit union.

(23) To act as a fiscal agent of the United States and to receive deposits from nonmember units of the federal, state, or county governments, from political subdivisions, and from other credit unions upon which the credit union may pay varying interest rates at varying maturities subject to terms, rates, and conditions that are established by the board of directors. However, the total amount of public funds received from units of state and county governments and political subdivisions that a credit union may have on deposit may not exceed twenty percent (20%) of the total assets of that credit union, excluding those public funds.

(24) To join the National Credit Union Administration Central Liquidity Facility.

(25) To participate in community investment initiatives under the administration of organizations:

(A) exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; and

(B) located or conducting activities in communities in which the credit union does business.

Participation may be in the form of either charitable contributions or participation loans. In either case, disbursement of funds through the administering organization is not required to be limited to members of the credit union. Total contributions or participation loans may not exceed one-tenth of one percent (0.1%) of total assets of the credit union. A recipient of a contribution or loan is not considered qualified for credit union membership. A contribution or participation loan made under this subdivision must be approved by the board of directors.

(26) To establish and operate an automated teller machine (ATM):

(A) at any location within Indiana; or

(B) as permitted by the laws of the state in which the

C o p y

automated teller machine is to be located.

(27) To demand and receive, for the faithful performance and discharge of services performed under the powers vested in the credit union by this article:

(A) reasonable compensation, or compensation as fixed by agreement of the parties;

(B) all advances necessarily paid out and expended in the discharge and performance of its duties; and

(C) unless otherwise agreed upon, interest at the legal rate on the advances referred to in clause (B).

(28) Subject to any restrictions the department may impose, to become the owner or lessor of personal property acquired upon the request and for the use of a member and to incur additional obligations as may be incident to becoming an owner or lessor of such property.

(b) A credit union shall maintain files containing credit and other information adequate to demonstrate evidence of prudent business judgment in exercising the investment powers granted under this chapter or by rule, order, or declaratory ruling of the department.

**(c) Subject to any limitations or restrictions that the department or a federal regulator may impose by regulation, rule, policy, or guidance, a credit union may purchase and hold life insurance as follows:**

**(1) Life insurance purchased or held in connection with employee compensation or benefit plans approved by the credit union's board of directors.**

**(2) Life insurance purchased or held to recover the cost of providing preretirement or postretirement employee benefits approved by the credit union's board of directors.**

**(3) Life insurance on the lives of borrowers.**

**(4) Life insurance held as security for a loan.**

**(5) Life insurance that a federal credit union may purchase or hold under 12 CFR 701.19(c).**

SECTION 93. IC 28-7-1-17, AS AMENDED BY P.L.35-2010, SECTION 157, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 17. (a) Every loan application shall be submitted on a form approved by the board of directors. When making an application, a member shall state the security offered. Loans may be dispersed upon written approval by a majority of the credit committee or a loan officer. If the credit committee or loan officer fails to approve an application for a loan, the applicant may appeal to the board of directors, providing such appeal is authorized by the bylaws.

C o p y

(b) Loans to members may be made only under the following terms and conditions:

(1) All loans shall be evidenced by notes signed by the borrowing member.

(2) Except as otherwise provided in this section, the terms of any loan to a member with a maturity of more than six (6) months shall provide for principal and interest payments that will amortize the obligation in full within the terms of the loan contract. If the income of the borrowing member is seasonal, the terms of the loan contract may provide for seasonal amortization.

(3) Loans may be made upon the security of improved or unimproved real estate. Except as otherwise specified in this section, such loans must be secured by a first lien upon real estate prior to all other liens, except for taxes and assessments not delinquent, and may be made with repayment terms other than as provided in subdivision (2). ~~When the amount of a loan is at least two hundred fifty thousand dollars ($250,000), the fair cash value of real estate security shall be determined by a written appraisal made by one (1) or more qualified state licensed or certified appraisers designated by the board of directors.~~ The credit union loan folder for **all** real estate mortgage loans shall include **the following:**

(A) The loan application.

(B) The mortgage instrument.

(C) The note.

(D) The disclosure statement.

(E) The documentation of property insurance.

(F) ~~an~~ **For the real estate for which the loan is made, a written** appraisal, ~~on the real estate for which the loan is made.~~ **which must be performed by a state licensed or certified appraiser designated by the board of directors if the amount of the loan is at least two hundred fifty thousand dollars ($250,000).**

(G) The attorney's opinion of titles or a certificate of title insurance on the real estate upon which the mortgage loan is made.

(4) Loans made upon security of real estate are subject to the following restrictions:

(A) Real estate loans in which no principal amortization is required shall provide for the payment of interest at least annually and shall mature within five (5) years of the date of the loan unless extended and shall not exceed fifty percent

C o p y

(50%) of the fair cash value of the real estate used as security.

(B) Real estate loans on improved real estate, except for variable rate mortgage loans and rollover mortgage loans provided for in subdivision (5), shall require substantially equal payments at successive intervals of not more than one (1) year, shall mature within thirty (30) years, and shall not exceed one hundred percent (100%) of the fair cash value of the real estate used as security.

(C) Real estate loans on unimproved real estate may be made. The terms of the loan shall:

(i) require substantially equal payments of interest and principal at successive intervals of one (1) year or less;

(ii) mature within ten (10) years; and

(iii) not exceed eighty-five percent (85%) of the fair cash value of the real estate used as security.

(D) Loans primarily secured by a mortgage which constitutes a second lien on improved real estate may be made only if the aggregate amount of all loans on the real estate does not exceed one hundred percent (100%) of the fair cash value of the real estate after such loan is made. Repayment terms shall be in accordance with subdivision (2).

(E) Real estate loans may be made for the construction of improvements to real property. Funds borrowed may be advanced as work on the improvements progresses. Repayment terms must comply with subdivision (2).

(5) Subject to the limitations of subdivision (3), variable rate mortgage loans and rollover mortgage loans may be made under the same limitations and rights provided state chartered savings associations under IC 28-1-21.5 (before its repeal) or IC 28-15 or federal credit unions.

(6) As used in this subdivision, "originating lender" means the participating lender with which the member contracts. A credit union may participate with other state and federal depository financial institutions (as defined in IC 28-1-1-6) or credit union service organizations in making loans to credit union members and may sell a participating interest in any of its loans under written participation loan policies established by the board of directors. However, the credit union may not sell more than ninety percent (90%) of the principal of participating loans outstanding at the time of sale. A participating credit union that is not the originating lender may participate only in loans made to the credit union's own members or to members of another participating state

C o p y

or federal credit union. A master participation agreement must be properly executed. The agreement must include provisions for identifying, either through documents incorporated by reference or directly in the agreement, the participation loan or loans before the sale of the loans.

(7) Notwithstanding subdivisions (1) through (6), a credit union may make any of the following:

(A) Any loan that may be made by a federal credit union. However, IC 24-4.5 applies to any loan that is:

(i) made under this clause; and

(ii) within the scope of IC 24-4.5.

Any provision of federal law that is in conflict with IC 24-4.5 does not apply to a loan made under this clause.

(B) Subject to subdivision (3), any alternative mortgage loan (as defined in IC 28-15-11-2) that may be made by a savings association (as defined in IC 28-15-1-11) under IC 28-15-11. A loan made under this clause by a credit union is subject to the same terms, conditions, exceptions, and limitations that apply to an alternative mortgage loan made by a savings association under IC 28-15-11.

(8) A credit union may make a loan under either:

(A) subdivisions (2) through (6); or

(B) subdivision (7);

but not both. A credit union shall make an initial determination as to whether to make a loan under subdivisions (2) through (6) or under subdivision (7). If the credit union determines that a loan or category of loans is to be made under subdivision (7), the written loan policies of the credit union must include that determination. A credit union may not combine the terms and conditions that apply to a loan made under subdivisions (2) through (6) with the terms and conditions that apply to a loan made under subdivision (7) to make a loan not expressly described and authorized either under subdivisions (2) through (6) or under subdivision (7).

(c) Nothing in this section prevents any credit union from taking an indemnifying or second mortgage on real estate as additional security.

SECTION 94. IC 28-7-1-39, AS AMENDED BY P.L.90-2008, SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 39. (a) As used in this section, "loans and extensions of credit" includes all direct or indirect advances of funds made to a member on the basis of:

(1) an obligation of the member to repay the funds; or

(2) a pledge of specific property by or on behalf of the member

C o p y

and from which the funds advanced are repayable.

The term includes any contractual liability of a credit union to advance funds to or on behalf of a member, to the extent specified by the department. **The term also includes any credit exposure to a person arising from a derivative transaction (as defined in 12 U.S.C. 84(b)(3)) between the credit union and the person.**

(b) As used in this section, "member" includes an individual, a sole proprietorship, a partnership, a joint venture, an association, a trust, an estate, a business trust, a limited liability company, a corporation, a sovereign government, or an agency, instrumentality, or political subdivision of a sovereign government, or any similar entity or organization.

(c) Except as provided in subsection (e), the total loans and extensions of credit by a credit union to a member outstanding at any given time and not fully secured, as determined in a manner consistent with subsection (d), by collateral with a market value at least equal to the amount of the loan or extension of credit may not exceed fifteen percent (15%) of the capital and surplus of the credit union.

(d) Except as provided in subsection (e), the total loans and extensions of credit by a credit union to a member outstanding at any given time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of funds outstanding may not exceed ten percent (10%) of the capital and surplus of the credit union. The limitation in this subsection is separate from and in addition to the limitation set forth in subsection (c).

(e) The limitations set forth in subsections (c) and (d) are subject to the following exceptions:

(1) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the member negotiating it with recourse are not subject to any limitation based on capital and surplus.

(2) The purchase of bankers' acceptances of the kind described in 12 U.S.C. 372 and issued by a financial institution organized or reorganized under the laws of Indiana or any other state or the United States are not subject to any limitation based on capital and surplus.

(3) Loans or extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples are subject to a limitation of thirty-five percent (35%) of capital and surplus in addition to the general limitations if the market value of the staples securing each

C o p y

additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent (115%) of the outstanding amount of the loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(4) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by any other obligation fully guaranteed as to principal and interest by the United States are not subject to any limitation based on capital and surplus.

(5) Loans or extensions of credit to or secured by unconditional takeout commitment or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States are not subject to any limitation based on capital and surplus.

(6) Loans or extensions of credit secured by a segregated deposit account in the lending credit union are not subject to any limitation based on capital and surplus.

(7) Loans or extensions of credit to any credit union, when the loans or extensions of credit are approved by the director of the department, are not subject to any limitation based on capital and surplus.

(f) Loans or extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper that carries a full recourse endorsement or unconditional guarantee by the member transferring the paper are subject under this section to a maximum limitation equal to twenty-five percent (25%) of the capital and surplus, notwithstanding the collateral requirements set forth in subsection (d).

(g) If the credit union's files or the knowledge of the credit union's officers of the financial condition of each maker of consumer paper described in subsection (f) is reasonably adequate, and an officer of the credit union designated for that purpose by the board of directors of the credit union certifies in writing that the credit union is relying primarily upon the responsibility of each maker for payment of the loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each maker shall be the sole applicable loan limitations.

(h) Loans or extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the

C o p y

obligation is not at any time less than one hundred fifteen percent (115%) of the face amount of the note covered are subject under this section, notwithstanding the collateral requirements set forth in subsection (d), to a maximum limitation equal to twenty-five percent (25%) of the capital and surplus.

(i) Loans or extensions of credit that arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller and that are secured by the cattle being sold, are subject under this section, notwithstanding the collateral requirements set forth in subsection (d), to a limitation of twenty-five percent (25%) of the capital and surplus.

(j) Except as otherwise provided, an officer, director, employee, or attorney of a credit union who stipulates for, receives, or consents or agrees to receive, any fee, commission, gift, or thing of value, from any person, for the purpose of procuring or endeavoring to procure for any member any loan from or the purchase or discount of any paper, note, draft, check, or bill of exchange by the credit union, commits a Class A misdemeanor.

(k) Except as otherwise provided in this chapter, any credit union that holds obligations of indebtedness in violation of the limitations prescribed in this section shall, not later than July 1, 2006, cause the amount of the obligations to conform to the limitations prescribed by this chapter and by the provisions of this section. The department may, in its discretion, extend the time for effecting this conformity, in individual instances, if the interests of the depositors will be protected and served by an extension. Upon the failure of a credit union to comply with the limitations, in accordance with this section or in accordance with any order of the department concerning the limitations, the department may declare that the credit union is conducting its business in an unauthorized or unsafe manner and proceed in accordance with IC 28-1-3.1-2.

(l) The department may apply the provisions of 12 CFR 32 in the application and administration of this chapter.

SECTION 95. IC 28-7-5-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 13. (a) The department ~~shall, upon ten (10) days notice to the licensee stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, revoke, by written order, any license issued under this chapter if it shall find that: (1) the licensee has failed to comply with any ruling or requirements of the department; (2) the licensee has violated any provision of this chapter or any rule made by~~

C o p y

~~the department; or (3) any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the department in refusing originally to issue such license.~~ **may issue to a licensee an order to show cause why the licensee's license should not be revoked or suspended for a period determined by the department.**

**(b) An order issued under subsection (a) must:**

**(1) include:**

**(A) a statement of the place, date, and time for a meeting with the department, which date may not be less than ten (10) days from the date of the order;**

**(B) a description of the action contemplated by the department; and**

**(C) a statement of the facts or conduct supporting the issuance of the order; and**

**(2) be accompanied by a notice stating that the licensee is entitled to:**

**(A) a reasonable opportunity to be heard; and**

**(B) show the licensee's compliance with all lawful requirements for retention of the license;**

**at the meeting described in subdivision (1)(A).**

**(c) After the meeting described in subsection (b)(1)(A), the department may revoke or suspend the license if the department finds that:**

**(1) the licensee has repeatedly and willfully violated:**

**(A) this chapter or any rule, order, or guidance document adopted or issued by the department; or**

**(B) any other state or federal law, regulation, or rule applicable to the business of a pawnbroker;**

**(2) the licensee does not meet the licensing qualifications set forth in this chapter;**

**(3) the licensee obtained the license for the benefit of, or on behalf of, a person who does not qualify for the license;**

**(4) the licensee knowingly or intentionally made material misrepresentations to, or concealed material information from, the department; or**

**(5) facts or conditions exist that, had they existed at the time the licensee applied for the license, would have been grounds for the department to deny the issuance of the license.**

**(d) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and notify the licensee of:**

C o p y

**(1) the revocation or suspension;**
**(2) if a suspension has been ordered, the duration of the suspension;**
**(3) the procedure for appealing the revocation or suspension under IC 4-21.5-3-5; and**
**(4) any other terms and conditions that apply to the revocation or suspension.**

**Not later than five (5) days after the entry of the order, the department shall deliver to the licensee a copy of the order and the findings supporting the order.**

**(e) Any person holding a license to operate as a pawnbroker may surrender the license by complying with section 10.1 of this chapter. However, a surrender of a license under section 10.1 of this chapter does not affect the person's liability for acts previously committed and coming within the scope of this chapter.**

**(f) If the director determines it to be in the public interest, the director may pursue the revocation of a license of a licensee that has surrendered the license under section 10.1 of this chapter.**

**(g) If a person's license is revoked, suspended, or surrendered, the revocation, suspension, or surrender does not impair or affect any obligation owed by any person under any existing contract, pledge, or pawn ticket.**

~~(b)~~ **(h)** If the director of the department ~~(1)~~ has just cause to believe an emergency exists from which it is necessary to protect the interests of the public, ~~or (2) determines that the license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license;~~ the director may proceed with the revocation of ~~the~~ **a** license **through an emergency or another temporary order** under ~~IC 4-21.5-3-6.~~ **IC 4-21.5-4.**

SECTION 96. IC 28-7-5-14 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 14. No revocation or suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any borrower.~~

SECTION 97. IC 28-7-5-16, AS AMENDED BY P.L.35-2010, SECTION 176, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 16. (a) The licensee shall keep and use in the licensee's business such books, accounts, and records as will enable the department to determine whether the licensee is complying with this chapter and with the rules adopted by the department under this chapter. Every licensee shall preserve such books, accounts, and records, including cards used in the card system for at least two (2) years after making the final entry on any loan recorded therein. The

C o p y

books and records of the licensee shall be kept so that the pawnbroking business transacted in Indiana may be readily separated and distinguished from the business of the licensee transacted elsewhere and from any other business in which the licensee may be engaged. To determine whether the licensee is complying with this chapter and with rules adopted by the department under this chapter, the department may examine the books, accounts, and records required to be kept by the licensee under this subsection. If the department examines the books, accounts, and records of the licensee under this subsection, the licensee shall pay all reasonably incurred costs of the examination in accordance with the fee schedule adopted under IC 28-11-3-5. **A fee established by the department under IC 28-11-3-5 may be charged for each day a fee under this subsection is delinquent.**

(b) If a pawnbroker, in the conduct of the business, purchases an article from a seller, the purchase shall be evidenced by a bill of sale properly signed by the seller. All bills of sale must be in duplicate and must recite the following separate items:

(1) Date of bill of sale.

(2) Amount of consideration.

(3) Name of pawnbroker.

(4) Description of each article sold. However, if multiple articles of a similar nature that do not contain an identification or serial number (such as precious metals, gemstones, musical recordings, video recordings, books, or hand tools) are delivered together in one (1) transaction, the description of the articles is adequate if the description contains the quantity of the articles delivered and a physical description of the type of articles delivered, including any other unique identifying marks, numbers, names, letters, or special features.

(5) Signature of seller.

(6) Address of seller.

(7) Date of birth of the seller.

(8) The type of government issued identification used to verify the identity of the seller, together with the name of the governmental agency that issued the identification, and the identification number present on the government issued identification.

(c) If a pawnbroker, in the conduct of the business, purchases an article from a seller on the condition of selling the property back at a stipulated price, the transaction shall be evidenced by a bill of sale properly signed by the seller. All such bills of sale must be in duplicate and recite the information in subsection (b) and must also contain the following information:

C o p y

(1) Date of resale.
(2) Amount of resale.

(d) The original copy of the bill of sale shall be retained by the pawnbroker. The second copy shall be delivered to the seller by the pawnbroker at the time of sale. The heading on all bill of sale forms must be in boldface type.

(e) Each licensee shall maintain a record of control indicating the number of accounts and dollar value of all outstanding pawnbroking receivables. Each licensee shall maintain a separate record of transactions subject to subsection (c).

(f) If a licensee contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the licensee and be subject to the department's routine examination procedures, the person that provides the service to the licensee shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any licensee that receives services from the person refusing the examination to:

(1) discontinue receiving one (1) or more services from the person; or
(2) otherwise cease conducting business with the person.

SECTION 98. IC 28-7-5-30, AS AMENDED BY P.L.217-2007, SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 30. (a) Subject to subsections (b) and (c), upon the expiration of two (2) months from the maturity of the loan, a pawned article becomes the property of the pawnbroker and is subject to sale.

(b) Subsection (a) applies only if the pledger is given a reasonable opportunity during:

(1) the term of the loan; and
(2) the two (2) month period described in subsection (a);

to repay the loan and redeem the pawned article.

(c) During the term of the loan and the two (2) month period described in subsection (a), the pawnbroker may not allow the public to have access to the pawned article.

**(d) If a pawnbroker gives notice to the department under section 10.1 of this chapter that the pawnbroker intends to cease engaging in business as a pawnbroker in Indiana, the pawnbroker may accept, through the two (2) month period described in subsection (a) with respect to any loan, partial payments from any**

C o p y

**pledger that has one (1) or more loans outstanding with the pawnbroker. A partial payment made under this subsection must be applied to a loan's principal and used to reduce the pledger's loan obligation. Acceptance of partial payments under this subsection does not require the pawnbroker to extend the two (2) month period described in subsection (a) with respect to any loan.**

SECTION 99. IC 28-8-4-41, AS AMENDED BY P.L.35-2010, SECTION 183, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 41. (a) The director may conduct an annual onsite examination of a licensee or an authorized delegate of a licensee.

(b) If the director determines that a reasonable belief exists that a person is operating without a valid license or in violation of this chapter, the director has the authority to investigate and examine the records of that person. The person examined must pay the reasonably incurred costs of the examination.

(c) Except as provided in section 42(a)(2) of this chapter, the director must give the licensee forty-five (45) days written notice before conducting an onsite examination.

(d) If the director determines, based on the licensee's financial statements and past history of operations in Indiana, that an onsite examination is unnecessary, the director may waive the onsite examination.

(e) If the director concludes that an onsite examination of a licensee is necessary, the licensee shall pay all reasonably incurred costs of such examination in accordance with the fee schedule adopted under IC 28-11-3-5. **A fee established by the department under IC 28-11-3-5 may be charged for each day a fee under this section is delinquent.**

(f) An onsite examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states. In lieu of an onsite examination, a director may accept the examination report of an agency of another state, or a report prepared by an independent accounting firm. A report accepted under this subsection shall be considered, for all purposes, to be an official report of the director.

(g) If a licensee contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the licensee and be subject to the department's routine examination procedures, the person that provides the service to the licensee shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or

C o p y

desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any licensee that receives services from the person refusing the examination to:

(1) discontinue receiving one (1) or more services from the person; or

(2) otherwise cease conducting business with the person.

SECTION 100. IC 28-8-4-42 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 42. (a) If the director has a reasonable basis to believe that a licensee or an authorized delegate of a licensee is in violation of this chapter, the director may:

(1) request financial data from the licensee in addition to that required under section 38(a)(1) of this chapter; or

(2) conduct an in-state, onsite examination of an authorized delegate's operation or a licensee's location without prior notice to the authorized delegate or licensee.

(b) All reasonable costs of an examination incurred under subsection (a)(2) shall be paid by the:

(1) authorized delegate whose operation is examined; or

(2) the licensee whose location is examined;

**in accordance with the fee schedule adopted under IC 28-11-3-5. A fee established by the department under IC 28-11-3-5 may be charged for each day a fee under this section is delinquent.**

SECTION 101. IC 28-8-4-48 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 48. (a) ~~After notice and hearing,~~ The director may ~~suspend or revoke a licensee's license if the director finds one (1) of the following conditions: (1) A fact or condition exists that, if it had existed at the time the licensee applied for a license, would have been grounds for denying the application. (2) The licensee's net worth becomes inadequate to meet the terms of sections 24 and 33 of this chapter and the licensee, after ten (10) days written notice from the director, fails to take steps that the director considers necessary to remedy the deficiency. (3) The licensee violates a material provision of this chapter or order validly promulgated by the director under authority of this chapter. (4) The licensee is conducting its business in an unsafe or unsound manner as determined by the director. (5) The licensee is insolvent. (6) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due. (7) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under the~~

C o p y

~~federal bankruptcy code. (8) The licensee refuses to permit the director to make any examination authorized by this chapter. (9) The licensee fails to make a report required by this chapter.~~ **issue to a licensee an order to show cause why the licensee's license should not be revoked or suspended for a period determined by the department.**

**(b) An order issued under subsection (a) must:**

**(1) include:**

**(A) a statement of the place, date, and time for a meeting with the department, which date may not be less than ten (10) days from the date of the order;**

**(B) a description of the action contemplated by the department; and**

**(C) a statement of the facts or conduct supporting the issuance of the order; and**

**(2) be accompanied by a notice stating that the licensee is entitled to:**

**(A) a reasonable opportunity to be heard; and**

**(B) show the licensee's compliance with all lawful requirements for retention of the license;**

**at the meeting described in subdivision (1)(A).**

**(c) After the meeting described in subsection (b)(1)(A), the department may revoke or suspend the license if the department finds that:**

**(1) the licensee has repeatedly and willfully violated:**

**(A) this chapter or any rule, order, or guidance document adopted or issued by the department; or**

**(B) any other state or federal law, regulation, or rule applicable to the business of money transmission;**

**(2) the licensee does not meet the licensing qualifications set forth in this chapter;**

**(3) the licensee obtained the license for the benefit of, or on behalf of, a person who does not qualify for the license;**

**(4) the licensee knowingly or intentionally made material misrepresentations to, or concealed material information from, the department; or**

**(5) facts or conditions exist that, had they existed at the time the licensee applied for the license, would have been grounds for the department to deny the issuance of the license.**

**(d) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and notify the licensee of:**

**(1) the revocation or suspension;**

C o p y

**(2) if a suspension has been ordered, the duration of the suspension;**

**(3) the procedure for appealing the revocation or suspension under IC 4-21.5-3-5; and**

**(4) any other terms and conditions that apply to the revocation or suspension.**

**Not later than five (5) days after the entry of the order, the department shall deliver to the licensee a copy of the order and the findings supporting the order.**

**(e) Any person holding a license to engage in the business of money transmission may relinquish the license by notifying the department in writing of the relinquishment. However, a relinquishment under this subsection does not affect the person's liability for acts previously committed and coming within the scope of this chapter.**

**(f) If the director determines it to be in the public interest, the director may pursue the revocation of a license of a licensee that has relinquished the license under subsection (e).**

**(g) If a person's license is revoked, suspended, or relinquished, the revocation, suspension, or relinquishment does not impair or affect any obligation owed by any person under any existing lawful contract.**

~~(b)~~ **(h)** If the director of the department ~~(1)~~ has just cause to believe an emergency exists from which it is necessary to protect the interests of the public, ~~or (2) determines that the license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license;~~ the director may proceed with the revocation of ~~the~~ **a** license **through an emergency or another temporary order** under ~~IC 4-21.5-3-6.~~ **IC 4-21.5-4.**

SECTION 102. IC 28-8-4-49 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 49. **(a)** Licensees desiring to conduct licensed activities through authorized delegates shall authorize each delegate to operate pursuant to an express written contract, which shall provide for the following:

(1) That the licensee appoints the person as its delegate with authority to sell payment instruments and accept funds to be transmitted by or on behalf of the licensee.

(2) That neither a licensee nor an authorized delegate may authorize a subdelegate without the written consent of the director.

(3) That licensees are subject to supervision and regulation by the director.

C o p y

(4) An acknowledgment that the authorized delegate consents to the director's inspection, with or without prior notice to the licensee or authorized delegate, of the books, records, and accounts of an authorized delegate of the licensee when the director has a reasonable basis to believe that the licensee or authorized delegate is in violation of this chapter.

(5) That authorized delegates are under a duty to act only as authorized under the contract with the licensee and that an authorized delegate who exceeds the delegate's authority is subject to cancellation of the delegate's contract and disciplinary action by the director.

**(b) Subject to sections 50 and 51 of this chapter, an authorized delegate of a licensee or of a person exempt from licensure under section 1 of this chapter is exempt from the licensing requirements of this chapter if the authorized delegate acts within the scope of the written contract executed under subsection (a) between the authorized delegate and the licensee or exempt person.**

SECTION 103. IC 28-8-5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 14. A license issued pursuant to this chapter expires on July 1 of the year following the date of issuance unless earlier ~~surrendered,~~ suspended, **relinquished,** or revoked.

SECTION 104. IC 28-8-5-19, AS AMENDED BY P.L.35-2010, SECTION 189, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 19. (a) The department may examine the books, accounts, and records of a licensee and may make investigations to determine compliance.

(b) If the department examines the books, accounts, and records of a licensee, the licensee shall pay all reasonably incurred costs of the examination in accordance with the fee schedule adopted under IC 28-11-3-5. **A fee established by the department under IC 28-11-3-5 may be charged for each day a fee under this section is delinquent.**

(c) If a licensee contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the licensee and be subject to the department's routine examination procedures, the person that provides the service to the licensee shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order

C o p y

any licensee that receives services from the person refusing the examination to:

(1) discontinue receiving one (1) or more services from the person; or

(2) otherwise cease conducting business with the person.

SECTION 105. IC 28-8-5-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 22. (a) The department may ~~suspend or revoke a license issued under this chapter pursuant to the provisions in IC 4-21.5 for: (1) violating this chapter; or (2) any reason that would be sufficient to deny an initial application for a license.~~ **issue to a licensee an order to show cause why the licensee's license should not be revoked or suspended for a period determined by the department.**

**(b) An order issued under subsection (a) must:**

**(1) include:**

**(A) a statement of the place, date, and time for a meeting with the department, which date may not be less than ten (10) days from the date of the order;**

**(B) a description of the action contemplated by the department; and**

**(C) a statement of the facts or conduct supporting the issuance of the order; and**

**(2) be accompanied by a notice stating that the licensee is entitled to:**

**(A) a reasonable opportunity to be heard; and**

**(B) show the licensee's compliance with all lawful requirements for retention of the license;**

**at the meeting described in subdivision (1)(A).**

**(c) After the meeting described in subsection (b)(1)(A), the department may revoke or suspend the license if the department finds that:**

**(1) the licensee has repeatedly and willfully violated:**

**(A) this chapter or any rule, order, or guidance document adopted or issued by the department; or**

**(B) any other state or federal law, regulation, or rule applicable to the business of cashing checks for consideration;**

**(2) the licensee does not meet the licensing qualifications set forth in this chapter;**

**(3) the licensee obtained the license for the benefit of, or on behalf of, a person who does not qualify for the license;**

**(4) the licensee knowingly or intentionally made material**

copy

**misrepresentations to, or concealed material information from, the department; or**

**(5) facts or conditions exist that, had they existed at the time the licensee applied for the license, would have been grounds for the department to deny the issuance of the license.**

**(d) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and notify the licensee of:**

**(1) the revocation or suspension;**

**(2) if a suspension has been ordered, the duration of the suspension;**

**(3) the procedure for appealing the revocation or suspension under IC 4-21.5-3-5; and**

**(4) any other terms and conditions that apply to the revocation or suspension.**

**Not later than five (5) days after the entry of the order, the department shall deliver to the licensee a copy of the order and the findings supporting the order.**

**(e) Any person holding a license to engage in the business of cashing checks for consideration may relinquish the license by notifying the department in writing of the relinquishment. However, a relinquishment under this subsection does not affect the person's liability for acts previously committed and coming within the scope of this chapter.**

**(f) If the director determines it to be in the public interest, the director may pursue the revocation of a license of a licensee that has relinquished the license under subsection (e).**

**(g) If a person's license is revoked, suspended, or relinquished, the revocation, suspension, or relinquishment does not impair or affect any obligation owed by any person under any existing lawful contract.**

~~(b)~~ **(h)** If the director of the department ~~(1)~~ has just cause to believe an emergency exists from which it is necessary to protect the interests of the public, ~~or (2) determines that the license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license;~~ the director may proceed with the revocation of ~~the~~ **a** license **through an emergency or another temporary order** under ~~IC 4-21.5-3-6.~~ **IC 4-21.5-4.**

SECTION 106. IC 28-10-1-1, AS AMENDED BY P.L.89-2011, SECTION 68, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012 (RETROACTIVE)]: Sec. 1. A reference to a federal law or federal regulation in this title is a reference to the law or

C o p y

regulation as in effect December 31, ~~2010.~~ **2011.**

SECTION 107. IC 28-11-1-9.1, AS ADDED BY P.L.35-2010, SECTION 194, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9.1. (a) **Subject to the policies adopted by the members governing the conduct of meetings,** this section applies to ~~a meeting~~ **all meetings** of the members. ~~at which at least four (4) members are physically present at the place where the meeting is conducted.~~

(b) A member may participate in a meeting of the members by using a means of communication that permits:

(1) all other members participating in the meeting; and

(2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member who participates in a meeting under subsection (b) is considered to be present at the meeting **for all purposes, including establishing a quorum and voting on all matters to come before the members.**

~~(d) A member who participates in a meeting under subsection (b) may act as a voting member on official action only if that official action is voted upon by at least four (4) members of the board physically present at the place where the meeting is conducted.~~

~~(e)~~ **(d)** The memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of each member who:

(1) was physically present at the place where the meeting was conducted;

(2) participated in the meeting by using a means of communication described in subsection (b); and

(3) was absent.

~~(f) A member who participates in a meeting under subsection (b) may not cast the deciding vote on any official action.~~

SECTION 108. IC 28-11-5-10, AS ADDED BY P.L.90-2008, SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 10. (a) Subject to subsection (g), a financial institution **described in section 1 of this chapter that is** subject to this chapter may:

(1) be organized as a limited liability company;

(2) convert to a limited liability company; or

(3) merge with or into a limited liability company;

under the laws of Indiana or the United States, including any rules or regulations adopted or promulgated under the laws of Indiana or the United States.

C o p y

(b) A ~~bank~~ **financial institution** organized as a limited liability company is subject to:

(1) IC 23-18; and

(2) this title.

If a provision of IC 23-18 conflicts with a provision of this title or with any rule of the department, the provision of this title or the rule the department controls.

(c) Any filing required to be made under IC 23-18 shall be made in the same manner as for a ~~bank~~ **financial institution** that is organizing or is organized in stock form.

(d) The department may prescribe any requirements for:

(1) the articles of organization; and

(2) the operating agreement;

of a financial institution that is organized and operates as a limited liability company.

(e) The department has the exclusive authority under this title to regulate a financial institution organized as a limited liability company. A financial institution that is a limited liability company is subject to the department's authority in the same manner as a bank that is organized in stock form.

(f) A financial institution that is a limited liability company is subject to the provisions of this title that apply to banks, except for the provisions concerning corporate governance (IC 28-13), in the same manner as a financial institution that is organized in stock form, subject to the following:

(1) In the case of a manager managed limited liability company, "director" means a manager of the limited liability company.

(2) In the case of a member managed limited liability company, "director" means a member of the limited liability company.

(g) A financial institution may not:

(1) organize as;

(2) convert to; or

(3) merge with or into;

a limited liability company without the prior approval of the department under this title.

SECTION 109. IC 28-14-3-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 22. **(a)** Subject to IC 28-1-22, a corporate fiduciary, trust company, or bank that is organized and doing business under the laws of any state, territory, or district other than Indiana, including a national bank or national trust company that is primarily domiciled in any other state, may establish an office to conduct business as a fiduciary in Indiana if the law of the

C o p y

state, territory, or district in which the corporate fiduciary, trust company, or bank is primarily domiciled would allow an Indiana bank, an Indiana corporate fiduciary, or an Indiana trust company to establish a place of business or an agency in that state, territory, or district for the conduct of business as a fiduciary.

**(b) A corporate fiduciary, trust company, or bank that is organized and doing business under the laws of any state, territory, or district other than Indiana, including a national bank or national trust company that is primarily domiciled in any other state, has the same rights, privileges, and restrictions, including capital requirements, as an Indiana bank, an Indiana corporate fiduciary, or an Indiana trust company of like character or charter, and to the same extent as if the corporate fiduciary, trust company, or bank organized and doing business under the laws of any state, territory, or district other than Indiana had been organized under this article, to transact the business for which a certificate of admission is issued.**

SECTION 110. IC 28-15-1-9.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 9.8. "Primary federal regulator" means the federal agency primarily responsible for the regulation of:**

**(1) savings associations; or**

**(2) savings association holding companies;**

**organized under the laws of any state or the United States.**

SECTION 111. IC 28-15-2-1, AS AMENDED BY P.L.89-2011, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) Savings associations may do the following:

(1) Accept deposit accounts.

(2) Issue evidence of deposit account ownership.

(3) Declare and distribute earnings to members.

(4) Pay, in part or in full, withdrawal requests of deposit accounts.

(5) Subject to the provisions and restrictions of 12 U.S.C. 84 and 12 CFR 32:

(A) Make loans to members on the security of deposit accounts.

(B) Make property improvement loans.

(C) Make other loans as provided under IC 28-15-8.

(D) Make mortgage loans.

(E) Accept additional collateral on mortgage loans.

(F) Purchase and sell loans.

(G) Negotiate loan servicing agreements.



C o p y

(H) Purchase and sell participating interests in loans.
(I) Issue letters of credit with specific expiration dates.
(J) Make secured or unsecured loans, which are partially insured or guaranteed in any manner by any state of the United States, the United States government, or any of its agencies or government sponsored enterprises.
(K) Purchase commercial paper that is denominated in United States currency and that:
(i) is rated by at least one (1) nationally recognized investment rating service in one (1) of the two (2) highest grades; or
(ii) meets another standard of creditworthiness determined to be appropriate by the director.
(L) Make, purchase, or participate in alternative mortgage loans as provided in IC 28-15-11.
(6) Acquire and sell real estate in satisfaction of debts previously contracted.
(7) Acquire real estate for the convenient transaction of its business. A savings association has the same powers under this subdivision as a bank or trust company has under IC 28-1-11-5.
(8) Notwithstanding any other law, establish, maintain, or relocate one (1) or more branch offices by following the provisions of IC 28-2-13, IC 28-2-17, or IC 28-2-18 as if the savings association were a bank.
(9) Become a member in any agency or instrumentality of the federal government. For the purposes of this subdivision, membership in an agency or instrumentality of the federal government may include:
(A) purchasing stock;
(B) purchasing notes and debentures; or
(C) borrowing money.
(10) Subject to any limitations imposed by the department through policy:
(A) invest the money deposited in the savings association in the shares of the capital stock, bonds, debentures, notes, or other obligations of a federal home loan bank of the United States;
(B) become a member of the federal home loan bank of the district in which Indiana is located or an adjoining district;
(C) borrow money from:
(i) a federal home loan bank described in clause (B);
(ii) the Federal Deposit Insurance Corporation; or

C o p y

(iii) any other corporation;

(D) transfer, assign to, and pledge with a federal home loan bank described in clause (B), the Federal Deposit Insurance Corporation, or any other corporation any of the bonds, notes, contracts, mortgages, securities, or other property of the savings association held or acquired as security for the payment of loans entered into under clause (C); and

(E) exercise all rights, powers, and privileges conferred upon, and do all things and perform all acts required of, members or shareholders of a federal home loan bank by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449).

(11) Subject to the provisions and restrictions of 12 U.S.C. 24 and 12 CFR 1, invest in the following types of securities:

(A) Bonds, notes, certificates, and other valid obligations of the United States government or any agency of the United States government.

(B) Accounts offered by federally insured banks, savings banks, and savings associations.

(C) Bonds, notes, or other evidences of indebtedness that are general obligations supported by the full faith and credit of any state in the United States or any city, town, or other political subdivision in any state in the United States if the obligations:

(i) have been assigned one (1) of the four (4) highest grades by a nationally recognized investment rating service; or

(ii) meet another standard of creditworthiness determined to be appropriate by the director.

(D) Shares of stock of a subsidiary that does not exercise a power or engage in any activity that is not authorized for the savings association. The investment power granted by this subdivision is separate from the investment power granted by IC 28-15-9.

(E) Corporate debt securities that are denominated in United States currency and that:

(i) are rated by at least one (1) nationally recognized investment rating service in one (1) of the four (4) highest grades; or

(ii) meet another standard of creditworthiness determined to be appropriate by the director.

Corporate debt securities in which a savings association invests under this clause must be convertible into stock at the sole option of the holder, and a savings association is prohibited from exercising the conversion option.

C o p y

(F) Shares of open end investment companies that are eligible for purchase by national banks.

(G) Bankers' acceptances that are eligible for purchase by national banks.

(12) For the purpose of:

(A) check and deposit sorting and posting;

(B) computation and posting of interest and other credits and charges;

(C) preparation and mailing of checks, statements, notices, and similar items; or

(D) other clerical, bookkeeping, accounting, statistical, or similar functions performed by a savings association;

invest in a corporation organized in any state to perform those functions for two (2) or more savings associations, each of which owns a portion of the capital stock of the corporation. The total investment of a savings association under this subdivision may not exceed ten percent (10%) of the capital and surplus of the savings association. A savings association may not invest in this type of corporation unless the corporation furnishes assurances to the department that it will subject itself to examination by the department to the same extent as if the services were performed by the savings association.

(13) Lend money to other savings associations:

(A) the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(B) that are incorporated and operating under the laws of any state or of the United States.

(14) Borrow money and mortgage or pledge its property to secure payment.

(15) Issue subordinated notes or debentures.

(16) Assess and collect interest, fees, and other charges.

(17) Insure its deposit accounts with the Federal Deposit Insurance Corporation or its successor.

(18) Act as an agent for the United States or its instrumentalities.

(19) Accept property for safe keeping or escrow.

(20) Rent or lease safe deposit boxes.

(21) Issue and sell checks, drafts, money orders, and other instruments for the transmission or payment of money.

(22) Exercise all the powers that:

(A) are incidental and proper; or

(B) may be necessary and usual;

in carrying on the business of the savings association.

C o p y

(23) Purchase or construct buildings, hold legal title to the buildings, and lease the buildings for public purposes to municipal corporations or other public authorities that have resources sufficient to make payment of all rentals as they become due. Each lease agreement entered into under this subdivision must provide that, upon expiration, the lessee will become the owner of the building.

(24) Open or establish automated teller machines at any location. An automated teller machine opened or established under this subdivision may be owned and operated individually or jointly on a cost sharing or fee basis.

(25) Act:

(A) in any fiduciary capacity in which a bank or trust company is permitted to act under this title; and

(B) as an agent for the sale of real estate, without bond or other security.

(26) Accept and maintain demand deposit accounts if the savings association is insured by the Federal Deposit Insurance Corporation or its successor.

(27) Without the approval of the department, to the extent authorized by the board of directors of the savings association, establish or maintain agencies that:

(A) only service and originate, but do not approve, loans and contracts; or

(B) manage or sell real estate owned by the savings association.

An agency established or maintained under this subdivision may offer any services not referred to in this subdivision with the approval of the department, except for accepting payment on savings accounts. An agency shall maintain records of all business it transacts and transmit copies to a branch or home office of the savings association.

(b) Subject to any limitations or restrictions that the department **or a federal regulator** may impose by **regulation,** rule, ~~or~~ policy, **or guidance,** a savings association may purchase and hold life insurance as follows:

(1) Life insurance purchased or held in connection with employee compensation or benefit plans approved by the savings association's board of directors.

(2) Life insurance purchased or held to recover the cost of providing preretirement or postretirement employee benefits approved by the savings association's board of directors.

C o p y

(3) Life insurance on the lives of borrowers.
(4) Life insurance held as security for a loan.
(5) Life insurance that a national bank may purchase or hold under 12 U.S.C. 24 (Seventh).

SECTION 112. IC 28-15-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. **(a)** The following limits apply to the loans that a savings association may make to one (1) borrower:

(1) Loans that a savings association may make to one (1) borrower are restricted by the provisions of 12 U.S.C. 84 and 12 CFR 32.
(2) Notwithstanding subdivision (1), a savings association may loan to one (1) borrower no more than the lesser of:
(A) an amount equal to four percent (4%) of the assets of the savings association; or
(B) five hundred thousand dollars ($500,000).
(3) Notwithstanding subdivisions (1) and (2), a savings association may make loans to one (1) borrower to develop domestic residential housing units in an amount equal to or less than thirty percent (30%) of the savings association's unimpaired capital and surplus if:
(A) the final purchase price of each single family dwelling unit whose development is financed under this section does not exceed five hundred thousand dollars ($500,000);
(B) loans made under this subdivision to all borrowers do not in the aggregate exceed one hundred fifty percent (150%) of the savings association's unimpaired capital and surplus; and
(C) the loans made under this subdivision comply with the applicable loan to value requirements that apply to federal savings associations.

**(b) For purposes of any lending limits set forth under this article with respect to savings associations, the total loans and extensions of credit by a savings association includes any credit exposure to a person arising from a derivative transaction (as defined in 12 U.S.C. 84(b)(3)) between the savings association and the person.**

SECTION 113. IC 28-15-11-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4. As used in this chapter, ~~"federally chartered~~ **"federal savings** association" means ~~a~~ **any federal** savings association ~~incorporated under regulations of the Office of Thrift Supervision or its successor~~ **or federal savings bank chartered or regulated** under **Section 5 of** the Home Owners' Loan Act of 1933 (12 U.S.C. 1464).



Copy

SECTION 114. IC 28-15-11-7, AS AMENDED BY P.L.89-2011, SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7. As used in this chapter, "money cost index" means any of the following:

(1) The ~~weekly net yield purchase quotations of conventional program home mortgages published~~ **Federal Cost of Funds Index calculated and made available** by the Federal Home Loan Mortgage Corporation **on or about the twentieth day of each month.**

~~(2) The monthly national average mortgage rate index for all major lenders for the purchase of previously occupied single-family homes of the Office of Thrift Supervision or its successor.~~

~~(3) The average cost to savings associations of funds insured by the Federal Deposit Insurance Corporation, either for all Federal Home Loan Bank districts or for a particular district or districts, as computed semiannually and published by the Office of Thrift Supervision or its successor and made available in news releases.~~

~~(4)~~ **(2)** The monthly average of weekly auction rates on United States Treasury bills with a maturity of three (3) months or six (6) months, as published in the Federal Reserve Bulletin and made available by the Federal Reserve Board each month.

~~(5)~~ **(3)** The monthly average yield on United States Treasury securities adjusted to a constant maturity of one (1), two (2), three (3), or five (5) years, as published in the Federal Reserve Bulletin and made available by the Federal Reserve Board each month.

~~(6)~~ **(4)** Any rate that is designated by the department.

SECTION 115. IC 28-15-11-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 17. (a) Any statement, disclosure, or notification required by this chapter with respect to an alternative mortgage loan may be made in the form prescribed by the ~~Office of Thrift Supervision~~ **primary federal regulator** or its successor for a similar alternative mortgage loan made by a ~~federally chartered~~ **federal** savings association.

(b) In addition to the disclosures required by this chapter, the department may adopt rules under IC 4-22-2 or policies that require additional disclosures for alternative mortgage loans.

SECTION 116. IC 28-15-11-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 18. (a) Subsections (b) and (c) apply to alternative mortgage loans and to similar loans authorized under federal law or regulations for a ~~federally chartered~~ **federal** savings association.

C o p y

(b) Any Indiana laws prohibiting:

(1) the compounding of interest;

(2) capitalizing interest because contracted loan repayments create negative amortization; or

(3) paying interest on interest;

do not apply. For purposes of the application of IC 24-4.5-3 to a loan described in subsection (a), "principal" (as defined in IC 24-4.5-3-107(3)) includes interest unpaid and added to principal because the contracted repayments under the loan do not cover the entire interest due at any time.

(c) The lien of the loan provided by the mortgage and the loan documents:

(1) includes all advances or additions to principal of either principal or interest that are made in accordance with the terms of the loan documents; and

(2) is superior to any lien on the property created after the date the mortgage securing the loan is recorded, other than taxes and special property or taxing district assessments.

SECTION 117. IC 28-15-13-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. A reference in IC 28-13-5, IC 28-13-6, ~~or~~ IC 28-1-7, **IC 28-1-7.1, IC 28-1-8, or IC 28-1-9** to shareholders and shareholders' meetings means, as to a mutual savings association, members and members' meetings.

SECTION 118. IC 28-15-14-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) A savings association may be:

(1) merged or consolidated with; or

(2) converted into;

a federal savings and loan association, under the charter of the federal savings and loan association or under a new charter issued to the converted association or the merged or consolidated association, upon a vote of fifty-one percent (51%) or more of the votes cast at a legal meeting of the shareholders and members of the state chartered savings association called to consider the proposed merger, consolidation, or conversion.

(b) A merger, consolidation, or conversion under this section must be accomplished:

(1) in compliance with the laws of the United States relating to the merger, consolidation, or conversion; and

(2) upon terms and conditions prescribed or approved by the Office of ~~Thrift Supervision~~ **the Comptroller of the Currency** or its successor.

C o p y

SECTION 119. IC 28-15-14-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4. (a) Subject to regulations prescribed by the Office of ~~Thrift Supervision~~ **the Comptroller of the Currency** or its successor, a federal savings and loan association located in Indiana, by resolution approved by its board of directors and adopted by a vote of fifty-one percent (51%) or more of the votes cast at any annual meeting or at any special meeting of its members called to consider the action, may convert itself into a state chartered savings association under this article.

(b) A resolution referred to in subsection (a), when adopted by the members of a federal savings and loan association, must:

(1) designate the names and the number of the directors who will serve as directors of the savings association after the conversion takes effect; and

(2) authorize the directors to execute articles of incorporation.

(c) The articles of incorporation executed under this section must include the contents required by IC 28-12-2-1 except that, instead of disclosing the name and address of each incorporator as required by IC 28-12-2-1(4), the articles must:

(1) indicate that the savings association is incorporated by conversion of a federal savings and loan association into a state chartered savings association; and

(2) state the name of the federal savings and loan association converted under this section.

(d) The department must receive from the federal savings and loan association:

(1) three (3) copies of the resolution, certified by the secretary or assistant secretary of the federal savings and loan association; and

(2) the articles of incorporation, in triplicate, signed and acknowledged by the directors designated under subsection (b)(1).

(e) The department shall approve or disapprove the proposed conversion of a federal savings and loan association into a state chartered savings association under this section. The department may not approve a proposed conversion unless the department, after appropriate investigation or examination, finds all of the following:

(1) That the state chartered savings association resulting from the conversion will operate in a safe, sound, and prudent manner.

(2) That the proposed charter conversion will not result in a state chartered savings association that has:

(A) inadequate capital;

(B) unsatisfactory management; or

C o p y

(C) poor earnings prospects.

(3) That the management or other principals of the savings association are qualified by character and financial responsibility to control and operate in a legal and proper manner the proposed state chartered savings association.

(4) That the interests of the depositors, the creditors, and the public generally will not be jeopardized by the proposed charter conversion.

(f) If the department approves the resolution and articles of incorporation submitted under subsection (d), the department shall:

(1) indicate its approval on the resolution and articles of incorporation in the manner prescribed by IC 28-12-5-1; and

(2) present the articles of incorporation to the secretary of state.

(g) If the secretary of state finds that the articles of incorporation conform to law, the secretary of state shall:

(1) endorse the secretary's approval on the copies of the articles of incorporation;

(2) when all fees required by law have been paid:

(A) file one (1) copy of the articles of incorporation in the secretary's office; and

(B) issue a certificate of incorporation to the savings association; and

(3) return the certificate of incorporation and two (2) copies of the articles of incorporation to the directors of the savings association designated under subsection (b)(1).

(h) The conversion of a federal savings and loan association into a state chartered savings association under this section is effective when the secretary of state issues the certificate of incorporation under subsection (g). However, before the savings association may transact business under this article or incur indebtedness, except indebtedness that is incidental to its organization, one (1) of the copies of its articles of incorporation bearing the endorsement of the approval of the department and of the secretary of state must be filed for record with the recorder of the county in which the principal office of the savings association is located.

SECTION 120. **An emergency is declared for this act.**

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1239, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Replace the effective date in SECTION 13 with "[EFFECTIVE JANUARY 1, 2012 (RETROACTIVE)]".

Page 79, between lines 9 and 10, begin a new line block indented and insert:

"**(7) If deposits are to be transferred as part of the proposed transaction, whether the resulting institution will maintain adequate federal deposit insurance or such other deposit insurance as approved by the director.**".

Page 79, line 18, strike "IC 28-1-4" and insert "**IC 28-1-5**".

and when so amended that said bill do pass.

(Reference is to HB 1239 as introduced.)

BURTON, Chair

Committee Vote: yeas 8, nays 0.

---

COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1239, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1239 as printed January 13, 2012.)

PAUL, Chairperson

Committee Vote: Yeas 8, Nays 0.

C o p y