



January 13, 2012

# HOUSE BILL No. 1239

DIGEST OF HB 1239 (Updated January 11, 2012 5:25 pm - DI 101)

**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.

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## Burton

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January 9, 2012, read first time and referred to Committee on Financial Institutions.  
January 12, 2012, amended, reported — Do Pass.

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HB 1239—LS 7050/DI 101+



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January 13, 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.

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## HOUSE BILL No. 1239

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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:*

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

HB 1239—LS 7050/DI 101+



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

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

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

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

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

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

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- 1 (b) to conform the regulation of first lien mortgage lending  
 2 practices to applicable state and federal laws, rules, ~~and~~  
 3 regulations, **policies, and guidance.**
- 4 (3) A reference to a requirement imposed by this article includes  
 5 reference to a related rule of the department adopted under this article.
- 6 (4) A reference to a federal law in this article is a reference to the  
 7 law as in effect December 31, ~~2010~~: **2011.**
- 8 SECTION 4. IC 24-4.4-1-202, AS AMENDED BY P.L.89-2011,  
 9 SECTION 3, AND AS AMENDED BY P.L.9-2011, SECTION 1, IS  
 10 CORRECTED AND AMENDED TO READ AS FOLLOWS  
 11 [EFFECTIVE JULY 1, 2012]: Sec. 202. (a) *As used in this section,*  
 12 *"balloon payment", with respect to a mortgage transaction, means any*  
 13 *payment that:*
- 14 (1) *the creditor requires the debtor to make at any time during the*  
 15 *term of the mortgage;*
- 16 (2) *represents the entire amount of the outstanding balance with*  
 17 *respect to the mortgage; and*
- 18 (3) *the entire amount of which is due as of a specified date or at*  
 19 *the end of a specified period;*
- 20 *if the aggregate amount of the minimum periodic payments required*  
 21 *under the mortgage would not fully amortize the outstanding balance*  
 22 *by the specified date or at the end of the specified period. The term*  
 23 *does not include a payment required by a creditor under a due-on-sale*  
 24 *clause (as defined in 12 U.S.C. 1701j-3(a)) or a payment required by*  
 25 *a creditor under a provision in the mortgage that permits the creditor*  
 26 *to accelerate the debt upon the debtor's default or failure to abide by*  
 27 *the material terms of the mortgage.*
- 28 (b) This article does not apply to the following:
- 29 (1) Extensions of credit to government or governmental agencies  
 30 or instrumentalities.
- 31 (2) A first lien mortgage transaction in which the debt is incurred  
 32 primarily for a purpose other than a personal, family, or  
 33 household purpose.
- 34 (3) An extension of credit primarily for a business, a commercial,  
 35 or an agricultural purpose.
- 36 (4) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3,  
 37 IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a first lien mortgage  
 38 transaction made:
- 39 (a) in compliance with the requirements of; and  
 40 (b) by a community development corporation (as defined in  
 41 IC 4-4-28-2) acting as a subrecipient of funds from;  
 42 the Indiana housing and community development authority

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1 established by IC 5-20-1-3.

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

9 (6) An extension of credit originated by:

10 (a) a depository institution;

11 (b) subsidiaries that are:

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

13 (ii) regulated by a federal banking agency; or

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

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

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

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

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

36 (11) Unless the attorney is compensated by:

37 (a) a lender;

38 (b) a mortgage broker;

39 (c) another mortgage loan originator; or

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

42 a licensed attorney who negotiates the terms of a mortgage

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

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

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

10 ~~(a) the transaction:~~

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

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

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

18 ~~(13)~~ **(14) A bona fide nonprofit entity organization** not operating  
19 ~~in a commercial context, as determined by the director, if the~~  
20 ~~following criteria are satisfied:~~

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

24 ~~(i) Zero (0) interest first lien mortgage transactions.~~

25 ~~(ii) Zero (0) interest subordinate lien mortgage transactions.~~

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

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

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

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

37 ~~(i) unpaid volunteers; or~~

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

41 ~~to originate the mortgage transactions described in clause~~  
42 ~~(A): (a).~~

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~~(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.

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- 1 (4) "Agricultural purpose" means a purpose related to the  
 2 production, harvest, exhibition, marketing, transportation,  
 3 processing, or manufacture of agricultural products by a natural  
 4 person who cultivates, plants, propagates, or nurtures the  
 5 agricultural products.
- 6 (5) "Consumer credit sale" is a sale of goods, services, or an  
 7 interest in land in which:
- 8 (a) credit is granted by a person who engages as a seller in  
 9 credit transactions of the same kind;
- 10 (b) the buyer is a person other than an organization;
- 11 (c) the goods, services, or interest in land are purchased  
 12 primarily for a personal, family, or household purpose;
- 13 (d) either the debt is payable in installments or a credit service  
 14 charge is made; and
- 15 (e) with respect to a sale of goods or services, either the  
 16 amount financed does not exceed fifty thousand dollars  
 17 (\$50,000) or the debt is secured by personal property used or  
 18 expected to be used as the principal dwelling of the buyer.
- 19 (6) "Credit" means the right granted by a creditor to a debtor to  
 20 defer payment of debt or to incur debt and defer its payment.
- 21 (7) "Creditor" means a person:
- 22 (a) that **regularly** engages in the extension of first lien  
 23 mortgage transactions that are subject to a credit service  
 24 charge or loan finance charge, as applicable, or are payable by  
 25 written agreement in more than four (4) installments (not  
 26 including a down payment); and
- 27 (b) to which the obligation is initially payable, either on the  
 28 face of the note or contract, or by agreement if there is not a  
 29 note or contract.
- 30 The term does not include a person described in subsection  
 31 (34)(a) in a tablefunded transaction. A creditor may be an  
 32 individual, a limited liability company, a sole proprietorship, a  
 33 partnership, a trust, a joint venture, a corporation, an  
 34 unincorporated organization, or other form of entity, however  
 35 organized.
- 36 (8) "Department" refers to the members of the department of  
 37 financial institutions.
- 38 (9) "Depository institution" has the meaning set forth in the  
 39 Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes  
 40 any credit union.
- 41 (10) "Director" refers to the director of the department of financial  
 42 institutions or the director's designee.

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- 1 (11) "Dwelling" means a residential structure that contains one  
 2 (1) to four (4) units, regardless of whether the structure is  
 3 attached to real property. The term includes an individual:  
 4 (a) condominium unit;  
 5 (b) cooperative unit;  
 6 (c) mobile home; or  
 7 (d) trailer;  
 8 that is used as a residence.
- 9 (12) "Employee" means an individual who is paid wages or other  
 10 compensation by an employer required under federal income tax  
 11 law to file Form W-2 on behalf of the individual.
- 12 (13) "Federal banking agencies" means the Board of Governors  
 13 of the Federal Reserve System, the Office of the Comptroller of  
 14 the Currency, the Office of Thrift Supervision, the National Credit  
 15 Union Administration, and the Federal Deposit Insurance  
 16 Corporation.
- 17 (14) "First lien mortgage transaction" means:  
 18 (a) a **consumer** loan; or  
 19 (b) a consumer credit sale;  
 20 that is or will be used by the debtor primarily for personal, family,  
 21 or household purposes and that is secured by a mortgage **or a**  
 22 **land contract** (or another ~~equivalent~~ consensual security interest  
 23 **equivalent to a mortgage or a land contract**) that constitutes a  
 24 first lien on a dwelling or on residential real estate upon which a  
 25 dwelling is constructed or intended to be constructed. ~~The term~~  
 26 ~~does not include a land contract.~~
- 27 (15) "Immediate family member" means a spouse, child, sibling,  
 28 parent, grandparent, or grandchild. The term includes stepparents,  
 29 stepchildren, stepsiblings, and adoptive relationships.
- 30 (16) "Individual" means a natural person.
- 31 (17) "Licensee" means a person licensed as a creditor under this  
 32 article.
- 33 (18) "Loan" includes:  
 34 (a) the creation of debt by:  
 35 (i) the creditor's payment of or agreement to pay money to  
 36 the debtor or to a third party for the account of the debtor; or  
 37 (ii) the extension of credit by a person who engages as a  
 38 seller in credit transactions primarily secured by an interest  
 39 in land;  
 40 (b) the creation of debt by a credit to an account with the  
 41 creditor upon which the debtor is entitled to draw  
 42 immediately; and

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- (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);

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- 1 activities and is licensed or registered in accordance with
- 2 applicable state law.
- 3 (c) A person solely involved in extensions of credit relating to
- 4 timeshare plans (as defined in 11 U.S.C. 101(53D)).
- 5 (22) "Mortgage servicer" means the last person to whom a
- 6 mortgagor or the mortgagor's successor in interest has been
- 7 instructed by a mortgagee to send payments on a loan secured by
- 8 a mortgage.
- 9 (23) "Mortgage transaction" means:
- 10 (a) a **consumer** loan; or
- 11 (b) a consumer credit sale;
- 12 that is or will be used by the debtor primarily for personal, family,
- 13 or household purposes and that is secured by a mortgage **or a**
- 14 **land contract** (or another ~~equivalent~~ consensual security interest
- 15 **equivalent to a mortgage or a land contract**) on a dwelling or
- 16 on residential real estate upon which a dwelling is constructed or
- 17 intended to be constructed. ~~The term does not include a land~~
- 18 ~~contract.~~
- 19 (24) "Nationwide Mortgage Licensing System and Registry" or
- 20 "NMLSR" means a mortgage licensing system developed and
- 21 maintained by the Conference of State Bank Supervisors and the
- 22 American Association of Residential Mortgage Regulators for the
- 23 licensing and registration of creditors and mortgage loan
- 24 originators.
- 25 (25) "Nontraditional mortgage product" means any mortgage
- 26 product other than a thirty (30) year fixed rate mortgage.
- 27 (26) "Organization" means a corporation, a government or
- 28 government subdivision, an agency, a trust, an estate, a
- 29 partnership, a limited liability company, a cooperative, an
- 30 association, a joint venture, an unincorporated organization, or
- 31 any other entity, however organized.
- 32 (27) "Payable in installments", with respect to a debt or an
- 33 obligation, means that payment is required or permitted by written
- 34 agreement to be made in more than four (4) installments not
- 35 including a down payment.
- 36 (28) "Person" includes an individual or an organization.
- 37 (29) "Principal" of a mortgage transaction means the total of:
- 38 (a) the net amount paid to, receivable by, or paid or payable
- 39 for the account of the debtor; and
- 40 (b) to the extent that payment is deferred, amounts actually
- 41 paid or to be paid by the creditor for registration, certificate of
- 42 title, or license fees if not included in clause (a).

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- 1 (30) "Real estate brokerage activity" means any activity that
- 2 involves offering or providing real estate brokerage services to the
- 3 public, including the following:
- 4 (a) Acting as a real estate agent or real estate broker for a
- 5 buyer, seller, lessor, or lessee of real property.
- 6 (b) Bringing together parties interested in the sale, purchase,
- 7 lease, rental, or exchange of real property.
- 8 (c) Negotiating, on behalf of any party, any part of a contract
- 9 relating to the sale, purchase, lease, rental, or exchange of real
- 10 property (other than in connection with providing financing
- 11 with respect to the sale, purchase, lease, rental, or exchange of
- 12 real property).
- 13 (d) Engaging in any activity for which a person engaged in the
- 14 activity is required to be registered or licensed as a real estate
- 15 agent or real estate broker under any applicable law.
- 16 (e) Offering to engage in any activity, or act in any capacity,
- 17 described in this subsection.
- 18 (31) "Registered mortgage loan originator" means any individual
- 19 who:
- 20 (a) meets the definition of mortgage loan originator and is an
- 21 employee of:
- 22 (i) a depository institution;
- 23 (ii) a subsidiary that is owned and controlled by a depository
- 24 institution and regulated by a federal banking agency; or
- 25 (iii) an institution regulated by the Farm Credit
- 26 Administration; and
- 27 (b) is registered with, and maintains a unique identifier
- 28 through, the NMLSR.
- 29 (32) "Residential real estate" means any real property that is
- 30 located in Indiana and on which there is located or intended to be
- 31 constructed a dwelling.
- 32 (33) "Revolving first lien mortgage transaction" means a first lien
- 33 mortgage transaction in which:
- 34 (a) the creditor permits the debtor to obtain advances from
- 35 time to time;
- 36 (b) the unpaid balances of principal, finance charges, and other
- 37 appropriate charges are debited to an account; and
- 38 (c) the debtor has the privilege of paying the balances in
- 39 installments.
- 40 (34) "Tablefunded" means a transaction in which:
- 41 (a) a person closes a first lien mortgage transaction in the
- 42 person's own name as a mortgagee with funds provided by one

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- 1 (1) or more other persons; and
- 2 (b) the transaction is assigned, not later than one (1) business
- 3 day after the funding of the transaction, to the mortgage
- 4 creditor providing the funding.
- 5 (35) "Unique identifier" means a number or other identifier
- 6 assigned by protocols established by the NMLSR.
- 7 (36) "Land contract" means a contract for the sale of real estate in
- 8 which the seller of the real estate retains legal title to the real
- 9 estate until the total contract price is paid by the buyer.
- 10 **(37) "Bona fide nonprofit organization" means an**
- 11 **organization that the does the following, as determined by the**
- 12 **director, under criteria established by the director:**
- 13 (a) **Maintains tax exempt status under Section 501(c)(3) of**
- 14 **the Internal Revenue Code.**
- 15 (b) **Promotes affordable housing or provides home**
- 16 **ownership education or similar services.**
- 17 (c) **Conducts the organization's activities in a manner that**
- 18 **serves public or charitable purposes.**
- 19 (d) **Receives funding and revenue and charges fees in a**
- 20 **manner that does not encourage the organization or the**
- 21 **organization's employees to act other than in the best**
- 22 **interests of the organization's clients.**
- 23 (e) **Compensates the organization's employees in a manner**
- 24 **that does not encourage employees to act other than in the**
- 25 **best interests of the organization's clients.**
- 26 (f) **Provides to, or identifies for, debtors mortgage**
- 27 **transactions with terms that are favorable to the debtor (as**
- 28 **described in section 202(b)(15) of this chapter) and**
- 29 **comparable to mortgage transactions and housing**
- 30 **assistance provided under government housing assistance**
- 31 **programs.**
- 32 (g) **Maintains certification by the United States**
- 33 **Department of Housing and Urban Development or**
- 34 **employs counselors who are certified by the Indiana**
- 35 **housing and community development authority.**
- 36 **(38) "Regularly engaged", with respect to a person who**
- 37 **extends or originates first lien mortgage transactions, refers**
- 38 **to a person who:**
- 39 (a) **extended or originated more than five (5) first lien**
- 40 **mortgage transactions in the preceding calendar year; or**
- 41 (b) **extends or originates, or will extend or originate, more**
- 42 **than five (5) first lien mortgage transactions in the current**

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**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.

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

- 25 (a) the following statement: "The debtor remains liable for any
- 26 amount still owed under the first lien mortgage transaction."; or
- 27 (b) a statement substantially similar to the statement set forth in
- 28 subdivision (a);

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

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

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1 **If, at any time, the information or record contained in:**  
 2 **(a) an application filed under this section; or**  
 3 **(b) a renewal application filed under section 403 of this**  
 4 **chapter;**  
 5 **is or becomes inaccurate or incomplete in a material respect, the**  
 6 **applicant shall promptly file a correcting amendment with the**  
 7 **department.**  
 8 (2) A license may not be issued unless the department finds that the  
 9 professional training and experience, financial responsibility, character,  
 10 and fitness of:  
 11 (a) the applicant and any significant affiliate of the applicant;  
 12 (b) each executive officer, director, or manager of the applicant,  
 13 or any other individual having a similar status or performing a  
 14 similar function for the applicant; and  
 15 (c) if known, each person directly or indirectly owning of record  
 16 or owning beneficially at least ten percent (10%) of the  
 17 outstanding shares of any class of equity security of the applicant;  
 18 are such as to warrant belief that the business will be operated honestly  
 19 and fairly within the purposes of this article.  
 20 (3) The director is entitled to request evidence of compliance with  
 21 this section at:  
 22 (a) the time of application;  
 23 (b) the time of renewal of a license; or  
 24 (c) any other time considered necessary by the director.  
 25 (4) Evidence of compliance with this section must include:  
 26 (a) criminal background checks, as described in section 402.1 of  
 27 this chapter, including a national criminal history background  
 28 check (as defined in IC 10-13-3-12) by the Federal Bureau of  
 29 Investigation, for any individual described in subsection (2);  
 30 (b) credit histories as described in section 402.2 of this chapter;  
 31 (c) surety bond requirements as described in section 402.3 of this  
 32 chapter;  
 33 (d) a review of licensure actions in Indiana and in other states;  
 34 and  
 35 (e) other background checks considered necessary by the director.  
 36 (5) For purposes of this section and in order to reduce the points of  
 37 contact that the director has to maintain for purposes of this section, the  
 38 director may use the NMLSR as a channeling agent for requesting and  
 39 distributing information to and from any source as directed by the  
 40 director.  
 41 (6) The department may deny an application under this section if the  
 42 director of the department determines that the application was

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- 1 submitted for the benefit of, or on behalf of, a person who does not
- 2 qualify for a license.
- 3 (7) Upon written request, the applicant is entitled to a hearing on the
- 4 question of the qualifications of the applicant for a license in the
- 5 manner provided in IC 4-21.5.
- 6 (8) The applicant shall pay the following fees at the time designated
- 7 by the department:
- 8 (a) An initial license fee as established by the department under
- 9 IC 28-11-3-5.
- 10 (b) An annual renewal fee as established by the department under
- 11 IC 28-11-3-5.
- 12 (c) Examination fees as established by the department under
- 13 IC 28-11-3-5.
- 14 (9) A fee as established by the department under IC 28-11-3-5 may
- 15 be charged for each day a fee under subsection 8(b) or 8(c) is
- 16 delinquent.
- 17 (10) Except in a transaction approved under section 406 of this
- 18 chapter, a license issued under this section is not assignable or
- 19 transferable.
- 20 SECTION 8. IC 24-4.4-2-402.4, AS ADDED BY P.L.35-2010,
- 21 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 22 JULY 1, 2012]: Sec. 402.4. (1) Subject to subsection (6), the director
- 23 shall designate the NMLSR to serve as the sole entity responsible for:
- 24 (a) processing applications and renewals for licenses under this
- 25 article;
- 26 (b) issuing unique identifiers for licensees and entities exempt
- 27 from licensing under this article that employ a licensed mortgage
- 28 loan originator under this article; and
- 29 (c) performing other services that the director determines are
- 30 necessary for the orderly administration of the department's
- 31 licensing system under this article.
- 32 (2) Subject to the confidentiality provisions contained in IC 5-14-3,
- 33 this section, and IC 28-1-2-30, the director shall regularly report
- 34 significant or recurring violations of this article to the NMLSR.
- 35 (3) Subject to the confidentiality provisions contained in IC 5-14-3,
- 36 this section, and IC 28-1-2-30, the director may report complaints
- 37 received regarding licensees under this article to the NMLSR.
- 38 (4) The director may report publicly adjudicated licensure actions
- 39 against a licensee to the NMLSR.
- 40 (5) The director shall establish a process in which licensees may
- 41 challenge information reported to the NMLSR by the department.
- 42 (6) The director's authority to designate the NMLSR under

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- 1 subsection (1) is subject to the following:
- 2 (a) Information stored in the NMLSR is subject to the
- 3 confidentiality provisions of IC 5-14-3 and IC 28-1-2-30. A
- 4 person may not:
- 5 (i) obtain information from the NMLSR, unless the person is
- 6 authorized to do so by statute;
- 7 (ii) initiate any civil action based on information obtained
- 8 from the NMLSR if the information is not otherwise available
- 9 to the person under any other state law; or
- 10 (iii) initiate any civil action based on information obtained
- 11 from the NMLSR if the person could not have initiated the
- 12 action based on information otherwise available to the person
- 13 under any other state law.
- 14 (b) Documents, materials, and other forms of information in the
- 15 control or possession of the NMLSR that are confidential under
- 16 IC 28-1-2-30 and that are:
- 17 (i) furnished by the director, the director's designee, or a
- 18 licensee; or
- 19 (ii) otherwise obtained by the NMLSR;
- 20 are confidential and privileged by law and are not subject to
- 21 inspection under IC 5-14-3, subject to subpoena, subject to
- 22 discovery, or admissible in evidence in any civil action. However,
- 23 the director may use the documents, materials, or other
- 24 information available to the director in furtherance of any action
- 25 brought in connection with the director's duties under this article.
- 26 (c) Disclosure of documents, materials, and information:
- 27 (i) to the director; or
- 28 (ii) by the director;
- 29 under this subsection does not result in a waiver of any applicable
- 30 privilege or claim of confidentiality with respect to the
- 31 documents, materials, or information.
- 32 (d) Information provided to the NMLSR is subject to IC 4-1-11.
- 33 (e) This subsection does not limit or impair a person's right to:
- 34 (i) obtain information;
- 35 (ii) use information as evidence in a civil action or proceeding;
- 36 or
- 37 (iii) use information to initiate a civil action or proceeding;
- 38 if the information may be obtained from the director or the
- 39 director's designee under any law.
- 40 (f) Except as otherwise provided in **the federal Housing and**
- 41 **Economic Recovery Act of 2008** (Public Law 110-289, Section
- 42 1512), the requirements under any federal law or IC 5-14-3

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

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

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

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

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

28 (i) Any provision of IC 5-14-3 that concerns the disclosure of:  
29 (i) confidential supervisory information; or  
30 (ii) any information or material described in subdivision (f);  
31 and that is inconsistent with subdivision (f) is superseded by this  
32 section.

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

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

42 (i) require review of; and

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- 1 (ii) make available;
- 2 the audited financial statements of the NMLSR.
- 3 **(7) Notwithstanding any other provision of law, any:**
- 4 **(a) application, renewal, or other form or document that:**
- 5 **(i) relates to licenses issued under this article; and**
- 6 **(ii) is made or produced in an electronic format;**
- 7 **(b) document filed as an electronic record in a multistate**
- 8 **automated repository established and operated for the**
- 9 **licensing or registration of mortgage lenders, brokers, or loan**
- 10 **originators; or**
- 11 **(c) electronic record filed through the NMLSR;**
- 12 **is considered a valid original document when reproduced in paper**
- 13 **form by the department.**

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

- 20 (a) The creditor has continued to meet the surety bond
- 21 requirement under section 402.3 of this chapter.
- 22 (b) The creditor has filed the creditor's ~~annual~~ call report in a
- 23 manner that satisfies section 405(4) of this chapter.
- 24 (c) The creditor has paid all required fees for renewal of the
- 25 license.
- 26 (d) The creditor and individuals described in section 402(2) of
- 27 this chapter **have certified to the department that they** continue
- 28 to meet all the standards for licensing contained in section 402 of
- 29 this chapter.
- 30 **(e) The creditor has provided in the creditor's renewal**
- 31 **application:**
- 32 **(i) any information describing material changes in the**
- 33 **information contained in the creditor's original application**
- 34 **for licensure, or in any previous application, including any**
- 35 **previous renewal application; and**
- 36 **(ii) any other information the director requires in order to**
- 37 **evaluate the renewal of the license issued under this article.**
- 38 (2) A license issued by the department authorizing a person to
- 39 engage in first lien mortgage transactions as a creditor under this article
- 40 may be revoked or suspended by the department if the person fails to:
- 41 (a) file any renewal form required by the department; or
- 42 (b) pay any license renewal fee described under section 402 of

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1 this chapter;  
 2 not later than sixty (60) days after the due date.  
 3 (3) A person whose license is revoked or suspended under this  
 4 section may do either of the following:  
 5 (a) Pay all delinquent fees and apply for reinstatement of the  
 6 license.  
 7 (b) Appeal the revocation or suspension to the department for an  
 8 administrative review under IC 4-21.5-3. Pending the decision  
 9 resulting from the hearing under IC 4-21.5-3 concerning the  
 10 license revocation or suspension, the license remains in force.  
 11 **(4) If, at any time, the information or record contained in:**  
 12 **(a) an original application for licensure filed under section**  
 13 **402 of this chapter; or**  
 14 **(b) a renewal application filed under this section;**  
 15 **is or becomes inaccurate or incomplete in a material respect, the**  
 16 **applicant shall promptly file a correcting amendment with the**  
 17 **department.**  
 18 SECTION 10. IC 24-4.4-2-404, AS AMENDED BY P.L.35-2010,  
 19 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 20 JULY 1, 2012]: Sec. 404. (1) The department may issue to a person  
 21 licensed as a creditor to engage in first lien mortgage transactions as  
 22 a creditor an order to show cause why the person's license should not  
 23 be revoked or suspended for a period determined by the department.  
 24 The  
 25 **(2) An order issued under subsection (1) must: state**  
 26 **(a) include:**  
 27 **(i) a statement of the place, date, and time for a meeting with**  
 28 **the department, that is which date may not be less than ten**  
 29 **(10) days from the date of the order;**  
 30 **(ii) a description of the action contemplated by the**  
 31 **department; and**  
 32 **(iii) a statement of the facts or conduct supporting the**  
 33 **issuance of the order; and**  
 34 **(b) be accompanied by a notice stating that the licensee is**  
 35 **entitled to:**  
 36 **(i) a reasonable opportunity to be heard; and**  
 37 **(ii) show the licensee's compliance with all lawful**  
 38 **requirements for retention of the license;**  
 39 **at the meeting described in subdivision (a)(i).**  
 40 **(3) After the meeting described in subsection (2)(a)(i), the**  
 41 **department shall may revoke or suspend the license if the department**  
 42 **finds that:**

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- 1 (a) the licensee has repeatedly and willfully violated:
- 2 (i) this article or any rule, order, or guidance document
- 3 lawfully adopted or issued ~~under this article~~; **by the**
- 4 **department**; or
- 5 (ii) any other state or federal law, regulation, or rule applicable
- 6 to first lien mortgage transactions;
- 7 (b) the licensee does not meet the licensing qualifications
- 8 contained in section 402 of this chapter; ~~or~~
- 9 **(c) the licensee obtained the license for the benefit of, or on**
- 10 **behalf of, another person;**
- 11 **(d) the licensee knowingly or intentionally made material**
- 12 **misrepresentations to, or concealed material information**
- 13 **from, the department; or**
- 14 ~~(e) (e) facts or conditions exist which would clearly have justified~~
- 15 ~~the department in refusing to grant a license had the facts or~~
- 16 ~~conditions been known to exist at the time the application for the~~
- 17 ~~license was made. that, had they existed at the time the licensee~~
- 18 ~~applied for the license, would have been grounds for the~~
- 19 ~~department to deny the issuance of the license.~~
- 20 (2) Except as provided in section 403 of this chapter, a revocation
- 21 or suspension of a license is not authorized under this article unless
- 22 before instituting proceedings to suspend or revoke the license, the
- 23 department gives notice to the licensee of the conduct or facts that
- 24 warrant the intended action; and the licensee is given an opportunity to
- 25 show compliance with all lawful requirements for retention of the
- 26 license.
- 27 (3) If the department finds that probable cause for revocation of a
- 28 license exists and that enforcement of this article requires immediate
- 29 suspension of the license pending investigation, the department may,
- 30 after a hearing with the licensee upon five (5) days written notice to the
- 31 licensee, enter an order suspending the license for not more than thirty
- 32 (30) days.
- 33 (4) Whenever the department revokes or suspends a license, the
- 34 department shall enter an order to that effect and notify the licensee of:
- 35 (a) the revocation or suspension;
- 36 (b) **if a suspension has been ordered, the duration of the**
- 37 **suspension;**
- 38 (c) **the procedure for appealing the revocation or suspension**
- 39 **under IC 4-21.5-3-5; and**
- 40 (d) **any other terms and conditions that apply to the**
- 41 **revocation or suspension.**
- 42 Not later than five (5) days after the entry of the order, the department

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

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

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

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

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

23 (9) (8) If the director (a) has just cause to believe an emergency  
24 exists from which it is necessary to protect the interests of the public,  
25 or (b) determines that a license was obtained for the benefit of, or on  
26 behalf of, a person who does not qualify for a license; the director may  
27 proceed with the revocation of ~~the a~~ license **through an emergency or**  
28 **another temporary order** under ~~IC 4-21.5-3-6. IC 4-21.5-4.~~

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

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

38 (b) has committed fraudulent or unconscionable conduct; or

39 (c) has been convicted of ~~or has pleaded guilty or nolo contendere~~  
40 ~~to~~ a felony under the laws of Indiana or any other jurisdiction;  
41 the director, subject to subsection (2), may issue and serve upon the  
42 officer, director, or employee a notice of the director's intent to issue an

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

16 (4) Each:

- 17 (a) creditor licensed by the department under this article; and
- 18 (b) entity that is exempt from licensing under this article and that
- 19 employs one (1) or more licensed mortgage originators;

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

22 (5) Each:

- 23 (a) creditor licensed by the department under this article; and
- 24 (b) entity exempt from licensing under this article that employs
- 25 licensed mortgage loan originators;

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

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

- 32 (a) has a change in name, address, or any of its principals;
- 33 (b) opens a new branch, closes an existing branch, or relocates an
- 34 existing branch;
- 35 (c) files for bankruptcy or reorganization; or
- 36 (d) is subject to revocation or suspension proceedings by a state
- 37 or governmental authority with regard to the licensed creditor's
- 38 activities;

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

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

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

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

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

- 19 (2) The underlying purposes and policies of this article are:
  - 20 (a) to simplify, clarify, and modernize the law governing retail
  - 21 installment sales, consumer credit, small loans, and usury;
  - 22 (b) to provide rate ceilings to assure an adequate supply of credit
  - 23 to consumers;
  - 24 (c) to further consumer understanding of the terms of credit
  - 25 transactions and to foster competition among suppliers of
  - 26 consumer credit so that consumers may obtain credit at
  - 27 reasonable cost;
  - 28 (d) to protect consumer buyers, lessees, and borrowers against
  - 29 unfair practices by some suppliers of consumer credit, having due
  - 30 regard for the interests of legitimate and scrupulous creditors;
  - 31 (e) to permit and encourage the development of fair and
  - 32 economically sound consumer credit practices;
  - 33 (f) to conform the regulation of consumer credit transactions to
  - 34 the policies of the Federal Consumer Credit Protection Act **and**
  - 35 **to applicable state and federal laws, rules, regulations,**
  - 36 **policies, and guidance;** and
  - 37 (g) to make uniform the law, including administrative rules
  - 38 among the various jurisdictions.

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

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

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

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

3 that the transaction:

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

5 (b) involves the application of subterfuge for the purpose of

6 avoiding this article.

7 A determination by the director under this paragraph must be in writing

8 and shall be delivered to all parties to the transaction. IC 4-21.5-3

9 applies to a determination made under this paragraph.

10 (6) The authority of this article remains in effect, whether a licensee,

11 an individual, or a person subject to this article acts or claims to act

12 under any licensing or registration law of this state, or claims to act

13 without such authority.

14 (7) A violation of a state or federal law, regulation, or rule

15 applicable to consumer credit transactions is a violation of this article.

16 (8) The department may enforce penalty provisions set forth in 15

17 U.S.C. 1640 for violations of disclosure requirements applicable to

18 mortgage transactions.

19 SECTION 14. IC 24-4.5-1-202, AS AMENDED BY P.L.89-2011,

20 SECTION 11, AND AS AMENDED BY P.L.9-2011, SECTION 2, IS

21 CORRECTED AND AMENDED TO READ AS FOLLOWS

22 [EFFECTIVE JULY 1, 2012]: Sec. 202. (a) *As used in this section,*

23 *"balloon payment", with respect to a mortgage transaction, means any*

24 *payment that:*

25 (1) *the creditor requires the debtor to make at any time during the*

26 *term of the mortgage;*

27 (2) *represents the entire amount of the outstanding balance with*

28 *respect to the mortgage; and*

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

30 *the end of a specified period;*

31 *if the aggregate amount of the minimum periodic payments required*

32 *under the mortgage would not fully amortize the outstanding balance*

33 *by the specified date or at the end of the specified period. The term*

34 *does not include a payment required by a creditor under a due-on-sale*

35 *clause (as defined in 12 U.S.C. 1701j-3(a)) or a payment required by*

36 *a creditor under a provision in the mortgage that permits the creditor*

37 *to accelerate the debt upon the debtor's default or failure to abide by*

38 *the material terms of the mortgage.*

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

40 (1) Extensions of credit to government or governmental agencies

41 or instrumentalities.

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

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- 1 provided in the chapter on insurance (IC 24-4.5-4).
- 2 (3) Transactions under public utility, municipal utility, or  
3 common carrier tariffs if a subdivision or agency of this state or  
4 of the United States regulates the charges for the services  
5 involved, the charges for delayed payment, and any discount  
6 allowed for early payment.
- 7 (4) The rates and charges and the disclosure of rates and charges  
8 of a licensed pawnbroker established in accordance with a statute  
9 or ordinance concerning these matters.
- 10 (5) A sale of goods, services, or an interest in land in which the  
11 goods, services, or interest in land are purchased primarily for a  
12 purpose other than a personal, family, or household purpose.
- 13 (6) A loan in which the debt is incurred primarily for a purpose  
14 other than a personal, family, or household purpose.
- 15 (7) An extension of credit primarily for a business, a commercial,  
16 or an agricultural purpose.
- 17 (8) An installment agreement for the purchase of home fuels in  
18 which a finance charge is not imposed.
- 19 (9) Loans made, insured, or guaranteed under a program  
20 authorized by Title IV of the Higher Education Act of 1965 (20  
21 U.S.C. 1070 et seq.).
- 22 (10) Transactions in securities or commodities accounts in which  
23 credit is extended by a broker-dealer registered with the Securities  
24 and Exchange Commission or the Commodity Futures Trading  
25 Commission.
- 26 (11) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3,  
27 IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a loan made:  
28 (A) in compliance with the requirements of; and  
29 (B) by a community development corporation (as defined in  
30 IC 4-4-28-2) acting as a subrecipient of funds from;  
31 the Indiana housing and community development authority  
32 established by IC 5-20-1-3.
- 33 (12) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3,  
34 IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a subordinate lien  
35 mortgage transaction made by an entity that exclusively uses  
36 funds provided by the United States Department of Housing and  
37 Urban Development under Title 1 of the Housing and Community  
38 Development Act of 1974, Public Law 93-383, as amended (42  
39 U.S.C. 5301 et seq.).
- 40 (13) *The United States, any state or local government, or any*  
41 *agency or instrumentality of any governmental entity, including*  
42 *United States government sponsored enterprises.*

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- 1 ~~(13)~~ **(14)** *A bona fide nonprofit **entity organization** not operating*
- 2 *in a commercial context, as determined by the director, if the*
- 3 *following criteria are satisfied:*
- 4 *(A) Subject to clause (B), the **entity organization** originates*
- 5 *only one (1) or both of the following types of mortgage*
- 6 *transactions:*
- 7 *(i) Zero (0) interest first lien mortgage transactions.*
- 8 *(ii) Zero (0) interest subordinate lien mortgage transactions.*
- 9 *(B) The **entity organization** does not require, under the terms*
- 10 *of the mortgage or otherwise, balloon payments with respect*
- 11 *to the mortgage transactions described in clause (A).*
- 12 *(C) The **entity organization** is exempt from federal income*
- 13 *taxation under Section 501(c)(3) of the Internal Revenue*
- 14 *Code.*
- 15 *(D) The ~~entity's~~ **organization's** primary purpose is to serve*
- 16 *the public by helping low income individuals and families*
- 17 *build, repair, and purchase housing.*
- 18 *(E) The **entity organization** uses only:*
- 19 *(i) unpaid volunteers; or*
- 20 *(ii) employees whose compensation is not based on the*
- 21 *number or size of any mortgage transactions that the*
- 22 *employees originate;*
- 23 *to originate the mortgage transactions described in clause*
- 24 *(A).*
- 25 *(F) The **entity organization** does not charge loan origination*
- 26 *fees in connection with the mortgage transactions described*
- 27 *in clause (A).*
- 28 **(15) A bona fide nonprofit organization (as defined in section**
- 29 **301.5(45) of this chapter) if the following criteria are satisfied:**
- 30 **(a) For each calendar year that the organization seeks the**
- 31 **exemption provided by this subdivision, the organization**
- 32 **certifies, not later than December 31 of the preceding**
- 33 **calendar year and on a form prescribed by the director**
- 34 **and accompanied by such documentation as required by**
- 35 **the director, that the organization is a bona fide nonprofit**
- 36 **organization (as defined in section 301.5(45) of this**
- 37 **chapter).**
- 38 **(b) The director determines that the organization**
- 39 **originates only mortgage transactions that are favorable to**
- 40 **the debtor. For purposes of this clause, a mortgage**
- 41 **transaction is favorable to the debtor if the director**
- 42 **determines that the terms of the mortgage transaction are**

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

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

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

- 12                  (a) controls;
  - 13                  (b) is controlled by; or
  - 14                  (c) is under common control with;
- 15                  the person subject to this article.

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

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

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

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

- 33                  (a) fees or premiums for title examination, title insurance, or  
34                  similar purposes, including surveys;
- 35                  (b) fees for preparation of a deed, settlement statement, or other  
36                  documents;
- 37                  (c) escrows for future payments of taxes and insurance;
- 38                  (d) fees for notarizing deeds and other documents;
- 39                  (e) appraisal fees; and
- 40                  (f) fees for credit reports.

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

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1 noticed it.

2 (7) "Consumer credit" means credit offered or extended to a

3 consumer primarily for a personal, family, or household purpose.

4 (8) "Consumer credit sale" is a sale of goods, services, or an interest

5 in land in which:

6 (a) credit is granted by a person who regularly engages as a seller

7 in credit transactions of the same kind;

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

9 (c) the goods, services, or interest in land are purchased primarily

10 for a personal, family, or household purpose;

11 (d) either the debt is payable in installments or a credit service

12 charge is made; and

13 (e) with respect to a sale of goods or services, either the amount

14 financed does not exceed fifty thousand dollars (\$50,000) or the

15 debt is secured by personal property used or expected to be used

16 as the principal dwelling of the buyer.

17 Unless the sale is made subject to this article by agreement

18 (IC 24-4.5-2-601), "consumer credit sale" does not include a sale in

19 which the seller allows the buyer to purchase goods or services

20 pursuant to a lender credit card or similar arrangement or except as

21 provided with respect to disclosure (IC 24-4.5-2-301), debtors'

22 remedies (IC 24-4.5-5-201), providing payoff amounts

23 (IC 24-4.5-2-209), and powers and functions of the department

24 (IC 24-4.5-6) a sale of an interest in land which is a first lien mortgage

25 transaction.

26 (9) "Consumer loan" means a loan made by a person regularly

27 engaged in the business of making loans in which:

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

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

30 purpose;

31 (c) either the debt is payable in installments or a loan finance

32 charge is made; and

33 (d) either:

34 (i) the principal does not exceed fifty thousand dollars

35 (\$50,000); or

36 (ii) the debt is secured by an interest in land or by personal

37 property used or expected to be used as the principal dwelling

38 of the debtor.

39 Except as described in IC 24-4.5-3-105, the term does not include a

40 first lien mortgage transaction.

41 (10) "Credit" means the right granted by a creditor to a debtor to

42 defer payment of debt or to incur debt and defer its payment.

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- 1 (11) "Creditor" means a person:
- 2 (a) who regularly engages in the extension of consumer credit that
- 3 is subject to a credit service charge or loan finance charge, as
- 4 applicable, or is payable by written agreement in more than four
- 5 (4) installments (not including a down payment); and
- 6 (b) to whom the obligation is initially payable, either on the face
- 7 of the note or contract, or by agreement when there is not a note
- 8 or contract.
- 9 (12) "Depository institution" has the meaning set forth in the
- 10 Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any
- 11 credit union.
- 12 (13) "Director" means the director of the department of financial
- 13 institutions or the director's designee.
- 14 (14) "Dwelling" means a residential structure that contains one (1)
- 15 to four (4) units, regardless of whether the structure is attached to real
- 16 property. The term includes an individual:
- 17 (a) condominium unit;
- 18 (b) cooperative unit;
- 19 (c) mobile home; or
- 20 (d) trailer;
- 21 that is used as a residence.
- 22 (15) "Earnings" means compensation paid or payable for personal
- 23 services, whether denominated as wages, salary, commission, bonus,
- 24 or otherwise, and includes periodic payments under a pension or
- 25 retirement program.
- 26 (16) "Employee" means an individual who is paid wages or other
- 27 compensation by an employer required under federal income tax law
- 28 to file Form W-2 on behalf of the individual.
- 29 (17) "Federal banking agencies" means the Board of Governors of
- 30 the Federal Reserve System, the Office of the Comptroller of the
- 31 Currency, the Office of Thrift Supervision, the National Credit Union
- 32 Administration, and the Federal Deposit Insurance Corporation.
- 33 (18) "First lien mortgage transaction" means:
- 34 (a) a **consumer** loan; or
- 35 (b) a consumer credit sale;
- 36 that is or will be used by the debtor primarily for personal, family, or
- 37 household purposes and that is secured by a mortgage **or a land**
- 38 **contract** (or another ~~equivalent~~ consensual security interest **equivalent**
- 39 **to a mortgage or a land contract**) that constitutes a first lien on a
- 40 dwelling or on residential real estate upon which a dwelling is
- 41 constructed or intended to be constructed. ~~The term does not include~~
- 42 ~~a land contract.~~

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

4 (20) "Individual" means a natural person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (i) a creditor;

17 (ii) a loan broker;

18 (iii) another mortgage loan originator; or

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

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

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

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

29 (27) "Mortgage transaction" means:

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

31 (b) a consumer credit sale;

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

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

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

3 (30) "Official fees" means:

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

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

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

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

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

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

23 (a) the spouse of the individual;

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

22 (i) a depository institution;

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

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

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

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

31 (a) extended consumer credit:

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

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

35 in the preceding calendar year; or

36 (b) extends or will extend consumer credit:

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

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

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

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

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

12 (42) "Subordinate lien mortgage transaction" means:

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

14 (b) a consumer credit sale;

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

39 (B) the greater of:

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

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

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1 request until the date on which the accurate consumer credit  
 2 sale payoff amount is provided;  
 3 if an accurate consumer credit sale payoff amount is not provided  
 4 by the creditor or mortgage servicer within seven (7) business  
 5 days (excluding legal public holidays, Saturdays, and Sundays)  
 6 after the creditor or mortgage servicer receives the debtor's  
 7 second written request, and the creditor or mortgage servicer  
 8 failed to comply with clause (A).

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

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

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

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1 amount still owed under the mortgage transaction."; or  
 2 (b) a statement substantially similar to the statement set forth in  
 3 subdivision (a);  
 4 acknowledged by the initials or signature of the debtor, on or before the  
 5 date on which the short sale payment is accepted. As used in this  
 6 subsection, "short sale" means a transaction in which the property that  
 7 is the subject of a mortgage transaction is sold for an amount that is  
 8 less than the amount of the debtor's outstanding obligation under the  
 9 mortgage transaction. A creditor or mortgage servicer that fails to  
 10 respond to an offer within the time prescribed by this subsection is  
 11 liable in accordance with 12 U.S.C. 2605(f) in any action brought  
 12 under that section.

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

- 20 (a) credit is granted by a person that is not regularly engaged
- 21 as a seller in credit transactions of the same kind;
- 22 (b) the buyer is a person other than an organization;
- 23 (c) the goods, services, or interest in land are purchased
- 24 primarily for a personal, family, or household purpose;
- 25 (d) either the debt is payable in installments or a credit service
- 26 charge is made; and
- 27 (e) with respect to a sale of goods or services, either the
- 28 amount financed does not exceed fifty thousand dollars
- 29 (\$50,000) or the debt is secured by personal property used or
- 30 expected to be used as the principal dwelling of the buyer.

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

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

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

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

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

- 12 (a) if the loan is refinanced or consolidated with the same  
 13 creditor;  
 14 (b) for prepayment by proceeds of any insurance or acceleration  
 15 after default; or  
 16 (c) after three (3) years from the contract date.

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

- 25 (a) The loan origination fee allowed under section 201 of this  
 26 chapter.  
 27 (b) The debtor paid mortgage broker fee, if any, paid to a person  
 28 who does not control, is not controlled by, or is not under  
 29 common control with, the creditor holding the loan at the time a  
 30 consumer loan is prepaid.

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



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- 1 (a) one hundred dollars (\$100) if an accurate consumer loan
- 2 payoff amount is not provided by the creditor or mortgage
- 3 servicer within seven (7) business days (excluding legal public
- 4 holidays, Saturdays, and Sundays) after the creditor or mortgage
- 5 servicer receives the debtor's first written request; and
- 6 (b) the greater of:
- 7 (i) one hundred dollars (\$100); or
- 8 (ii) the loan finance charge that accrues on the loan from the
- 9 date the creditor or mortgage servicer receives the first written
- 10 request until the date on which the accurate consumer loan
- 11 payoff amount is provided;
- 12 if an accurate consumer loan payoff amount is not provided by the
- 13 creditor or mortgage servicer within seven (7) business days
- 14 (excluding legal public holidays, Saturdays, and Sundays) after
- 15 the creditor or mortgage servicer receives the debtor's second
- 16 written request, and the creditor or mortgage servicer failed to
- 17 comply with subdivision (a).

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

20 (4) As used in this subsection, "mortgage transaction" means a  
 21 consumer ~~credit~~ loan in which a mortgage **or a land contract** (or  
 22 another ~~equivalent~~ consensual security interest **equivalent to a**  
 23 **mortgage or a land contract**) that constitutes a lien is created or  
 24 retained against land upon which there is constructed or intended to be  
 25 constructed a dwelling that is or will be used by the debtor primarily  
 26 for personal, family, or household purposes. This subsection applies to  
 27 a mortgage transaction with respect to which any installment or  
 28 minimum payment due is delinquent for at least sixty (60) days. The  
 29 creditor, servicer, or the creditor's agent shall acknowledge a written  
 30 offer made in connection with a proposed short sale not later than five  
 31 (5) business days (excluding legal public holidays, Saturdays, and  
 32 Sundays) after the date of the offer if the offer complies with the  
 33 requirements for a qualified written request set forth in 12 U.S.C.  
 34 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to  
 35 acknowledge a written offer made in connection with a proposed short  
 36 sale from a third party acting on behalf of the debtor only if the debtor  
 37 has provided written authorization for the creditor, servicer, or  
 38 creditor's agent to do so. Not later than thirty (30) business days  
 39 (excluding legal public holidays, Saturdays, and Sundays) after receipt  
 40 of an offer under this subsection, the creditor, servicer, or creditor's  
 41 agent shall respond to the offer with an acceptance or a rejection of the  
 42 offer. The thirty (30) day period described in this subsection may be

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 7 (a) the time of application;
- 8 (b) the time of renewal of a license; or
- 9 (c) any other time considered necessary by the director.

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

- 13 (a) criminal background checks as described in section 503.1 of  
 14 this chapter, including a national criminal history background  
 15 check (as defined in IC 10-13-3-12) by the Federal Bureau of  
 16 Investigation, for any individual described in subsection (2);
- 17 (b) credit histories as described in section 503.2 of this chapter;
- 18 (c) surety bond requirements as described in section 503.3 of this  
 19 chapter;
- 20 (d) a review of licensure actions in Indiana and other states; and
- 21 (e) other background checks considered necessary by the director.

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

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

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

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

- 36 (a) An initial license fee as established by the department under  
 37 IC 28-11-3-5.
- 38 (b) Examination fees as established by the department under  
 39 IC 28-11-3-5.
- 40 (c) An annual renewal fee as established by the department under  
 41 IC 28-11-3-5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 (iii) initiate any civil action based on information obtained  
2 from the NMLSR if the person could not have initiated the  
3 action based on information otherwise available to the person  
4 under any other state law.  
5 (b) Documents, materials, and other forms of information in the  
6 control or possession of the NMLSR that are confidential under  
7 IC 28-1-2-30 and that are:  
8 (i) furnished by the director, the director's designee, or a  
9 licensee; or  
10 (ii) otherwise obtained by the NMLSR;  
11 are confidential and privileged by law and are not subject to  
12 inspection under IC 5-14-3, subject to subpoena, subject to  
13 discovery, or admissible in evidence in any civil action. However,  
14 the director may use the documents, materials, or other  
15 information available to the director in furtherance of any action  
16 brought in connection with the director's duties under this article.  
17 (c) Disclosure of documents, materials, and information:  
18 (i) to the director; or  
19 (ii) by the director;  
20 under this subsection does not result in a waiver of any applicable  
21 privilege or claim of confidentiality with respect to the  
22 documents, materials, or information.  
23 (d) Information provided to the NMLSR is subject to IC 4-1-11.  
24 (e) This subsection does not limit or impair a person's right to:  
25 (i) obtain information;  
26 (ii) use information as evidence in a civil action or proceeding;  
27 or  
28 (iii) use information to initiate a civil action or proceeding;  
29 if the information may be obtained from the director or the  
30 director's designee under any law.  
31 (f) Except as otherwise provided in the federal Housing and  
32 Economic Recovery Act of 2008, Public Law 110-289, Section  
33 1512, the requirements under any federal law or IC 5-14-3  
34 regarding the privacy or confidentiality of any information or  
35 material provided to the NMLSR, and any privilege arising under  
36 federal or state law, including the rules of any federal or state  
37 court, with respect to the information or material, continue to  
38 apply to the information or material after the information or  
39 material has been disclosed to the NMLSR. The information and  
40 material may be shared with all state and federal regulatory  
41 officials with mortgage industry oversight authority without the  
42 loss of privilege or the loss of confidentiality protections provided

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1 by federal law or IC 5-14-3.

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

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

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

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

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

20 (i) confidential supervisory information; or

21 (ii) any information or material described in subdivision (f);  
22 and that is inconsistent with subdivision (f) is superseded by this  
23 section.

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

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

34 (i) require review of; and

35 (ii) make available;

36 the audited financial statements of the NMLSR.

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

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

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

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

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

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1           **licensing or registration of mortgage lenders, brokers, or loan**  
 2           **originators; or**  
 3           **(c) electronic record filed through the NMLSR;**  
 4           **is considered a valid original document when reproduced in paper**  
 5           **form by the department.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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- 1 (b) pay any license renewal fee described under section 503(8)(c)
- 2 of this chapter;
- 3 not later than sixty (60) days after the due date.
- 4 (3) A person whose license is revoked or suspended under this
- 5 section may do either of the following:
- 6 (a) Pay all delinquent fees and apply for reinstatement of the
- 7 license.
- 8 (b) Appeal the revocation or suspension to the department for an
- 9 administrative review under IC 4-21.5-3.
- 10 Pending the decision from a hearing under IC 4-21.5-3 concerning
- 11 license revocation or suspension, a license remains in force.
- 12 **(4) If, at any time, the information or record contained in:**
- 13 **(a) an original application for licensure filed under section**
- 14 **502 or 502.1 of this chapter; or**
- 15 **(b) a renewal application filed under this section;**
- 16 **is or becomes inaccurate or incomplete in a material respect, the**
- 17 **applicant shall promptly file a correcting amendment with the**
- 18 **department.**
- 19 SECTION 22. IC 24-4.5-3-504, AS AMENDED BY P.L.35-2010,
- 20 SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 21 JULY 1, 2012]: Sec. 504. (1) The department may issue to a person
- 22 licensed to:
- 23 (a) make consumer loans; or
- 24 (b) engage in consumer credit sales that are mortgage
- 25 transactions;
- 26 an order to show cause why the license should not be revoked or
- 27 suspended for a period determined by the department. ~~The~~
- 28 **(2) An order ~~shall~~ state issued under subsection (1) must:**
- 29 **(a) include:**
- 30 **(i) a statement of the place, date, and time for a meeting with**
- 31 **the department, ~~that is no~~ which date may not be less than ten**
- 32 **(10) days from the date of the order;**
- 33 **(ii) a description of the action contemplated by the**
- 34 **department; and**
- 35 **(iii) a statement of the facts or conduct supporting the**
- 36 **issuance of the order; and**
- 37 **(b) be accompanied by a notice stating that the licensee is**
- 38 **entitled to:**
- 39 **(i) a reasonable opportunity to be heard; and**
- 40 **(ii) show the licensee's compliance with all lawful**
- 41 **requirements for retention of the license;**
- 42 **at the meeting described in subdivision (a)(i).**

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

4 (a) the licensee has repeatedly and willfully violated:

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

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

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

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

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

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

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

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

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

38 (a) the revocation or suspension;

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

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

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1           (d) **any other terms and conditions that apply to the**  
 2           **revocation or suspension.**  
 3       ~~Within~~ **Not later than** five (5) days after the entry of the order the  
 4       department shall deliver to the licensee a copy of the order and the  
 5       findings supporting the order.  
 6       (5) Any person holding a license to make consumer loans may  
 7       relinquish the license by notifying the department in writing of its  
 8       relinquishment, but this relinquishment ~~shall~~ **does** not affect the  
 9       person's liability for acts previously committed **and coming within the**  
 10      **scope of this article.**  
 11      (6) If the director determines it is in the public interest, the director  
 12      may pursue revocation of a license of a licensee that has relinquished  
 13      the license under subsection (5).  
 14      (7) ~~No~~ **If a person's license is revoked, suspended, or**  
 15      **relinquished, the** revocation, suspension, or relinquishment of a  
 16      license **shall does not** impair or affect ~~the any~~ **obligation of owed by**  
 17      **any person under** any preexisting lawful contract. ~~between the~~  
 18      licensee and any debtor.  
 19      (8) ~~The department may reinstate a license or terminate a~~  
 20      suspension of a license to a person whose license has been revoked or  
 21      suspended if the director determines that, ~~at the time the determination~~  
 22      is made, ~~no fact or condition then exists which clearly would have~~  
 23      justified the department in refusing to reinstate a license.  
 24      (9) ~~(8)~~ **(8)** If the director ~~(a)~~ has just cause to believe an emergency  
 25      exists from which it is necessary to protect the interests of the public,  
 26      or ~~(b)~~ determines that the license was obtained for the benefit of, or on  
 27      behalf of, a person who does not qualify for a license; the director may  
 28      proceed with the revocation of ~~the a~~ **license through an emergency or**  
 29      **another temporary order** under ~~IC 4-21.5-3-6.~~ **IC 4-21.5-4.**  
 30      SECTION 23. IC 24-4.5-3-505, AS AMENDED BY P.L.35-2010,  
 31      SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 32      JULY 1, 2012]: Sec. 505. (1) Every creditor required to be licensed  
 33      under this article shall maintain records in conformity with generally  
 34      accepted accounting principles and practices in a manner that will  
 35      enable the department to determine whether the licensee is complying  
 36      with the provisions of this article. The record keeping system of a  
 37      licensee shall be sufficient if the licensee makes the required  
 38      information reasonably available. The department shall determine the  
 39      sufficiency of the records and whether the licensee has made the  
 40      required information reasonably available. The department shall be  
 41      given free access to the records wherever located. The records  
 42      pertaining to any loan shall be retained for two (2) years after making

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

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

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

13 (4) Each:

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

16 (b) entity that is exempt from licensing under this article and that  
 17 employs one (1) or more licensed mortgage loan originators;  
 18 shall submit to the NMLSR a call report, which must be in the form  
 19 and contain information the NMLSR requires.

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

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

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

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

36 (c) files for bankruptcy or reorganization; or

37 (d) is subject to revocation or suspension proceedings by a state  
 38 or governmental authority with regard to the licensee's activities;  
 39 not later than thirty (30) days after the date of the event described in  
 40 this subsection.

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

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

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

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

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

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

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

19 **(e) Either:**

20 **(i) the principal does not exceed fifty thousand dollars**  
 21 **(\$50,000); or**

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

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

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

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

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

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

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

42 (2) directly collect payments from or enforce rights against

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- 1 debtors arising from sales, leases, or loans specified in subsection  
 2 (1), wherever they are made.
- 3 (b) For purposes of IC 24-4.5-6-101 through IC 24-4.5-6-117:
- 4 (1) "Consumer credit sale" includes a sale that is a first lien  
 5 mortgage transaction if the sale is otherwise a consumer credit  
 6 sale.
- 7 (2) "Consumer loan" includes a loan that is a first lien mortgage  
 8 transaction if the loan is otherwise a consumer loan.
- 9 SECTION 26. IC 24-4.5-6-106, AS AMENDED BY P.L.35-2010,  
 10 SECTION 66, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 11 JULY 1, 2012]: Sec. 106. (1) In administering this article and in order  
 12 to determine whether the provisions of this article are being complied  
 13 with by persons engaging in acts subject to this article, the department  
 14 may examine the records of persons and may make investigations of  
 15 persons as may be necessary to determine compliance. Records subject  
 16 to examination under this section include the following:
- 17 (a) Training, operating, and policy manuals.
- 18 (b) Minutes of:
- 19 (i) management meetings; and  
 20 (ii) other meetings.
- 21 (c) Other records that the department determines are necessary to  
 22 perform its investigation or examination.
- 23 The department may also administer oaths or affirmations, subpoena  
 24 witnesses, and compel the attendance of witnesses, including directors,  
 25 executive officers, managers, principals, mortgage loan originators,  
 26 employees, independent contractors, agents, and customers of the  
 27 licensee, individual, or person subject to this article. The department  
 28 may also adduce evidence, and require the production of any matter  
 29 which is relevant to the investigation. The department shall determine  
 30 the sufficiency of the records maintained and whether the person has  
 31 made the required information reasonably available. The records  
 32 pertaining to any transaction subject to this article shall be retained for  
 33 two (2) years after making the final entry relating to the consumer  
 34 credit transaction, but in the case of a revolving loan account or  
 35 revolving charge account, the two (2) years is measured from the date  
 36 of each entry.
- 37 (2) The department's examination and investigatory authority under  
 38 this article includes the following:
- 39 (a) The authority to require a creditor to refund overcharges  
 40 resulting from the creditor's noncompliance with the terms of a  
 41 ~~subordinate lien mortgage transaction.~~ **consumer credit sales,**  
 42 **consumer leases, or consumer loans.**

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- 1 (b) The authority to require a creditor to comply with the  
 2 **prepayment** penalty provisions set forth in IC 24-4.5-3-209.
- 3 (c) The authority to investigate complaints filed with the  
 4 department by debtors.
- 5 (3) If the department:
- 6 (a) investigates; or  
 7 (b) examines the books and records of;  
 8 a person that is subject to IC 24-4.5-6-201, IC 24-4.5-6-202, and  
 9 IC 24-4.5-6-203, the person shall pay all reasonably incurred costs of  
 10 the investigation or examination in accordance with the fee schedule  
 11 adopted by the department under IC 28-11-3-5. However, the person is  
 12 liable for the costs of an investigation or examination under this  
 13 subsection only to the extent that the costs exceed the amount of the  
 14 filing fees paid most recently under IC 24-4.5-6-203. Any costs  
 15 required to be paid under this subsection shall be paid not later than  
 16 sixty (60) days after the person receives a notice from the department  
 17 of the costs being assessed. The department may impose a fee, in an  
 18 amount fixed by the department under IC 28-11-3-5, for each day that  
 19 the assessed costs are not paid, beginning on the first day after the sixty  
 20 (60) day period described in this subsection.
- 21 (4) The department shall be given free access to the records  
 22 wherever located. In making any examination or investigation  
 23 authorized by this article, the director may control access to any  
 24 documents and records of the licensee or person under examination or  
 25 investigation. The director may take possession of the documents and  
 26 records or place a person in exclusive charge of the documents and  
 27 records in the place where the documents are usually kept. During the  
 28 period of control, the licensee or person may not remove or attempt to  
 29 remove any of the documents and records except under a court order  
 30 or with the consent of the director. Unless the director has reasonable  
 31 grounds to believe the documents or records of the licensee or person  
 32 have been, or are, at risk of being altered or destroyed for purposes of  
 33 concealing a violation of this article, the licensee or person being  
 34 examined or investigated is entitled to access to the documents or  
 35 records as necessary to conduct the licensee's or person's ordinary  
 36 business affairs. If the person's records are located outside Indiana, the  
 37 records shall be made available to the department at a convenient  
 38 location within Indiana, or the person shall pay the reasonable and  
 39 necessary expenses for the department or its representative to examine  
 40 them where they are maintained. The department may designate  
 41 comparable officials of the state in which the records are located to  
 42 inspect them on behalf of the department.

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

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

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

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

23 (b) otherwise cease conducting business with the person.

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

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

33 (2) has committed fraudulent or unconscionable conduct; or

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

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

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

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- 1 director finds any of the following:
- 2 (1) The interests of the creditor's customers could be seriously
- 3 prejudiced by reason of the violation, practice, or breach.
- 4 (2) The violation, practice, or breach involves personal dishonesty
- 5 on the part of the officer, director, or employee involved.
- 6 (3) The violation, practice, or breach demonstrates a willful or
- 7 continuing disregard by the officer, director, or employee for state
- 8 or federal law and regulations, and for the consumer protections
- 9 contained in this article.
- 10 (c) A person who ~~(1)~~ has been convicted of ~~or (2) has pleaded guilty~~
- 11 ~~or not contended to~~; a felony under the laws of Indiana or any other
- 12 jurisdiction may not serve as an officer, a director, or an employee of
- 13 a creditor, or serve in any similar capacity, unless the person obtains
- 14 the written consent of the director.
- 15 (d) A creditor that willfully permits a person to serve the creditor in
- 16 violation of subsection (c) is subject to a civil penalty of five hundred
- 17 dollars (\$500) for each day the violation occurs.
- 18 (e) **A creditor shall give the department written notice of the**
- 19 **resignation, discharge, or termination of an employee, independent**
- 20 **contractor, or agent against whom allegations were made that**
- 21 **accused the employee, independent contractor, or agent of:**
- 22 **(1) violating this article or other laws, regulations, rules, or**
- 23 **industry standards of conduct applicable to consumer credit**
- 24 **transactions; or**
- 25 **(2) fraud, dishonesty, theft, or the wrongful taking of**
- 26 **property.**
- 27 **The creditor shall provide the department the notice required**
- 28 **under this subsection not later than thirty (30) days after the**
- 29 **effective date of the resignation, discharge, or termination.**
- 30 SECTION 28. IC 24-4.5-6-202, AS AMENDED BY P.L.35-2010,
- 31 SECTION 81, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 32 JULY 1, 2012]: Sec. 202. (1) Persons that are subject to this section
- 33 and sections 201 and 203 of this chapter shall file notification with the
- 34 department within thirty (30) days after commencing business in
- 35 Indiana and thereafter on an annual basis, on the date set forth in
- 36 subsection (2). The notification shall state the:
- 37 (a) name of the person;
- 38 (b) name in which business is transacted if different from
- 39 subdivision (a);
- 40 (c) address of principal office, which may be outside Indiana; and
- 41 (d) address of all offices or retail stores, if any, in Indiana at
- 42 which consumer credit sales, consumer leases, or consumer loans

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

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

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

- 12 (a) has a change in name, address, or principals;
- 13 (b) opens a new branch, closes an existing branch, or relocates an  
 14 existing branch;
- 15 (c) files for bankruptcy or reorganization;
- 16 (d) is notified that the person is subject to revocation or  
 17 suspension proceedings by a state or governmental authority with  
 18 regard to the person's activities; or
- 19 (e) has been convicted of ~~or pleaded guilty or nolo contendere to~~  
 20 a felony involving fraud, deceit, or misrepresentation under the  
 21 laws of Indiana or any other jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 ~~(4)~~ (5) The lender shall provide to each borrower a copy of the  
4 required loan documents before the disbursement of the loan proceeds.

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

9 ~~(6)~~ (7) A lender shall not enter into a renewal with a borrower. If a  
10 loan is paid in full, a subsequent loan is not a renewal.

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

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

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

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

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

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

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

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

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

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

- 7 (1) is closed after June 30, 2009; and
- 8 (2) has an interest rate that is subject to change at one (1) or more  
9 times during the term of the home loan.

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

13 (c) This subsection applies to a home loan with respect to which any  
14 installment or minimum payment due is delinquent for at least sixty  
15 (60) days. The creditor, servicer, or the creditor's agent shall  
16 acknowledge a written offer made in connection with a proposed short  
17 sale not later than five (5) business days (excluding legal public  
18 holidays, Saturdays, and Sundays) after the date of the offer if the offer  
19 complies with the requirements for a qualified written request set forth  
20 in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent  
21 is required to acknowledge a written offer made in connection with a  
22 proposed short sale from a third party acting on behalf of the debtor  
23 only if the debtor has provided written authorization for the creditor,  
24 servicer, or creditor's agent to do so. Not later than thirty (30) business  
25 days (excluding legal public holidays, Saturdays, and Sundays) after  
26 receipt of an offer under this subsection, the creditor, servicer, or  
27 creditor's agent shall respond to the offer with an acceptance or a  
28 rejection of the offer. The thirty (30) day period described in this  
29 subsection may be extended for not more than fifteen (15) business  
30 days (excluding legal public holidays, Saturdays, and Sundays) if,  
31 before the end of the thirty (30) day period, the creditor, the servicer,  
32 or the creditor's agent notifies the debtor of the extension and the  
33 reason the extension is needed. As used in this subsection, "short sale"  
34 means a transaction in which the property that is the subject of a home  
35 loan is sold for an amount that is less than the amount of the borrower's  
36 outstanding obligation on the home loan. A creditor, a servicer, or a  
37 creditor's agent that fails to respond to an offer within the time  
38 prescribed by this subsection is liable in accordance with 12 U.S.C.  
39 2605(f) in any action brought under that section.

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

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1 transaction" includes the following:  
 2 (1) A home loan subject to this article.  
 3 (2) To the extent allowed under federal law, a loan described in  
 4 IC 24-9-1-1 that is secured by a mortgage **or a land contract** (or  
 5 another ~~equivalent~~ consensual security interest **equivalent to a**  
 6 **mortgage or a land contract**) on real estate in Indiana on which  
 7 there is located or will be located a structure or structures:  
 8 (A) designed primarily for occupancy of one (1) to four (4)  
 9 families; and  
 10 (B) that is or will be occupied by a borrower as the borrower's  
 11 principal dwelling.  
 12 (3) A first lien mortgage transaction (as defined in  
 13 IC 24-4.4-1-301) subject to IC 24-4.4.  
 14 (4) A consumer credit sale subject to IC 24-4.5-2 in which a  
 15 mortgage **or a land contract** (or another ~~equivalent~~ consensual  
 16 security interest **equivalent to a mortgage or a land contract**)  
 17 that constitutes a lien is created or retained against land:  
 18 (A) that is located in Indiana; and  
 19 (B) upon which there is constructed or intended to be  
 20 constructed a dwelling that is or will be used by the debtor  
 21 primarily for personal, family, or household purposes.  
 22 (5) A consumer credit loan subject to IC 24-4.5-3 in which a  
 23 mortgage **or a land contract** (or another ~~equivalent~~ consensual  
 24 security interest **equivalent to a mortgage or a land contract**)  
 25 that constitutes a lien is created or retained against land:  
 26 (A) that is located in Indiana; and  
 27 (B) upon which there is constructed or intended to be  
 28 constructed a dwelling that is or will be used by the debtor  
 29 primarily for personal, family, or household purposes.  
 30 (6) A loan in which a mortgage **or a land contract** (or another  
 31 ~~equivalent~~ consensual security interest **equivalent to a mortgage**  
 32 **or a land contract**) that constitutes a lien is created or retained  
 33 against land:  
 34 (A) that is located in Indiana;  
 35 (B) upon which there is constructed or intended to be  
 36 constructed a dwelling that is not or will not be used by the  
 37 borrower primarily for personal, family, or household  
 38 purposes; and  
 39 (C) that is classified as residential for property tax purposes.  
 40 The term includes a loan that is secured by land in Indiana upon  
 41 which there is constructed or intended to be constructed a  
 42 dwelling that is purchased by or through the borrower for

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- 1 investment or other business purposes.
- 2 (7) A reverse mortgage transaction that is secured by real estate
- 3 in Indiana on which there is located a structure that is occupied by
- 4 a borrower as the borrower's principal dwelling.
- 5 ~~The term does not include a land contract:~~
- 6 (b) As used in this section, "real estate transaction" means the sale
- 7 or lease of any legal or equitable interest in real estate:
- 8 (1) that is located in Indiana;
- 9 (2) upon which there is constructed or intended to be constructed
- 10 a dwelling; and
- 11 (3) that is classified as residential for property tax purposes.
- 12 (c) A person may not do any of the following:
- 13 (1) Divide a home loan transaction into separate parts with the
- 14 intent of evading a provision of this article.
- 15 (2) Structure a home loan transaction as an open-end loan with
- 16 the intent of evading the provisions of this article if the home loan
- 17 would be a high cost home loan if the home loan had been
- 18 structured as a closed-end loan.
- 19 (3) Engage in a deceptive act in connection with a mortgage
- 20 transaction or a real estate transaction.
- 21 (4) Engage in, or solicit to engage in, a real estate transaction or
- 22 a mortgage transaction without a permit or license required by
- 23 law.
- 24 (5) With respect to a real estate transaction or a mortgage
- 25 transaction, represent that:
- 26 (A) the transaction has:
- 27 (i) certain terms or conditions; or
- 28 (ii) the sponsorship or approval of a particular person or
- 29 entity;
- 30 that it does not have and that the person knows or reasonably
- 31 should know it does not have; or
- 32 (B) the real estate or property that is the subject of the
- 33 transaction has any improvements, appurtenances, uses,
- 34 characteristics, or associated benefits that it does not have and
- 35 that the person knows or reasonably should know it does not
- 36 have.
- 37 (6) Maintain or offer to maintain an account for the receipt of
- 38 funds for the payment of real estate taxes and insurance unless the
- 39 person is any of the following:
- 40 (A) Any of the following that is chartered under the laws of a
- 41 state or the United States:
- 42 (i) A bank.

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- 1 (ii) A savings and loan association.
- 2 (iii) A credit union.
- 3 (iv) A savings bank.
- 4 (B) The creditor in a mortgage transaction.
- 5 (C) A mortgage servicer acting on behalf of the creditor in a
- 6 mortgage transaction.
- 7 (D) A closing agent (as defined in IC 27-7-3.7-1).
- 8 (7) Fail to provide the notice required under subsection (d), within
- 9 the time specified in subsection (d), if the person is a seller in a
- 10 real estate transaction described in subsection (d).
- 11 (d) This subsection applies to a real estate transaction that involves
- 12 a land contract between the seller and the buyer in the transaction. If
- 13 the real estate that is the subject of the transaction is subject to any
- 14 encumbrance, including any tax lien, foreclosure action, legal
- 15 judgment, or other encumbrance affecting the title to the real estate, the
- 16 seller must provide written notice by certified mail, return receipt
- 17 requested, of the encumbrance to the buyer:
- 18 (1) not later than the time the land contract is executed, if the
- 19 encumbrance is created before or at the time the land contract is
- 20 executed; or
- 21 (2) not later than ten (10) business days after the encumbrance is
- 22 created, if the encumbrance is created after the land contract is
- 23 executed.
- 24 SECTION 34. IC 24-9-7-2, AS AMENDED BY P.L.181-2006,
- 25 SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 26 JULY 1, 2012]: Sec. 2. Political subdivisions may not:
- 27 (1) enact, issue, or enforce ordinances, resolutions, regulations,
- 28 orders, requests for proposals, or requests for bids pertaining to
- 29 financial or lending activities, including ordinances, resolutions,
- 30 and rules that disqualify persons from doing business with a
- 31 municipality and that are based upon lending terms or practices;
- 32 or
- 33 (2) impose reporting requirements or any other obligations upon
- 34 persons regarding financial services or lending practices or upon
- 35 subsidiaries or affiliates that:
- 36 (A) are subject to the jurisdiction of the department of
- 37 financial institutions;
- 38 (B) are subject to the jurisdiction or regulatory supervision of
- 39 the Board of Governors of the Federal Reserve System, the
- 40 Office of the Comptroller of the Currency, ~~the Office of Thrift~~
- 41 ~~Supervision,~~ the National Credit Union Administration, the
- 42 Federal Deposit Insurance Corporation, the Federal Trade

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- 1 Commission, or the United States Department of Housing and
- 2 Urban Development;
- 3 (C) are chartered by the United States Congress to engage in
- 4 secondary market mortgage transactions;
- 5 (D) are created by the Indiana housing and community
- 6 development authority; or
- 7 (E) originate, purchase, sell, assign, securitize, or service
- 8 property interests or obligations created by financial
- 9 transactions or loans made, executed, originated, or purchased
- 10 by persons referred to in clauses (A), (B), (C), or (D).

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

- 15 (1) "Financial institution" means any bank, trust company,
- 16 corporate fiduciary, savings association, credit union, savings
- 17 bank, bank of discount and deposit, or industrial loan and
- 18 investment company organized or reorganized under the laws of
- 19 this state, and includes licensees under IC 24-4.4 and IC 24-4.5.
- 20 (2) "Bank" or "bank or trust company" means a financial
- 21 institution organized or reorganized as a bank, bank of discount
- 22 and deposit, or trust company under the laws of this state with the
- 23 express power to receive and accept deposits of money subject to
- 24 withdrawal by check, and possessing such other rights and powers
- 25 granted by the provisions of this article in express terms or by
- 26 implication. The term "bank" or "bank or trust company" does not
- 27 include a savings association, credit union, or industrial loan and
- 28 investment company.
- 29 (3) "Domestic corporation" means a corporation formed under the
- 30 laws of this state, and "foreign corporation" means every other
- 31 corporation.
- 32 (4) "Articles of incorporation" includes both the original articles
- 33 of incorporation and any and all amendments thereto, except
- 34 where the original articles of incorporation only are expressly
- 35 referred to, and includes articles of merger and consolidation, and,
- 36 in the case of corporations organized before July 1, 1933, articles
- 37 of reorganization, and all amendments thereto.
- 38 (5) "Incorporator" means one (1) of the signers of the original
- 39 articles of incorporation.
- 40 (6) "Subscriber" means one who subscribes for shares of stock in
- 41 a financial institution.
- 42 (7) "Shareholder" means one who is a holder of record of shares

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- 1 of stock in a financial institution.
- 2 (8) "Capital stock" means the aggregate amount of the par value
- 3 of all shares of capital stock.
- 4 (9) "Capital" means the aggregate amount paid in on the shares of
- 5 capital stock of a financial institution issued and outstanding.
- 6 (10) "Capital and surplus" or "unimpaired capital and unimpaired
- 7 surplus" has the meaning set forth in 12 CFR 32.2.
- 8 (11) "Assets" includes all of the property and rights of every kind
- 9 of a financial institution, and the term "fixed assets" means such
- 10 assets as are not intended to be sold or disposed of in the ordinary
- 11 course of business.
- 12 (12) "Principal office" means that office maintained by the
- 13 financial institution in this state, the address of which is required
- 14 by the provisions of this article to be kept on file in the office of
- 15 the secretary of state.
- 16 (13) "Subscription" means any written agreement or undertaking,
- 17 accepted by a financial institution, for the purchase of shares of
- 18 capital stock in the financial institution.
- 19 (14) "Department" means the department of financial institutions.
- 20 (15) "Member" means a member of the department of financial
- 21 institutions.
- 22 (16) "Branch" means any office, agency, **mobile unit, messenger**
- 23 **service**, or other place of business ~~other than the principal office~~
- 24 ~~of a financial institution~~; at which deposits are received, checks
- 25 paid, or money lent. **The term does not include:**
- 26 (A) **the principal office of a bank;**
- 27 (B) **the principal office of an affiliate;**
- 28 (C) **a branch of an affiliate;**
- 29 (D) **an automated teller machine;**
- 30 (E) **a night depository;**
- 31 (F) **a temporary facility authorized in IC 28-2-13-22.5;**
- 32 (G) **a loan production office;**
- 33 (H) **a deposit production office; or**
- 34 (I) **other service delivery mechanisms not considered by**
- 35 **the director to be a branch.**
- 36 (17) "Subsidiary" means any foreign or domestic corporation or
- 37 limited liability company in which the parent bank, savings bank,
- 38 savings association, or industrial loan and investment company
- 39 had at least eighty percent (80%) ownership before July 1, 1999,
- 40 or is formed or acquired in accordance with IC 28-13-16 after
- 41 June 30, 1999.
- 42 (18) "Savings bank" means a financial institution that:

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- 1 (A) was organized, reorganized, or operating under IC 28-6  
 2 (before its repeal) before January 1, 1993;  
 3 (B) is formed as the result of a conversion under:  
 4 (i) IC 28-1-21.7;  
 5 (ii) IC 28-1-21.8;  
 6 (iii) IC 28-1-21.9; or  
 7 (iv) IC 28-1-30; or  
 8 (C) is incorporated under IC 28-12.  
 9 (19) "Corporate fiduciary" means a financial institution whose  
 10 primary business purpose is to engage in the trust business (as  
 11 defined in IC 28-14-1-8) and the execution and administration of  
 12 fiduciary accounts as a nondepository trust company incorporated  
 13 under Indiana law.  
 14 SECTION 36. IC 28-1-2-23, AS AMENDED BY P.L.89-2011,  
 15 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 16 JULY 1, 2012]: Sec. 23. (a) A corporation or an individual acting  
 17 directly, indirectly, or through or in concert with one (1) or more other  
 18 corporations or individuals may not acquire control of any bank, trust  
 19 company, stock savings bank, holding company, corporate fiduciary,  
 20 or industrial loan and investment company unless the department has  
 21 received and approved an application for change in control. The  
 22 department has not more than one hundred twenty (120) days following  
 23 receipt of an application to issue a notice approving the proposed  
 24 change in control. The application shall contain the name and address  
 25 of the corporation, individual, or individuals who propose to acquire  
 26 control.  
 27 (b) The period for approval under subsection (a) may be extended:  
 28 (1) in the discretion of the director for an additional thirty (30)  
 29 days; and  
 30 (2) not to exceed two (2) additional times for not more than  
 31 forty-five (45) days each time if:  
 32 (A) the director determines that the corporation, individual, or  
 33 individuals who propose to acquire control have not submitted  
 34 substantial evidence of the qualifications described in  
 35 subsection (c);  
 36 (B) the director determines that any material information  
 37 submitted is substantially inaccurate; or  
 38 (C) the director has been unable to complete the investigation  
 39 of the corporation, individual, or individuals who propose to  
 40 acquire control because of any delay caused by or the  
 41 inadequate cooperation of the corporation, individual, or  
 42 individuals.

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1 (c) The department shall issue a notice approving the application  
 2 only after it has become satisfied that both of the following apply:  
 3 (1) The corporation, individual, or individuals who propose to  
 4 acquire control are qualified by competence, experience,  
 5 character, and financial responsibility to control and operate the  
 6 bank, trust company, stock savings bank, bank holding company,  
 7 corporate fiduciary, or industrial loan and investment company in  
 8 a legal and proper manner.  
 9 (2) The interests of the stockholders, depositors, and creditors of  
 10 the bank, trust company, stock savings bank, bank holding  
 11 company, corporate fiduciary, or industrial loan and investment  
 12 company and the interests of the public generally will not be  
 13 jeopardized by the proposed change in control.  
 14 (d) As used in this section, "holding company" means any company  
 15 (as defined in IC 28-2-15-5 before July 1, 1992, and as defined in  
 16 IC 28-2-16-5 beginning July 1, 1992) that directly or indirectly controls  
 17 one (1) or more state chartered financial institutions.  
 18 (e) As used in this section, "control", "controlling", "controlled by",  
 19 or "under common control with" means possession of the power  
 20 directly or indirectly to:  
 21 (1) direct or cause the direction of the management or policies of  
 22 a bank, a trust company, a holding company, a corporate  
 23 fiduciary, or an industrial loan and investment company, whether  
 24 through the beneficial ownership of voting securities, by contract,  
 25 or otherwise; or  
 26 (2) vote at least twenty-five percent (25%) of voting securities of  
 27 a bank, a trust company, a holding company, a corporate  
 28 fiduciary, or an industrial loan and investment company, whether  
 29 the voting rights are derived through the beneficial ownership of  
 30 voting securities, by contract, or otherwise.  
 31 (f) The director may determine, in the director's discretion, that  
 32 subsection (a) does not apply to a transaction if the director determines  
 33 that the direct or beneficial ownership of the bank, trust company, stock  
 34 savings bank, holding company, corporate fiduciary, or industrial loan  
 35 and investment company will not change as a result of the transaction.  
 36 (g) The president or other chief executive officer of a financial  
 37 institution or holding company shall report to the director any transfer  
 38 or sale of shares of stock of the financial institution or holding  
 39 company that results in direct or indirect ownership by a stockholder  
 40 or an affiliated group of stockholders of at least ten percent (10%) of  
 41 the outstanding stock of the financial institution or holding company.  
 42 The report required by this ~~section~~ **subsection** must be made not later

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1 than ten (10) days after the **president or other chief executive officer**  
 2 **becomes aware of the** transfer of the shares of stock on the books of  
 3 the financial institution or holding company.

4 **(h) To assist the department in making a determination under**  
 5 **subsection (c), the director may conduct any investigation the**  
 6 **director determines is warranted, including any background check**  
 7 **described in IC 28-11-5-4.5.**

8 **(i) This subsection applies to a transaction described in 12 CFR**  
 9 **303.83(b)(1), including the following:**

10 **(1) The acquisition of voting shares through inheritance.**

11 **(2) The acquisition of voting shares through a bona fide gift.**

12 **(3) The acquisition of voting shares in satisfaction of a debt**  
 13 **previously contracted in good faith, other than the acquisition**  
 14 **of a defaulted loan secured by a controlling amount of the**  
 15 **voting securities of a bank, trust company, stock savings bank,**  
 16 **bank holding company, corporate fiduciary, or industrial loan**  
 17 **and investment company.**

18 **In a transaction to which this subsection applies, the acquiring**  
 19 **person shall use the person's best effort to comply with the**  
 20 **requirements of this section. However, it is not a violation of this**  
 21 **section if the acquiring person is not able to satisfy the**  
 22 **requirements of this section and notifies the department of the**  
 23 **acquisition not later than thirty (30) calendar days after the**  
 24 **acquisition and provides any relevant information requested by the**  
 25 **department. This subsection does not limit the authority of the**  
 26 **department to conduct any investigation necessary to approve or**  
 27 **disapprove the transaction under subsection (c).**

28 SECTION 37. IC 28-1-5-2, AS AMENDED BY P.L.35-2010,  
 29 SECTION 111, IS AMENDED TO READ AS FOLLOWS  
 30 [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) Every corporation has the  
 31 capacity to act that is possessed by a natural person, but has the  
 32 authority to perform only those acts that are necessary, convenient, or  
 33 expedient to accomplish the purposes for which it is formed and that  
 34 are not repugnant to law.

35 (b) Subject to any limitations or restrictions imposed by law or by  
 36 the articles of incorporation, each corporation has the following general  
 37 rights, powers, and privileges:

38 (1) To continue as a corporation, under its corporate name, for the  
 39 period limited in its articles of incorporation, or, if the period is  
 40 not so limited, then perpetually.

41 (2) To sue and be sued in its corporate name.

42 (3) To have a corporate seal and to alter such seal at its pleasure.



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- 1 (4) To acquire, own, hold, use, lease, mortgage, pledge, sell,
- 2 convey, or otherwise dispose of property, real and personal,
- 3 tangible and intangible, in the manner and to the extent
- 4 hereinafter provided.
- 5 (5) To borrow money and to mortgage or pledge its property to
- 6 secure the payment thereof, in the manner and to the extent
- 7 hereinafter provided; but no financial institution having power to
- 8 accept deposits of money shall pledge any of the assets of such
- 9 financial institution as security for the safekeeping and prompt
- 10 payment of any money so deposited, except that any such
- 11 financial institution may, for the safekeeping and prompt payment
- 12 of any money so deposited, give security of the kind authorized by
- 13 any statute of this state or by the Congress of the United States.
- 14 Notwithstanding this subdivision, a financial institution may
- 15 receive deposits of state and federal public funds and may pledge
- 16 securities or other assets for the repayment of deposits if the
- 17 pledge is permitted by applicable law or regulation.
- 18 (6) To conduct business in this state and elsewhere.
- 19 (7) To appoint such officers and agents as the business of the
- 20 corporation may require and to do the following with respect to
- 21 any officers or agents appointed:
  - 22 (A) Define their duties.
  - 23 (B) Fix their compensation, which may include compensation
  - 24 paid pursuant to any plan of deferred compensation approved
  - 25 by the corporation's board of directors.
  - 26 (C) Enter into employment contracts with the corporation's
  - 27 officers and agents which set forth terms and conditions of
  - 28 employment.
  - 29 (D) Provide the corporation's officers, agents, and employees
  - 30 with individual or group life insurance.
  - 31 (E) Procure and maintain in effect for the benefit of the bank,
  - 32 insurance on the life or lives of designated officers or
  - 33 directors.
- 34 (8) To make bylaws for the government and regulation of its
- 35 affairs.
- 36 (9) To cease doing business and to dissolve and surrender its
- 37 corporate franchise.
- 38 (10) To do all acts and things necessary, convenient, or expedient
- 39 to carry out the purposes for which it is formed.
- 40 (c) Subject to any limitations or restrictions that the department **or**
- 41 **a federal regulator** may impose by **regulation**, rule, **or** policy, **or**
- 42 **guidance**, each corporation may purchase and hold life insurance as

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- 1 follows:
- 2 (1) Life insurance purchased or held in connection with employee
- 3 compensation or benefit plans approved by the corporation's
- 4 board of directors.
- 5 (2) Life insurance purchased or held to recover the cost of
- 6 providing preretirement or postretirement employee benefits
- 7 approved by the corporation's board of directors.
- 8 (3) Life insurance on the lives of borrowers.
- 9 (4) Life insurance held as security for a loan.
- 10 (5) Life insurance that a national bank may purchase or hold
- 11 under 12 U.S.C. 24 (Seventh).
- 12 SECTION 38. IC 28-1-7-1, AS AMENDED BY P.L.35-2010,
- 13 SECTION 112, IS AMENDED TO READ AS FOLLOWS
- 14 [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) As used in this chapter,
- 15 "corporation" means:
- 16 (1) a bank;
- 17 (2) a trust company;
- 18 (3) a corporate fiduciary;
- 19 (4) a savings bank organized, reorganized, or formed as a result
- 20 of a conversion after December 31, 1992;
- 21 (5) a savings association; or
- 22 (6) an industrial loan and investment company that maintains
- 23 federal deposit insurance.
- 24 **(b) As used in this chapter, "shareholder", with respect to a:**
- 25 **(1) mutual savings bank; or**
- 26 **(2) mutual saving association;**
- 27 **refers to a member of the mutual savings bank or mutual savings**
- 28 **association.**
- 29 ~~(b)~~ **(c)** Any two (2) or more corporations that are organized or
- 30 reorganized under the laws of any state (as defined in IC 28-2-17-19)
- 31 or of the United States may merge into one (1) of such corporations, or
- 32 may consolidate into a new corporation, to be organized under
- 33 IC 28-12, by complying with the provisions of this chapter.
- 34 ~~(c)~~ **(d)** A savings bank organized before January 1, 1993, may under
- 35 section 25 of this chapter merge, consolidate, or join together with a
- 36 bank or trust company. Except as provided in section 25 of this chapter,
- 37 all other provisions of this chapter apply to the merger, consolidation,
- 38 or joining together.
- 39 ~~(d)~~ **(e)** A corporation organized or reorganized under the laws of a
- 40 state (as defined in IC 28-2-17-19) or of the United States may merge
- 41 or consolidate with one (1) or more of its affiliates (as defined in
- 42 IC 28-1-18.2-1) by complying with all the provisions of this chapter. In

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1 effecting a merger or consolidation between a corporation and an  
 2 affiliate, this chapter applies as if the affiliate were a corporation except  
 3 that a noncorporation survivor of a merger or consolidation does not  
 4 retain powers of the corporation.

5 SECTION 39. IC 28-1-7-4, AS AMENDED BY P.L.35-2010,  
 6 SECTION 113, IS AMENDED TO READ AS FOLLOWS  
 7 [EFFECTIVE JULY 1, 2012]: Sec. 4. (a) After the resolutions  
 8 approving a joint agreement of merger have been adopted by the board  
 9 of directors of each of the corporations, such resolutions and joint  
 10 agreement shall be submitted for approval by the department. **Subject**  
 11 **to any approvals required under federal law**, the department may,  
 12 in its discretion, approve or disapprove the resolution and joint  
 13 agreement.

14 (b) In deciding whether to approve or disapprove a resolution and  
 15 joint agreement under this section, the department shall consider the  
 16 following factors:

- 17 (1) Whether the institutions subject to the proposed transaction  
 18 are operated in a safe, sound, and prudent manner.
- 19 (2) Whether the financial condition of any institution subject to  
 20 the proposed transaction will jeopardize the financial stability of  
 21 any other institutions subject to the proposed transaction.
- 22 (3) Whether the proposed transaction under this chapter will  
 23 result in an institution that has inadequate capital, unsatisfactory  
 24 management, or poor earnings prospects.
- 25 (4) Whether the proposed transaction, in the department's  
 26 judgment and considering the available information under the  
 27 prevailing circumstances, will result in an institution that is more  
 28 favorable to the stakeholders than if the entities were to remain  
 29 separate.
- 30 (5) Whether the management or other principals of the institution  
 31 that will result from the proposed transaction under this chapter  
 32 are qualified by character and financial responsibility to control  
 33 and operate in a legal and proper manner the resulting institution.
- 34 (6) Whether the institutions subject to the proposed transaction  
 35 under this chapter furnish all the information the department  
 36 requires in reaching the department's decision.

37 SECTION 40. IC 28-1-7-21 IS AMENDED TO READ AS  
 38 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 21. **(a) This section**  
 39 **does not apply to a shareholder of a:**

- 40 **(1) mutual savings bank; or**
- 41 **(2) mutual savings association;**

42 **that is the subject of a proposed merger or consolidation under this**

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**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 ~~(e)~~; **(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

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1 within the time provided in this section; or

2 (5) a court of competent jurisdiction determines that the  
3 shareholder is not entitled to the relief provided by this section.

4 (f) (g) Within ten (10) days after the merger or consolidation is  
5 effected, the surviving or new corporation shall mail or deliver written  
6 notice of the date of that action to each dissenting shareholder who has  
7 made demand under this section. For purposes of giving this notice, the  
8 corporation shall use the shareholder's address which appears on the  
9 corporate records. In the notice the corporation shall include a written  
10 offer to the shareholder to pay for the shareholder's shares at a specified  
11 price considered by the corporation to be the value of them. If within  
12 thirty (30) days after the date on which the merger or consolidation was  
13 effected the value of the shares is agreed upon between a dissenting  
14 shareholder and the surviving or new corporation, the surviving or new  
15 corporation shall make payment to the shareholder for the shares. The  
16 surviving or new corporation shall make the payment within ninety  
17 (90) days after the date on which the merger or consolidation was  
18 effected, upon surrender of the certificate or certificates representing  
19 the shares. Upon payment of the agreed value, the dissenting  
20 shareholder ceases to have any interest in the shares.

21 (g) (h) If within the period of thirty (30) days a dissenting  
22 shareholder and the surviving or new corporation do not so agree, then  
23 either the corporation or the dissenting shareholder may file a petition  
24 in any circuit or superior court in the county in Indiana where the  
25 principal office of the corporation is located requesting that the court  
26 determine the value of the shares. However, the petition must be filed  
27 within ninety (90) days after the effective date of the merger or  
28 consolidation. Two (2) or more dissenting shareholders may join as  
29 plaintiffs or be joined as defendants in the action, and two (2) or more  
30 actions may be transferred and consolidated to avoid inconsistent  
31 results and promote judicial economy. The jurisdiction of the court is  
32 plenary and exclusive.

33 (h) (i) The court shall render judgment against the surviving or new  
34 corporation for payment of an amount equal to the value of each  
35 dissenting share multiplied by the number of dissenting shares that any  
36 dissenting shareholder who is a party is entitled to require the surviving  
37 or new corporation to purchase. The judgment is payable only upon the  
38 endorsement and delivery to the surviving or new corporation of the  
39 certificates for the shares described in the judgment. Any party may  
40 appeal from the judgment.

41 (i) (j) Within twenty (20) days after the merger or consolidation is  
42 effected, the shareholder shall submit the certificate or certificates

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1 representing the shareholder's shares to the corporation for notation on  
 2 the certificate or certificates that demand for payment has been made.  
 3 The shareholder's failure to do so, at the option of the corporation,  
 4 terminates the shareholder's rights under this section unless a court of  
 5 competent jurisdiction, for good and sufficient cause shown, otherwise  
 6 directs. If shares represented by a certificate on which notation has  
 7 been so made are transferred, each new certificate issued for those  
 8 shares shall bear a similar notation together with the name of the  
 9 original dissenting holder of the shares, and a transferee of the shares  
 10 acquires by the transfer no rights in the corporation other than those  
 11 which the original dissenting shareholder had after making demand for  
 12 payment of the value of the shares.

13 SECTION 41. IC 28-1-7.1-8, AS ADDED BY P.L.89-2011,  
 14 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 15 JULY 1, 2012]: Sec. 8. A majority of the board of directors of a  
 16 depository financial institution with mutual ownership must adopt a  
 17 plan of voluntary supervisory conversion. The plan adopted must  
 18 include the following:

- 19 (1) The name and address of the depository financial institution.
- 20 (2) The name and address of each proposed purchaser of  
 21 conversion shares and a description of that purchaser's  
 22 relationship to the depository financial institution.
- 23 (3) The title, per unit par value, number, and per unit and  
 24 aggregate offering price of shares that the converted depository  
 25 financial institution will issue.
- 26 (4) The number and percentage of shares that each investor will  
 27 purchase or acquire in a merger or other combination.
- 28 (5) The aggregate number and percentage of shares that each  
 29 director or officer of the converted depository financial  
 30 institution, and any affiliates (**as defined in IC 28-1-18.2-1**) or  
 31 associates (**as defined in 12 CFR 563b.25**) of the director or  
 32 officer, will purchase.
- 33 (6) A description of any liquidation account to be established in  
 34 connection with the voluntary supervisory conversion.
- 35 (7) Certified copies of all resolutions of the board of directors of  
 36 the depository financial institution relating to the conversion.

37 SECTION 42. IC 28-1-7.1-9, AS ADDED BY P.L.89-2011,  
 38 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 39 JULY 1, 2012]: Sec. 9. The following information and documents must  
 40 be included in an application for a voluntary supervisory conversion  
 41 made to the department:

- 42 (1) Evidence establishing that the depository financial institution



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- 1 with mutual ownership meets the eligibility requirements set forth  
2 in this chapter.
- 3 (2) An opinion of qualified, independent counsel or of an  
4 independent, certified public accountant concerning the tax  
5 consequences of the conversion, or an IRS ruling indicating that  
6 the transaction qualifies as a tax free reorganization.
- 7 (3) A plan of voluntary supervisory conversion that complies with  
8 section 8 of this chapter.
- 9 (4) A business plan, when required by the department.
- 10 (5) The depository financial institution's most recent audited  
11 financial statements and call report.
- 12 (6) A detailed explanation of how the current capital levels make  
13 the depository financial institution eligible to engage in a  
14 voluntary supervisory conversion under this chapter.
- 15 (7) A description of the estimated conversion expenses.
- 16 (8) Evidence supporting the value of any noncash asset  
17 contributions. Appraisals must be acceptable to the department  
18 and each noncash asset must meet all other department policy  
19 guidelines.
- 20 (9) Pro forma financial statements that reflect the effects of the  
21 transaction. The depository financial institution must identify its  
22 tangible, core, and risk based capital levels and show the  
23 adjustments necessary to compute the pro forma capital levels.  
24 The depository financial institution must prepare its pro forma  
25 statements in conformance with department regulations and  
26 policy.
- 27 (10) The proposed articles of incorporation and bylaws, if any, of  
28 the depository financial institution formed as a result of the  
29 voluntary supervisory conversion.
- 30 (11) The proposed stock certificate form, if any, for the depository  
31 financial institution formed as a result of the voluntary  
32 supervisory conversion.
- 33 (12) A copy of any agreements between the depository financial  
34 institution formed as a result of the voluntary supervisory  
35 conversion and proposed purchasers.
- 36 (13) A copy and description of all existing and proposed  
37 employment contracts. The depository financial institution formed  
38 as a result of the voluntary supervisory conversion must include  
39 information describing the term, salary, and severance provisions  
40 of the contract, the identity and background of the officer or  
41 employee to be employed, and the amount of any conversion  
42 shares to be purchased by the officer or employee or his or her

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- 1 affiliates (as defined in IC 28-1-18.2-1) or associates (as defined
- 2 in 12 CFR 563b.25).
- 3 (14) Any:
- 4 (A) required filings under federal law; or
- 5 (B) waivers of compliance with federal law obtained as a
- 6 result of conflicts with state law.
- 7 (15) Applications for permission to organize a stock association
- 8 and for approval of a merger, if applicable, and a copy of any
- 9 application for Federal Home Loan Bank membership or FDIC
- 10 insurance of accounts, if applicable.
- 11 (16) A statement describing any other applications required under
- 12 federal or state banking laws for all transactions related to the
- 13 conversion, copies of all dispositive documents issued by
- 14 regulatory authorities relating to the applications, and, if
- 15 requested by the department, copies of the applications and
- 16 related documents.
- 17 (17) A description of any of the features of the application that do
- 18 not conform to the requirements of this section, including any
- 19 request for waiver of such requirements.
- 20 **(18) An opinion of counsel acceptable to the department as to**
- 21 **the legality of the voluntary supervisory conversion.**
- 22 **(19) Any other information or documents requested by the**
- 23 **director.**

24 SECTION 43. IC 28-1-8-0.7 IS ADDED TO THE INDIANA CODE  
 25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 26 1, 2012]: **Sec. 0.7. As used in this chapter, "shareholder", with**  
 27 **respect to a:**

- 28 (1) mutual savings bank; or
- 29 (2) mutual saving association;
- 30 **refers to a member of the mutual savings bank or mutual savings**
- 31 **association.**

32 SECTION 44. IC 28-1-8-1 IS AMENDED TO READ AS  
 33 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. ~~Any bank, trust~~  
 34 ~~company, corporate fiduciary, savings bank organized after December~~  
 35 ~~31, 1992, bank of discount and deposit, or building and loan~~  
 36 ~~association~~ **A corporation** may sell, lease, exchange, or otherwise  
 37 dispose of all or substantially all of its property and assets, including  
 38 good will, by complying with the provisions of this chapter.

39 SECTION 45. IC 28-1-8-2 IS AMENDED TO READ AS  
 40 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. A sale, lease,  
 41 exchange, or other disposition described in section 1 of this chapter  
 42 must first be proposed by the board of directors by the adoption of a

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- 1 resolution that:
- 2 (1) sets forth the terms and conditions of the sale, lease, exchange,
- 3 or other disposition; and
- 4 (2) directs that the proposed disposition be submitted to a vote of
- 5 the ~~stockholders~~ **shareholders** at the annual meeting or a special
- 6 meeting.
- 7 The meeting shall be called by the resolution and notice of the meeting
- 8 shall be given in the manner provided in IC 28-13-5-8.
- 9 SECTION 46. IC 28-1-8-3, AS AMENDED BY P.L.35-2010,
- 10 SECTION 114, IS AMENDED TO READ AS FOLLOWS
- 11 [EFFECTIVE JULY 1, 2012]: Sec. 3. (a) Before a proposed disposition
- 12 described in section 1 of this chapter is submitted to a vote of the
- 13 shareholders, the resolution proposing the disposition shall be
- 14 submitted for the approval of the department.
- 15 (b) **Subject to section 5(c) of this chapter, and any approvals**
- 16 **required under federal law**, the department may approve a resolution
- 17 if the corporation has and will have assets in excess of the corporation's
- 18 liabilities and either of the following applies:
- 19 (1) The corporation intends to merge out of existence under
- 20 IC 28-1-7-1.
- 21 (2) The corporation intends to voluntarily dissolve under
- 22 IC 28-1-9.
- 23 (c) **An officer or a director of a corporation whose proposed**
- 24 **disposition is approved by the department under subsection (b)**
- 25 **may not negotiate for or receive any economic benefit in**
- 26 **connection with any sale of assets under this chapter, except for:**
- 27 (1) **compensation and other benefits paid to the officer or**
- 28 **director and to officers and directors of the purchasing**
- 29 **institution in the ordinary course of business;**
- 30 (2) **any economic benefit realized by all shareholders as a**
- 31 **result of the disposition; or**
- 32 (3) **any economic benefit received as part of a compensation**
- 33 **or benefit plan existing at the time of the disposition and**
- 34 **approved before the initiation of sale negotiations.**
- 35 (d) If the department approves a resolution submitted under this
- 36 section, the department shall:
- 37 (1) write or stamp on the resolution:
- 38 (A) the words "Approved by the Department of Financial
- 39 Institutions of the State of Indiana"; and
- 40 (B) the date of the approval; and
- 41 (2) place the impression of the seal of the department and the
- 42 signature of the director or the director's authorized designee



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1           beneath the approval stamp.

2           SECTION 47. IC 28-1-8-5 IS AMENDED TO READ AS

3 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. (a) **Subject to**

4 **subsection (c)**, the rights of dissenting shareholders in **the** case of a

5 merger or consolidation, as set forth in IC 28-1-7-21, apply to the sale,

6 lease, exchange, or other disposition of the property and assets of a

7 corporation under this chapter. Any dissenting shareholder shall have

8 such rights and remedies as provided for in IC 28-1-7-21.

9           (b) For purposes of the application of IC 28-1-7-21 to this chapter,

10 the "effective date" of a sale, lease, exchange, or other disposition

11 under this chapter, within the meaning of IC 28-1-7-21, ~~shall be~~ **is** the

12 date upon which the disposition was authorized by the shareholders of

13 the corporation.

14           **(c) In a proposed disposition described in section 3(b) of this**

15 **chapter, if the corporation that is the subject of the proposed**

16 **disposition is a mutual savings bank or a mutual savings**

17 **association, the rights and remedies for dissenting shareholders set**

18 **forth in IC 28-1-7-21 do not apply.**

19           SECTION 48. IC 28-1-8-6 IS AMENDED TO READ AS

20 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. (a) Subject to the

21 approval of the department, a ~~(1) bank; (2) trust company; (3) corporate~~

22 ~~fiduciary; (4) savings bank; or (5) savings association;~~ **corporation**

23 may purchase all or substantially all of the assets of one (1) or more

24 **other** corporations that are organized or reorganized under the laws of

25 any state (as defined in IC 28-2-17-19) or the United States.

26           (b) After the board of directors of a corporation agrees to purchase

27 all or substantially all of the assets of one (1) or more corporations, the

28 board resolution approving the purchase and an application in the form

29 prescribed by the director of the department must be submitted for

30 approval by the department.

31           (c) **Subject to any approvals required under federal law**, the

32 department, in its discretion, may approve or disapprove an application

33 and a board resolution submitted under subsection (b). In deciding

34 whether to approve or disapprove the board resolution and application,

35 the department shall consider the following factors:

36           (1) Whether the institutions subject to the proposed transaction

37 are operated in a safe, sound, and prudent manner.

38           (2) Whether the financial condition of any institution subject to

39 the proposed transaction will jeopardize the financial stability of

40 any other institutions subject to the proposed transaction.

41           (3) Whether the proposed transaction under this chapter will

42 result in an institution that has inadequate capital, unsatisfactory

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1 management, or poor earnings prospects.

2 (4) Whether the management or other principals of the institution  
3 that will result from the proposed transaction under this chapter  
4 are qualified by character and financial responsibility to control  
5 and operate in a legal and proper manner the resulting institution.

6 (5) Whether the public convenience and advantage will be served  
7 by the resulting institution after the proposed transaction.

8 (6) Whether the institutions subject to the proposed transaction  
9 under this chapter furnish all of the information the department  
10 requires in reaching the department's decision.

11 **(7) If deposits are to be transferred as part of the proposed**  
12 **transaction, whether the resulting institution will maintain**  
13 **adequate federal deposit insurance or such other deposit**  
14 **insurance as approved by the director.**

15 (d) The approval of the department of the purchase of all or  
16 substantially all of the assets of one (1) or more corporations is not  
17 required under this section if the resulting corporation is a corporation  
18 organized or reorganized under the laws of:

19 (1) a state (as defined in IC 28-2-17-19) other than Indiana; or

20 (2) the United States.

21 SECTION 49. IC 28-1-11-1 IS AMENDED TO READ AS  
22 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) In addition to the  
23 general rights, privileges, and powers conferred by ~~IC 28-1-4~~ **IC 28-1-5**  
24 through IC 28-1-9 and subject to the limitations and restrictions  
25 contained in this article and in the articles of incorporation, every bank  
26 or trust company shall possess and may exercise the rights, privileges,  
27 and powers enumerated in this chapter.

28 (b) Unless the language used specifically indicates otherwise, the  
29 terms "bank or trust company" and "bank and trust company" as used  
30 in IC 28-1-11 through IC 28-1-20 mean any bank or trust company  
31 organized under this article and any bank of discount and deposit, loan  
32 and trust and safe deposit company, or trust company organized under  
33 any statute enacted prior to February 24, 1933.

34 (c) ~~As used in this chapter, "community based economic~~  
35 ~~development" refers to activities that seek to address economic causes~~  
36 ~~of poverty within specific geographic areas; revitalizing the economic~~  
37 ~~and social base of low income communities through activities that~~  
38 ~~include:~~

39 (1) ~~affordable housing development;~~

40 (2) ~~small business and micro-enterprise support;~~

41 (3) ~~commercial, industrial, and retail revitalization, retention, and~~  
42 ~~expansion;~~



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- 1 (4) capacity development and technical assistance support for
- 2 community development corporations;
- 3 (5) employment and training efforts;
- 4 (6) human resource development; and
- 5 (7) social service enterprises.

6 (d) As used in this chapter, "community development corporation"  
 7 means a private, nonprofit corporation:

- 8 (1) whose board of directors is comprised primarily of community
- 9 representatives and business, civic, and community leaders; and
- 10 (2) whose principal purpose includes the provision of:
  - 11 (A) housing;
  - 12 (B) community-based economic development projects; and
  - 13 (C) social services;

14 that primarily benefit low-income individuals and communities.

15 SECTION 50. IC 28-1-11-3.1, AS AMENDED BY P.L.35-2010,  
 16 SECTION 116, IS AMENDED TO READ AS FOLLOWS

17 [EFFECTIVE JULY 1, 2012]: Sec. 3.1. (a) Any bank or trust company  
 18 shall have the power to discount, negotiate, sell and guarantee  
 19 promissory notes, bonds, drafts, acceptances, bills of exchange, and  
 20 other evidences of debt; to buy and sell, exchange, coin and bullion; to  
 21 loan money; to borrow money and to issue its notes, bonds, or  
 22 debentures to evidence any such borrowing and to mortgage, pledge,  
 23 or hypothecate any of its assets to secure the repayment thereof; to  
 24 receive savings deposits and deposits of money subject to check, and  
 25 deposits of securities or other personal property from any person or  
 26 corporation, upon such terms as may be agreed upon by the parties; to  
 27 contract for and receive on loans and discounts the highest rate of  
 28 interest allowed by the laws of this state to be contracted for and  
 29 received by individuals; to accept, for payment at a future date, drafts  
 30 drawn upon it by its customers and to issue letters of credit authorizing  
 31 the holders thereof to draw drafts upon it or its correspondents at sight  
 32 or on time, however, the letter of credit must state a specific expiration  
 33 date; and to exercise all the powers incidental and proper or which may  
 34 be necessary and usual in carrying on a general banking business, but  
 35 it shall have no right to issue bills to circulate as money.

36 (b) Subject to such regulations, **rules, policies, and guidance** as the  
 37 department finds to be necessary and proper, any bank or trust  
 38 company shall have the following powers:

- 39 (1) To make such loans and advances of credit and purchases of
- 40 obligations representing loans and advances of credit as are
- 41 eligible for insurance by the federal housing administrator, and to
- 42 obtain such insurance.

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1 (2) To make such loans secured by mortgages on real property or  
 2 leasehold, as the federal housing administrator insures or makes  
 3 a commitment to insure, and to obtain such insurance.  
 4 (3) To purchase, invest in, and dispose of notes or bonds secured  
 5 by mortgage or trust deed insured by the federal housing  
 6 administrator or debentures issued by the federal housing  
 7 administrator, or bonds or other securities issued by national  
 8 mortgage associations.  
 9 (4) To extend credit to any state agency, with the approval of the  
 10 department, notwithstanding any other provisions or limitations  
 11 of IC 28-1. No law of this state prescribing the nature, amount, or  
 12 form of security or requiring security upon which loans or  
 13 advances of credit may be made, or prescribing or limiting  
 14 interest rates upon loans or advances of credit, or prescribing or  
 15 limiting the period for which loans or advances of credit may be  
 16 made, shall be deemed to apply to loans, advances of credit, or  
 17 purchases made pursuant to subdivisions (1), (2), and (3) and this  
 18 subdivision.  
 19 (5) To purchase, take, hold, and dispose of notes, and mortgages  
 20 securing such notes, made to any joint stock land bank heretofore  
 21 incorporated, in any case in which not less than ninety-nine  
 22 percent (99%) of the stock of said joint stock land bank is owned  
 23 by the bank or trust company at the time such notes or mortgages  
 24 be acquired by the bank or trust company; and upon dissolution  
 25 of any such joint stock land bank, or at any stage in the process of  
 26 such dissolution, any bank or trust company then owning not less  
 27 than ninety-nine percent (99%) of the stock of such joint stock  
 28 land bank may take, hold, and dispose of any notes, mortgages, or  
 29 other assets of such joint stock land bank of whatsoever nature,  
 30 including real estate, wheresoever situated, which such joint stock  
 31 land bank shall assign, transfer, convey, or otherwise make over  
 32 to such bank or trust company by way of final or partial  
 33 distribution of its assets to its stockholders upon such dissolution  
 34 or in connection with the process of such dissolution. No law of  
 35 this state prescribing the nature, amount, location, or form of  
 36 security, or requiring security upon which loans or advances of  
 37 credit may be made, or prescribing or limiting interest rates upon  
 38 loans or advances of credit, or prescribing or limiting the period  
 39 for which loan or advances of credit may be made, or prescribing  
 40 any ratio between the amount of any loan and the appraised value  
 41 of the security for such loan, or requiring periodical reductions of  
 42 the principal of any loan, shall be deemed to apply to loans, notes,

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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

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1 real estate, the bank or trust company shall divest itself of all  
 2 interest in the real estate within five (5) years from the acquisition  
 3 date of the real estate, if a branch was not opened, or five (5)  
 4 years from the removal date of the branch office, whichever  
 5 applies. Except with the written approval of the department, the  
 6 sum invested in real estate and buildings used for the convenient  
 7 transaction of its business as provided in this subdivision shall not  
 8 exceed fifty percent (50%) of the capital and surplus of the bank  
 9 or trust company as provided in section 5 of this chapter.

10 (9) Except as provided in subsections (c) and (d); and subject to  
 11 subsection (e); to invest directly or indirectly in community  
 12 development corporations and projects of a predominantly civic;  
 13 community; or public nature; including equity investments in  
 14 corporations; limited partnerships; limited liability companies; or  
 15 other entities organized for such purposes. Investments by a bank  
 16 or trust company under this subdivision may not exceed:

17 (A) in any one (1) project, two percent (2%); and

18 (B) in the aggregate, five percent (5%);

19 of the capital and surplus of the bank or trust company. As used  
 20 in this subdivision and in subsection (c), "capital and surplus" has  
 21 the meaning set forth in IC 28-1-1-3(10).

22 (10) (9) Subject to section 3.2 of this chapter, to exercise the  
 23 rights and privileges (as defined in section 3.2(a) of this chapter)  
 24 that are or may be granted to national banks domiciled in Indiana.

25 (e) Investments by a bank or trust company under subsection (b)(9)  
 26 may exceed the limit set forth in subsection (b)(9)(B) if the director  
 27 determines that:

28 (1) the aggregate investments by the bank or trust company under  
 29 subsection (b)(9) in excess of five percent (5%) of the capital and  
 30 surplus of the bank or trust company will not pose a significant  
 31 risk to the affected deposit insurance fund; and

32 (2) the bank or trust company is adequately capitalized.

33 However, in no case shall the aggregate investments by a bank or trust  
 34 company under subsection (b)(9) exceed ten percent (10%) of the  
 35 capital and surplus of the bank or trust company.

36 (d) Investments by a bank or trust company under subsection (b)(9)  
 37 in equity investments qualifying for the new markets tax credits under  
 38 26 U.S.C. 45D or other programs approved by the director:

39 (1) are not subject to the limit set forth in subsection (b)(9)(A);  
 40 and

41 (2) may exceed the limit set forth in subsection (b)(9)(B) if the  
 42 director determines that:

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1 (A) the aggregate equity investments qualifying for the new  
2 markets tax credit or other programs that are:

3 (i) made by the bank or trust company under subsection  
4 (b)(9); and

5 (ii) in excess of five percent (5%) of the capital and surplus  
6 of the bank or trust company;

7 will not pose a significant risk to the affected deposit  
8 insurance fund; and

9 (B) the bank or trust company is adequately capitalized.

10 However, in no case shall the aggregate equity investments  
11 qualifying for the new markets tax credit or other programs and  
12 made by a bank or trust company exceed fifteen percent (15%) of  
13 the capital and surplus of the bank or trust company.

14 (e) A bank or trust company shall not make any investment under  
15 subsection (b)(9) if the investment would expose the bank or trust  
16 company to unlimited liability.

17 (f) (c) Any rule made and promulgated under and pursuant to this  
18 section may apply to one (1) or more banks or trust companies or to one  
19 (1) or more localities in the state as the department, in its discretion,  
20 may determine.

21 SECTION 51. IC 28-1-11-4, AS AMENDED BY P.L.89-2011,  
22 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
23 JULY 1, 2012]: Sec. 4. (a) Except as otherwise provided in this article,  
24 the business of dealing in investment securities by any bank or trust  
25 company is limited to purchasing and selling securities without  
26 recourse, solely upon the order and for the account of customers and in  
27 no event for its own account. A bank or trust company may not  
28 underwrite or guarantee all or any part of any issue of securities other  
29 than obligations issued or guaranteed by or on behalf of the state or any  
30 political subdivision of the state or any agency or instrumentality of  
31 either. A bank or trust company may purchase for its own account and  
32 sell investment securities under such limitations and restrictions as the  
33 department prescribes by **regulation, rule, policy, or guidance**, but in  
34 no event may the total amount of the investment securities of any one  
35 (1) obligor or maker, purchased or held by a bank or trust company for  
36 its own account, exceed at any time ten percent (10%) of the amount  
37 of the total equity capital of the bank or trust company. The limitations  
38 imposed by this section do not apply to the direct or indirect obligations  
39 of the United States or the direct obligations of a United States territory  
40 or insular possession or of the state of Indiana or any municipal  
41 corporation or taxing district in Indiana. A bank or trust company may  
42 purchase for its own account and sell shares of stock in federal or state

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1 chartered small business investment companies that have received a  
 2 permit or license to operate under the federal Small Business  
 3 Investment Act (15 U.S.C. 681). However, a bank or trust company  
 4 may not acquire shares in any small business investment company if,  
 5 upon the making of that acquisition, the aggregate amount of shares in  
 6 small business investment companies then held by the bank would  
 7 exceed five percent (5%) of its total equity capital.

8 (b) A bank or trust company may purchase for its own account and  
 9 sell:

10 (1) shares of open-end investment companies the portfolios of  
 11 which consist solely of securities that are eligible for purchase  
 12 and sale by national banking associations; and

13 (2) collateralized obligations that are eligible for purchase and  
 14 sale by national banking associations. However, a bank or trust  
 15 company may purchase for its own account and sell the  
 16 obligations only to the extent that a national banking association  
 17 can purchase and sell those obligations.

18 (c) A bank or trust company may deposit its funds in:

19 (1) a federally chartered savings association; or

20 (2) a savings association or other entity organized and operated  
 21 according to federal law or the laws of any state or the District of  
 22 Columbia;

23 the accounts of which are insured by the Federal Deposit Insurance  
 24 Corporation.

25 (d) A bank or trust company may not purchase for its own account  
 26 any bond, note, or other evidence of indebtedness that is commonly  
 27 designated as a security that is speculative in character or that has  
 28 speculative characteristics. For the purposes of this subsection, a  
 29 security is speculative or has speculative characteristics if at the time  
 30 of purchase the security:

31 (1) is rated below the first four (4) rating classes by a generally  
 32 recognized security rating service;

33 (2) is in default; or

34 (3) is otherwise considered speculative by the director.

35 (e) A bank or trust company may purchase for its own account a  
 36 security that is not rated by a generally recognized security rating  
 37 service if:

38 (1) the bank or trust company at the time of purchase obtains  
 39 financial information that is adequate to document the investment  
 40 quality of the security; and

41 (2) the security is not otherwise considered speculative by the  
 42 director.

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1 (f) Except as otherwise authorized by this title, a bank or trust  
 2 company may not purchase any share of stock of a corporation that is  
 3 not a subsidiary of that bank or trust company unless the purchase is  
 4 considered expedient to prevent loss from a debt previously contracted  
 5 in good faith. Any shares of stock thus acquired by a bank or trust  
 6 company that would not have been eligible for purchase shall be sold  
 7 and disposed of within six (6) months from the date of acquisition  
 8 unless the director grants an extension of time for the sale and  
 9 disposition.

10 (g) Notwithstanding any other provision of this article, a bank or  
 11 trust company may purchase for its own account shares of stock of a  
 12 banker's bank insured by the Federal Deposit Insurance Corporation or  
 13 a holding company that owns or controls a banker's bank insured by the  
 14 Federal Deposit Insurance Corporation. For the purposes of this  
 15 subsection, a "banker's bank" is a bank (as defined in IC 28-2-14-2):

16 (1) the stock of which is owned exclusively by other banks (as  
 17 defined in IC 28-2-14-2), or by a bank holding company the stock  
 18 of which is owned exclusively by other banks (as defined in  
 19 IC 28-2-14-2); and

20 (2) that is engaged exclusively in providing services to other  
 21 banks (as defined in IC 28-2-14-2), and to their officers, directors,  
 22 and employees.

23 A bank's or trust company's holdings of the stock of an insured banker's  
 24 bank or of a holding company that owns or controls an insured banker's  
 25 bank may not exceed ten percent (10%) of the capital and surplus of  
 26 the bank or trust company. A bank or trust company may not purchase  
 27 the stock of an insured banker's bank or of a holding company that  
 28 owns or controls an insured banker's bank if, after the purchase, the  
 29 bank or trust company would own more than five percent (5%) of any  
 30 class of voting securities of the banker's bank or holding company.

31 (h) Notwithstanding any other provision of this article, a bank or  
 32 trust company may invest in a casualty insurance company organized  
 33 solely for the purpose of insuring banks, trust companies, and bank  
 34 holding companies and their officers and directors from and against  
 35 liabilities, including those covered by bankers' blanket bonds and  
 36 director and officer liability insurance and other public liability  
 37 insurance. The investment must take the form of:

38 (1) the purchase for the bank's or trust company's own account of  
 39 shares of stock of the casualty insurance company or shares of  
 40 stock of an association of banks organized for the purpose of  
 41 funding the casualty insurance company; or

42 (2) loans to such an association of banks.



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1 The total investment of any bank or trust company under this  
 2 subsection may not exceed five percent (5%) of the capital and surplus  
 3 of the bank or trust company.

4 (i) Any bank or trust company may establish or acquire a subsidiary  
 5 that engages in:

6 (1) the sale, distribution, or underwriting of securities issued by  
 7 investment companies (as defined in Section 3 of the Investment  
 8 Company Act of 1940 (15 U.S.C. 80a-3); or

9 (2) the underwriting or distribution of securities backed by or  
 10 representing an interest in mortgages.

11 (j) As used in this section, "total equity capital" means unimpaired  
 12 capital stock, unimpaired surplus, unimpaired undivided profits,  
 13 subordinated debt that has been approved by the state or federal  
 14 regulatory agencies, and one hundred percent (100%) of loan reserves.

15 (k) The department may define an investment security by  
 16 department policy or by rule.

17 (l) A bank or trust company may establish a trading account for the  
 18 purchase and resale of securities that are otherwise eligible for  
 19 purchase or resale by the bank or trust company. The trading account  
 20 must comply with the requirements established by policy or rule of the  
 21 department.

22 (m) A bank or trust company that purchases a security for its own  
 23 account shall maintain sufficient records of the security to allow the  
 24 security to be properly identified by the department for examination  
 25 purposes.

26 SECTION 52. IC 28-1-11-14 IS ADDED TO THE INDIANA  
 27 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 28 [EFFECTIVE JULY 1, 2012]: **Sec. 14. (a) As used in this section,**  
 29 **"community based economic development" refers to activities that**  
 30 **seek to address economic causes of poverty within specific**  
 31 **geographic areas, revitalizing the economic and social base of low**  
 32 **income communities through activities that include:**

33 (1) affordable housing development;

34 (2) small business and micro-enterprise support;

35 (3) commercial, industrial, and retail revitalization, retention,  
 36 and expansion;

37 (4) capacity development and technical assistance support for  
 38 community development corporations;

39 (5) employment and training efforts;

40 (6) human resource development; and

41 (7) social service enterprises.

42 (b) As used in this section, "community development

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1 **corporation" means a private, nonprofit corporation:**

2 (1) whose board of directors is comprised primarily of  
3 community representatives and business, civic, and  
4 community leaders; and

5 (2) whose principal purpose includes the provision of:

6 (A) housing;

7 (B) community based economic development projects; and

8 (C) social services;

9 that primarily benefit low-income individuals and  
10 communities.

11 (c) As used in this section, "capital and surplus" has the  
12 meaning set forth in IC 28-1-1-3(10).

13 (d) Subject to the limitations of this section, other laws, and any  
14 regulation, rule, policy, or guidance adopted by the department  
15 concerning investments in community based economic  
16 development, any bank or trust company may invest directly or  
17 indirectly in equity investments in a corporation, a limited  
18 partnership, a limited liability company, or another entity  
19 organized as:

20 (1) a community development corporation;

21 (2) an entity formed primarily to support community based  
22 economic development;

23 (3) an entity qualifying for the new markets tax credits under  
24 26 U.S.C. 45D; or

25 (4) an entity approved by the director as being formed for a  
26 predominantly civic, community, or public purpose and that:

27 (A) primarily benefits low and moderate income  
28 individuals;

29 (B) primarily benefits low and moderate income areas;

30 (C) primarily benefits areas targeted for redevelopment by  
31 a government entity; or

32 (D) is a qualified investment under 12 CFR 25.23 for  
33 purposes of the Community Reinvestment Act of 1977 (12  
34 U.S.C. 2901 et seq.).

35 (e) Except as provided in subsection (f), the aggregate of all  
36 equity investments by a bank or trust company under subsection  
37 (d) may not exceed:

38 (1) five percent (5%) of the capital and surplus of the bank or  
39 trust company without the prior written approval of the  
40 director; and

41 (2) fifteen percent (15%) of the capital and surplus of the  
42 bank or trust company under any circumstances.

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1           **(f) In determining whether to permit the aggregate of all equity**  
 2 **investments by a bank or trust company under subsection (d) to**  
 3 **exceed five percent (5%) of the capital and surplus of the bank or**  
 4 **trust company under subsection (e)(1), the director shall consider**  
 5 **whether:**

6           **(1) the aggregate of all equity investments under subsection**  
 7 **(d) will pose a significant risk to the affected deposit insurance**  
 8 **fund; and**

9           **(2) the bank or trust company is adequately capitalized.**

10           **(g) A bank or trust company shall not make any investment**  
 11 **under this section if the investment would expose the bank or trust**  
 12 **company to unlimited liability.**

13           SECTION 53. IC 28-1-13-1.5 IS AMENDED TO READ AS  
 14 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1.5. (a) The total loans  
 15 and extensions of credit by a bank to a person outstanding at one (1)  
 16 time and not fully secured, as determined in a manner consistent with  
 17 subsection (b), by collateral having a market value at least equal to the  
 18 amount of the loan or extension of credit may not exceed fifteen  
 19 percent (15%) of the unimpaired capital and unimpaired surplus of the  
 20 bank.

21           (b) The total loans and extensions of credit by a bank to a person  
 22 outstanding at one (1) time and fully secured by readily marketable  
 23 collateral having a market value, as determined by reliable and  
 24 continuously available price quotations, at least equal to the amount of  
 25 the funds outstanding may not exceed ten percent (10%) of the  
 26 unimpaired capital and unimpaired surplus of the bank. The limitation  
 27 in this subsection is separate from and in addition to the limitation  
 28 contained in subsection (a).

29           **(c) The total loans and extensions of credit by a bank includes**  
 30 **any credit exposure to a person arising from a derivative**  
 31 **transaction (as defined in 12 U.S.C. 84(b)(3)) between the bank and**  
 32 **the person.**

33           SECTION 54. IC 28-1-21.4-5 IS REPEALED [EFFECTIVE JULY  
 34 1, 2012]. Sec. 5: As used in this chapter, "office of thrift supervision"  
 35 refers to the primary federal regulator of savings associations:

36           SECTION 55. IC 28-1-21.4-5.1 IS ADDED TO THE INDIANA  
 37 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 38 [EFFECTIVE JULY 1, 2012]: Sec. 5.1. As used in this chapter,  
 39 "primary federal regulator" means the federal agency primarily  
 40 responsible for the regulation of:

41           **(1) savings associations; or**

42           **(2) savings association holding companies;**



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**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:**

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1           **(1) savings associations; or**  
 2           **(2) savings association holding companies;**  
 3           **organized under the laws of any state or the United States.**

4           SECTION 59. IC 28-1-21.6-8 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8. Any savings  
 6 association may, upon approval of the department and, if required by  
 7 federal law, the ~~office of thrift supervision~~, **primary federal**  
 8 **regulator**, effect a charter conversion.

9           SECTION 60. IC 28-1-21.6-9 IS AMENDED TO READ AS  
 10 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. The department shall  
 11 prescribe procedures for charter conversions. The procedures  
 12 prescribed by the department must include the following:

13           (1) The savings association shall prepare and submit a plan of  
 14 charter conversion to the department that provides the terms and  
 15 conditions of the charter conversion as required by the  
 16 department. However, if the plan of charter conversion complies  
 17 with the requirements of the ~~Office of Thrift Supervision~~,  
 18 **primary federal regulator**, the plan shall be considered  
 19 adequate. In the case of a charter conversion by a mutual savings  
 20 association, the plan of charter conversion shall stipulate the  
 21 manner of distribution of stock in conformance with ~~Office of~~  
 22 ~~Thrift Supervision~~ **the primary federal regulator's** regulations.

23           (2) The plan of charter conversion must be adopted by not less  
 24 than a majority of the board of directors of the savings  
 25 association.

26           (3) Upon approval of a plan of charter conversion by the board of  
 27 directors of the savings association, the plan of charter conversion  
 28 and a certified copy of the resolution of the board of directors  
 29 approving the plan of charter conversion shall be submitted to the  
 30 department for approval.

31           (4) The plan of charter conversion shall be conditioned upon the  
 32 approval of not less than a majority of the total number of votes  
 33 cast at a regular or special meeting of the voting parties. In  
 34 obtaining the approval of the plan of charter conversion by the  
 35 voting parties, the converting savings association shall provide to  
 36 the voting parties the information regarding the plan of charter  
 37 conversion that the department requires. In determining the  
 38 information that must be provided, the department shall give due  
 39 consideration to the requirements of the ~~Office of Thrift~~  
 40 ~~Supervision~~ **and primary federal regulator's** regulations relating  
 41 to proxy statements governed by Section 14 of the Securities and  
 42 Exchange Act of 1934 (15 U.S.C. 78n).

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1 (5) The savings associations shall provide to the department the  
 2 additional relevant information requested by the department in  
 3 connection with the plan of charter conversion.

4 SECTION 61. IC 28-1-21.7-5 IS REPEALED [EFFECTIVE JULY  
 5 1, 2012]. Sec. 5: As used in this chapter, "office of thrift supervision"  
 6 means the primary federal regulator of savings associations or  
 7 successors of savings associations (as defined in 12 U.S.C. 1462(a)  
 8 (FIRREA Section 301)).

9 SECTION 62. IC 28-1-21.7-5.1 IS ADDED TO THE INDIANA  
 10 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 11 [EFFECTIVE JULY 1, 2012]: Sec. 5.1. As used in this chapter,  
 12 "primary federal regulator" means the federal agency primarily  
 13 responsible for the regulation of:

14 (1) savings associations; or

15 (2) savings association holding companies;

16 organized under the laws of any state or the United States.

17 SECTION 63. IC 28-1-21.7-8 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8. Any savings  
 19 association may, upon approval of the department and, if required by  
 20 federal law, the office of thrift supervision, primary federal  
 21 regulator, effect a mutual bank conversion.

22 SECTION 64. IC 28-1-21.7-9 IS AMENDED TO READ AS  
 23 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. The department shall  
 24 prescribe procedures for mutual bank conversions. The procedures  
 25 prescribed by the department must include the following:

26 (1) The savings association shall prepare and submit a plan of  
 27 mutual bank conversion to the department that provides the terms  
 28 and conditions of the mutual bank conversion as required by the  
 29 department. However, if the plan of mutual bank conversion  
 30 complies with the requirements of the Office of Thrift  
 31 Supervision, primary federal regulator, the plan shall be  
 32 considered adequate.

33 (2) The plan of mutual bank conversion must be adopted by not  
 34 less than a majority of the board of directors of the savings  
 35 association.

36 (3) Upon approval of a plan of mutual bank conversion by the  
 37 board of directors of the savings association, the plan of mutual  
 38 bank conversion and a certified copy of the resolution of the  
 39 board of directors approving the plan of mutual bank conversion  
 40 shall be submitted to the department for approval.

41 (4) The plan of mutual bank conversion shall be conditioned upon  
 42 the approval of not less than a majority of the total number of

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1 votes cast at a regular or special meeting of the voting parties. The  
 2 method used to notify the voting parties of the meeting held to  
 3 consider a plan of mutual bank conversion must be approved by  
 4 the director of the department. The director may require the  
 5 converting savings association to provide the voting parties with  
 6 information regarding the plan of mutual bank conversion.

7 (5) The savings association shall provide to the department the  
 8 additional relevant information requested by the department in  
 9 connection with the plan of mutual bank conversion.

10 SECTION 65. IC 28-1-21.8-3 IS REPEALED [EFFECTIVE JULY  
 11 1, 2012]. Sec. 3: As used in this chapter, "Office of Thrift Supervision"  
 12 refers to the primary federal regulator of savings associations.

13 SECTION 66. IC 28-1-21.8-3.1 IS ADDED TO THE INDIANA  
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 15 [EFFECTIVE JULY 1, 2012]: Sec. 3.1. As used in this chapter,  
 16 "primary federal regulator" means the federal agency primarily  
 17 responsible for the regulation of:

18 (1) savings associations; or

19 (2) savings association holding companies;

20 organized under the laws of any state or the United States.

21 SECTION 67. IC 28-1-21.8-9 IS AMENDED TO READ AS  
 22 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. (a) The department  
 23 shall prescribe procedures for stock savings bank conversions.

24 (b) The procedures prescribed by the department must include the  
 25 following:

26 (1) The savings association must prepare and submit a conversion  
 27 plan to the department that provides the terms and conditions of  
 28 the stock savings bank conversion as required by the department.  
 29 The resulting stock savings bank is not required to register its  
 30 stock under the Securities and Exchange Act of 1934 (15 U.S.C.  
 31 77b et seq.) unless required by other applicable laws or  
 32 regulations. A conversion plan is sufficient if it complies with the  
 33 requirements of the ~~Office of Thrift Supervision~~. **primary federal**  
 34 **regulator**. In case of a stock savings bank conversion by a mutual  
 35 savings association, the conversion plan must specify the manner  
 36 of distribution of stock in conformance with the ~~Office of Thrift~~  
 37 ~~Supervision~~ **primary federal regulator's** regulations unless  
 38 otherwise provided in this chapter.

39 (2) The conversion plan must be adopted by not less than a  
 40 majority of the board of directors of the savings association.

41 (3) Upon approval of the conversion plan by the board of  
 42 directors of the savings association, the conversion plan and a

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1 certified copy of the resolution of the board of directors approving  
 2 the conversion plan must be submitted to the department for  
 3 approval.

4 (4) The conversion plan must be conditioned on the approval of  
 5 not less than a majority of the total number of votes eligible to be  
 6 cast at a regular or special meeting of the voting parties. In  
 7 obtaining the approval of the conversion plan by the voting  
 8 parties, the converting savings association shall provide to the  
 9 voting parties the information regarding the conversion plan  
 10 required by the department. In determining the information that  
 11 must be provided, the department shall give due consideration to  
 12 the requirements of the ~~Office of Thrift Supervision~~ **primary**  
 13 **federal regulator's** regulations relating to proxy statements  
 14 governed by Section 14 of the Security and Exchange Act of 1934  
 15 (15 U.S.C. 78n).

16 (5) The savings association shall provide to the department  
 17 additional relevant information requested by the department  
 18 regarding the conversion plan.

19 (c) Voting parties have the voting rights provided by the bylaws or  
 20 charter of the converting savings association.

21 SECTION 68. IC 28-1-21.9-5 IS REPEALED [EFFECTIVE JULY  
 22 1, 2012]. ~~Sec. 5: As used in this chapter, "Office of Thrift Supervision"~~  
 23 ~~means the primary federal regulator of savings associations.~~

24 SECTION 69. IC 28-1-21.9-5.1 IS ADDED TO THE INDIANA  
 25 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 26 [EFFECTIVE JULY 1, 2012]: **Sec. 5.1. As used in this chapter,**  
 27 **"primary federal regulator" means the federal agency primarily**  
 28 **responsible for the regulation of:**

29 (1) **savings associations (as defined in IC 28-15-1-11); or**

30 (2) **savings association holding companies;**

31 **organized under the laws of any state or the United States.**

32 SECTION 70. IC 28-1-21.9-9 IS AMENDED TO READ AS  
 33 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. (a) The department  
 34 shall prescribe procedures for charter conversions under this chapter.

35 (b) The procedures prescribed by the department must include the  
 36 following:

37 (1) The savings bank must prepare and submit a conversion plan  
 38 to the department that provides the terms and conditions of the  
 39 charter conversion as required by the department. The conversion  
 40 plan shall stipulate the manner of distribution of stock.

41 (2) The conversion plan must be adopted by not less than a  
 42 majority of the board of directors of the savings bank.

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1 (3) Upon approval of a plan of charter conversion by the board of  
 2 directors of the savings bank, the conversion plan and a certified  
 3 copy of the resolution of the board of directors approving the  
 4 conversion plan shall be submitted to the department for approval.

5 (4) The conversion plan shall be conditioned upon the approval  
 6 of not less than a majority of the total number of votes eligible to  
 7 be cast at a regular or special meeting of the voting parties. In  
 8 obtaining the approval of the conversion plan by the voting  
 9 parties, the converting savings bank shall provide to the voting  
 10 parties the information regarding the conversion plan that the  
 11 department requires. In determining the information that must be  
 12 provided, the department shall give due consideration to the  
 13 requirements of the ~~Office of Thrift Supervision~~ **primary federal**  
 14 **regulator's** regulations relating to proxy statements governed by  
 15 Section 14 of the Securities Exchange Act of 1934 (15 U.S.C.  
 16 78n).

17 (5) The savings bank shall provide to the department the  
 18 additional relevant information requested by the department in  
 19 connection with the conversion plan.

20 SECTION 71. IC 28-1-29-4, AS AMENDED BY P.L.35-2010,  
 21 SECTION 121, IS AMENDED TO READ AS FOLLOWS  
 22 [EFFECTIVE JULY 1, 2012]: Sec. 4. (a) The department may ~~revoke~~  
 23 ~~or suspend any license issued under this chapter for the following~~  
 24 ~~causes: (1) Conviction of or a plea of guilty or nolo contendere to a~~  
 25 ~~felony under the laws of Indiana or any other jurisdiction. (2) Violation~~  
 26 ~~of any of the provisions of this chapter. (3) Fraud or deceit in procuring~~  
 27 ~~the issuance of a license or renewal under this chapter. (4) Indulging in~~  
 28 ~~a continuous course of unfair conduct. (5) Insolvency, bankruptcy,~~  
 29 ~~receivership, or assignment for the benefit of creditors by a licensee.~~  
 30 ~~(6) Licensee lending money to any contract debtor that has subscribed~~  
 31 ~~to the licensee's services. (7) Except as provided in subsection (e),~~  
 32 ~~offering to pay or give any cash, gift, bonus, premiums, reward, or~~  
 33 ~~other compensation to any person for referring any prospective~~  
 34 ~~customer to the licensee. (8) Except as provided in subsection (d),~~  
 35 ~~receiving any cash, gift, bonus, premium, reward, or other~~  
 36 ~~compensation from any person other than the contract debtor in~~  
 37 ~~connection with the licensee's activities as a licensee. (9) Licensee~~  
 38 ~~requiring a debtor to purchase or agree to purchase a policy of~~  
 39 ~~insurance from which licensee receives a fee or other remuneration.~~  
 40 ~~(10) If the licensee violates any reasonable rule or regulation made by~~  
 41 ~~the department under and within the authority of this chapter. (11)~~  
 42 ~~Misleading advertising or representing that the licensee can provide~~



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1 protection from legal recourse or suits of creditors. (12) Engaging in an  
 2 unfair, unconscionable, or deceptive act or practice, including the  
 3 knowing omission of any material information. (13) Providing a  
 4 contract debtor less than the full benefit of a compromise of a debt  
 5 arranged by the licensee. (14) Furnishing legal advice or performing  
 6 legal services, unless the person furnishing the advice or performing  
 7 the services: (A) is licensed to practice law; and (B) has been engaged  
 8 by a debtor to provide legal services to the debtor. (15) A fact or  
 9 condition exists that, if the fact or condition had existed when the  
 10 licensee applied for licensure as a debt management company, would  
 11 have been a reason for denying the license. (b) Except as provided in  
 12 section 4.1 of this chapter, the denial, revocation, or suspension shall  
 13 be made only after specific charges have been filed in writing, under  
 14 oath, with the department or by the department, whereupon a hearing  
 15 shall be had as to the reasons for such denial, revocation, or suspension  
 16 and a certified copy of the charges shall be served on the licensee or the  
 17 applicant for license not less than ten (10) days prior to the hearing. (c)  
 18 Notwithstanding subsection (a)(7), a licensee may reduce the fees of a  
 19 contract debtor who is a client of the licensee if the contract debtor  
 20 refers a prospective customer to the licensee. (d) Notwithstanding  
 21 subsection (a)(8), a licensee may receive a fair share creditor fee, based  
 22 on disbursements made to the creditor, from a contract debtor's  
 23 creditors. If any creditor refuses to pay the fair share creditor fee, the  
 24 creditor must still be included in the contract debtor's payment plan.  
 25 issue to a licensee an order to show cause why the licensee's license  
 26 should not be revoked or suspended for a period determined by the  
 27 department.

28 (b) An order issued under subsection (a) must:

29 (1) include:

30 (A) a statement of the place, date, and time for a meeting  
 31 with the department, which date may not be less than ten  
 32 (10) days from the date of the order;

33 (B) a description of the action contemplated by the  
 34 department; and

35 (C) a statement of the facts or conduct supporting the  
 36 issuance of the order; and

37 (2) be accompanied by a notice stating that the licensee is  
 38 entitled to:

39 (A) a reasonable opportunity to be heard; and

40 (B) show the licensee's compliance with all lawful  
 41 requirements for retention of the license;

42 at the meeting described in subdivision (1)(A).

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1 (c) After the meeting described in subsection (b)(1)(A), the  
 2 department may revoke or suspend the license if the department  
 3 finds that:

4 (1) the licensee has repeatedly and willfully violated:

5 (A) this chapter or any rule, order, or guidance document  
 6 adopted or issued by the department; or

7 (B) any other state or federal law, regulation, or rule  
 8 applicable to debt management companies;

9 (2) the licensee does not meet the licensing qualifications set  
 10 forth in section 5 of this chapter;

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

13 (4) the licensee knowingly or intentionally made material  
 14 misrepresentations to, or concealed material information  
 15 from, the department; or

16 (5) facts or conditions exist that, had they existed at the time  
 17 the licensee applied for the license, would have been grounds  
 18 for the department to deny the issuance of the license.

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

22 (1) the revocation or suspension;

23 (2) if a suspension has been ordered, the duration of the  
 24 suspension;

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

27 (4) any other terms and conditions that apply to the  
 28 revocation or suspension.

29 Not later than five (5) days after the entry of the order, the  
 30 department shall deliver to the licensee a copy of the order and the  
 31 findings supporting the order.

32 (e) Any person holding a license to operate a debt management  
 33 company may relinquish the license by notifying the department in  
 34 writing of the relinquishment. However, a relinquishment under  
 35 this subsection does not affect the person's liability for acts  
 36 previously committed and coming within the scope of this chapter.

37 (f) If the director determines it to be in the public interest, the  
 38 director may pursue revocation of a license of a licensee that has  
 39 relinquished the license under subsection (e).

40 (g) If a person's license is revoked, suspended, or relinquished,  
 41 the revocation, suspension, or relinquishment does not impair or  
 42 affect any obligation owed by any person under any existing

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**agreement or contract.**

~~(e)~~ **(h)** If the director of the department ~~(†)~~ 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;

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- 1 (C) creditors that the licensee expects not to participate in the
- 2 plan; and
- 3 (D) all other creditors.

4 (c) Before a debtor enters into an agreement with a licensee, the  
 5 licensee shall, in a written form that is provided to the debtor  
 6 separately, that contains no other information, and that the debtor may  
 7 keep whether or not the debtor enters into the agreement, provide the  
 8 following information to the debtor ~~(1) The licensee's name and~~  
 9 ~~business address of the licensee.~~ ~~(2) The following disclosure~~ in clear  
 10 and conspicuous type, surrounded by black lines:

11 "IMPORTANT INFORMATION FOR YOU TO CONSIDER

- 12 (1) Debt management plans are not right for all individuals, and
- 13 you may ask us to provide information about other ways,
- 14 including bankruptcy, to deal with your debts.
- 15 (2) We may receive compensation for our services from your
- 16 creditors.
- 17 ~~(3) Nonpayment of your debts under our program may:~~
- 18 ~~(A) hurt your ability to obtain credit;~~
- 19 ~~(B) lead your creditors to increase finance and other charges;~~
- 20 ~~and~~
- 21 ~~(C) lead your creditors to undertake activity, including~~
- 22 ~~lawsuits, to collect the debts.~~
- 23 ~~(4) Reduction of debt under our program may result in taxable~~
- 24 ~~income to you, even though you will not actually receive any~~
- 25 ~~money.~~

26 \_\_\_\_\_  
 27 (Name and business address of licensee)".

28 **(d) If during the term of a debt management agreement a**  
 29 **creditor that is a participating creditor in the plan agrees to reduce**  
 30 **the amount owed by the debtor, the licensee must, not later than**  
 31 **fourteen (14) days after the date the creditor agrees to the**  
 32 **reduction, provide the following disclosure in clear and**  
 33 **conspicuous type, surrounded by black lines:**

34 "IMPORTANT INFORMATION FOR YOU TO CONSIDER

- 35 **(1) (Description of the terms of the reduction).**
- 36 **(2) Reduction of debt as described in item (1) above may**
- 37 **result in taxable income to you, even though you will not**
- 38 **actually receive any money."**

39 SECTION 73. IC 28-1-29-8, AS AMENDED BY P.L.89-2011,  
 40 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 41 JULY 1, 2012]: Sec. 8. (a) An agreement between a licensee and a  
 42 debtor must:

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- 1 (1) be in a written form;
- 2 (2) be dated and signed by the licensee and the debtor;
- 3 (3) include the name of the debtor and the address where the
- 4 debtor resides;
- 5 (4) include the name, business address, and telephone number of
- 6 the licensee;
- 7 (5) be delivered to the debtor immediately upon formation of the
- 8 agreement; and
- 9 (6) disclose the following:
- 10 (A) The services to be provided.
- 11 (B) The amount or method of determining the amount of all
- 12 fees, individually itemized, to be paid by the debtor.
- 13 (C) The schedule of payments to be made by or on behalf of
- 14 the debtor, including the amount of each payment, the date on
- 15 which each payment is due, and an estimate of the date of the
- 16 final payment.
- 17 (D) If a plan provides for regular periodic payments to
- 18 creditors:
- 19 (i) each creditor of the debtor to which payment will be
- 20 made, the amount owed to each creditor, and any
- 21 concessions the licensee reasonably believes each creditor
- 22 will offer; and
- 23 (ii) the schedule of expected payments to each creditor,
- 24 including the amount of each payment and the date on which
- 25 the payment will be made.
- 26 (E) Each creditor that the licensee believes will not participate
- 27 in the plan and to which the licensee will not direct payment.
- 28 (F) The manner in which the licensee will comply with the
- 29 licensee's obligations under section 9(j) of this chapter.
- 30 (G) A statement that:
- 31 (i) the licensee may terminate the agreement for good cause,
- 32 upon return of unexpended money of the debtor;
- 33 (ii) the debtor may cancel the agreement as provided in
- 34 section 8.6 of this chapter; and
- 35 (iii) the debtor may contact the department with any
- 36 questions or complaints regarding the licensee.
- 37 (H) The address, telephone number, and Internet address or
- 38 web site of the department.
- 39 (b) For purposes of subsection (a)(5), delivery of an electronic
- 40 record occurs when:
- 41 (1) the record is made available in a format in which the debtor
- 42 may retrieve, save, and print the record; and

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- 1 (2) the debtor is notified that the record is available.
- 2 (c) An agreement must provide that:
- 3 (1) the debtor has a right to terminate the agreement at any time
- 4 without penalty, notwithstanding the close-out fee as permitted by
- 5 section ~~8.3(d)~~ **8.3(e)** of this chapter, or obligation, by giving the
- 6 licensee written or electronic notice, in which event:
- 7 (A) the licensee shall refund all unexpended money that the
- 8 licensee or the licensee's agent has received from or on behalf
- 9 of the debtor for the reduction or satisfaction of the debtor's
- 10 debt; and
- 11 (B) all powers of attorney granted by the debtor to the licensee
- 12 are revoked and ineffective;
- 13 (2) the debtor authorizes any bank insured by the Federal Deposit
- 14 Insurance Corporation in which the licensee or the licensee's
- 15 agent has established a trust account to disclose to the department
- 16 any financial records relating to the trust account;
- 17 (3) the licensee shall notify the debtor within five (5) days after
- 18 learning of a creditor's final decision to reject or withdraw from
- 19 a plan under the agreement; and
- 20 (4) the notice under subdivision (3) must include:
- 21 (A) the identity of the creditor; and
- 22 (B) a statement that the debtor has the right to modify or
- 23 terminate the agreement.
- 24 (d) All creditors must be notified of the debtor's and licensee's
- 25 relationship.
- 26 (e) A licensee shall give to the contract debtor a dated receipt for
- 27 each payment, at the time of the payment, unless the payment is made
- 28 by check, money order, or automated clearinghouse withdrawal as
- 29 authorized by the contract debtor.
- 30 (f) A licensee shall, upon cancellation by a contract debtor of the
- 31 agreement, notify immediately in writing all creditors in the debt
- 32 management plan of the cancellation by the contract debtor.
- 33 (g) A licensee may not enter into an agreement with a debtor unless
- 34 a thorough, written budget analysis of the debtor indicates that the
- 35 debtor can reasonably meet the payments required under a proposed
- 36 plan. The following must be included in the budget analysis:
- 37 (1) Documentation and verification of all income considered. All
- 38 income verification must be dated not more than sixty (60) days
- 39 before the completion of the budget analysis.
- 40 (2) Monthly living expense figures, which must be reasonable for
- 41 the particular family size and part of the state.
- 42 (3) Documentation and verification, by a current credit bureau

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1 report, current debtor account statements, or direct documentation  
 2 from the creditor, of monthly debt payments and balances to be  
 3 paid outside the plan.  
 4 (4) Documentation and verification, by a current credit bureau  
 5 report, current debtor account statements, or direct documentation  
 6 from the creditor, of the monthly debt payments and current  
 7 balances to be paid through the plan.  
 8 (5) The date of the budget analysis and the signature of the debtor.  
 9 (h) A licensee may not enter into an agreement with a contract  
 10 debtor for a period longer than sixty (60) months. Every thirty (30)  
 11 months, the licensee shall complete a thorough, written budget analysis  
 12 of the contract debtor to ensure the debt management plan is still  
 13 suitable for the contract debtor and the contract debtor will be able to  
 14 meet the payment obligations under the plan. ~~When~~ **If** adjustments are  
 15 needed to change the indebtedness listed in the agreement, the licensee  
 16 ~~may~~ **shall** execute a new agreement **or modify, in writing, the**  
 17 **existing agreement**, using the revised figures. **If during the term of**  
 18 **the original agreement, the agreement is modified in writing or a**  
 19 **new agreement is executed**, a licensee:  
 20 (1) may not increase the amount of the monthly fee as originally  
 21 calculated under section 8.3(c)(2) of this chapter; and  
 22 (2) must decrease the amount of the monthly fee as originally  
 23 calculated under section 8.3(c)(2) of this chapter if applying the  
 24 percentage specified in section 8.3(c)(2)(A) of this chapter to the  
 25 new monthly amount of indebtedness to be paid through the  
 26 licensee (as of the date of the review under this subsection) would  
 27 result in an amount that is less than seventy-five dollars (\$75) in  
 28 any month.  
 29 ~~during the term of the original debt management plan agreement.~~  
 30 (i) A licensee may provide services under this chapter in the same  
 31 place of business in which another business is operating, or from which  
 32 other products or services are sold, if the director issues a written  
 33 determination that:  
 34 (1) the operation of the other business; or  
 35 (2) the sale of other products and services;  
 36 from the location in question is not contrary to the best interests of the  
 37 licensee's contract debtors.  
 38 (j) A licensee without a physical location in Indiana may:  
 39 (1) solicit sales of; and  
 40 (2) sell;  
 41 additional products and services to Indiana residents if the director  
 42 issues a written determination that the proposed solicitation or sale is

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1 not contrary to the best interests of contract debtors.  
 2 (k) A licensee shall maintain a toll free communication system,  
 3 staffed at a level that reasonably permits a contract debtor to speak to  
 4 a counselor, debt specialist, or customer service representative, as  
 5 appropriate, during ordinary business hours.  
 6 (l) A debt management company shall act in good faith in all  
 7 matters under this chapter.  
 8 SECTION 74. IC 28-1-29-8.3, AS AMENDED BY P.L.89-2011,  
 9 SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 10 JULY 1, 2012]: Sec. 8.3. (a) Except as otherwise permitted by this  
 11 section, a licensee may not:  
 12 (1) impose, directly or indirectly, a fee or other charge on a  
 13 debtor; or  
 14 (2) receive money from or on behalf of a debtor for debt  
 15 management services.  
 16 (b) A licensee may not impose charges or receive payment for debt  
 17 management services until:  
 18 (1) the licensee and the debtor have agreed upon a plan and have  
 19 signed an agreement that complies with sections 8, 8.6, and 9.5 of  
 20 this chapter; and  
 21 (2) at least one (1) payment has been made to a creditor under the  
 22 plan.  
 23 All creditors must be notified of the debtor's and licensee's relationship.  
 24 (c) If a debtor assents to a plan, the licensee may charge the  
 25 following:  
 26 (1) A set up fee of not more than fifty dollars (\$50) for  
 27 consultation, obtaining a credit report, and setting up an account.  
 28 Acceptance of a plan payment **by a creditor** constitutes  
 29 agreement by the creditor to the plan. A set up fee under this  
 30 subdivision may not be collected until the debtor, or the licensee  
 31 on behalf of the debtor, has made at least one (1) payment to a  
 32 creditor under the plan.  
 33 (2) **Subject to subsection (d)**, a monthly service fee of the lesser  
 34 of:  
 35 (A) not more than fifteen percent (15%) of the amount the  
 36 contract debtor agrees to pay through the licensee, divided into  
 37 equal monthly payments over the term of the agreement; or  
 38 (B) not more than seventy-five dollars (\$75) in any month.  
 39 The monthly service fee under this subdivision may be charged  
 40 for any one (1) month or part of a month. The amount of a set up  
 41 fee under subdivision (1) may not be included in the calculation  
 42 of the monthly service fee.

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1           **(d) If during the term of the original agreement, the agreement**  
 2 **is modified in writing or a new agreement is executed, a licensee:**  
 3           **(1) may not increase the amount of the monthly fee as**  
 4 **originally calculated under subsection (c)(2); and**  
 5           **(2) must decrease the amount of the monthly fee as originally**  
 6 **calculated under subsection (c)(2) if applying the percentage**  
 7 **specified in subsection (c)(2)(A) to the monthly amount of**  
 8 **indebtedness to be paid through the licensee as of the date of**  
 9 **the modification of the original agreement or the execution of**  
 10 **the new agreement, as applicable, would result in an amount**  
 11 **that is less than seventy-five dollars (\$75) in any month.**

12           ~~(d)~~ **(e)** Upon cancellation by a contract debtor or termination of  
 13 payments by a contract debtor, a licensee may **not** withhold for the  
 14 licensee's own benefit **not** more than one hundred dollars (\$100),  
 15 which may be accrued as a close-out fee.

16           ~~(e)~~ **(f)** A licensee may not charge a contract debtor more than one  
 17 (1) set up fee or one (1) ~~cancellation~~ **close-out fee** unless the contract  
 18 debtor leaves the services of the licensee for more than six (6) months.

19           ~~(f)~~ **(g)** With respect to any additional charge not specifically  
 20 provided for in this section, the licensee must submit a written  
 21 explanation of the charge to the department indicating how the charge  
 22 would be assessed and the value or benefit conferred on the contract  
 23 debtor in connection with the charge. Supporting documents may be  
 24 required by the department. The department shall determine whether  
 25 the charge:

- 26           (1) would be imposed in relation to some benefit conferred on the  
 27 consumer; and
- 28           (2) is reasonable in relation to the benefit conferred.

29 An additional charge is not permitted unless approved by the  
 30 department.

31           ~~(g)~~ **(h)** For purposes of this chapter, the terms of an agreement  
 32 commence on the date on which the agreement is made.

33           ~~(h)~~ **(i)** A licensee may assess a charge of not more than twenty-five  
 34 dollars (\$25) for each return by a bank or other depository institution  
 35 of a dishonored check, negotiable order of withdrawal, or share draft  
 36 issued by the contract debtor.

37           ~~(i)~~ **(j)** Any fee charged by the licensee to the debtor under this  
 38 section for services rendered by the licensee, other than the fees  
 39 described under subsection ~~(e)~~; **(f)**, is not considered a debt owed by  
 40 the debtor to the licensee.

41           SECTION 75. IC 28-1-29-9, AS AMENDED BY P.L.89-2011,  
 42 SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2012]: Sec. 9. (a) All money paid to a licensee by or on behalf  
 2 of a contract debtor for distribution to creditors under a plan is held in  
 3 trust. ~~On or~~ Before the close of the same banking day the funds are  
 4 received, the licensee shall deposit the money in a trust account  
 5 established for the benefit of the contract debtor to whom the licensee  
 6 is furnishing debt management services.

7 (b) A licensee shall do the following:

8 (1) Maintain separate records of account for each individual to  
 9 whom the licensee is furnishing debt management services.

10 (2) Disburse money paid by or on behalf of the contract debtor to  
 11 creditors of the contract debtor as disclosed in the agreement.

12 (3) Make remittances not later than thirty (30) days after initial  
 13 receipt of funds. After the initial receipt of funds, remittances  
 14 shall be made not later than thirty (30) days after receipt of funds,  
 15 less fees and costs, unless the reasonable payment of one (1) or  
 16 more of the contract debtor's obligations requires that the funds be  
 17 held for a longer period to accumulate a sum certain. For purposes  
 18 of this section, the close-out fee set forth in section ~~8.3(d)~~ **8.3(e)**  
 19 of this chapter is not considered an obligation of the contract  
 20 debtor.

21 (4) Retain in the contract debtor's trust account, for charges, an  
 22 amount less than or equal to the sum of one (1) month's fee as  
 23 permitted by section 8.3(c)(2) of this chapter plus the close-out  
 24 fee as permitted by section ~~8.3(d)~~ **8.3(e)** of this chapter, unless a  
 25 greater amount is approved in writing by the department.

26 (5) Promptly:

27 (A) correct any payments that are not made or that are  
 28 misdirected as a result of an error by the licensee or other  
 29 person in control of the trust account; and

30 (B) reimburse the contract debtor for any costs or fees imposed  
 31 by a creditor as a result of the failure to pay or misdirection.

32 (c) A licensee may not commingle money in a trust account  
 33 established for the benefit of a contract ~~debtors~~ **debtor** to whom the  
 34 licensee is furnishing debt management services with money of other  
 35 persons.

36 (d) A trust account must at all times have a cash balance equal to the  
 37 sum of the balances of each contract debtor's account.

38 (e) If a licensee has established a trust account under subsection (a),  
 39 the licensee shall reconcile the trust account at least every thirty (30)  
 40 days after receipt of the bank statement. The reconciliation must  
 41 compare the cash balance in the trust account with the sum of the  
 42 balances in each contract debtor's account. If the licensee or the

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1 licensee's designee has more than one (1) trust account, each trust  
 2 account must be individually reconciled.

3 (f) If a licensee or a licensee's employee discovers, or has a  
 4 reasonable suspicion of, embezzlement or other unlawful appropriation  
 5 of money held in trust, the licensee or the licensee's employee shall ~~(1)~~  
 6 immediately notify the department in writing. ~~and (2)~~ Unless the  
 7 department by **regulation**, rule, **policy**, or **guidance** provides  
 8 otherwise, **the licensee shall** give notice to the department describing  
 9 the remedial action taken or to be taken not later than five (5) days after  
 10 the licensee or the licensee's employee discovers, or has a reasonable  
 11 suspicion of, the embezzlement or other unlawful appropriation.

12 (g) If a contract debtor terminates an agreement or it becomes  
 13 reasonably apparent to a licensee that a plan has failed, the licensee  
 14 shall promptly refund to the contract debtor all money paid by or on  
 15 behalf of the contract debtor that has not been paid to creditors less the  
 16 fee that is payable to the licensee under section 8.3(e) of this chapter.

17 (h) Before relocating a trust account from one (1) bank to another,  
 18 a licensee shall inform the department of the name, business address,  
 19 and telephone number of the new bank. As soon as practicable, the  
 20 licensee shall inform the department of the account number of the trust  
 21 account at the new bank.

22 (i) At least once every three (3) months the licensee shall render an  
 23 accounting to the contract debtor which must itemize the total amount  
 24 received from the contract debtor, the total amount paid each creditor,  
 25 the amount of charges deducted, and any amount held in reserve. A  
 26 licensee shall provide such an accounting to a contract debtor not later  
 27 than seven (7) days after written demand, but is not required to provide  
 28 more than three (3) such accountings per six (6) month period.

29 (j) Upon the completion or termination of a contract between a  
 30 licensee and a contract debtor, the licensee shall provide to the contract  
 31 debtor a statement:

- 32 (1) indicating that the licensee no longer holds funds in trust for
- 33 the contract debtor; and
- 34 (2) listing the name and address of:
  - 35 (A) each creditor paid in full; and
  - 36 (B) any creditors remaining unpaid.

37 SECTION 76. IC 28-2-13-26 IS AMENDED TO READ AS  
 38 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 26. (a) A bank, trust  
 39 company, corporate fiduciary, or savings bank organized under the  
 40 laws of Indiana **or the laws of any other state or the United States**  
 41 may establish a trust office to exercise its powers as a fiduciary to  
 42 conduct business in any location that is approved by the department.

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1 Before the department approves a trust office to exercise powers as a  
2 fiduciary under this subsection, it must determine to its satisfaction that  
3 the bank, trust company, corporate fiduciary, or savings bank will have  
4 adequate capital, sound management, and adequate future earnings  
5 prospects after the establishment of the trust office.

6 (b) A trust office established under this section by a bank, trust  
7 company, or savings bank shall not:

- 8 (1) receive deposits;
- 9 (2) pay checks; or
- 10 (3) lend money;

11 at the trust office.

12 SECTION 77. IC 28-2-14-2 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) As used in this  
14 chapter, "bank" means a financial institution:

15 (1) that has been organized or reorganized under the laws of the  
16 United States or the state of Indiana;

17 (2) that has its principal office in Indiana; and

18 (3) that:

19 (A) is an "insured bank" (as defined in Section 3(h) of the  
20 Federal Deposit Insurance Act (12 U.S.C. 1813(h)) or is  
21 eligible to make application to become an insured depository  
22 institution under Section 5 of the Federal Deposit Insurance  
23 Act (12 U.S.C. 1815); or

24 (B) is a stock savings bank that was formed as a result of a  
25 conversion under IC 28-1-21.8 or IC 28-1-21.9 or incorporated  
26 under IC 28-12.

27 (b) Except as provided in subsection (a)(3)(B), the term "bank" does  
28 not include:

29 (1) any institution that has been or is chartered by ~~the Federal~~  
30 ~~Home Loan Bank Board or the Office of Thrift Supervision;~~ **or**  
31 **regulated as a federal savings association or federal savings**  
32 **bank under Section 5 of the Home Owners Loan Act (12**  
33 **U.S.C. 1464);**

34 (2) institutions of the "Farm Credit System" as described in 12  
35 U.S.C. 2001 through 2260, which include the Farm Credit Banks,  
36 the Federal Land Bank Associations, the Production Credit  
37 Associations, the Banks for Cooperatives, and any other  
38 institution that may become a part of the Farm Credit System, as  
39 chartered by and subject to the supervision of the Farm Credit  
40 Administration; or

41 (3) any other institution that has been organized or reorganized as  
42 a savings association, credit union, or industrial loan and

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1 investment company.

2 SECTION 78. IC 28-2-16-2 IS AMENDED TO READ AS

3 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) As used in this

4 chapter, "bank" means a financial institution:

5 (1) that has been organized or reorganized under the laws of the

6 United States, any state of the United States, or the District of

7 Columbia; and

8 (2) that:

9 (A) is an "insured bank" (as defined in Section 3(h) of the

10 Federal Deposit Insurance Act (12 U.S.C. 1813(h)) or is

11 eligible to make application to become an insured depository

12 institution under Section 5 of the Federal Deposit Insurance

13 Act (12 U.S.C. 1815); or

14 (B) is a stock savings bank that was formed as a result of

15 conversion under IC 28, incorporated under IC 28-12, or

16 organized or reorganized under the laws of any other state of

17 the United States.

18 (b) Except as provided in subsection (a)(2)(B), the term "bank" does

19 not include:

20 (1) any institution that has been or is chartered by ~~the Federal~~

21 ~~Home Loan Bank Board or the Office of Thrift Supervision;~~ **or**

22 **regulated as a federal savings association or federal savings**

23 **bank under Section 5 of the Home Owners Loan Act (12**

24 **U.S.C. 1464);**

25 (2) institutions of the "Farm Credit System" as described in 12

26 U.S.C. 2001 through 2260, which include the Farm Credit Banks,

27 the Federal Land Bank Associations, the Production Credit

28 Associations, the Banks for Cooperatives, and any other

29 institution that may become a part of the Farm Credit System, as

30 chartered by and subject to the supervision of the Farm Credit

31 Administration; or

32 (3) any other institution that has been organized or reorganized as

33 a savings association, a credit union, or an industrial loan and

34 investment company.

35 SECTION 79. IC 28-2-17-5 IS AMENDED TO READ AS

36 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. As used in this

37 chapter, "bank supervisory agency" means:

38 (1) any agency of another state with primary responsibility for

39 organizing and supervising banks; and

40 (2) the Office of the Comptroller of the Currency, the Federal

41 Deposit Insurance Corporation, the Board of Governors of the

42 Federal Reserve System, ~~the Office of Thrift Supervision;~~ and any

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1 successor to these agencies.  
2 SECTION 80. IC 28-2-18-6 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. As used in this  
4 chapter, "bank supervisory agency" means any of the following:  
5 (1) Any agency of another state with primary responsibility for  
6 organizing and supervising banks.  
7 (2) The Office of the Comptroller of the Currency, the Federal  
8 Deposit Insurance Corporation, the Board of Governors of the  
9 Federal Reserve System, ~~the Office of Thrift Supervision~~, and any  
10 successor to these agencies.  
11 SECTION 81. IC 28-6.1-1-2 IS AMENDED TO READ AS  
12 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) This section  
13 applies only to a savings bank (whether in stock or mutual form of  
14 ownership) that was:  
15 (1) formed as a result of conversion under IC 28-1-21.7,  
16 IC 28-1-21.8, or IC 28-1-21.9 after December 31, 1992;  
17 (2) incorporated under IC 28-12; or  
18 (3) formed as a result of conversion under IC 28-1-30.  
19 (b) A savings bank described in subsection (a) is governed by  
20 IC 28-13 in addition to this article.  
21 (c) A reference in this article to formation and operation by a board  
22 means formation by conversion and operation by an elected board of  
23 directors.  
24 (d) As to a mutual savings bank, a reference in IC 28-13-5,  
25 IC 28-13-6, IC 28-1-7, **IC 28-1-7.1**, ~~or~~ IC 28-1-8, **or IC 28-1-9**  
26 to shareholders and shareholders' meetings means members and members'  
27 meetings.  
28 **(e) Notwithstanding subsection (d), in a proposed disposition**  
29 **described in IC 28-1-8-3(b) of this chapter, the rights and remedies**  
30 **for dissenting shareholders set forth in IC 28-1-7-21 do not apply.**  
31 SECTION 82. IC 28-6.1-2-2.4 IS REPEALED [EFFECTIVE JULY  
32 1, 2012]. ~~Sec. 2.4. "Community based economic development" refers~~  
33 ~~to activities that seek to address economic causes of poverty within~~  
34 ~~specific geographic areas; revitalizing the economic and social base of~~  
35 ~~low income communities through activities that include:~~  
36 ~~(1) affordable housing development;~~  
37 ~~(2) small business and micro-enterprise support;~~  
38 ~~(3) commercial, industrial, and retail revitalization, retention, and~~  
39 ~~expansion;~~  
40 ~~(4) capacity development and technical assistance support for~~  
41 ~~community development corporations;~~  
42 ~~(5) employment and training efforts;~~

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1 (6) human resource development; and  
 2 (7) social service enterprises.  
 3 SECTION 83. IC 28-6.1-2-2.5 IS REPEALED [EFFECTIVE JULY  
 4 1, 2012]. Sec. 2.5: "Community development corporation" means a  
 5 private, nonprofit corporation:  
 6 (1) whose board of directors is comprised primarily of community  
 7 representatives and business, civic, and community leaders; and  
 8 (2) whose principal purpose includes the provision of:  
 9 (A) housing;  
 10 (B) community-based economic development projects; and  
 11 (C) social services;  
 12 that primarily benefit low-income individuals and communities.  
 13 SECTION 84. IC 28-6.1-6-14, AS AMENDED BY P.L.57-2006,  
 14 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 15 JULY 1, 2012]: Sec. 14. (a) A savings bank may solicit and write  
 16 insurance as an insurance producer or a broker for any insurance  
 17 company authorized to do business in the state or states where the  
 18 insurance producer or broker operates.  
 19 (b) A savings bank or its affiliate (as defined in IC 28-6.2-1-4) may  
 20 act as an insurance producer for the sale of any life insurance policy or  
 21 annuity contract issued by a life insurance company (as defined in  
 22 IC 27-1-2-3) authorized to do business in the state or states where the  
 23 insurance producer operates.  
 24 (c) A savings bank or its affiliate that acts as an insurance producer  
 25 for the sale of a life insurance policy or an annuity contract under  
 26 subsection (b):  
 27 (1) is subject to all requirements of IC 27 with respect to the  
 28 insurance producer's activity in Indiana; and  
 29 (2) must comply with the disclosure requirements under  
 30 IC 27-1-38.  
 31 (d) A savings bank or its affiliate may not condition:  
 32 (1) an extension of credit;  
 33 (2) a lease or sale of real or personal property;  
 34 (3) the performance of a service; or  
 35 (4) the amount charged for:  
 36 (A) extending credit;  
 37 (B) leasing or selling real or personal property; or  
 38 (C) performing services;  
 39 upon a person's purchase of a life insurance policy or an annuity  
 40 contract from the savings bank or its affiliate.  
 41 (e) This section does not prohibit a savings bank or its affiliate from  
 42 requiring that a person, as a condition to a transaction, obtain a life

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1 insurance policy from an insurance company acceptable to the savings  
2 bank or its affiliate.

3 (f) Subject to any limitations or restrictions that the department **or**  
4 **a federal regulator** may impose by **regulation**, rule, **or** policy, **or**  
5 **guidance**, a savings bank may purchase and hold life insurance as  
6 follows:

- 7 (1) Life insurance purchased or held in connection with employee  
8 compensation or benefit plans approved by the savings bank's  
9 board.
- 10 (2) Life insurance purchased or held to recover the cost of  
11 providing preretirement or postretirement employee benefits  
12 approved by the savings bank's board.
- 13 (3) Life insurance on the lives of borrowers.
- 14 (4) Life insurance held as security for a loan.
- 15 (5) Life insurance that a national bank may purchase or hold  
16 under 12 U.S.C. 24 (Seventh).

17 SECTION 85. IC 28-6.1-7-11 IS AMENDED TO READ AS  
18 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 11. **(a) As used in this**  
19 **section, "community based economic development" refers to**  
20 **activities that seek to address economic causes of poverty within**  
21 **specific geographic areas, revitalizing the economic and social base**  
22 **of low income communities through activities that include:**

- 23 (1) affordable housing development;
- 24 (2) small business and micro-enterprise support;
- 25 (3) commercial, industrial, and retail revitalization, retention,  
26 and expansion;
- 27 (4) capacity development and technical assistance support for  
28 community development corporations;
- 29 (5) employment and training efforts;
- 30 (6) human resource development; and
- 31 (7) social service enterprises.

32 **(b) As used in this section, "community development**  
33 **corporation" means a private, nonprofit corporation:**

- 34 (1) whose board of directors is comprised primarily of  
35 community representatives and business, civic, and  
36 community leaders; and
- 37 (2) whose principal purpose includes the provision of:
  - 38 (A) housing;
  - 39 (B) community based economic development projects; and
  - 40 (C) social services;
- 41 that primarily benefit low income individuals and  
42 communities.

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1 (a) (c) As used in this section, "surplus" means the sum of the  
 2 following: (1) The remainder of: (A) capital surplus; undivided profits;  
 3 reserves for contingencies and other capital reserves (excluding  
 4 accrued dividends on perpetual and limited life preferred stock);  
 5 minority interests in consolidated subsidiaries; and allowances for loan  
 6 and lease losses; minus (B) intangible assets. (2) Purchased mortgage  
 7 servicing rights. (3) Mandatory convertible debt to the extent of twenty  
 8 percent (20%) of the sum of capital, capital surplus, and purchased  
 9 mortgage servicing rights. (4) Other mandatory convertible debt,  
 10 limited life preferred stock, and subordinated notes and debentures to  
 11 the extent that the debt, stock, notes, and debentures qualify as "tier II  
 12 capital" under 12 CFR 325. "capital and surplus" has the meaning  
 13 set forth in IC 28-1-1-3(10).

14 (b) (d) Subject to the limitations of this section, other laws, and  
 15 any regulation, rule, policy, or guidance adopted by the  
 16 department concerning investments in community based economic  
 17 development, a savings bank may invest directly or indirectly in  
 18 community development corporations and projects of a predominantly  
 19 civic, community, or public nature, including equity investments in  
 20 corporations or limited liability companies organized for such  
 21 purposes. Investments by a savings bank under this subsection shall not  
 22 exceed: (1) in any one (1) project, two percent (2%); and (2) in the  
 23 aggregate, five percent (5%);

24 of the capital and surplus of the savings bank, unless the director makes  
 25 the determination set forth in subsection (e). (e) Investments by a  
 26 savings bank under subsection (b) may exceed the limit set forth in  
 27 subsection (b)(2) if the director determines that: (1) the aggregate  
 28 investments by the savings bank under subsection (b) in excess of five  
 29 percent (5%) of the capital and surplus of the savings bank will not  
 30 pose a significant risk to the affected deposit insurance fund; and (2)  
 31 the savings bank is adequately capitalized. However, in no case shall  
 32 the aggregate investments by a savings bank under subsection (b)  
 33 exceed ten percent (10%) of the capital and surplus of the savings  
 34 bank. equity investments in a corporation, a limited partnership, a  
 35 limited liability company, or another entity organized as:

- 36 (1) a community development corporation;  
 37 (2) an entity formed primarily to support community based  
 38 economic development;  
 39 (3) an entity qualifying for the new markets tax credits under  
 40 26 U.S.C. 45D; or  
 41 (4) an entity approved by the director as being formed for a  
 42 predominantly civic, community, or public purpose and that:



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- 1 (A) primarily benefits low and moderate income
- 2 individuals;
- 3 (B) primarily benefits low and moderate income areas;
- 4 (C) primarily benefits areas targeted for redevelopment by
- 5 a government entity; or
- 6 (D) is a qualified investment under 12 CFR 25.23 for
- 7 purposes of the Community Reinvestment Act of 1977 (12
- 8 U.S.C. 2901 et seq.).

9 (e) Except as provided in subsection (f), the aggregate of all  
 10 equity investments by a savings bank under subsection (d) may not  
 11 exceed:

- 12 (1) five percent (5%) of the capital and surplus of the savings
- 13 bank without the prior written approval of the director; and
- 14 (2) fifteen percent (15%) of the capital and surplus of the
- 15 savings bank under any circumstances.

16 (f) In determining whether to permit the aggregate of all equity  
 17 investments by a savings bank under subsection (d) to exceed five  
 18 percent (5%) of the capital and surplus of the savings bank under  
 19 subsection (e)(1), the director shall consider whether:

- 20 (1) the aggregate of all equity investments under subsection
- 21 (d) will pose a significant risk to the affected deposit insurance
- 22 fund; and
- 23 (2) the savings bank is adequately capitalized.

24 (d) (g) A savings bank shall not make any investment under  
 25 subsection (b) this section if the investment would expose the savings  
 26 bank to unlimited liability.

27 SECTION 86. IC 28-6.1-9-5 IS AMENDED TO READ AS  
 28 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. (a) The total loans  
 29 and extensions of credit by a savings bank to a person outstanding at  
 30 one (1) time and not fully secured, as determined in a manner  
 31 consistent with subsection (b), by collateral having a market value at  
 32 least equal to the amount of the loan or extension of credit may not  
 33 exceed fifteen percent (15%) of the unimpaired capital and unimpaired  
 34 surplus of the savings bank.

35 (b) The total loans and extensions of credit by a savings bank to a  
 36 person outstanding at one (1) time and fully secured by readily  
 37 marketable collateral having a market value, as determined by reliable  
 38 and continuously available price quotations, at least equal to the  
 39 amount of the funds outstanding may not exceed ten percent (10%) of  
 40 the unimpaired capital and unimpaired surplus of the savings bank. The  
 41 limitation in this subsection is separate from and in addition to the  
 42 limitation contained in subsection (a).

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1 (c) **The total loans and extensions of credit by a savings bank**  
 2 **includes any credit exposure to a person arising from a derivative**  
 3 **transaction (as defined in 12 U.S.C. 84(b)(3)) between the savings**  
 4 **bank and the person.**

5 SECTION 87. IC 28-6.1-9-13 IS REPEALED [EFFECTIVE JULY  
 6 1, 2012]. Sec. 13. (a) This section does not apply to a savings bank  
 7 organized, reorganized, or operating under IC 28-6 (before its repeal)  
 8 before January 1, 1993.

9 (b) A savings bank shall maintain sixty percent (60%) of its assets  
 10 in investments that qualify under 26 U.S.C. 7701(a)(19).

11 SECTION 88. IC 28-6.1-10-6 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. (a) Subject to  
 13 subsection (b), a savings bank may purchase for its own account and  
 14 sell investment securities under limitations and restrictions the  
 15 department prescribes by **regulation, rule, policy, or guidance.**

16 (b) The total amount of the investment securities of any one (1)  
 17 obligor or maker, purchased or held by any savings bank for its own  
 18 account may not at any time exceed ten percent (10%) of the amount  
 19 of the total equity capital of the savings bank.

20 SECTION 89. IC 28-6.1-12-2 IS AMENDED TO READ AS  
 21 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) As used in this  
 22 chapter, "bank" means a financial institution that is either of the  
 23 following:

24 (1) A bank that:

25 (A) has been organized or reorganized under the laws of the  
 26 United States, any state of the United States, or the District of  
 27 Columbia; and

28 (B) is an "insured bank" (as defined in Section 3(h) of the  
 29 Federal Deposit Insurance Act (12 U.S.C. 1813(h)) eligible to  
 30 make application to become an insured depository institution  
 31 under Section 5 of the Federal Deposit Insurance Act (12  
 32 U.S.C. 1815).

33 (2) Notwithstanding subsection (b), a savings bank formed as a  
 34 result of conversion.

35 (b) The term does not include any of the following:

36 (1) An institution that has been or is chartered ~~by the Federal~~  
 37 ~~Home Loan Bank Board or the Office of Thrift Supervision.~~ **or**  
 38 **regulated as a federal savings association or federal savings**  
 39 **bank under Section 5 of the Home Owners Loan Act (12**  
 40 **U.S.C. 1464).**

41 (2) Institutions of the "Farm Credit System" as described in 12  
 42 U.S.C. 2001 through 2260, which include the Farm Credit Banks,

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1 the Federal Land Bank Associations, the Production Credit  
2 Associations, the Banks for Cooperatives, and any other  
3 institution that may become a part of the Farm Credit System, as  
4 chartered by and subject to the supervision of the Farm Credit  
5 Administration.

6 (3) Another institution that has been organized or reorganized as  
7 a savings association, a credit union, or an industrial loan and  
8 investment company.

9 SECTION 90. IC 28-6.2-1-12 IS AMENDED TO READ AS  
10 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 12. As used in this  
11 chapter, "mutual holding company" means a mutual savings bank  
12 holding company that:

- 13 (1) is:
  - 14 (A) organized under IC 28-6.2-2 or converted under
  - 15 IC 28-6.2-7-6; ~~and~~ or
  - 16 (B) **organized under the laws of any other state or the**
  - 17 **United States; and**

- 18 (2) has control over:
  - 19 (A) any savings bank; or
  - 20 (B) any company that is or becomes a mutual holding
  - 21 company under this article.

22 SECTION 91. IC 28-6.2-2-1.5, AS ADDED BY P.L.90-2008,  
23 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
24 JULY 1, 2012]: Sec. 1.5. (a) **As used in this section, "primary**  
25 **federal regulator" means the federal agency primarily responsible**  
26 **for the regulation of mutual holding companies (as defined in**  
27 **IC 28-6.2-1-12).**

28 (b) A mutual savings bank may, upon application to and with the  
29 approval by the department and the ~~Office of Thrift Supervision;~~  
30 **primary federal regulator**, reorganize as a federal mutual holding  
31 company by undertaking a transaction or series of transactions  
32 substantially similar to those set forth in section 1 of this chapter.

33 SECTION 92. IC 28-7-1-9, AS AMENDED BY P.L.89-2011,  
34 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
35 JULY 1, 2012]: Sec. 9. (a) A credit union has the following powers:

- 36 (1) To issue shares of its capital stock to its members. No
- 37 commission or compensation shall be paid for securing members
- 38 or for the sale of shares.
- 39 (2) To make loans to officers, directors, or committee members
- 40 under sections 17.1 and 17.2 of this chapter.
- 41 (3) To invest in any of the following:
  - 42 (A) Bonds, notes, or certificates that are the direct or indirect

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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) ~~It~~ 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

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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.

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- 1 (vii) Subject to items (i) through (iv), a credit union may
- 2 purchase yankee dollar deposits, eurodollar deposits,
- 3 banker's acceptances, deposit notes, bank notes with original
- 4 weighted average maturities of less than five (5) years, and
- 5 investments in obligations of, or issued by, any state or
- 6 political subdivision (including any agency, corporation, or
- 7 instrumentality of a state or political subdivision).
- 8 (K) Collateralized obligations that are eligible for purchase
- 9 and sale by federal credit unions. However, a credit union may
- 10 purchase for its own account and sell the obligations only to
- 11 the extent that a federal credit union can purchase and sell
- 12 those obligations.
- 13 (4) With the prior approval of the department, and subject to the
- 14 limitations of this subsection, a credit union may organize, invest
- 15 in, or loan money to a credit union service organization (as
- 16 defined in Part 712 of the regulations of the National Credit
- 17 Union Administration, 12 CFR 712). A credit union may not loan
- 18 or invest in a credit union service organization if the aggregate
- 19 amount of all such loans or investments in a particular credit
- 20 union service organization is greater than ten percent (10%) of the
- 21 capital, surplus, and unimpaired shares of the credit union without
- 22 the prior written approval of the department. A credit union may
- 23 organize, invest in, or loan money to a credit union service
- 24 organization described in this subdivision only if the following
- 25 requirements are met:
- 26 (A) The credit union service organization is adequately
- 27 capitalized or has a reasonable plan for adequate capitalization
- 28 if the credit union service organization is to be formed or is
- 29 newly formed.
- 30 (B) The credit union service organization is structured and
- 31 operated as a separate legal entity from the credit union.
- 32 (C) The credit union obtains a written legal opinion that the
- 33 credit union service organization is structured and operated in
- 34 a manner that limits the credit union's potential liability for the
- 35 debts and liabilities of the credit union service organization to
- 36 not more than the loss of money invested in or loaned to the
- 37 credit union service organization by the credit union.
- 38 (D) The credit union service organization agrees in writing to
- 39 prepare financial statements and provide the financial
- 40 statements to the credit union at least quarterly, and to the
- 41 department upon request.
- 42 (E) The credit union service organization agrees in writing to

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- 1 obtain an audit of the credit union service organization from a  
 2 certified public accountant at least annually and provide a  
 3 copy of each audit report to the credit union, and to the  
 4 department upon request. A wholly owned credit union service  
 5 organization is not required to obtain a separate annual audit  
 6 if the credit union service organization is included in the  
 7 annual consolidated audit of the credit union that is the credit  
 8 union service organization's parent.
- 9 (F) The credit union service organization operates in  
 10 compliance with all applicable federal and state laws.
- 11 (5) To deposit its funds into:
- 12 (A) depository institutions that are federally insured; or  
 13 (B) state chartered credit unions that are privately insured by  
 14 an insurer approved by the department.
- 15 (6) To purchase, hold, own, or convey real estate as may be  
 16 conveyed to the credit union in satisfaction of debts previously  
 17 contracted or in exchange for real estate conveyed to the credit  
 18 union.
- 19 (7) To own, hold, or convey real estate as may be purchased by  
 20 the credit union upon judgment in its favor or decrees of  
 21 foreclosure upon mortgages.
- 22 (8) To issue shares of stock and upon the terms, conditions,  
 23 limitations, and restrictions and with the relative rights as may be  
 24 stated in the bylaws of the credit union, but no stock may have  
 25 preference or priority over the other to share in the assets of the  
 26 credit union upon liquidation or dissolution or for the payment of  
 27 dividends except as to the amount of the dividends and the time  
 28 for the payment of the dividends as provided in the bylaws.
- 29 (9) To charge the member's share account for the actual cost of a  
 30 necessary locator service when the member has failed to keep the  
 31 credit union informed about the member's current address. The  
 32 charge shall be made only for amounts paid to a person or concern  
 33 normally engaged in providing such service, and shall be made  
 34 against the account or accounts of any one (1) member not more  
 35 than once in any twelve (12) month period.
- 36 (10) To transfer to an accounts payable account, a dormant  
 37 account, or a special account share accounts which have been  
 38 inactive, except for dividend credits, for a period of at least two  
 39 (2) years. The credit union shall not consider the payment of  
 40 dividends on the transferred account.
- 41 (11) To invest in fixed assets with the funds of the credit union.  
 42 An investment in fixed assets in excess of five percent (5%) of its

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- 1 assets is subject to the approval of the department. A credit union
- 2 may rent excess space at the credit union's main office or branch
- 3 as a source of income.
- 4 (12) To establish branch offices, upon approval of the department,
- 5 provided that all books of account shall be maintained at the
- 6 principal office.
- 7 (13) To pay an interest refund on loans proportionate to the
- 8 interest paid during the dividend period by borrowers who are
- 9 members at the end of the dividend period.
- 10 (14) To purchase life savings and loan protection insurance for
- 11 the benefit of the credit union and its members, if:
- 12 (A) the coverage is placed with an insurance company licensed
- 13 to do business in Indiana; and
- 14 (B) no officer, director, or employee of the credit union
- 15 personally benefits, directly or indirectly, from the sale or
- 16 purchase of the coverage.
- 17 (15) To sell and cash negotiable checks, travelers checks, and
- 18 money orders for members.
- 19 (16) To purchase members' notes from any liquidating credit
- 20 union, with written approval from the department, at prices agreed
- 21 upon by the boards of directors of both the liquidating and the
- 22 purchasing credit unions. However, the aggregate of the unpaid
- 23 balances of all notes of liquidating credit unions purchased by any
- 24 one (1) credit union shall not exceed ten percent (10%) of the
- 25 purchasing credit union's capital and surplus unless special
- 26 written authorization has been granted by the department.
- 27 (17) To exercise such incidental powers necessary or requisite to
- 28 enable it to carry on effectively the business for which it is
- 29 incorporated.
- 30 (18) To act as a custodian or trustee of any trust created or
- 31 organized in the United States and forming part of a tax
- 32 advantaged savings plan which qualifies or qualified for specific
- 33 tax treatment under Section 223, 401(d), 408, 408A, or 530 of the
- 34 Internal Revenue Code, if the funds of the trust are invested only
- 35 in share accounts or insured certificates of the credit union.
- 36 (19) To issue shares or insured certificates to a trustee or
- 37 custodian of a pension plan, profit sharing plan, or stock bonus
- 38 plan which qualifies for specific tax treatment under Sections
- 39 401(d) or 408(a) of the Internal Revenue Code.
- 40 (20) ~~A credit union may~~ To exercise any rights and privileges that
- 41 are:
- 42 (A) granted to federal credit unions; but

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1 (B) not authorized for credit unions under the Indiana Code  
2 (except for this section) or any rule adopted under the Indiana  
3 Code;  
4 if the credit union complies with section 9.2 of this chapter.  
5 (21) To sell, pledge, or discount any of its assets. However, a  
6 credit union may not pledge any of its assets as security for the  
7 safekeeping and prompt payment of any money deposited, except  
8 that a credit union may, for the safekeeping and prompt payment  
9 of money deposited, give security as authorized by federal law.  
10 (22) To purchase assets of another credit union and to assume the  
11 liabilities of the selling credit union.  
12 (23) To act as a fiscal agent of the United States and to receive  
13 deposits from nonmember units of the federal, state, or county  
14 governments, from political subdivisions, and from other credit  
15 unions upon which the credit union may pay varying interest rates  
16 at varying maturities subject to terms, rates, and conditions that  
17 are established by the board of directors. However, the total  
18 amount of public funds received from units of state and county  
19 governments and political subdivisions that a credit union may  
20 have on deposit may not exceed twenty percent (20%) of the total  
21 assets of that credit union, excluding those public funds.  
22 (24) To join the National Credit Union Administration Central  
23 Liquidity Facility.  
24 (25) To participate in community investment initiatives under the  
25 administration of organizations:  
26 (A) exempt from taxation under Section 501(c)(3) of the  
27 Internal Revenue Code; and  
28 (B) located or conducting activities in communities in which  
29 the credit union does business.  
30 Participation may be in the form of either charitable contributions  
31 or participation loans. In either case, disbursement of funds  
32 through the administering organization is not required to be  
33 limited to members of the credit union. Total contributions or  
34 participation loans may not exceed one-tenth of one percent  
35 (0.1%) of total assets of the credit union. A recipient of a  
36 contribution or loan is not considered qualified for credit union  
37 membership. A contribution or participation loan made under this  
38 subdivision must be approved by the board of directors.  
39 (26) To establish and operate an automated teller machine  
40 (ATM):  
41 (A) at any location within Indiana; or  
42 (B) as permitted by the laws of the state in which the

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1 automated teller machine is to be located.  
 2 (27) To demand and receive, for the faithful performance and  
 3 discharge of services performed under the powers vested in the  
 4 credit union by this article:  
 5 (A) reasonable compensation, or compensation as fixed by  
 6 agreement of the parties;  
 7 (B) all advances necessarily paid out and expended in the  
 8 discharge and performance of its duties; and  
 9 (C) unless otherwise agreed upon, interest at the legal rate on  
 10 the advances referred to in clause (B).  
 11 (28) Subject to any restrictions the department may impose, to  
 12 become the owner or lessor of personal property acquired upon  
 13 the request and for the use of a member and to incur additional  
 14 obligations as may be incident to becoming an owner or lessor of  
 15 such property.  
 16 (b) A credit union shall maintain files containing credit and other  
 17 information adequate to demonstrate evidence of prudent business  
 18 judgment in exercising the investment powers granted under this  
 19 chapter or by rule, order, or declaratory ruling of the department.  
 20 **(c) Subject to any limitations or restrictions that the department**  
 21 **or a federal regulator may impose by regulation, rule, policy, or**  
 22 **guidance, a credit union may purchase and hold life insurance as**  
 23 **follows:**  
 24 **(1) Life insurance purchased or held in connection with**  
 25 **employee compensation or benefit plans approved by the**  
 26 **credit union's board of directors.**  
 27 **(2) Life insurance purchased or held to recover the cost of**  
 28 **providing preretirement or postretirement employee benefits**  
 29 **approved by the credit union's board of directors.**  
 30 **(3) Life insurance on the lives of borrowers.**  
 31 **(4) Life insurance held as security for a loan.**  
 32 **(5) Life insurance that a federal credit union may purchase or**  
 33 **hold under 12 CFR 701.19(c).**  
 34 SECTION 93. IC 28-7-1-17, AS AMENDED BY P.L.35-2010,  
 35 SECTION 157, IS AMENDED TO READ AS FOLLOWS  
 36 [EFFECTIVE JULY 1, 2012]: Sec. 17. (a) Every loan application shall  
 37 be submitted on a form approved by the board of directors. When  
 38 making an application, a member shall state the security offered. Loans  
 39 may be dispersed upon written approval by a majority of the credit  
 40 committee or a loan officer. If the credit committee or loan officer fails  
 41 to approve an application for a loan, the applicant may appeal to the  
 42 board of directors, providing such appeal is authorized by the bylaws.

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(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

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1 (50%) of the fair cash value of the real estate used as security.  
 2 (B) Real estate loans on improved real estate, except for  
 3 variable rate mortgage loans and rollover mortgage loans  
 4 provided for in subdivision (5), shall require substantially  
 5 equal payments at successive intervals of not more than one  
 6 (1) year, shall mature within thirty (30) years, and shall not  
 7 exceed one hundred percent (100%) of the fair cash value of  
 8 the real estate used as security.  
 9 (C) Real estate loans on unimproved real estate may be made.  
 10 The terms of the loan shall:  
 11 (i) require substantially equal payments of interest and  
 12 principal at successive intervals of one (1) year or less;  
 13 (ii) mature within ten (10) years; and  
 14 (iii) not exceed eighty-five percent (85%) of the fair cash  
 15 value of the real estate used as security.  
 16 (D) Loans primarily secured by a mortgage which constitutes  
 17 a second lien on improved real estate may be made only if the  
 18 aggregate amount of all loans on the real estate does not  
 19 exceed one hundred percent (100%) of the fair cash value of  
 20 the real estate after such loan is made. Repayment terms shall  
 21 be in accordance with subdivision (2).  
 22 (E) Real estate loans may be made for the construction of  
 23 improvements to real property. Funds borrowed may be  
 24 advanced as work on the improvements progresses.  
 25 Repayment terms must comply with subdivision (2).  
 26 (5) Subject to the limitations of subdivision (3), variable rate  
 27 mortgage loans and rollover mortgage loans may be made under  
 28 the same limitations and rights provided state chartered savings  
 29 associations under IC 28-1-21.5 (before its repeal) or IC 28-15 or  
 30 federal credit unions.  
 31 (6) As used in this subdivision, "originating lender" means the  
 32 participating lender with which the member contracts. A credit  
 33 union may participate with other state and federal depository  
 34 financial institutions (as defined in IC 28-1-1-6) or credit union  
 35 service organizations in making loans to credit union members  
 36 and may sell a participating interest in any of its loans under  
 37 written participation loan policies established by the board of  
 38 directors. However, the credit union may not sell more than ninety  
 39 percent (90%) of the principal of participating loans outstanding  
 40 at the time of sale. A participating credit union that is not the  
 41 originating lender may participate only in loans made to the credit  
 42 union's own members or to members of another participating state

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1 or federal credit union. A master participation agreement must be  
2 properly executed. The agreement must include provisions for  
3 identifying, either through documents incorporated by reference  
4 or directly in the agreement, the participation loan or loans before  
5 the sale of the loans.

6 (7) Notwithstanding subdivisions (1) through (6), a credit union  
7 may make any of the following:

- 8 (A) Any loan that may be made by a federal credit union.  
9 However, IC 24-4.5 applies to any loan that is:
  - 10 (i) made under this clause; and
  - 11 (ii) within the scope of IC 24-4.5.

12 Any provision of federal law that is in conflict with IC 24-4.5  
13 does not apply to a loan made under this clause.

14 (B) Subject to subdivision (3), any alternative mortgage loan  
15 (as defined in IC 28-15-11-2) that may be made by a savings  
16 association (as defined in IC 28-15-1-11) under IC 28-15-11.  
17 A loan made under this clause by a credit union is subject to  
18 the same terms, conditions, exceptions, and limitations that  
19 apply to an alternative mortgage loan made by a savings  
20 association under IC 28-15-11.

21 (8) A credit union may make a loan under either:

- 22 (A) subdivisions (2) through (6); or
- 23 (B) subdivision (7);

24 but not both. A credit union shall make an initial determination  
25 to whether to make a loan under subdivisions (2) through (6) or  
26 under subdivision (7). If the credit union determines that a loan or  
27 category of loans is to be made under subdivision (7), the written  
28 loan policies of the credit union must include that determination.  
29 A credit union may not combine the terms and conditions that  
30 apply to a loan made under subdivisions (2) through (6) with the  
31 terms and conditions that apply to a loan made under subdivision  
32 (7) to make a loan not expressly described and authorized either  
33 under subdivisions (2) through (6) or under subdivision (7).

34 (c) Nothing in this section prevents any credit union from taking an  
35 indemnifying or second mortgage on real estate as additional security.

36 SECTION 94. IC 28-7-1-39, AS AMENDED BY P.L.90-2008,  
37 SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
38 JULY 1, 2012]: Sec. 39. (a) As used in this section, "loans and  
39 extensions of credit" includes all direct or indirect advances of funds  
40 made to a member on the basis of:

- 41 (1) an obligation of the member to repay the funds; or
- 42 (2) a pledge of specific property by or on behalf of the member

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1 and from which the funds advanced are repayable.  
2 The term includes any contractual liability of a credit union to advance  
3 funds to or on behalf of a member, to the extent specified by the  
4 department. **The term also includes any credit exposure to a person**  
5 **arising from a derivative transaction (as defined in 12 U.S.C.**  
6 **84(b)(3)) between the credit union and the person.**

7 (b) As used in this section, "member" includes an individual, a sole  
8 proprietorship, a partnership, a joint venture, an association, a trust, a  
9 estate, a business trust, a limited liability company, a corporation, a  
10 sovereign government, or an agency, instrumentality, or political  
11 subdivision of a sovereign government, or any similar entity or  
12 organization.

13 (c) Except as provided in subsection (e), the total loans and  
14 extensions of credit by a credit union to a member outstanding at any  
15 given time and not fully secured, as determined in a manner consistent  
16 with subsection (d), by collateral with a market value at least equal to  
17 the amount of the loan or extension of credit may not exceed fifteen  
18 percent (15%) of the capital and surplus of the credit union.

19 (d) Except as provided in subsection (e), the total loans and  
20 extensions of credit by a credit union to a member outstanding at any  
21 given time and fully secured by readily marketable collateral having a  
22 market value, as determined by reliable and continuously available  
23 price quotations, at least equal to the amount of funds outstanding may  
24 not exceed ten percent (10%) of the capital and surplus of the credit  
25 union. The limitation in this subsection is separate from and in addition  
26 to the limitation set forth in subsection (c).

27 (e) The limitations set forth in subsections (c) and (d) are subject to  
28 the following exceptions:

29 (1) Loans or extensions of credit arising from the discount of  
30 commercial or business paper evidencing an obligation to the  
31 member negotiating it with recourse are not subject to any  
32 limitation based on capital and surplus.

33 (2) The purchase of bankers' acceptances of the kind described in  
34 12 U.S.C. 372 and issued by a financial institution organized or  
35 reorganized under the laws of Indiana or any other state or the  
36 United States are not subject to any limitation based on capital  
37 and surplus.

38 (3) Loans or extensions of credit secured by bills of lading,  
39 warehouse receipts, or similar documents transferring or securing  
40 title to readily marketable staples are subject to a limitation of  
41 thirty-five percent (35%) of capital and surplus in addition to the  
42 general limitations if the market value of the staples securing each

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1 additional loan or extension of credit at all times equals or  
 2 exceeds one hundred fifteen percent (115%) of the outstanding  
 3 amount of the loan or extension of credit. The staples shall be  
 4 fully covered by insurance whenever it is customary to insure  
 5 such staples.  
 6 (4) Loans or extensions of credit secured by bonds, notes,  
 7 certificates of indebtedness, or Treasury bills of the United States  
 8 or by any other obligation fully guaranteed as to principal and  
 9 interest by the United States are not subject to any limitation  
 10 based on capital and surplus.  
 11 (5) Loans or extensions of credit to or secured by unconditional  
 12 takeout commitment or guarantees of any department, agency,  
 13 bureau, board, commission, or establishment of the United States  
 14 or any corporation wholly owned directly or indirectly by the  
 15 United States are not subject to any limitation based on capital  
 16 and surplus.  
 17 (6) Loans or extensions of credit secured by a segregated deposit  
 18 account in the lending credit union are not subject to any  
 19 limitation based on capital and surplus.  
 20 (7) Loans or extensions of credit to any credit union, when the  
 21 loans or extensions of credit are approved by the director of the  
 22 department, are not subject to any limitation based on capital and  
 23 surplus.  
 24 (f) Loans or extensions of credit arising from the discount of  
 25 negotiable or nonnegotiable installment consumer paper that carries a  
 26 full recourse endorsement or unconditional guarantee by the member  
 27 transferring the paper are subject under this section to a maximum  
 28 limitation equal to twenty-five percent (25%) of the capital and surplus,  
 29 notwithstanding the collateral requirements set forth in subsection (d).  
 30 (g) If the credit union's files or the knowledge of the credit union's  
 31 officers of the financial condition of each maker of consumer paper  
 32 described in subsection (f) is reasonably adequate, and an officer of the  
 33 credit union designated for that purpose by the board of directors of the  
 34 credit union certifies in writing that the credit union is relying primarily  
 35 upon the responsibility of each maker for payment of the loans or  
 36 extensions of credit and not upon any full or partial recourse  
 37 endorsement or guarantee by the transferor, the limitations of this  
 38 section as to the loans or extensions of credit of each maker shall be the  
 39 sole applicable loan limitations.  
 40 (h) Loans or extensions of credit secured by shipping documents or  
 41 instruments transferring or securing title covering livestock or giving  
 42 a lien on livestock when the market value of the livestock securing the

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1 obligation is not at any time less than one hundred fifteen percent  
2 (115%) of the face amount of the note covered are subject under this  
3 section, notwithstanding the collateral requirements set forth in  
4 subsection (d), to a maximum limitation equal to twenty-five percent  
5 (25%) of the capital and surplus.

6 (i) Loans or extensions of credit that arise from the discount by  
7 dealers in dairy cattle of paper given in payment for dairy cattle, which  
8 paper carries a full recourse endorsement or unconditional guarantee  
9 of the seller and that are secured by the cattle being sold, are subject  
10 under this section, notwithstanding the collateral requirements set forth  
11 in subsection (d), to a limitation of twenty-five percent (25%) of the  
12 capital and surplus.

13 (j) Except as otherwise provided, an officer, director, employee, or  
14 attorney of a credit union who stipulates for, receives, or consents or  
15 agrees to receive, any fee, commission, gift, or thing of value, from any  
16 person, for the purpose of procuring or endeavoring to procure for any  
17 member any loan from or the purchase or discount of any paper, note,  
18 draft, check, or bill of exchange by the credit union, commits a Class  
19 A misdemeanor.

20 (k) Except as otherwise provided in this chapter, any credit union  
21 that holds obligations of indebtedness in violation of the limitations  
22 prescribed in this section shall, not later than July 1, 2006, cause the  
23 amount of the obligations to conform to the limitations prescribed by  
24 this chapter and by the provisions of this section. The department may,  
25 in its discretion, extend the time for effecting this conformity, in  
26 individual instances, if the interests of the depositors will be protected  
27 and served by an extension. Upon the failure of a credit union to  
28 comply with the limitations, in accordance with this section or in  
29 accordance with any order of the department concerning the  
30 limitations, the department may declare that the credit union is  
31 conducting its business in an unauthorized or unsafe manner and  
32 proceed in accordance with IC 28-1-3.1-2.

33 (l) The department may apply the provisions of 12 CFR 32 in the  
34 application and administration of this chapter.

35 SECTION 95. IC 28-7-5-13 IS AMENDED TO READ AS  
36 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 13. (a) The department  
37 shall, upon ten (10) days notice to the licensee stating the contemplated  
38 action and in general the grounds therefor, and upon reasonable  
39 opportunity to be heard, revoke, by written order, any license issued  
40 under this chapter if it shall find that: (1) the licensee has failed to  
41 comply with any ruling or requirements of the department; (2) the  
42 licensee has violated any provision of this chapter or any rule made by

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1 the department; or (3) any fact or condition exists which, if it had  
2 existed at the time of the original application for such license, would  
3 have warranted the department in refusing originally to issue such  
4 license. may issue to a licensee an order to show cause why the  
5 licensee's license should not be revoked or suspended for a period  
6 determined by the department.

7 (b) An order issued under subsection (a) must:

8 (1) include:

9 (A) a statement of the place, date, and time for a meeting  
10 with the department, which date may not be less than ten

11 (10) days from the date of the order;

12 (B) a description of the action contemplated by the  
13 department; and

14 (C) a statement of the facts or conduct supporting the  
15 issuance of the order; and

16 (2) be accompanied by a notice stating that the licensee is  
17 entitled to:

18 (A) a reasonable opportunity to be heard; and

19 (B) show the licensee's compliance with all lawful  
20 requirements for retention of the license;

21 at the meeting described in subdivision (1)(A).

22 (c) After the meeting described in subsection (b)(1)(A), the  
23 department may revoke or suspend the license if the department  
24 finds that:

25 (1) the licensee has repeatedly and willfully violated:

26 (A) this chapter or any rule, order, or guidance document  
27 adopted or issued by the department; or

28 (B) any other state or federal law, regulation, or rule  
29 applicable to the business of a pawnbroker;

30 (2) the licensee does not meet the licensing qualifications set  
31 forth in this chapter;

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

34 (4) the licensee knowingly or intentionally made material  
35 misrepresentations to, or concealed material information  
36 from, the department; or

37 (5) facts or conditions exist that, had they existed at the time  
38 the licensee applied for the license, would have been grounds  
39 for the department to deny the issuance of the license.

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

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- 1           (1) the revocation or suspension;
- 2           (2) if a suspension has been ordered, the duration of the
- 3           suspension;
- 4           (3) the procedure for appealing the revocation or suspension
- 5           under IC 4-21.5-3-5; and
- 6           (4) any other terms and conditions that apply to the
- 7           revocation or suspension.

8           Not later than five (5) days after the entry of the order, the  
 9           department shall deliver to the licensee a copy of the order and the  
 10          findings supporting the order.

11          (e) Any person holding a license to operate as a pawnbroker  
 12          may surrender the license by complying with section 10.1 of this  
 13          chapter. However, a surrender of a license under section 10.1 of  
 14          this chapter does not affect the person's liability for acts previously  
 15          committed and coming within the scope of this chapter.

16          (f) If the director determines it to be in the public interest, the  
 17          director may pursue the revocation of a license of a licensee that  
 18          has surrendered the license under section 10.1 of this chapter.

19          (g) If a person's license is revoked, suspended, or surrendered,  
 20          the revocation, suspension, or surrender does not impair or affect  
 21          any obligation owed by any person under any existing contract,  
 22          pledge, or pawn ticket.

23          **(b) (h)** If the director of the department ~~(+)~~ has just cause to believe  
 24          an emergency exists from which it is necessary to protect the interests  
 25          of the public, or ~~(2)~~ determines that the license was obtained for the  
 26          benefit of, or on behalf of, a person who does not qualify for a license;  
 27          the director may proceed with the revocation of ~~the~~ a license **through**  
 28          **an emergency or another temporary order** under ~~IC 4-21.5-3-6.~~  
 29          **IC 4-21.5-4.**

30          SECTION 96. IC 28-7-5-14 IS REPEALED [EFFECTIVE JULY 1,  
 31          2012]. ~~Sec. 14. No revocation or suspension or surrender of any license~~  
 32          ~~shall impair or affect the obligation of any pre-existing lawful contract~~  
 33          ~~between the licensee and any borrower.~~

34          SECTION 97. IC 28-7-5-16, AS AMENDED BY P.L.35-2010,  
 35          SECTION 176, IS AMENDED TO READ AS FOLLOWS  
 36          [EFFECTIVE JULY 1, 2012]: Sec. 16. (a) The licensee shall keep and  
 37          use in the licensee's business such books, accounts, and records as will  
 38          enable the department to determine whether the licensee is complying  
 39          with this chapter and with the rules adopted by the department under  
 40          this chapter. Every licensee shall preserve such books, accounts, and  
 41          records, including cards used in the card system for at least two (2)  
 42          years after making the final entry on any loan recorded therein. The

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1 books and records of the licensee shall be kept so that the pawnbroking  
 2 business transacted in Indiana may be readily separated and  
 3 distinguished from the business of the licensee transacted elsewhere  
 4 and from any other business in which the licensee may be engaged. To  
 5 determine whether the licensee is complying with this chapter and with  
 6 rules adopted by the department under this chapter, the department may  
 7 examine the books, accounts, and records required to be kept by the  
 8 licensee under this subsection. If the department examines the books,  
 9 accounts, and records of the licensee under this subsection, the licensee  
 10 shall pay all reasonably incurred costs of the examination in  
 11 accordance with the fee schedule adopted under IC 28-11-3-5. **A fee**  
 12 **established by the department under IC 28-11-3-5 may be charged**  
 13 **for each day a fee under this subsection is delinquent.**

14 (b) If a pawnbroker, in the conduct of the business, purchases a  
 15 article from a seller, the purchase shall be evidenced by a bill of sale  
 16 properly signed by the seller. All bills of sale must be in duplicate and  
 17 must recite the following separate items:

- 18 (1) Date of bill of sale.
- 19 (2) Amount of consideration.
- 20 (3) Name of pawnbroker.
- 21 (4) Description of each article sold. However, if multiple articles  
 22 of a similar nature that do not contain an identification or serial  
 23 number (such as precious metals, gemstones, musical recordings,  
 24 video recordings, books, or hand tools) are delivered together in  
 25 one (1) transaction, the description of the articles is adequate if  
 26 the description contains the quantity of the articles delivered and  
 27 a physical description of the type of articles delivered, including  
 28 any other unique identifying marks, numbers, names, letters, or  
 29 special features.
- 30 (5) Signature of seller.
- 31 (6) Address of seller.
- 32 (7) Date of birth of the seller.
- 33 (8) The type of government issued identification used to verify the  
 34 identity of the seller, together with the name of the governmental  
 35 agency that issued the identification, and the identification  
 36 number present on the government issued identification.

37 (c) If a pawnbroker, in the conduct of the business, purchases a  
 38 article from a seller on the condition of selling the property back at a  
 39 stipulated price, the transaction shall be evidenced by a bill of sale  
 40 properly signed by the seller. All such bills of sale must be in duplicate  
 41 and recite the information in subsection (b) and must also contain the  
 42 following information:



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1 (1) Date of resale.  
 2 (2) Amount of resale.  
 3 (d) The original copy of the bill of sale shall be retained by the  
 4 pawnbroker. The second copy shall be delivered to the seller by the  
 5 pawnbroker at the time of sale. The heading on all bill of sale forms  
 6 must be in boldface type.  
 7 (e) Each licensee shall maintain a record of control indicating the  
 8 number of accounts and dollar value of all outstanding pawnbroking  
 9 receivables. Each licensee shall maintain a separate record of  
 10 transactions subject to subsection (c).  
 11 (f) If a licensee contracts with an outside vendor to provide a service  
 12 that would otherwise be undertaken internally by the licensee and be  
 13 subject to the department's routine examination procedures, the person  
 14 that provides the service to the licensee shall, at the request of the  
 15 director, submit to an examination by the department. If the director  
 16 determines that an examination under this subsection is necessary or  
 17 desirable, the examination may be made at the expense of the person  
 18 to be examined. If the person to be examined under this subsection  
 19 refuses to permit the examination to be made, the director may order  
 20 any licensee that receives services from the person refusing the  
 21 examination to:  
 22 (1) discontinue receiving one (1) or more services from the  
 23 person; or  
 24 (2) otherwise cease conducting business with the person.  
 25 SECTION 98. IC 28-7-5-30, AS AMENDED BY P.L.217-2007,  
 26 SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 27 JULY 1, 2012]: Sec. 30. (a) Subject to subsections (b) and (c), upon the  
 28 expiration of two (2) months from the maturity of the loan, a pawned  
 29 article becomes the property of the pawnbroker and is subject to sale.  
 30 (b) Subsection (a) applies only if the pledger is given a reasonable  
 31 opportunity during:  
 32 (1) the term of the loan; and  
 33 (2) the two (2) month period described in subsection (a);  
 34 to repay the loan and redeem the pawned article.  
 35 (c) During the term of the loan and the two (2) month period  
 36 described in subsection (a), the pawnbroker may not allow the public  
 37 to have access to the pawned article.  
 38 (d) **If a pawnbroker gives notice to the department under**  
 39 **section 10.1 of this chapter that the pawnbroker intends to cease**  
 40 **engaging in business as a pawnbroker in Indiana, the pawnbroker**  
 41 **may accept, through the two (2) month period described in**  
 42 **subsection (a) with respect to any loan, partial payments from any**

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1 **pledger that has one (1) or more loans outstanding with the**  
 2 **pawnbroker. A partial payment made under this subsection must**  
 3 **be applied to a loan's principal and used to reduce the pledger's**  
 4 **loan obligation. Acceptance of partial payments under this**  
 5 **subsection does not require the pawnbroker to extend the two (2)**  
 6 **month period described in subsection (a) with respect to any loan.**

7 SECTION 99. IC 28-8-4-41, AS AMENDED BY P.L.35-2010,  
 8 SECTION 183, IS AMENDED TO READ AS FOLLOWS  
 9 [EFFECTIVE JULY 1, 2012]: Sec. 41. (a) The director may conduct an  
 10 annual onsite examination of a licensee or an authorized delegate of a  
 11 licensee.

12 (b) If the director determines that a reasonable belief exists that a  
 13 person is operating without a valid license or in violation of this  
 14 chapter, the director has the authority to investigate and examine the  
 15 records of that person. The person examined must pay the reasonably  
 16 incurred costs of the examination.

17 (c) Except as provided in section 42(a)(2) of this chapter, the  
 18 director must give the licensee forty-five (45) days written notice  
 19 before conducting an onsite examination.

20 (d) If the director determines, based on the licensee's financial  
 21 statements and past history of operations in Indiana, that an onsite  
 22 examination is unnecessary, the director may waive the onsite  
 23 examination.

24 (e) If the director concludes that an onsite examination of a licensee  
 25 is necessary, the licensee shall pay all reasonably incurred costs of such  
 26 examination in accordance with the fee schedule adopted under  
 27 IC 28-11-3-5. **A fee established by the department under**  
 28 **IC 28-11-3-5 may be charged for each day a fee under this section**  
 29 **is delinquent.**

30 (f) An onsite examination may be conducted in conjunction with  
 31 examinations to be performed by representatives of agencies of another  
 32 state or states. In lieu of an onsite examination, a director may accept  
 33 the examination report of an agency of another state, or a report  
 34 prepared by an independent accounting firm. A report accepted under  
 35 this subsection shall be considered, for all purposes, to be an official  
 36 report of the director.

37 (g) If a licensee contracts with an outside vendor to provide a  
 38 service that would otherwise be undertaken internally by the licensee  
 39 and be subject to the department's routine examination procedures, the  
 40 person that provides the service to the licensee shall, at the request of  
 41 the director, submit to an examination by the department. If the director  
 42 determines that an examination under this subsection is necessary or

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1 desirable, the examination may be made at the expense of the person  
2 to be examined. If the person to be examined under this subsection  
3 refuses to permit the examination to be made, the director may order  
4 any licensee that receives services from the person refusing the  
5 examination to:

- 6 (1) discontinue receiving one (1) or more services from the
- 7 person; or
- 8 (2) otherwise cease conducting business with the person.

9 SECTION 100. IC 28-8-4-42 IS AMENDED TO READ AS  
10 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 42. (a) If the director  
11 has a reasonable basis to believe that a licensee or an authorized  
12 delegate of a licensee is in violation of this chapter, the director may:

- 13 (1) request financial data from the licensee in addition to that
- 14 required under section 38(a)(1) of this chapter; or
- 15 (2) conduct an in-state, onsite examination of an authorized
- 16 delegate's operation or a licensee's location without prior notice
- 17 to the authorized delegate or licensee.

18 (b) All reasonable costs of an examination incurred under  
19 subsection (a)(2) shall be paid by the:

- 20 (1) authorized delegate whose operation is examined; or
- 21 (2) the licensee whose location is examined;

22 **in accordance with the fee schedule adopted under IC 28-11-3-5. A**  
23 **fee established by the department under IC 28-11-3-5 may be**  
24 **charged for each day a fee under this section is delinquent.**

25 SECTION 101. IC 28-8-4-48 IS AMENDED TO READ AS  
26 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 48. (a) After notice and  
27 hearing, The director may suspend or revoke a licensee's license if the  
28 director finds one (1) of the following conditions: (1) A fact or  
29 condition exists that, if it had existed at the time the licensee applied  
30 for a license, would have been grounds for denying the application. (2)  
31 The licensee's net worth becomes inadequate to meet the terms of  
32 sections 24 and 33 of this chapter and the licensee, after ten (10) days  
33 written notice from the director, fails to take steps that the director  
34 considers necessary to remedy the deficiency. (3) The licensee violates  
35 a material provision of this chapter or order validly promulgated by the  
36 director under authority of this chapter. (4) The licensee is conducting  
37 its business in an unsafe or unsound manner as determined by the  
38 director. (5) The licensee is insolvent. (6) The licensee has suspended  
39 payment of its obligations; has made an assignment for the benefit of  
40 its creditors; or has admitted in writing its inability to pay its debts as  
41 they become due. (7) The licensee has applied for an adjudication of  
42 bankruptcy, reorganization, arrangement, or other relief under the

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1 federal bankruptcy code. (8) The licensee refuses to permit the director  
2 to make any examination authorized by this chapter. (9) The licensee  
3 fails to make a report required by this chapter. **issue to a licensee an**  
4 **order to show cause why the licensee's license should not be**  
5 **revoked or suspended for a period determined by the department.**

6 **(b) An order issued under subsection (a) must:**

7 **(1) include:**

- 8 **(A) a statement of the place, date, and time for a meeting**
- 9 **with the department, which date may not be less than ten**
- 10 **(10) days from the date of the order;**
- 11 **(B) a description of the action contemplated by the**
- 12 **department; and**
- 13 **(C) a statement of the facts or conduct supporting the**
- 14 **issuance of the order; and**

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

- 17 **(A) a reasonable opportunity to be heard; and**
- 18 **(B) show the licensee's compliance with all lawful**
- 19 **requirements for retention of the license;**

20 **at the meeting described in subdivision (1)(A).**

21 **(c) After the meeting described in subsection (b)(1)(A), the**  
22 **department may revoke or suspend the license if the department**  
23 **finds that:**

24 **(1) the licensee has repeatedly and willfully violated:**

- 25 **(A) this chapter or any rule, order, or guidance document**
- 26 **adopted or issued by the department; or**
- 27 **(B) any other state or federal law, regulation, or rule**
- 28 **applicable to the business of money transmission;**

29 **(2) the licensee does not meet the licensing qualifications set**  
30 **forth in this chapter;**

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

33 **(4) the licensee knowingly or intentionally made material**  
34 **misrepresentations to, or concealed material information**  
35 **from, the department; or**

36 **(5) facts or conditions exist that, had they existed at the time**  
37 **the licensee applied for the license, would have been grounds**  
38 **for the department to deny the issuance of the license.**

39 **(d) Whenever the department revokes or suspends a license, the**  
40 **department shall enter an order to that effect and notify the**  
41 **licensee of:**

42 **(1) the revocation or suspension;**

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- 1           (2) if a suspension has been ordered, the duration of the
- 2           suspension;
- 3           (3) the procedure for appealing the revocation or suspension
- 4           under IC 4-21.5-3-5; and
- 5           (4) any other terms and conditions that apply to the
- 6           revocation or suspension.

7 Not later than five (5) days after the entry of the order, the  
 8 department shall deliver to the licensee a copy of the order and the  
 9 findings supporting the order.

10           (e) Any person holding a license to engage in the business of  
 11 money transmission may relinquish the license by notifying the  
 12 department in writing of the relinquishment. However, a  
 13 relinquishment under this subsection does not affect the person's  
 14 liability for acts previously committed and coming within the scope  
 15 of this chapter.

16           (f) If the director determines it to be in the public interest, the  
 17 director may pursue the revocation of a license of a licensee that  
 18 has relinquished the license under subsection (e).

19           (g) If a person's license is revoked, suspended, or relinquished,  
 20 the revocation, suspension, or relinquishment does not impair or  
 21 affect any obligation owed by any person under any existing lawful  
 22 contract.

23           **(h)** If the director of the department ~~(+)~~ has just cause to believe  
 24 an emergency exists from which it is necessary to protect the interests  
 25 of the public, or ~~(2)~~ determines that the license was obtained for the  
 26 benefit of, or on behalf of, a person who does not qualify for a license;  
 27 the director may proceed with the revocation of ~~the~~ a license **through**  
 28 **an emergency or another temporary order** under ~~IC 4-21.5-3-6.~~  
 29 **IC 4-21.5-4.**

30           SECTION 102. IC 28-8-4-49 IS AMENDED TO READ AS  
 31 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 49. **(a)** Licensees  
 32 desiring to conduct licensed activities through authorized delegates  
 33 shall authorize each delegate to operate pursuant to an express written  
 34 contract, which shall provide for the following:

- 35           (1) That the licensee appoints the person as its delegate with
- 36           authority to sell payment instruments and accept funds to be
- 37           transmitted by or on behalf of the licensee.
- 38           (2) That neither a licensee nor an authorized delegate may
- 39           authorize a subdelegate without the written consent of the
- 40           director.
- 41           (3) That licensees are subject to supervision and regulation by the
- 42           director.

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1 (4) An acknowledgment that the authorized delegate consents to  
 2 the director's inspection, with or without prior notice to the  
 3 licensee or authorized delegate, of the books, records, and  
 4 accounts of an authorized delegate of the licensee when the  
 5 director has a reasonable basis to believe that the licensee or  
 6 authorized delegate is in violation of this chapter.

7 (5) That authorized delegates are under a duty to act only as  
 8 authorized under the contract with the licensee and that an  
 9 authorized delegate who exceeds the delegate's authority is  
 10 subject to cancellation of the delegate's contract and disciplinary  
 11 action by the director.

12 **(b) Subject to sections 50 and 51 of this chapter, an authorized**  
 13 **delegate of a licensee or of a person exempt from licensure under**  
 14 **section 1 of this chapter is exempt from the licensing requirements**  
 15 **of this chapter if the authorized delegate acts within the scope of**  
 16 **the written contract executed under subsection (a) between the**  
 17 **authorized delegate and the licensee or exempt person.**

18 SECTION 103. IC 28-8-5-14 IS AMENDED TO READ AS  
 19 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 14. A license issued  
 20 pursuant to this chapter expires on July 1 of the year following the date  
 21 of issuance unless earlier ~~surrendered~~, suspended, **relinquished**, or  
 22 revoked.

23 SECTION 104. IC 28-8-5-19, AS AMENDED BY P.L.35-2010,  
 24 SECTION 189, IS AMENDED TO READ AS FOLLOWS  
 25 [EFFECTIVE JULY 1, 2012]: Sec. 19. (a) The department may  
 26 examine the books, accounts, and records of a licensee and may make  
 27 investigations to determine compliance.

28 (b) If the department examines the books, accounts, and records of  
 29 a licensee, the licensee shall pay all reasonably incurred costs of the  
 30 examination in accordance with the fee schedule adopted under  
 31 IC 28-11-3-5. **A fee established by the department under**  
 32 **IC 28-11-3-5 may be charged for each day a fee under this section**  
 33 **is delinquent.**

34 (c) If a licensee contracts with an outside vendor to provide a  
 35 service that would otherwise be undertaken internally by the licensee  
 36 and be subject to the department's routine examination procedures, the  
 37 person that provides the service to the licensee shall, at the request of  
 38 the director, submit to an examination by the department. If the director  
 39 determines that an examination under this subsection is necessary or  
 40 desirable, the examination may be made at the expense of the person  
 41 to be examined. If the person to be examined under this subsection  
 42 refuses to permit the examination to be made, the director may order



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1 any licensee that receives services from the person refusing the  
2 examination to:

- 3 (1) discontinue receiving one (1) or more services from the
- 4 person; or
- 5 (2) otherwise cease conducting business with the person.

6 SECTION 105. IC 28-8-5-22 IS AMENDED TO READ AS  
 7 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 22. (a) The department  
 8 may suspend or revoke a license issued under this chapter pursuant to  
 9 the provisions in IC 4-21.5 for: ~~(1) violating this chapter; or (2) any~~  
 10 ~~reason that would be sufficient to deny an initial application for a~~  
 11 ~~license. issue to a licensee an order to show cause why the licensee's~~  
 12 ~~license should not be revoked or suspended for a period~~  
 13 ~~determined by the department.~~

14 (b) An order issued under subsection (a) must:

15 (1) include:

- 16 (A) a statement of the place, date, and time for a meeting
- 17 with the department, which date may not be less than ten
- 18 (10) days from the date of the order;
- 19 (B) a description of the action contemplated by the
- 20 department; and
- 21 (C) a statement of the facts or conduct supporting the
- 22 issuance of the order; and

23 (2) be accompanied by a notice stating that the licensee is  
24 entitled to:

- 25 (A) a reasonable opportunity to be heard; and
- 26 (B) show the licensee's compliance with all lawful
- 27 requirements for retention of the license;
- 28 at the meeting described in subdivision (1)(A).

29 (c) After the meeting described in subsection (b)(1)(A), the  
30 department may revoke or suspend the license if the department  
31 finds that:

- 32 (1) the licensee has repeatedly and willfully violated:
  - 33 (A) this chapter or any rule, order, or guidance document
  - 34 adopted or issued by the department; or
  - 35 (B) any other state or federal law, regulation, or rule
  - 36 applicable to the business of cashing checks for
  - 37 consideration;
- 38 (2) the licensee does not meet the licensing qualifications set
- 39 forth in this chapter;
- 40 (3) the licensee obtained the license for the benefit of, or on
- 41 behalf of, a person who does not qualify for the license;
- 42 (4) the licensee knowingly or intentionally made material

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1 misrepresentations to, or concealed material information  
2 from, the department; or  
3 (5) facts or conditions exist that, had they existed at the time  
4 the licensee applied for the license, would have been grounds  
5 for the department to deny the issuance of the license.

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

- 9 (1) the revocation or suspension;
- 10 (2) if a suspension has been ordered, the duration of the
- 11 suspension;
- 12 (3) the procedure for appealing the revocation or suspension
- 13 under IC 4-21.5-3-5; and
- 14 (4) any other terms and conditions that apply to the
- 15 revocation or suspension.

16 Not later than five (5) days after the entry of the order, the  
17 department shall deliver to the licensee a copy of the order and the  
18 findings supporting the order.

19 (e) Any person holding a license to engage in the business of  
20 cashing checks for consideration may relinquish the license by  
21 notifying the department in writing of the relinquishment.  
22 However, a relinquishment under this subsection does not affect  
23 the person's liability for acts previously committed and coming  
24 within the scope of this chapter.

25 (f) If the director determines it to be in the public interest, the  
26 director may pursue the revocation of a license of a licensee that  
27 has relinquished the license under subsection (e).

28 (g) If a person's license is revoked, suspended, or relinquished,  
29 the revocation, suspension, or relinquishment does not impair or  
30 affect any obligation owed by any person under any existing lawful  
31 contract.

32 ~~(b)~~ (h) If the director of the department ~~(1)~~ has just cause to believe  
33 an emergency exists from which it is necessary to protect the interests  
34 of the public, ~~or (2) determines that the license was obtained for the~~  
35 ~~benefit of, or on behalf of, a person who does not qualify for a license;~~  
36 the director may proceed with the revocation of ~~the~~ a license **through**  
37 **an emergency or another temporary order** under ~~IC 4-21.5-3-6.~~  
38 **IC 4-21.5-4.**

39 SECTION 106. IC 28-10-1-1, AS AMENDED BY P.L.89-2011,  
40 SECTION 68, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
41 JANUARY 1, 2012 (RETROACTIVE)]: Sec. 1. A reference to a  
42 federal law or federal regulation in this title is a reference to the law or

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1 regulation as in effect December 31, ~~2010~~ **2011**.

2 SECTION 107. IC 28-11-1-9.1, AS ADDED BY P.L.35-2010,  
3 SECTION 194, IS AMENDED TO READ AS FOLLOWS  
4 [EFFECTIVE JULY 1, 2012]: Sec. 9.1. (a) **Subject to the policies**  
5 **adopted by the members governing the conduct of meetings**, this  
6 section applies to a ~~meeting~~ **all meetings** of the members. ~~at which at~~  
7 ~~least four (4) members are physically present at the place where the~~  
8 ~~meeting is conducted.~~

9 (b) A member may participate in a meeting of the members by using  
10 a means of communication that permits:

- 11 (1) all other members participating in the meeting; and
- 12 (2) all members of the public physically present at the place  
13 where the meeting is conducted;

14 to simultaneously communicate with each other during the meeting.

15 (c) A member who participates in a meeting under subsection (b) is  
16 considered to be present at the meeting **for all purposes, including**  
17 **establishing a quorum and voting on all matters to come before the**  
18 **members.**

19 (d) ~~A member who participates in a meeting under subsection (b)~~  
20 ~~may act as a voting member on official action only if that official action~~  
21 ~~is voted upon by at least four (4) members of the board physically~~  
22 ~~present at the place where the meeting is conducted.~~

23 (e) ~~(d)~~ The memoranda of the meeting prepared under IC 5-14-1.5-4  
24 must state the name of each member who:

- 25 (1) was physically present at the place where the meeting was  
26 conducted;
- 27 (2) participated in the meeting by using a means of  
28 communication described in subsection (b); and
- 29 (3) was absent.

30 (f) ~~A member who participates in a meeting under subsection (b)~~  
31 ~~may not cast the deciding vote on any official action.~~

32 SECTION 108. IC 28-11-5-10, AS ADDED BY P.L.90-2008,  
33 SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
34 JULY 1, 2012]: Sec. 10. (a) Subject to subsection (g), a financial  
35 institution **described in section 1 of this chapter that is** subject to this  
36 chapter may:

- 37 (1) be organized as a limited liability company;
- 38 (2) convert to a limited liability company; or
- 39 (3) merge with or into a limited liability company;

40 under the laws of Indiana or the United States, including any rules or  
41 regulations adopted or promulgated under the laws of Indiana or the  
42 United States.

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1 (b) A **bank financial institution** organized as a limited liability  
2 company is subject to:  
3 (1) IC 23-18; and  
4 (2) this title.  
5 If a provision of IC 23-18 conflicts with a provision of this title or with  
6 any rule of the department, the provision of this title or the rule the  
7 department controls.  
8 (c) Any filing required to be made under IC 23-18 shall be made in  
9 the same manner as for a **bank financial institution** that is organizing  
10 or is organized in stock form.  
11 (d) The department may prescribe any requirements for:  
12 (1) the articles of organization; and  
13 (2) the operating agreement;  
14 of a financial institution that is organized and operates as a limited  
15 liability company.  
16 (e) The department has the exclusive authority under this title to  
17 regulate a financial institution organized as a limited liability company.  
18 A financial institution that is a limited liability company is subject to  
19 the department's authority in the same manner as a bank that is  
20 organized in stock form.  
21 (f) A financial institution that is a limited liability company is  
22 subject to the provisions of this title that apply to banks, except for the  
23 provisions concerning corporate governance (IC 28-13), in the same  
24 manner as a financial institution that is organized in stock form, subject  
25 to the following:  
26 (1) In the case of a manager managed limited liability company,  
27 "director" means a manager of the limited liability company.  
28 (2) In the case of a member managed limited liability company,  
29 "director" means a member of the limited liability company.  
30 (g) A financial institution may not:  
31 (1) organize as;  
32 (2) convert to; or  
33 (3) merge with or into;  
34 a limited liability company without the prior approval of the  
35 department under this title.  
36 SECTION 109. IC 28-14-3-22 IS AMENDED TO READ AS  
37 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 22. (a) Subject to  
38 IC 28-1-22, a corporate fiduciary, trust company, or bank that is  
39 organized and doing business under the laws of any state, territory, or  
40 district other than Indiana, including a national bank or national trust  
41 company that is primarily domiciled in any other state, may establish  
42 an office to conduct business as a fiduciary in Indiana if the law of the

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1 state, territory, or district in which the corporate fiduciary, trust  
2 company, or bank is primarily domiciled would allow an Indiana bank,  
3 an Indiana corporate fiduciary, or an Indiana trust company to establish  
4 a place of business or an agency in that state, territory, or district for the  
5 conduct of business as a fiduciary.

6 **(b) A corporate fiduciary, trust company, or bank that is**  
7 **organized and doing business under the laws of any state, territory,**  
8 **or district other than Indiana, including a national bank or**  
9 **national trust company that is primarily domiciled in any other**  
10 **state, has the same rights, privileges, and restrictions, including**  
11 **capital requirements, as an Indiana bank, an Indiana corporate**  
12 **fiduciary, or an Indiana trust company of like character or**  
13 **charter, and to the same extent as if the corporate fiduciary, trust**  
14 **company, or bank organized and doing business under the laws of**  
15 **any state, territory, or district other than Indiana had been**  
16 **organized under this article, to transact the business for which a**  
17 **certificate of admission is issued.**

18 SECTION 110. IC 28-15-1-9.8 IS ADDED TO THE INDIANA  
19 CODE AS A NEW SECTION TO READ AS FOLLOWS  
20 [EFFECTIVE JULY 1, 2012]: **Sec. 9.8. "Primary federal regulator"**  
21 **means the federal agency primarily responsible for the regulation**  
22 **of:**

- 23 **(1) savings associations; or**  
24 **(2) savings association holding companies;**  
25 **organized under the laws of any state or the United States.**

26 SECTION 111. IC 28-15-2-1, AS AMENDED BY P.L.89-2011,  
27 SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
28 JULY 1, 2012]: Sec. 1. (a) Savings associations may do the following:

- 29 (1) Accept deposit accounts.  
30 (2) Issue evidence of deposit account ownership.  
31 (3) Declare and distribute earnings to members.  
32 (4) Pay, in part or in full, withdrawal requests of deposit accounts.  
33 (5) Subject to the provisions and restrictions of 12 U.S.C. 84 and  
34 12 CFR 32:  
35 (A) Make loans to members on the security of deposit  
36 accounts.  
37 (B) Make property improvement loans.  
38 (C) Make other loans as provided under IC 28-15-8.  
39 (D) Make mortgage loans.  
40 (E) Accept additional collateral on mortgage loans.  
41 (F) Purchase and sell loans.  
42 (G) Negotiate loan servicing agreements.

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- 1 (H) Purchase and sell participating interests in loans.
- 2 (I) Issue letters of credit with specific expiration dates.
- 3 (J) Make secured or unsecured loans, which are partially
- 4 insured or guaranteed in any manner by any state of the United
- 5 States, the United States government, or any of its agencies or
- 6 government sponsored enterprises.
- 7 (K) Purchase commercial paper that is denominated in United
- 8 States currency and that:
- 9 (i) is rated by at least one (1) nationally recognized
- 10 investment rating service in one (1) of the two (2) highest
- 11 grades; or
- 12 (ii) meets another standard of creditworthiness determined
- 13 to be appropriate by the director.
- 14 (L) Make, purchase, or participate in alternative mortgage
- 15 loans as provided in IC 28-15-11.
- 16 (6) Acquire and sell real estate in satisfaction of debts previously
- 17 contracted.
- 18 (7) Acquire real estate for the convenient transaction of its
- 19 business. A savings association has the same powers under this
- 20 subdivision as a bank or trust company has under IC 28-1-11-5.
- 21 (8) Notwithstanding any other law, establish, maintain, or relocate
- 22 one (1) or more branch offices by following the provisions of
- 23 IC 28-2-13, IC 28-2-17, or IC 28-2-18 as if the savings association
- 24 were a bank.
- 25 (9) Become a member in any agency or instrumentality of the
- 26 federal government. For the purposes of this subdivision,
- 27 membership in an agency or instrumentality of the federal
- 28 government may include:
- 29 (A) purchasing stock;
- 30 (B) purchasing notes and debentures; or
- 31 (C) borrowing money.
- 32 (10) Subject to any limitations imposed by the department
- 33 through policy:
- 34 (A) invest the money deposited in the savings association in
- 35 the shares of the capital stock, bonds, debentures, notes, or
- 36 other obligations of a federal home loan bank of the United
- 37 States;
- 38 (B) become a member of the federal home loan bank of the
- 39 district in which Indiana is located or an adjoining district;
- 40 (C) borrow money from:
- 41 (i) a federal home loan bank described in clause (B);
- 42 (ii) the Federal Deposit Insurance Corporation; or

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- 1 (iii) any other corporation;
- 2 (D) transfer, assign to, and pledge with a federal home loan
- 3 bank described in clause (B), the Federal Deposit Insurance
- 4 Corporation, or any other corporation any of the bonds, notes,
- 5 contracts, mortgages, securities, or other property of the
- 6 savings association held or acquired as security for the
- 7 payment of loans entered into under clause (C); and
- 8 (E) exercise all rights, powers, and privileges conferred upon,
- 9 and do all things and perform all acts required of, members or
- 10 shareholders of a federal home loan bank by the Federal Home
- 11 Loan Bank Act (12 U.S.C. 1421 through 1449).
- 12 (11) Subject to the provisions and restrictions of 12 U.S.C. 24 and
- 13 12 CFR 1, invest in the following types of securities:
- 14 (A) Bonds, notes, certificates, and other valid obligations of
- 15 the United States government or any agency of the United
- 16 States government.
- 17 (B) Accounts offered by federally insured banks, savings
- 18 banks, and savings associations.
- 19 (C) Bonds, notes, or other evidences of indebtedness that are
- 20 general obligations supported by the full faith and credit of any
- 21 state in the United States or any city, town, or other political
- 22 subdivision in any state in the United States if the obligations:
- 23 (i) have been assigned one (1) of the four (4) highest grades
- 24 by a nationally recognized investment rating service; or
- 25 (ii) meet another standard of creditworthiness determined to
- 26 be appropriate by the director.
- 27 (D) Shares of stock of a subsidiary that does not exercise a
- 28 power or engage in any activity that is not authorized for the
- 29 savings association. The investment power granted by this
- 30 subdivision is separate from the investment power granted by
- 31 IC 28-15-9.
- 32 (E) Corporate debt securities that are denominated in United
- 33 States currency and that:
- 34 (i) are rated by at least one (1) nationally recognized
- 35 investment rating service in one (1) of the four (4) highest
- 36 grades; or
- 37 (ii) meet another standard of creditworthiness determined to
- 38 be appropriate by the director.
- 39 Corporate debt securities in which a savings association
- 40 invests under this clause must be convertible into stock at the
- 41 sole option of the holder, and a savings association is
- 42 prohibited from exercising the conversion option.

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- 1 (F) Shares of open end investment companies that are eligible  
2 for purchase by national banks.
- 3 (G) Bankers' acceptances that are eligible for purchase by  
4 national banks.
- 5 (12) For the purpose of:
- 6 (A) check and deposit sorting and posting;
- 7 (B) computation and posting of interest and other credits and  
8 charges;
- 9 (C) preparation and mailing of checks, statements, notices, and  
10 similar items; or
- 11 (D) other clerical, bookkeeping, accounting, statistical, or  
12 similar functions performed by a savings association;
- 13 invest in a corporation organized in any state to perform those  
14 functions for two (2) or more savings associations, each of which  
15 owns a portion of the capital stock of the corporation. The total  
16 investment of a savings association under this subdivision may  
17 not exceed ten percent (10%) of the capital and surplus of the  
18 savings association. A savings association may not invest in this  
19 type of corporation unless the corporation furnishes assurances to  
20 the department that it will subject itself to examination by the  
21 department to the same extent as if the services were performed  
22 by the savings association.
- 23 (13) Lend money to other savings associations:
- 24 (A) the deposits of which are insured by the Federal Deposit  
25 Insurance Corporation; and
- 26 (B) that are incorporated and operating under the laws of any  
27 state or of the United States.
- 28 (14) Borrow money and mortgage or pledge its property to secure  
29 payment.
- 30 (15) Issue subordinated notes or debentures.
- 31 (16) Assess and collect interest, fees, and other charges.
- 32 (17) Insure its deposit accounts with the Federal Deposit  
33 Insurance Corporation or its successor.
- 34 (18) Act as an agent for the United States or its instrumentalities.
- 35 (19) Accept property for safe keeping or escrow.
- 36 (20) Rent or lease safe deposit boxes.
- 37 (21) Issue and sell checks, drafts, money orders, and other  
38 instruments for the transmission or payment of money.
- 39 (22) Exercise all the powers that:
- 40 (A) are incidental and proper; or
- 41 (B) may be necessary and usual;
- 42 in carrying on the business of the savings association.

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- 1 (23) Purchase or construct buildings, hold legal title to the
- 2 buildings, and lease the buildings for public purposes to
- 3 municipal corporations or other public authorities that have
- 4 resources sufficient to make payment of all rentals as they become
- 5 due. Each lease agreement entered into under this subdivision
- 6 must provide that, upon expiration, the lessee will become the
- 7 owner of the building.
- 8 (24) Open or establish automated teller machines at any location.
- 9 An automated teller machine opened or established under this
- 10 subdivision may be owned and operated individually or jointly on
- 11 a cost sharing or fee basis.
- 12 (25) Act:
- 13 (A) in any fiduciary capacity in which a bank or trust company
- 14 is permitted to act under this title; and
- 15 (B) as an agent for the sale of real estate, without bond or other
- 16 security.
- 17 (26) Accept and maintain demand deposit accounts if the savings
- 18 association is insured by the Federal Deposit Insurance
- 19 Corporation or its successor.
- 20 (27) Without the approval of the department, to the extent
- 21 authorized by the board of directors of the savings association,
- 22 establish or maintain agencies that:
- 23 (A) only service and originate, but do not approve, loans and
- 24 contracts; or
- 25 (B) manage or sell real estate owned by the savings
- 26 association.
- 27 An agency established or maintained under this subdivision may
- 28 offer any services not referred to in this subdivision with the
- 29 approval of the department, except for accepting payment on
- 30 savings accounts. An agency shall maintain records of all
- 31 business it transacts and transmit copies to a branch or home
- 32 office of the savings association.
- 33 (b) Subject to any limitations or restrictions that the department **or**
- 34 **a federal regulator** may impose by **regulation**, rule, ~~or~~ policy, **or**
- 35 **guidance**, a savings association may purchase and hold life insurance
- 36 as follows:
- 37 (1) Life insurance purchased or held in connection with employee
- 38 compensation or benefit plans approved by the savings
- 39 association's board of directors.
- 40 (2) Life insurance purchased or held to recover the cost of
- 41 providing preretirement or postretirement employee benefits
- 42 approved by the savings association's board of directors.

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- 1 (3) Life insurance on the lives of borrowers.
- 2 (4) Life insurance held as security for a loan.
- 3 (5) Life insurance that a national bank may purchase or hold
- 4 under 12 U.S.C. 24 (Seventh).

5 SECTION 112. IC 28-15-6-1 IS AMENDED TO READ AS  
 6 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) The following  
 7 limits apply to the loans that a savings association may make to one (1)  
 8 borrower:

9 (1) Loans that a savings association may make to one (1)  
 10 borrower are restricted by the provisions of 12 U.S.C. 84 and 12  
 11 CFR 32.

12 (2) Notwithstanding subdivision (1), a savings association may  
 13 loan to one (1) borrower no more than the lesser of:

- 14 (A) an amount equal to four percent (4%) of the assets of the
- 15 savings association; or
- 16 (B) five hundred thousand dollars (\$500,000).

17 (3) Notwithstanding subdivisions (1) and (2), a savings  
 18 association may make loans to one (1) borrower to develop  
 19 domestic residential housing units in an amount equal to or less  
 20 than thirty percent (30%) of the savings association's unimpaired  
 21 capital and surplus if:

- 22 (A) the final purchase price of each single family dwelling unit
- 23 whose development is financed under this section does not
- 24 exceed five hundred thousand dollars (\$500,000);
- 25 (B) loans made under this subdivision to all borrowers do not
- 26 in the aggregate exceed one hundred fifty percent (150%) of
- 27 the savings association's unimpaired capital and surplus; and
- 28 (C) the loans made under this subdivision comply with the
- 29 applicable loan to value requirements that apply to federal
- 30 savings associations.

31 **(b) For purposes of any lending limits set forth under this article**  
 32 **with respect to savings associations, the total loans and extensions**  
 33 **of credit by a savings association includes any credit exposure to a**  
 34 **person arising from a derivative transaction (as defined in 12**  
 35 **U.S.C. 84(b)(3)) between the savings association and the person.**

36 SECTION 113. IC 28-15-11-4 IS AMENDED TO READ AS  
 37 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4. As used in this  
 38 chapter, "~~federally chartered~~ **federal savings** association" means a  
 39 **any federal** savings association ~~incorporated under regulations of the~~  
 40 ~~Office of Thrift Supervision or its successor or federal savings bank~~  
 41 **chartered or regulated** under **Section 5** of the Home Owners' Loan  
 42 Act of 1933 (12 U.S.C. 1464).

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1 SECTION 114. IC 28-15-11-7, AS AMENDED BY P.L.89-2011,  
 2 SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 2012]: Sec. 7. As used in this chapter, "money cost index"  
 4 means any of the following:

5 (1) The weekly net yield purchase quotations of conventional  
 6 program home mortgages published **Federal Cost of Funds**  
 7 **Index calculated and made available** by the Federal Home Loan  
 8 Mortgage Corporation **on or about the twentieth day of each**  
 9 **month.**

10 (2) The monthly national average mortgage rate index for all  
 11 major lenders for the purchase of previously occupied  
 12 single-family homes of the Office of Thrift Supervision or its  
 13 successor.

14 (3) The average cost to savings associations of funds insured by  
 15 the Federal Deposit Insurance Corporation, either for all Federal  
 16 Home Loan Bank districts or for a particular district or districts,  
 17 as computed semiannually and published by the Office of Thrift  
 18 Supervision or its successor and made available in news releases.

19 (4) (2) The monthly average of weekly auction rates on United  
 20 States Treasury bills with a maturity of three (3) months or six (6)  
 21 months, as published in the Federal Reserve Bulletin and made  
 22 available by the Federal Reserve Board each month.

23 (5) (3) The monthly average yield on United States Treasury  
 24 securities adjusted to a constant maturity of one (1), two (2), three  
 25 (3), or five (5) years, as published in the Federal Reserve Bulletin  
 26 and made available by the Federal Reserve Board each month.

27 (6) (4) Any rate that is designated by the department.

28 SECTION 115. IC 28-15-11-17 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 17. (a) Any statement,  
 30 disclosure, or notification required by this chapter with respect to an  
 31 alternative mortgage loan may be made in the form prescribed by the  
 32 **Office of Thrift Supervision primary federal regulator** or its  
 33 successor for a similar alternative mortgage loan made by a **federally**  
 34 **chartered federal** savings association.

35 (b) In addition to the disclosures required by this chapter, the  
 36 department may adopt rules under IC 4-22-2 or policies that require  
 37 additional disclosures for alternative mortgage loans.

38 SECTION 116. IC 28-15-11-18 IS AMENDED TO READ AS  
 39 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 18. (a) Subsections (b)  
 40 and (c) apply to alternative mortgage loans and to similar loans  
 41 authorized under federal law or regulations for a **federally chartered**  
 42 **federal** savings association.



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1 (b) Any Indiana laws prohibiting:  
 2 (1) the compounding of interest;  
 3 (2) capitalizing interest because contracted loan repayments  
 4 create negative amortization; or  
 5 (3) paying interest on interest;  
 6 do not apply. For purposes of the application of IC 24-4.5-3 to a loan  
 7 described in subsection (a), "principal" (as defined in  
 8 IC 24-4.5-3-107(3)) includes interest unpaid and added to principal  
 9 because the contracted repayments under the loan do not cover the  
 10 entire interest due at any time.  
 11 (c) The lien of the loan provided by the mortgage and the loan  
 12 documents:  
 13 (1) includes all advances or additions to principal of either  
 14 principal or interest that are made in accordance with the terms of  
 15 the loan documents; and  
 16 (2) is superior to any lien on the property created after the date the  
 17 mortgage securing the loan is recorded, other than taxes and  
 18 special property or taxing district assessments.  
 19 SECTION 117. IC 28-15-13-1 IS AMENDED TO READ AS  
 20 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. A reference in  
 21 IC 28-13-5, IC 28-13-6, ~~or~~ IC 28-1-7, **IC 28-1-7.1, IC 28-1-8, or**  
 22 **IC 28-1-9** to shareholders and shareholders' meetings means, as to a  
 23 mutual savings association, members and members' meetings.  
 24 SECTION 118. IC 28-15-14-1 IS AMENDED TO READ AS  
 25 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) A savings  
 26 association may be:  
 27 (1) merged or consolidated with; or  
 28 (2) converted into;  
 29 a federal savings and loan association, under the charter of the federal  
 30 savings and loan association or under a new charter issued to the  
 31 converted association or the merged or consolidated association, upon  
 32 a vote of fifty-one percent (51%) or more of the votes cast at a legal  
 33 meeting of the shareholders and members of the state chartered savings  
 34 association called to consider the proposed merger, consolidation, or  
 35 conversion.  
 36 (b) A merger, consolidation, or conversion under this section must  
 37 be accomplished:  
 38 (1) in compliance with the laws of the United States relating to  
 39 the merger, consolidation, or conversion; and  
 40 (2) upon terms and conditions prescribed or approved by the  
 41 Office of ~~Thrift Supervision~~ **the Comptroller of the Currency**  
 42 or its successor.

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1 SECTION 119. IC 28-15-14-4 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4. (a) Subject to  
3 regulations prescribed by the Office of Thrift Supervision ~~the~~  
4 **Comptroller of the Currency** or its successor, a federal savings and  
5 loan association located in Indiana, by resolution approved by its board  
6 of directors and adopted by a vote of fifty-one percent (51%) or more  
7 of the votes cast at any annual meeting or at any special meeting of its  
8 members called to consider the action, may convert itself into a state  
9 chartered savings association under this article.

10 (b) A resolution referred to in subsection (a), when adopted by the  
11 members of a federal savings and loan association, must:

12 (1) designate the names and the number of the directors who will  
13 serve as directors of the savings association after the conversion  
14 takes effect; and

15 (2) authorize the directors to execute articles of incorporation.

16 (c) The articles of incorporation executed under this section must  
17 include the contents required by IC 28-12-2-1 except that, instead of  
18 disclosing the name and address of each incorporator as required by  
19 IC 28-12-2-1(4), the articles must:

20 (1) indicate that the savings association is incorporated by  
21 conversion of a federal savings and loan association into a state  
22 chartered savings association; and

23 (2) state the name of the federal savings and loan association  
24 converted under this section.

25 (d) The department must receive from the federal savings and loan  
26 association:

27 (1) three (3) copies of the resolution, certified by the secretary or  
28 assistant secretary of the federal savings and loan association; and

29 (2) the articles of incorporation, in triplicate, signed and  
30 acknowledged by the directors designated under subsection  
31 (b)(1).

32 (e) The department shall approve or disapprove the proposed  
33 conversion of a federal savings and loan association into a state  
34 chartered savings association under this section. The department may  
35 not approve a proposed conversion unless the department, after  
36 appropriate investigation or examination, finds all of the following:

37 (1) That the state chartered savings association resulting from the  
38 conversion will operate in a safe, sound, and prudent manner.

39 (2) That the proposed charter conversion will not result in a state  
40 chartered savings association that has:

41 (A) inadequate capital;

42 (B) unsatisfactory management; or

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1 (C) poor earnings prospects.  
 2 (3) That the management or other principals of the savings  
 3 association are qualified by character and financial responsibility  
 4 to control and operate in a legal and proper manner the proposed  
 5 state chartered savings association.  
 6 (4) That the interests of the depositors, the creditors, and the  
 7 public generally will not be jeopardized by the proposed charter  
 8 conversion.  
 9 (f) If the department approves the resolution and articles of  
 10 incorporation submitted under subsection (d), the department shall:  
 11 (1) indicate its approval on the resolution and articles of  
 12 incorporation in the manner prescribed by IC 28-12-5-1; and  
 13 (2) present the articles of incorporation to the secretary of state.  
 14 (g) If the secretary of state finds that the articles of incorporation  
 15 conform to law, the secretary of state shall:  
 16 (1) endorse the secretary's approval on the copies of the articles  
 17 of incorporation;  
 18 (2) when all fees required by law have been paid:  
 19 (A) file one (1) copy of the articles of incorporation in the  
 20 secretary's office; and  
 21 (B) issue a certificate of incorporation to the savings  
 22 association; and  
 23 (3) return the certificate of incorporation and two (2) copies of the  
 24 articles of incorporation to the directors of the savings association  
 25 designated under subsection (b)(1).  
 26 (h) The conversion of a federal savings and loan association into a  
 27 state chartered savings association under this section is effective when  
 28 the secretary of state issues the certificate of incorporation under  
 29 subsection (g). However, before the savings association may transact  
 30 business under this article or incur indebtedness, except indebtedness  
 31 that is incidental to its organization, one (1) of the copies of its articles  
 32 of incorporation bearing the endorsement of the approval of the  
 33 department and of the secretary of state must be filed for record with  
 34 the recorder of the county in which the principal office of the savings  
 35 association is located.

36 SECTION 120. **An emergency is declared for this act.**

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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.

C  
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y

