Reprinted
March 20, 2013

ENGROSSED
HOUSE BILL No. 1081

DIGEST OF HB 1081 (Updated March 19, 2013 2:09 pm - DI 101)

Citations Affected: IC 24-4.4; IC 24-4.5; IC 24-5; IC 24-7; IC 28-1; IC 28-7; IC 28-8; IC 28-10; IC 28-13; IC 30-2.

Synopsis: Financial institutions and consumer credit and sales. Makes various changes to the laws concerning: (1) financial institutions; (2) first lien mortgage lenders; (3) persons regulated under the Uniform Consumer Credit Code, including payday lenders; (4) debt management companies; (5) pawnbrokers; (6) money transmitters; (7) rental purchase agreements; and (8) funeral trusts. Prohibits sellers from imposing surcharges on customers that elect to use credit cards as means of payment for certain sales or lease transactions. Provides that credit card issuers may not prohibit sellers from offering discounts for payments by cash, check, or similar means in certain sales or lease
(Continued next page)

Effective: January 1, 2013 (retroactive); July 1, 2013; November 1, 2013; January 1, 2014; July 1, 2014.

Burton, Moed, Riecken
(SENATE SPONSORS — HOLDMAN, WALKER)

January 7, 2013, read first time and referred to Committee on Financial Institutions.
January 31, 2013, amended, reported — Do Pass.
February 4, 2013, read second time, ordered engrossed. Engrossed.
February 5, 2013, read third time, passed. Yeas 99, nays 0.

SENATE ACTION

February 25, 2013, read first time and referred to Committee on Financial Institutions.
March 14, 2013, amended, reported favorably — Do Pass.
March 18, 2013, read second time, ordered engrossed. Engrossed, returned to second reading.
March 19, 2013, re-read second time, amended, ordered engrossed.

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Digest Continued

transactions. Provides that a person who violates the provisions concerning credit card surcharges and cash discounts commits a deceptive act under the deceptive consumer sales provisions. Repeals provisions that do the following: (1) Allow a debtor to cancel an agreement with a debt management company before midnight of the third business day after the debtor enters into the agreement. (2) Concern the definition, cancellation, and duration of, and alternatives to, a "surety device" for purposes of the statute concerning money transmitters. (3) Concern the application fee for purposes of the statute concerning money transmitters.

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Reprinted
March 20, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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ENGROSSED
HOUSE BILL No. 1081

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

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

SECTION 1. IC 24-4.4-1-102, AS AMENDED BY P.L.27-2012, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013 (RETROACTIVE)]: Sec. 102. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

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

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

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

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

(4) A reference to a federal law in this article is a reference to the law as in effect December 31, ~~2011.~~ **2012.**

SECTION 2. IC 24-4.4-1-301, AS AMENDED BY P.L.27-2012, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JANUARY 1, 2013 (RETROACTIVE)]: 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.

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

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

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

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

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

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

(e) with respect to a sale of goods or services, either:

(i) the **sale** amount ~~financed~~ does not exceed ~~fifty~~ **fifty-three** thousand dollars ~~($50,000)~~ **($53,000) or another amount as adjusted in accordance with the annual adjustment of the exempt threshold amount specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable);** or

(ii) the debt is secured by personal property used or expected

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to be used as the principal dwelling of the buyer.

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

(7) "Creditor" means a person:

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

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

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

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

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

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

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

(a) condominium unit;

(b) cooperative unit;

(c) mobile home; or

(d) trailer;

that is used as a residence.

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

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

(14) "First lien mortgage transaction" means:

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(a) a consumer loan; or
(b) a consumer credit sale;
that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a first lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.
(15) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.
(16) "Individual" means a natural person.
(17) "Licensee" means a person licensed as a creditor under this article.
(18) "Loan" includes:
(a) the creation of debt by:
(i) the creditor's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor; or
(ii) the extension of credit by a person who engages as a seller in credit transactions primarily secured by an interest in land;
(b) the creation of debt by a credit to an account with the creditor upon which the debtor is entitled to draw immediately; and
(c) 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

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loan, to the extent that the communication does not include:
(i) offering or negotiating loan rates or terms; or
(ii) counseling consumers about mortgage transaction rates or terms.

(21) "Mortgage loan originator" means an individual who, for compensation or gain, or in the expectation of compensation or gain, regularly engages in taking a mortgage transaction application or in offering or negotiating the terms of a mortgage transaction that either is made under this article or under IC 24-4.5 or is made by an employee of a person licensed or exempt from licensing under this article or under IC 24-4.5, while the employee is engaging in the loan brokerage business. The term does not include the following:
(a) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed or exempt from licensing under this article.
(b) Unless the person or entity is compensated by:
(i) a creditor;
(ii) a loan broker;
(iii) another mortgage loan originator; or
(iv) any agent of a creditor, a loan broker, or another mortgage loan originator described in items (i) through (iii);
a person or entity that performs only real estate brokerage activities and is licensed or registered in accordance with applicable state law.
(c) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D)).

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

(23) "Mortgage transaction" means:
(a) a consumer loan; or
(b) a consumer credit sale;
that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(24) "Nationwide Mortgage Licensing System and Registry" or

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"NMLSR" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of creditors and mortgage loan originators.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) a depository institution;

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

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

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

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

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

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

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

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

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

(a) a person closes a first lien mortgage transaction in the person's own name as a mortgagee with funds provided by one (1) or more other persons; and

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

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

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

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

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

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

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

(d) Receives funding and revenue and charges fees in a

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manner that does not encourage the organization or the organization's employees to act other than in the best interests of the organization's clients.

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

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

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

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

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

(b) extends or originates, or will extend or originate, more than five (5) first lien mortgage transactions in the current calendar year if the person did not extend or originate more than five (5) first lien mortgage transactions in the preceding calendar year.

SECTION 3. IC 24-4.4-2-402.3, AS ADDED BY P.L.35-2010, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 402.3. (1) Each:

(a) creditor; and

(b) ~~entity~~ **person** exempt from licensing under this article that employs a licensed mortgage loan originator;

must be covered by a surety bond in accordance with this section.

(2) A surety bond must:

(a) provide coverage for: ~~each~~

(i) a creditor; ~~and each entity~~ **or**

(ii) a person exempt from licensing under this article that employs a mortgage loan originator;

in an amount as prescribed in subsection (4); ~~and~~

(b) be in a form prescribed by the director;

(c) be in effect:

(i) during the term of the creditor's license under this chapter; or

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(ii) at any time during which the person exempt from licensing under this article employs a licensed mortgage loan originator;

as applicable;

(d) remain in effect during the two (2) years after:

(i) the creditor ceases offering financial services to individuals in Indiana; or

(ii) the person exempt from licensing under this article ceases to employ a licensed mortgage loan originator or to offer financial services to individuals in Indiana, whichever is later;

as applicable;

(e) be payable to the department for the benefit of:

(i) the state; and

(ii) individuals who reside in Indiana when they agree to receive financial services from the creditor or the person exempt from licensing under this article, as applicable;

(f) be issued by a bonding, surety, or insurance company authorized to do business in Indiana and rated at least "A-" by at least one (1) nationally recognized investment rating service; and

(g) have payment conditioned upon:

(i) the creditor's or any of the creditor's licensed mortgage loan originators'; or

(ii) the exempt person's or any of the exempt person's licensed mortgage loan originators';

noncompliance with or violation of this chapter, 750 IAC 9, or other federal or state laws or regulations applicable to mortgage lending.

(3) The director may adopt rules or guidance documents with respect to the requirements for a surety bond as necessary to accomplish the purposes of this article.

(4) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of mortgage transactions originated as determined by the director. **If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the creditor or exempt person for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in an amount set by the director. The amount of the new or additional bond set by the director must be at least the amount of the bond before**

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payment of the claim or judgment.

~~(5) If an action is commenced on the surety bond of a creditor or an entity exempt from licensing under this article as described in subsection (1), the director may require the filing of a new bond.~~

~~(6) A creditor or an entity exempt from licensing under this article as described in subsection (1) shall file a new surety bond immediately upon recovery of any action on the surety bond required under this section.~~

(5) If for any reason a surety terminates a bond issued under this section, the creditor or the exempt person shall immediately notify the department and file a new surety bond in an amount determined by the director.

(6) Cancellation of a surety bond issued under this section does not affect any liability incurred or accrued during the period when the surety bond was in effect.

(7) The director may obtain satisfaction from a surety bond issued under this section if the director incurs expenses, issues a final order, or recovers a final judgment under this chapter.

(8) Notices required under this section must be in writing and delivered by certified mail, return receipt requested and postage prepaid, or by overnight delivery using a nationally recognized carrier.

SECTION 4. IC 24-4.4-3-104, AS AMENDED BY P.L.35-2010, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 104. (1) In administering this article and in order to determine whether the provisions of this article are being complied with by persons engaging in acts subject to this article, the department may examine the records of persons and may make investigations of persons as may be necessary to determine compliance. Records subject to examination under this section include the following:

(a) Training, operating, and policy manuals.

(b) Minutes of:

(i) management meetings; and

(ii) other meetings.

(c) Financial records, credit files, and data bases.

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

The department may also administer oaths or affirmations, subpoena witnesses, and compel the attendance of witnesses, including officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of licensees, and other individuals or persons subject to this article. The department may also adduce

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evidence and require the production of any matter that is relevant to an investigation. The department shall determine the sufficiency of the records maintained and whether the person has made the required information reasonably available. The records concerning any transaction subject to this article shall be retained for two (2) years after the making of the final entry relating to the first lien mortgage transaction, but in the case of a revolving first lien mortgage transaction the two (2) year period is measured from the date of each entry.

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

(a) The authority to require a creditor to refund overcharges resulting from the creditor's noncompliance with the terms of a first lien mortgage transaction.

(b) The authority to require a creditor to comply with the penalty provisions set forth in IC 24-4.4-2-201.

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

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

(4) Upon a person's failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice by the

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department to all affected persons, the department may apply to any civil court with jurisdiction for an order compelling compliance.

(5) The department shall not make public:

(a) the name or identity of a person whose acts or conduct the department investigates under this section; or

(b) the facts discovered in the investigation.

However, this subsection does not apply to civil actions or enforcement proceedings under this article.

(6) To discover violations of this article or to secure information necessary for the enforcement of this article, the department may investigate any:

(a) licensee; or

(b) person that the department suspects to be operating:

(i) without a license, when a license is required under this article; or

(ii) otherwise in violation of this article.

The department has all investigatory and enforcement authority under this article that the department has under IC 28-11 with respect to financial institutions. If the department conducts an investigation under this section, the licensee or other person investigated shall pay all reasonably incurred costs of the investigation in accordance with the fee schedule adopted under IC 28-11-3-5.

~~(6)~~ **(7)** If a creditor contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the creditor and be subject to the department's routine examination procedures, the person that provides the service to the creditor shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any creditor that is licensed under this article and that receives services from the person refusing the examination to:

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

(b) otherwise cease conducting business with the person.

SECTION 5. IC 24-4.5-1-102, AS AMENDED BY P.L.27-2012, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013 (RETROACTIVE)]: Sec. 102. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

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

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

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

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

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

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

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

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

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

(4) A reference to a federal law in this article is a reference to the law as in effect December 31, ~~2011.~~ **2012.**

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

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

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

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

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

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

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

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SECTION 6. IC 24-4.5-1-201, AS AMENDED BY P.L.90-2008, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 201. (1) Except as otherwise provided in this section, this article applies to sales, leases, and loans made in this state and to modifications, including refinancings, consolidations, and deferrals, made in this state, of sales, leases, and loans, wherever made. For purposes of this article, the following apply:

(a) A sale or modification of a sale agreement is made in this state if the buyer's agreement or offer to purchase or to modify is received by the seller or a person acting on behalf of the seller in this state.

(b) A lease or modification of a lease agreement is made in this state if the lessee's agreement or offer to lease or to modify is received by the lessor or a person acting on behalf of the lessor in this state.

(c) A loan or modification of a loan agreement is made in this state if a writing signed by the debtor and evidencing the debt is received by the lender or a person acting on behalf of the lender in this state.

(d) Except as provided in ~~subdivision~~ **subdivisions** (e) **and (f),** a sale, lease, or loan transaction occurs in Indiana if a consumer who is a resident of Indiana enters into a consumer sale, lease, or loan transaction with a creditor or a person acting on behalf of the creditor in another state and the creditor or the person acting on behalf of the creditor has advertised or solicited sales, leases, or loans in Indiana by any means, including by mail, brochure, telephone, print, radio, television, the Internet, or electronic means. ~~However, during the period beginning July 1, 2007, and ending June 30, 2009, this subdivision does not apply to an affiliate or a subsidiary of a financial corporation issued a certificate of authority to operate as an industrial loan and investment company under IC 28-5 if all of the following apply:~~

~~(i) The industrial loan and investment company notifies the department in writing that an affiliate or a subsidiary of the industrial loan and investment company engages or plans to engage in activity involving Indiana residents at an out of state location. The notification required by this clause must list all states other than Indiana in which consumer loans may be made and must describe the nature of the proposed transactions.~~

~~(ii) The industrial loan and investment company provides written consent allowing the department to consult with and~~

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~~review information provided by other state regulators, as may be requested by the department, concerning the activities identified in clause (i) of any affiliate or subsidiary engaging in consumer lending to Indiana residents in the states identified under clause (i).~~

~~(iii) The industrial loan and investment company provides written consent allowing the department to inspect or examine all out of state locations in which an affiliate or a subsidiary of the industrial loan and investment company engages in the activities identified under clause (i) for the purpose of investigating the affiliate's or subsidiary's consumer lending practices involving Indiana residents. An inspection or examination performed by the department under this clause is subject to the schedule of fees established by the department under IC 28-11-3-5.~~

(e) A sale, lease, or loan transaction does not occur in Indiana if a consumer who is a resident of Indiana enters into a consumer sale, lease, or loan transaction secured by an interest in land located outside Indiana.

(f) A sale, lease, or loan transaction does not occur in Indiana if a consumer who is a resident of Indiana enters into a consumer sale, lease, or loan transaction at a creditor's place of business in another state.

For purposes of subdivisions (a) through (c), an offer is received by a creditor or a person acting on behalf of the creditor in Indiana if the offer is physically delivered, or otherwise transmitted or communicated, to a person who has actual or apparent authority to act for the creditor or the person acting on behalf of the creditor in Indiana, regardless of whether approval, acceptance, or ratification by any other agent or representative of the creditor or the person acting on behalf of the creditor in another state is necessary to give legal consequence to the consumer credit transaction.

(2) IC 24-4.5-5-101 through IC 24-4.5-5-108 apply to actions or other proceedings brought in this state to enforce rights arising from consumer credit sales, consumer leases, or consumer loans, or extortionate extensions of credit, wherever made.

(3) Except as provided in subsection (2), a sale, lease, loan, or modification thereof, made in another state to a person who was not a resident of this state when the sale, lease, loan, or modification was made is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

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(4) For the purposes of this article, the residence of a buyer, lessee, or debtor is the address given by the buyer, lessee, or debtor as the buyer's, lessee's, or debtor's residence in any writing or electronic communication made by the buyer, lessee, or debtor in connection with a credit transaction. Until the buyer, lessee, or debtor notifies the creditor or the person acting on behalf of the creditor of a new or different address, the given address is presumed to be unchanged.

(5) Notwithstanding other provisions of this section:

(a) except as provided in subsection (2), this article does not apply if the buyer, lessee, or debtor is not a resident of this state at the time of a credit transaction and the parties then agree that the law of the buyer's, lessee's, or debtor's residence applies; and

(b) this article applies if the buyer, lessee, or debtor is a resident of this state at the time of a credit transaction and the parties then agree that the law of this state applies.

(6) Except as provided in subsection (5), the following agreements by a buyer, lessee, or debtor are invalid with respect to consumer credit sales, consumer leases, consumer loans, or modifications thereof, to which this article applies:

(a) **An agreement** that the law of another state shall apply.

(b) **An agreement** that the buyer, lessee, or debtor consents to the jurisdiction of another state. ~~and~~

(c) **An agreement** that fixes venue.

(7) The following provisions of this article specify the applicable law governing certain cases:

(a) ~~applicability~~ IC 24-4.5-6-102 **(applicability** of the provisions on powers and functions of the department). ~~and~~

(b) ~~applicability~~ IC 24-4.5-6-201 **(applicability** of the provisions on notification and fees).

(8) If a creditor or a person acting on behalf of the creditor has violated the provisions of this article that apply to the authority to make consumer loans (IC 24-4.5-3-502), the loan is void and the debtor is not obligated to pay either the principal or loan finance charge, as set forth in IC 24-4.5-5-202.

SECTION 7. IC 24-4.5-1-301.5, AS AMENDED BY P.L.27-2012, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013 (RETROACTIVE)]: Sec. 301.5. In addition to definitions appearing in subsequent chapters in this article, the following definitions apply throughout this article:

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

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

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

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

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

(5) "Closing costs" with respect to a subordinate lien mortgage transaction includes:
(a) fees or premiums for title examination, title insurance, or similar purposes, including surveys;
(b) fees for preparation of a deed, settlement statement, or other documents;
(c) escrows for future payments of taxes and insurance;
(d) fees for notarizing deeds and other documents;
(e) appraisal fees; and
(f) fees for credit reports.

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

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

(8) "Consumer credit sale" is a sale of goods, services, or an interest in land in which:
(a) credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;
(b) the buyer is a person other than an organization;
(c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;
(d) either the debt is payable in installments or a credit service

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charge is made; and

(e) with respect to a sale of goods or services, either:

(i) the **sale** amount ~~financed~~ does not exceed ~~fifty~~ **fifty-three** thousand dollars ~~($50,000)~~ **($53,000) or another amount as adjusted in accordance with the annual adjustment of the exempt threshold amount specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable);** or

(ii) the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

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

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

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

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

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

(d) either:

(i) the ~~principal~~ **loan amount** does not exceed ~~fifty~~ **fifty-three** thousand dollars ~~($50,000);~~ **($53,000) or another amount as adjusted in accordance with the annual adjustment of the exempt threshold amount specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable);** or

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

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

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

(11) "Creditor" means a person:

(a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as

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applicable, or is payable by written agreement in more than four (4) installments (not including a down payment); and

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

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

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

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

(a) condominium unit;

(b) cooperative unit;

(c) mobile home; or

(d) trailer;

that is used as a residence.

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

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

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

(18) "First lien mortgage transaction" means:

(a) a consumer loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a first lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

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

(20) "Individual" means a natural person.

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

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

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

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

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

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

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

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

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

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

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

An individual engaging solely in loan processor or underwriter activities shall not represent to the public through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(25) "Mortgage loan originator" means an individual who, for compensation or gain, or in the expectation of compensation or gain,

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regularly engages in taking a mortgage transaction application or in offering or negotiating the terms of a mortgage transaction that either is made under this article or under IC 24-4.4 or is made by an employee of a person licensed or exempt from licensing under this article or under IC 24-4.4, while the employee is engaging in the loan brokerage business. The term does not include the following:

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

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

(i) a creditor;

(ii) a loan broker;

(iii) another mortgage loan originator; or

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

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

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

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

(27) "Mortgage transaction" means:

(a) a consumer loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

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

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

(30) "Official fees" means:

(a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for

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perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or

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

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

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

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

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

(a) the spouse of the individual;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) a depository institution;

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

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

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

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

(a) extended consumer credit:

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

(ii) more than five (5) times for a mortgage transaction secured by a dwelling;

in the preceding calendar year; or

(b) extends or will extend consumer credit:

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

(ii) more than five (5) times for a mortgage transaction secured by a dwelling;

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

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

(41) "Seller credit card" means an arrangement that gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other

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credit confirmation or identification for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or from that person and any other person. The term includes a card that is issued by a person, that is in the name of the seller, and that can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

(42) "Subordinate lien mortgage transaction" means:

(a) a consumer loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a subordinate lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

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

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

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

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

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

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

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

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

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

(g) Maintains certification by the United States Department of

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Housing and Urban Development or employs counselors who are certified by the Indiana housing and community development authority.

SECTION 8. IC 24-4.5-2-106 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013 (RETROACTIVE)]: Sec. 106. (1) "Consumer lease" means a lease of goods:

(a) which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, or household purpose;

(b) in which the amount payable under the lease does not exceed ~~fifty~~ **fifty-three** thousand dollars ~~($50,000);~~ **($53,000) or another amount as adjusted in accordance with the annual adjustment of the exempt threshold amount specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable);** and

(c) which is for a term exceeding four (4) months.

(2) "Consumer lease" does not include a lease made pursuant to a lender credit card or similar arrangement.

SECTION 9. IC 24-4.5-2-602, AS AMENDED BY P.L.27-2012, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013 (RETROACTIVE)]: Sec. 602. (1) A "consumer related sale" is a sale of goods, services, or an interest in land in which:

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

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

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

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

(e) with respect to a sale of goods or services:

(i) either the **sale** amount ~~financed~~ does not exceed ~~fifty~~ **fifty-three** thousand dollars ~~($50,000)~~ **($53,000) or another amount as adjusted in accordance with the annual adjustment of the exempt threshold amount specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable);** or

(ii) the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

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

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

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

SECTION 10. IC 24-4.5-3-503.3, AS ADDED BY P.L.35-2010, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 503.3. (1) Each:

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

(b) ~~entity~~ **person** exempt from licensing under this article that employs a licensed mortgage loan originator;

must be covered by a surety bond in accordance with this section.

(2) A surety bond **must:**

(a) ~~must~~ provide coverage for:

(i) ~~each~~ **a** creditor described in subsection (1)(a); and

(ii) ~~each~~ **an** exempt ~~entity~~ **person** described in subsection (1)(b);

in an amount as prescribed in subsection (4); ~~and~~

(b) ~~must~~ be in a form as prescribed by the director;

(c) be in effect:

(i) during the term of the creditor's license under this chapter; or

(ii) at any time during which the person exempt from licensing under this article employs a licensed mortgage loan originator;

as applicable;

(d) remain in effect during the two (2) years after:

(i) the creditor ceases offering financial services to individuals in Indiana; or

(ii) the person exempt from licensing under this article ceases to employ a licensed mortgage loan originator or to offer financial services to individuals in Indiana, whichever is later;

as applicable;

(e) be payable to the department for the benefit of:

(i) the state; and

(ii) individuals who reside in Indiana when they agree to receive financial services from the creditor or the person exempt from licensing under this article, as applicable;

(f) be issued by a bonding, surety, or insurance company authorized to do business in Indiana and rated at least "A-"

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by at least one (1) nationally recognized investment rating service; and

(g) have payment conditioned upon:

(i) the creditor's or any of the creditor's licensed mortgage loan originators'; or

(ii) the exempt person's or any of the exempt person's licensed mortgage loan originators';

noncompliance with or violation of this chapter, 750 IAC 9, or other federal or state laws or regulations applicable to mortgage lending.

(3) The director may adopt rules or guidance documents with respect to the requirements for surety bonds as necessary to accomplish the purposes of this article.

(4) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of mortgage transactions originated as determined by the director. **If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the creditor or exempt person for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in an amount set by the director. The amount of the new or additional bond set by the director must be at least the amount of the bond before payment of the claim or judgment.**

~~(5) If an action is commenced on the surety bond of a creditor or an entity exempt from licensing under this article as described in subsection (1), the director may require the filing of a new bond.~~

~~(6) A creditor or an entity exempt from licensing under this article as described in subsection (1) shall file a new surety bond immediately upon recovery of any action on the surety bond required under this section.~~

(5) If for any reason a surety terminates a bond issued under this section, the creditor or the exempt person shall immediately notify the department and file a new surety bond in an amount determined by the director.

(6) Cancellation of a surety bond issued under this section does not affect any liability incurred or accrued during the period when the surety bond was in effect.

(7) The director may obtain satisfaction from a surety bond issued under this section if the director incurs expenses, issues a final order, or recovers a final judgment under this chapter.

(8) Notices required under this section must be in writing and

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delivered by certified mail, return receipt requested and postage prepaid, or by overnight delivery using a nationally recognized carrier.

SECTION 11. IC 24-4.5-3-602, AS AMENDED BY P.L.27-2012, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013 (RETROACTIVE)]: Sec. 602. (1) A "consumer related loan" is a loan in which the following apply:

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

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

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

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

(e) Either:

(i) the ~~principal~~ **loan amount** does not exceed ~~fifty~~ **fifty-three** thousand dollars ~~($50,000);~~ **($53,000) or another amount as adjusted in accordance with the annual adjustment of the exempt threshold amount specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable);** or

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

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

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

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

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

SECTION 12. IC 24-4.5-6-106, AS AMENDED BY P.L.27-2012, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 106. (1) In administering this article and in order to determine whether the provisions of this article are being complied with by persons engaging in acts subject to this article, the department may examine the records of persons and may make investigations of persons as may be necessary to determine compliance. Records subject to examination under this section include the following:

(a) Training, operating, and policy manuals.

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(b) Minutes of:
(i) management meetings; and
(ii) other meetings.
(c) Other records that the department determines are necessary to perform its investigation or examination.

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

(2) The department's examination and investigatory authority under this article includes the following:
(a) The authority to require a creditor to refund overcharges resulting from the creditor's noncompliance with the terms of consumer credit sales, consumer leases, or consumer loans.
(b) The authority to require a creditor to comply with the prepayment penalty provisions set forth in IC 24-4.5-3-209.
(c) The authority to investigate complaints filed with the department by debtors.

(3) If the department:
(a) investigates; or
(b) examines the books and records of;

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

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the assessed costs are not paid, beginning on the first day after the sixty (60) day period described in this subsection.

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

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

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

(7) To discover violations of this article or to secure information necessary for the enforcement of this article, the department may investigate any:

(a) licensee or registrant; or

(b) person that the department suspects to be operating:

(i) without a license or registration, when a license or registration is required under this article; or

(ii) otherwise in violation of this article.

The department has all investigatory and enforcement authority

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under this article that the department has under IC 28-11 with respect to financial institutions. If the department conducts an investigation under this section, the licensee, registrant, or other person investigated shall pay all reasonably incurred costs of the investigation in accordance with the fee schedule adopted under IC 28-11-3-5.

~~(7)~~ **(8)** If a creditor contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the creditor and be subject to the department's routine examination procedures, the person that provides the service to the creditor shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any creditor that is licensed under this article and that receives services from the person refusing the examination to:

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

(b) otherwise cease conducting business with the person.

SECTION 13. IC 24-4.5-7-104, AS AMENDED BY P.L.217-2007, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 104. (1) "Small loan" means a loan:

(a) with a principal loan amount that is at least fifty dollars ($50) and not more than five hundred fifty dollars ($550); and

(b) in which the lender holds the borrower's check **for a specific period,** or receives the borrower's written authorization to debit the borrower's account **(other than as a result of default)** under an agreement, either express or implied, for a specific period, before the lender:

(i) offers the check for deposit or presentment; or

(ii) exercises the authorization to debit the borrower's account.

(2) The amount of five hundred fifty dollars ($550) in subsection (1)(a) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 2006.

SECTION 14. IC 24-4.5-7-413, AS AMENDED BY P.L.35-2010, SECTION 87, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 413. (1) A person engaged in making small loans under this chapter shall post a bond to the department in the amount of fifty thousand dollars ($50,000) for each location where small loans

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will be made, up to a maximum bond in an amount determined by the ~~department.~~ **director.**

~~(2) A bond posted under subsection (1) must continue in effect for two (2) years after the lender ceases operation in Indiana. The bond must be available to pay damages and penalties to a consumer harmed by a violation of this chapter.~~

(2) A surety bond issued under this section must:

(a) provide coverage for a lender engaged in making small loans under this chapter in an amount as prescribed in subsection (1);

(b) be in a form prescribed by the director;

(c) be in effect during the term of the lender's license under this chapter;

(d) remain in effect during the two (2) years after the lender ceases offering financial services to individuals in Indiana;

(e) be payable to the department for the benefit of:

(i) the state; and

(ii) individuals who reside in Indiana when they agree to receive financial services from the lender;

(f) be issued by a bonding, surety, or insurance company authorized to do business in Indiana and rated at least "A-" by at least one (1) nationally recognized investment rating service; and

(g) have payment conditioned upon the lender's or any of the lender's employees' or agents' noncompliance with or violation of this article or other applicable federal or state laws or regulations.

(3) The director may adopt rules or guidance documents with respect to the requirements for a surety bond as necessary to accomplish the purposes of this chapter.

(4) If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the lender for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in an amount set by the director. The amount of the new or additional bond set by the director must be at least the amount of the bond before payment of the claim or judgment.

(5) If for any reason a surety terminates a bond issued under this section, the lender shall immediately notify the department and file a new surety bond in an amount as prescribed in subsection (1).

(6) Cancellation of a surety bond issued under this section does

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not affect any liability incurred or accrued during the period when the surety bond was in effect.

(7) The director may obtain satisfaction from a surety bond issued under this section if the director incurs expenses, issues a final order, or recovers a final judgment under this chapter.

(8) Notices required under this section must be in writing and delivered by certified mail, return receipt requested and postage prepaid, or by overnight delivery using a nationally recognized carrier.

SECTION 15. IC 24-5-27 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

Chapter 27. Credit Card Surcharges by Sellers

Sec. 1. (a) This chapter applies to a sales or lease transaction that:

(1) is entered into at a seller's place of business located in Indiana; or

(2) is:

(A) offered by a seller with or without a physical presence in Indiana to an Indiana customer; and

(B) entered into by an Indiana customer;

if the seller has advertised or solicited sales or leases in Indiana by any means, including by mail, brochure, telephone, print, radio, television, the Internet, or electronic means.

(b) Notwithstanding subsection (a)(2), this chapter does not apply to a sales or lease transaction in which an Indiana customer enters into a sales or lease transaction at a seller's place of business located in another state.

Sec. 2. As used in this chapter, "card issuer" means any person who issues a credit card, or the agent of that person with respect to the credit card.

Sec. 3. (a) As used in this chapter, "credit card" means any card, plate, or other device that exists for the purpose of obtaining property or services.

(b) The term includes a bank card, a debit card, a charge card, a prepaid card or stored value card, or another similar device.

(c) The term does not include a seller credit card (as defined in IC 24-4.5-1-301.5(41)).

Sec. 4. As used in this chapter, "discount" means a reduction made from the regular price of property or services.

Sec. 5. As used in this chapter, "Indiana customer" means:

(1) an individual who is:

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(A) a resident of Indiana; and

(B) a customer in a sales or lease transaction offered by or entered into with a seller; or

(2) a business or another entity that is:

(A) domiciled in Indiana or has a physical presence in Indiana; and

(B) a customer in a sales or lease transaction offered by or entered into with a seller.

Sec. 6. (a) As used in this chapter, "seller" means a person, or an agent of the person, who sells or leases, or offers to sell or lease, property or services to an Indiana customer.

(b) The term does not include a card issuer.

Sec. 7. (a) As used in this chapter, "surcharge" means any means of increasing the regular price of property or services for a customer who pays for the property or services with a credit card rather than by cash, check, or similar means.

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

(1) Charges that are imposed for payment by credit card and that are:

(A) assessed by a public, municipally owned, or cooperatively owned utility; and

(B) approved by the Indiana utility regulatory commission, in the case of charges imposed by a utility described in clause (A) that is under the jurisdiction of the Indiana utility regulatory commission for the approval of rates and charges.

(2) Charges imposed under an approved state or federal tariff.

Sec. 8. A seller in any sales or lease transaction that is entered into at a seller's place of business located in Indiana may not impose a surcharge on any customer that elects to use a credit card as a means of payment instead of payment by cash, check, or similar means.

Sec. 9. Subject to section 1(b) of this chapter, in any sales or lease transaction that:

(1) is offered by a seller that, regardless of whether the seller has a physical presence in Indiana, has advertised or solicited sales or leases to Indiana customers by any means, including by mail, brochure, telephone, print, radio, television, the Internet, or electronic means; and

(2) is entered into by an Indiana customer;

the seller may not impose a surcharge on the Indiana customer if

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the Indiana customer elects to use a credit card as a means of payment instead of payment by cash, check, or similar means.

Sec. 10. (a) A card issuer may not, by contract or otherwise, prohibit a seller from offering a discount to:

(1) any customer in a sales or lease transaction that is entered into at a seller's place of business located in Indiana; or

(2) in the case of a seller described in section 9(1) of this chapter, an Indiana customer in a sales or lease transaction, other than a sales or lease transaction described in section 1(b) of this chapter, that is entered into by the Indiana customer;

for payment by cash, check, or similar means rather than for payment by credit card.

(b) A discount described in subsection (a) is not a surcharge for purposes of section 8 or 9 of this chapter if the discount is offered to all prospective customers and is disclosed clearly and conspicuously, verbally or in writing, at the point of sale, regardless of whether the point of sale is:

(1) at a seller's place of business located in Indiana; or

(2) by telephone, Internet, or other electronic means with an Indiana customer.

Sec. 11. A person who violates this chapter commits a deceptive act under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

SECTION 16. IC 24-7-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. ~~If information in a notification becomes inaccurate after filing, no further notification is required until~~ **After a lessor has filed an initial or a subsequent notification under section 1 of this chapter,** the lessor ~~is required to file a subsequent notification under section 1 of this chapter.~~ **shall notify the department not later than thirty (30) days after:**

(1) the lessor has a change in name or address;

(2) the lessor opens a new office or store, closes an existing office or store, or relocates an existing office or store;

(3) the lessor files for bankruptcy or reorganization; or

(4) the lessor is notified that the lessor is subject to revocation or suspension proceedings by a state or governmental authority with respect to the lessor's rental purchase activities.

SECTION 17. IC 24-7-8-5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 5. Before appointing or hiring any director, executive**

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officer, or Indiana store manager, a lessor must perform a criminal background check on the candidate and retain, until the department's next examination of the lessor is completed, records of the background check in the lessor's files.

SECTION 18. IC 28-1-9-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 13. Upon the completion of the dissolution, the corporation shall execute and file, in the manner hereinafter provided, articles of dissolution, setting forth the following:

(a) The name of the corporation.

(b) The place where its principal office is located.

(c) The date of the meeting of the shareholders at which the dissolution was authorized, and a copy of the notices of such meeting.

(d) A copy of the resolution of the shareholders authorizing the dissolution.

(e) The manner of ~~its~~ **the resolution's** adoption and the vote by which adopted.

(f) A copy of the notice published as hereinabove provided.

(g) The names and addresses of the then existing directors and officers of the corporation.

(h) A copy of the order of the department authorizing the dissolution of such corporation.

(i) A brief summary showing the manner in which the corporate debts and liabilities were disposed of or paid. ~~and~~

(j) A complete itemized list, **in a format approved by the director of the department,** of all ~~of~~ the corporate assets and property distributed to ~~its~~ **the corporation's** shareholders ~~the name of each such shareholder, the amount distributed to each, and the date of distribution.~~ **and any other information required by the director of the department.**

SECTION 19. IC 28-1-11-5, AS AMENDED BY P.L.217-2007, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5. (a) Any bank or trust company shall have power to purchase, hold, and convey real estate for the following purposes, and for no others:

(1) Such as shall be necessary for the convenient transaction of its business.

(2) Such as shall be mortgaged to it or to its assignor immediate or remote, in good faith by way of security for debts.

(3) Such as shall be conveyed to it in satisfaction of debts contracted in the course of its dealings, or in satisfaction of debts, notes, or mortgages purchased by or assigned to it, or in exchange

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for real estate so conveyed to it.

(4) Such as it shall purchase at sales under judgments, decrees, or mortgages held by the bank or trust company or shall purchase to secure debts due it.

(b) Except with the approval in writing of the department, after July 1, 1933, the sum invested in real estate and buildings used for the convenient transaction of its business shall not exceed fifty percent (50%) of the capital and surplus of such bank or trust company. Such investment may be made in the stock of a corporation organized to own and hold the real estate and building occupied and used wholly or in part by such bank or trust company.

(c) No bank or trust company shall hold the title or possession of any real estate purchased or otherwise acquired to secure any debts due to it for a longer period than ten (10) years after such real estate is or has been purchased or otherwise acquired, or after July 1, 1933, without the consent in writing of the ~~department.~~ **director unless the bank or trust company has entered into a bona fide contract that is being performed in accordance with its terms.**

(d) For the purposes of subsection (a)(1), real estate purchased or held for the convenient transaction of the business of a bank or trust company includes the following:

(1) Real estate on which the principal office or a branch office of the bank or trust company is located.

(2) Real estate that is the location of facilities supporting the operations of the bank or trust company, such as parking facilities, data processing centers, loan production offices, automated teller machines, night depositories, facilities necessary for the operations of a bank or trust company subsidiary, or other facilities that are approved by the director.

(3) Real estate that the board of directors of the bank or trust company expects, in good faith, to use as a bank or trust company office or facility in the future.

(e) If real estate referred to in subsection (d)(3) is held by a bank or trust company for one (1) year without being used as a bank or trust company office or facility, the board of directors of the bank or trust company shall state, by resolution, definite plans for the use of the real estate. A resolution adopted under this subsection shall be made available for inspection by the ~~department.~~ **director.**

(f) Real estate referred to in subsection (d)(3) may not be held by a bank or trust company for more than three (3) years without being used as a bank or trust company office or facility unless:

(1) the board of directors of the bank or trust company, by

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resolution:

(A) reaffirms annually that the bank or trust company expects to use the real estate as a bank or trust company office or facility in the future; and

(B) explains the reason why the real estate has not yet been used as a bank or trust company office or facility; and

(2) the director determines that:

(A) the continued holding of the real estate by the bank or trust company does not endanger the safety and soundness of the bank or trust company; and

(B) the bank or trust company is holding the real estate to use the real estate in the future for one (1) of the purposes set forth in subsection (d)(1) and (d)(2).

(g) Real estate referred to in subsection (d)(3) may not be held by a bank or trust company for more than ten (10) years without being used as a bank or trust company office or facility unless the ~~department~~ **director** consents in writing to the continued holding of the real estate by the bank or trust company.

SECTION 20. IC 28-1-29-0.5, AS ADDED BY P.L.35-2010, SECTION 118, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 0.5. (a) This chapter does not apply to:

(1) an attorney at law authorized to practice in Indiana; or

(2) persons under the supervision and control of an attorney at law authorized to practice in Indiana;

to the extent the attorney's debt management services are incidental to the attorney's practice of law.

(b) This chapter does not apply to a depository financial institution (as defined in IC 28-1-1-6).

~~(b)~~ **(c)** This chapter does not apply to a third-party bill paying service with which the customer contracts solely for the customer's convenience of paying routine bills, in an arrangement in which the customer retains full control over all funds deposited. The types of payments made by a bill paying service are exempt from this chapter as long as the company's actions are not an attempt, as determined by the director, to circumvent limitations under this chapter.

SECTION 21. IC 28-1-29-1, AS AMENDED BY P.L.89-2011, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. The following words, when used in this chapter, shall have the meaning ascribed to them unless the context clearly requires a different meaning:

(1) "Person" includes individuals, sole proprietorships,

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partnerships, limited liability companies, trusts, joint ventures, corporations, unincorporated organizations, other entities, and their affiliates, however organized.

(2) "Debt management company" is any person doing business as a budget counseling, credit counseling, debt management, or debt pooling service or holding the person out, by words of similar import, as providing services to debtors in the management of their ~~finances and~~ debts, and having a written agreement with the debtor to disburse money or anything of value. The term includes the following:

(A) A person that simply holds any money, funds, check, personal check, money order, personal money order, draft, or any other instrument for the transmission of money.

(B) A person or an entity known as a "budget service company".

The term does not include a person that provides debt settlement services (as defined in IC 24-5-15-2.5).

(3) "License" means a license issued under the provisions of this chapter.

(4) "Licensee" means any person to whom a license has been issued pursuant to the provisions of this chapter.

(5) "Contract debtor" means a debtor who has entered into a written agreement with a licensee.

(6) "Debt" means an obligation arising out of personal, family, or household use.

(7) "Debtor" means an individual whose principal debts and obligations arise out of personal, family, or household use and ~~shall~~ not ~~apply to persons whose principal indebtedness arises~~ out of business purpose transactions.

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

~~(9) "Finances" means a savings deposit that is: (A) made on behalf of a contract debtor; (B) owned and controlled exclusively by the contract debtor and not a licensee who has a power of attorney of the contract debtor; and (C) placed in a bank or savings institution chartered by the state or federal government.~~

(9) "Indiana contract debtor" means a contract debtor whose principal residence is located in Indiana.

(10) "Affiliate" means a person that, directly or indirectly, through one (1) or more intermediaries:

(A) controls;

(B) is controlled by; or

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(C) is under common control with;

a person subject to this chapter.

(11) "Fee" means the total amount of money charged to a contract debtor by a debt management company for the administration of a debt management plan.

(12) "Plan" means a written debt repayment program in which a debt management company furnishes debt management services to a contract debtor and that includes a schedule of payments to be made by or on behalf of the contract debtor and used to pay debts owed by the contract debtor.

(13) "Principal amount of the debt" means the total amount of a debt at the time the contract debtor enters into an agreement.

(14) "Agreement" means an agreement between a debt management company and a debtor for the performance of debt management services.

(15) "Trust account" means an account held by a licensee that is:

(A) established in a bank insured by the Federal Deposit Insurance Corporation;

(B) separate from other accounts held by the licensee;

(C) except as otherwise permitted under section 9(a) of this chapter, maintained specifically for the benefit of the licensee's Indiana contract debtors;

~~(C)~~ **(D)** designated as a trust account ~~or other account designated to indicate~~ **indicating** that the money in the **trust** account is not the money of the licensee; and

~~(D)~~ **(E)** used to hold money of one (1) or more **Indiana** contract debtors for disbursement to creditors of the **Indiana** contract debtors.

(16) "Month" means a calendar month.

(17) "Day" means a calendar day.

(18) "Concessions" means assent to repayment of a debt on terms more favorable to a contract debtor than the terms of the contract between ~~the~~ **that** debtor and a creditor.

(19) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.

(20) "Control of a related interest" refers to a situation in which a person, directly or indirectly, or through or in concert with one (1) or more other persons, possesses any of the following:

(A) The ownership of, control of, or power to vote at least twenty-five percent (25%) of the voting securities of a related interest.

(B) The control in any manner of the election of a majority of

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the directors of a related interest.

(C) The power to exercise a controlling influence over the management or policies of a related interest. For purposes of this clause, a person is presumed to have control, including the power to exercise a controlling influence over the management or policies of the related interest, if the person:

(i) is an executive officer or a director of the related interest and directly or indirectly owns, controls, or has the power to vote more than ten percent (10%) of any class of voting securities of the related interest; or

(ii) directly or indirectly owns, controls, or has the power to vote more than ten percent (10%) of any class of voting securities of the related interest and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities.

(21) "Lead generator" means a person that, in the regular course of business:

(A) supplies a debt management company with the name of a potential contract debtor;

(B) directs an individual to contact or communicate with a debt management company; or

(C) otherwise refers a debtor to a debt management company.

SECTION 22. IC 28-1-29-3, AS AMENDED BY P.L.172-2011, SECTION 132, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. (a) No person shall operate a debt management company in Indiana without having obtained a license from the department. For purposes of this section, a person is operating in Indiana if:

(1) the person or any of the person's employees or agents are located in Indiana; or

(2) the person:

(A) contracts with debtors who are residents of Indiana; or

(B) solicits business from residents of Indiana by advertisements or other communications sent or delivered through any of the following means:

(i) Mail.

(ii) Personal delivery.

(iii) Telephone.

(iv) Radio.

(v) Television.

(vi) The Internet or other electronic communications.

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(vii) Any other means of communication.

(b) The director may request evidence of compliance with this section at:

(1) the time of application;

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

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

(c) For purposes of subsection (b), evidence of compliance with this section may include:

(1) criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation for any individual described in section 5(b)(2), ~~or~~ 5(b)(3), **or 5(b)(4)** of this chapter;

(2) credit histories; and

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

If the director requests a national criminal history background check under subdivision (1) for an individual described in that subdivision, the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (b). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

(d) The fee for a license or renewal of a license shall be fixed by the department under IC 28-11-3-5 and shall be nonrefundable. The department may impose a fee under IC 28-11-3-5 for each day that a renewal fee and any related documents that are required to be submitted with a renewal application are delinquent.

(e) If a person knowingly acts as a debt management company in violation of this chapter, any agreement the person has made under this chapter is void and the debtor under the agreement is not obligated to pay any fees. If the debtor has paid any amounts to the person, the debtor, or the department on behalf of the debtor, may recover the payment from the person that violated this section.

(f) A license issued under this section, ~~(1)~~ except in a transaction approved under section 3.1 of this chapter, is not assignable or transferable. ~~and (2)~~ In order to remain in force, **a license issued under this section** must be renewed every year in the manner prescribed by the director of the department. The director of the department shall

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prescribe the form of the renewal application. In order to be accepted for processing, a renewal application must be accompanied by the **following:**

(1) The license renewal fee imposed under subsection (d). ~~and~~

(2) The licensee's most recent audited financial statements covering the licensee's immediately preceding fiscal year, as prepared by an independent certified public accountant in compliance with the requirements set forth in section 5(d) of this chapter. If the licensee's financial statements for the immediately preceding fiscal year are not available at the time of renewal, the licensee has one hundred twenty (120) days after the end of the immediately preceding fiscal year to file the financial statements.

(3) All **other** information and documents requested by the director of the department.

(g) If the department of state revenue notifies the department that a person is on the most recent tax warrant list, the department shall not issue or renew the person's license until:

(1) the person provides to the department a statement from the department of state revenue that the person's tax warrant has been satisfied; or

(2) the department receives a notice from the commissioner of the department of state revenue under IC 6-8.1-8-2(k).

SECTION 23. IC 28-1-29-5, AS AMENDED BY P.L.35-2010, SECTION 123, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5. (a) Every person doing business as a debt management company shall make application to the department for a license to engage in such business. Such application shall be in the form prescribed by the ~~department~~ **director** and shall contain such information as the ~~department~~ **director** may require.

(b) The department may not issue a license unless the department finds that the financial responsibility, character, and fitness of:

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

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

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

(4) each of the applicant's:

(A) employees; or

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(B) agents;

authorized to initiate transactions involving the trust account required under section 9 of this chapter;

warrant belief that the business will be operated honestly and fairly under this chapter. The department is entitled to request evidence of an applicant's financial responsibility, character, and fitness.

(c) An application submitted under this section must indicate whether any individuals described in subsection (b)(2), ~~or~~ (b)(3), **or (b)(4):**

(1) are, at the time of the application, under indictment for a felony under **Indiana law or** the laws of ~~Indiana or~~ any other jurisdiction; or

(2) have been convicted of ~~or pleaded guilty or nolo contendere to~~ a felony under **Indiana law or** the laws of ~~Indiana or~~ any other jurisdiction.

(d) Unless waived upon written request to and approval by the director, an application submitted to the department under this section must include copies of the applicant's audited financial statements for the applicant's most recently concluded fiscal year and, if available, for the applicant's two (2) fiscal years immediately preceding the applicant's most recently concluded fiscal year, including a:

(1) balance sheet;

(2) statement of income or loss;

(3) statement of changes in shareholder equity; and

(4) statement of changes in financial position.

A financial statement required to be submitted under this subsection must be prepared by an independent certified public accountant authorized to do business in the United States in accordance with AICPA Statements on Standards for Accounting and Review Services (SSARS).

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

~~(e)~~ **(f)** Upon written request, an applicant is entitled to a hearing under IC 4-21.5 on the question of the qualifications of the applicant for a license.

SECTION 24. IC 28-1-29-6, AS AMENDED BY P.L.35-2010, SECTION 124, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. **(a)** Each application for a license ~~shall~~ **must** be accompanied by proof that the applicant has executed a

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surety bond ~~payable to the department, in an amount determined by the director and in accordance with the standards adopted by the director. Said bond shall also indemnify any person damaged by failure on the part of the licensee to conduct the business in accordance with the provisions of this chapter.~~ **in accordance with this section.**

(b) A surety bond issued under this section must:

(1) be in a form prescribed by the director;

(2) be in effect during the term of the license issued under this chapter;

(3) remain in effect during the two (2) years after the licensee ceases offering debt management services to individuals in Indiana;

(4) be payable to the department for the benefit of:

(A) the state; and

(B) individuals who reside in Indiana when they agree to receive debt management services from the licensee;

(5) be in an amount equal to:

(A) fifty thousand dollars ($50,000), in the case of an initial surety bond issued under this section; or

(B) the amount prescribed under subsection (d), beginning with the first renewal of a license under this chapter;

(6) be issued by a bonding, surety, or insurance company authorized to do business in Indiana and rated at least "A-" by at least one (1) nationally recognized investment rating service; and

(7) have payment conditioned upon the licensee's or any of the licensee's employees' or agents' noncompliance with or violation of this chapter or other applicable federal or state laws or regulations.

(c) The director may adopt rules or guidance documents with respect to the requirements for a surety bond as necessary to accomplish the purposes of this chapter.

(d) Beginning with the first renewal of a license under this chapter, each year that a licensee continues to offer debt management services to individuals in Indiana, the licensee shall file a new or an additional surety bond in an amount that ensures that the licensee's surety bond under this section is equal to the greater of the following:

(1) fifty thousand dollars ($50,000); or

(2) the average of the highest daily balance of funds held in trust for Indiana residents for each month during the licensee's most recently concluded fiscal year, not to exceed

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one hundred thousand dollars ($100,000).

(e) If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the licensee for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in an amount set by the director. The amount of the new or additional bond set by the director must be at least the amount of the bond before payment of the claim or judgment.

(f) If for any reason a surety terminates a bond issued under this section, the licensee shall immediately notify the department and file a new surety bond in an amount as prescribed in subsection (b)(5).

(g) Cancellation of a surety bond issued under this section does not affect any liability incurred or accrued during the period when the surety bond was in effect.

(h) The director may obtain satisfaction from a surety bond issued under this section if the director incurs expenses, issues a final order, or recovers a final judgment under this chapter.

(i) Notices required under this section must be in writing and delivered by certified mail, return receipt requested and postage prepaid, or by overnight delivery using a nationally recognized carrier.

SECTION 25. IC 28-1-29-7.5, AS AMENDED BY P.L.42-2011, SECTION 62, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7.5. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any individuals described in section 5(b)(2), ~~or~~ 5(b)(3), **or 5(b)(4)** of this chapter have been convicted of ~~or pleaded guilty or nolo contendere to~~ a felony under **Indiana law or** the laws of ~~Indiana or~~ any other jurisdiction.

(b) If this section applies, the licensee shall provide to the department the information required under section 5(c) of this chapter:

(1) not later than thirty (30) days after any person described in subsection (a) has been convicted of ~~or pleaded guilty or nolo contendere to~~ the felony; or

(2) if the licensee's next license renewal fee under section 3(d) of this chapter is due before the date described in subdivision (1), along with the licensee's next license renewal fee under section 3(d) of this chapter.

(c) Not later than thirty (30) days after a licensee has been served with notice of a civil action **that is** for **the** violation of this chapter **by**

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the licensee (or by an employee or agent of the licensee) and that is brought by or on behalf of a debtor who resides or resided in Indiana on:

(1) the date an agreement that is the subject of the civil action was entered into; or

(2) the date the civil action is filed;

the licensee shall provide written notice of the civil action to the department.

(d) Not later than thirty (30) days after a licensee receives notice of any enforcement action initiated against the licensee (or an employee or agent of the licensee) by a federal or state regulatory or law enforcement agency, the licensee shall notify the director in writing of the notice received.

SECTION 26. IC 28-1-29-7.7, AS AMENDED BY P.L.27-2012, SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: 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,

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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; **and**

(C) creditors that the licensee expects not to participate in the plan. ~~and~~

~~(D) all other creditors.~~

(c) Before a debtor enters into an agreement with a licensee, the licensee shall, in a written form that is provided to the debtor separately, that contains no other information, and that the debtor may keep whether or not the debtor enters into the agreement, provide the following information to the debtor in clear and conspicuous type, surrounded by black lines:

"IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) We may receive compensation for our services from your creditors.

_____

(Name and business address of licensee)".

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

"IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) (Description of the terms of the reduction).

(2) Reduction of debt as described in item (1) above may result in taxable income to you, even though you will not actually receive any money.".

SECTION 27. IC 28-1-29-8, AS AMENDED BY P.L.27-2012, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. (a) An agreement between a licensee and a debtor must:

(1) be in a written form;

(2) be dated and signed by the licensee and the debtor;

(3) include the name of the debtor and the address where the debtor resides;

(4) include the name, business address, and telephone number of the licensee;

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(5) be delivered to the debtor immediately upon formation of the agreement; and

(6) disclose the following:

(A) The services to be provided.

(B) The amount or method of determining the amount of all fees, individually itemized, to be paid by the debtor.

(C) The schedule of payments to be made by or on behalf of the debtor, including the amount of each payment, the date on which each payment is due, and an estimate of the date of the final payment.

(D) If a plan provides for regular periodic payments to creditors:

(i) each creditor of the debtor to which payment will be made, the amount owed to each creditor, and any concessions the licensee reasonably believes each creditor will offer; and

(ii) the schedule of expected payments to each creditor, including the amount of each payment and the date on which the payment will be made.

(E) Each creditor that the licensee believes will not participate in the plan and to which the licensee will not direct payment.

(F) The manner in which the licensee will comply with the licensee's obligations under section ~~9(j)~~ **9(k)** of this chapter.

(G) A statement that:

(i) the licensee may terminate the agreement for good cause, upon return of unexpended money of the debtor; **and**

~~(ii) the debtor may cancel the agreement as provided in section 8.6 of this chapter; and~~

~~(iii)~~ **(ii)** the debtor may contact the department with any questions or complaints regarding the licensee.

(H) The address, telephone number, and Internet address or web site of the department.

(b) For purposes of subsection (a)(5), delivery of an electronic record occurs when:

(1) the record is made available in a format in which the debtor may retrieve, save, and print the record; and

(2) the debtor is notified that the record is available.

(c) An agreement must provide that:

(1) the debtor has a right to terminate the agreement at any time without penalty, notwithstanding the close-out fee as permitted by section ~~8.3(c)~~ **8.3(d)** of this chapter, or obligation, by giving the licensee written or electronic notice, in which event:

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(A) the licensee shall refund all unexpended money that the licensee or the licensee's agent has received from or on behalf of the debtor for the reduction or satisfaction of the debtor's debt; and

(B) all powers of attorney granted by the debtor to the licensee are revoked and ineffective;

(2) the debtor authorizes any bank insured by the Federal Deposit Insurance Corporation in which the licensee or the licensee's agent has established a trust account to disclose to the department any financial records relating to the trust account;

(3) the licensee shall notify the debtor within five (5) days after learning of a creditor's final decision to reject or withdraw from a plan under the agreement; and

(4) the notice under subdivision (3) must include:

(A) the identity of the creditor; and

(B) a statement that the debtor has the right to modify or terminate the agreement.

(d) All creditors **included in the plan** must be notified of the debtor's and licensee's relationship.

(e) A licensee shall give to the contract debtor a dated receipt for each payment, at the time of the payment, unless the payment is made by check, money order, or automated clearinghouse withdrawal as authorized by the contract debtor.

(f) A licensee shall, upon cancellation by a contract debtor of the agreement, notify immediately in writing all creditors in the debt management plan of the cancellation by the contract debtor.

(g) A licensee may not enter into an agreement with a debtor unless a thorough, written budget analysis of the debtor indicates that the debtor can reasonably meet the payments required under a proposed plan. The following must be included in the budget analysis:

(1) Documentation and verification of all income considered. All income verification must be dated not more than sixty (60) days before the completion of the budget analysis.

(2) Monthly living expense figures, which must be reasonable for the particular family size and part of ~~the state.~~ **Indiana. If expenditure reductions are part of the planned budget for the debtor, details of the expected savings must be documented in the debtor's file and set forth in the budget provided to the debtor.**

(3) Documentation and verification, by a current credit bureau report, current debtor account statements, or direct documentation from the creditor, of monthly debt payments and balances to be

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paid outside the plan.

(4) Documentation and verification, by a current credit bureau report, current debtor account statements, or direct documentation from the creditor, of the monthly debt payments and current balances to be paid through the plan.

(5) The date of the budget analysis and the signature of the debtor.

(h) A licensee may not enter into an agreement with a contract debtor for a period longer than sixty (60) months. ~~Every thirty (30) months, the licensee shall complete a thorough, written budget analysis of the contract debtor to ensure the debt management plan is still suitable for the contract debtor and the contract debtor will be able to meet the payment obligations under the plan. If adjustments are needed to change the indebtedness listed in the agreement, the licensee shall execute a new agreement or modify, in writing, the existing agreement, using the revised figures. If during the term of the original agreement, the agreement is modified in writing or a new agreement is executed, a licensee:~~

~~(1) may not increase the amount of the monthly fee as originally calculated under section 8.3(c)(2) of this chapter; and~~

~~(2) must decrease the amount of the monthly fee as originally calculated under section 8.3(c)(2) of this chapter if applying the percentage specified in section 8.3(c)(2)(A) of this chapter to the new monthly amount of indebtedness to be paid through the licensee (as of the date of the review under this subsection) would result in an amount that is less than seventy-five dollars ($75) in any month.~~

(i) A licensee may provide services under this chapter in the same place of business in which another business is operating, or from which other products or services are sold, if the director issues a written determination that:

(1) the operation of the other business; or

(2) the sale of other products and services;

from the location in question is not contrary to the best interests of the licensee's contract debtors.

(j) A licensee without a physical location in Indiana may:

(1) solicit sales of; and

(2) sell;

additional products and services to Indiana residents if the director issues a written determination that the proposed solicitation or sale is not contrary to the best interests of contract debtors.

(k) A licensee shall maintain a toll free communication system, staffed at a level that reasonably permits a contract debtor to speak to

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a counselor, debt specialist, or customer service representative, as appropriate, during ordinary business hours.

(l) A debt management company shall act in good faith in all matters under this chapter.

SECTION 28. IC 28-1-29-8.3, AS AMENDED BY P.L.27-2012, SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8.3. (a) Except as otherwise permitted by this section, a licensee may not:

(1) impose, directly or indirectly, a fee or other charge on a debtor; or

(2) receive money from or on behalf of a debtor for debt management services.

(b) A licensee may not impose charges or receive payment for debt management services until:

(1) the licensee and the debtor have agreed upon a plan and have signed an agreement that complies with sections 8 ~~8.6,~~ and 9.5 of this chapter; and

(2) at least one (1) payment has been made to a creditor under the plan.

All creditors must be notified of the debtor's and licensee's relationship.

(c) If a debtor assents to a plan, the licensee may charge the following:

(1) A set up fee of not more than fifty dollars ($50) for consultation, obtaining a credit report, and setting up an account. Acceptance of a plan payment by a creditor constitutes agreement by the creditor to the plan. A set up fee under this subdivision may not be collected until the debtor, or the licensee on behalf of the debtor, has made at least one (1) payment to a creditor under the plan.

(2) Subject to subsection (d), a monthly service fee of the lesser of **the following:**

(A) Not more than fifteen percent (15%) of the amount the ~~contract debtor agrees to pay through the~~ licensee ~~divided into equal monthly payments over the term of the agreement; or~~ **receives from the contract debtor for payment to the contract debtor's creditors for the applicable month. However, if the amount calculated under this clause is less than five dollars ($5) for a particular month, the licensee may charge a monthly service fee of five dollars ($5) for that month.**

(B) ~~not more than~~ Seventy-five dollars ($75). ~~in any month.~~

The monthly service fee under this subdivision may be charged

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for any one (1) month or part of a month. The amount of a set up fee under subdivision (1) may not be included in the calculation of the monthly service fee.

~~(d) If during the term of the original agreement, the agreement is modified in writing or a new agreement is executed, a licensee:~~

~~(1) may not increase the amount of the monthly fee as originally calculated under subsection (c)(2); and~~

~~(2) must decrease the amount of the monthly fee as originally calculated under subsection (c)(2) if applying the percentage specified in subsection (c)(2)(A) to the monthly amount of indebtedness to be paid through the licensee as of the date of the modification of the original agreement or the execution of the new agreement, as applicable, would result in an amount that is less than seventy-five dollars ($75) in any month.~~

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

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

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

(1) would be imposed in relation to some benefit conferred on the consumer; and

(2) is reasonable in relation to the benefit conferred.

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

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

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

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

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the debtor to the licensee.

SECTION 29. IC 28-1-29-8.6 IS REPEALED [EFFECTIVE JULY 1, 2013]. ~~Sec. 8.6. (a) A debtor may cancel an agreement before midnight of the third business day after the debtor enters into the agreement unless the agreement does not comply with subsection (b) or section 8 or 9.5 of this chapter, in which event the debtor may cancel the agreement at any time after the debtor enters into the agreement and all fees paid by the debtor shall be refunded to the debtor. To exercise the right to cancel, the debtor must give written notice to the licensee. Notice by mail is given when mailed.~~

~~(b) An agreement must be accompanied by a form that contains in clear and conspicuous type, surrounded by bold black lines:~~

~~"NOTICE OF RIGHT TO CANCEL~~

~~You may cancel this agreement, without any penalty or obligation, at any time before midnight of the third business day that begins the day after you agree to it by electronic communication or by signing it.~~

~~To cancel this agreement during this period, send an electronic mail message to~~

~~_____ or mail or deliver a signed,~~

~~Electronic mail address of licensee~~

~~dated copy of this notice, or any other written notice to~~

~~_____~~

~~Name of licensee~~

~~at _____ before midnight on~~

~~Address of licensee~~

~~_____.~~

~~Date~~

~~If you cancel this agreement within the 3 day period, we will refund all the money you have already paid us.~~

~~You also may terminate this agreement at any later time, but we may not be required to refund fees you have paid us.~~

~~I cancel this agreement,~~

~~_____~~

~~Print your name~~

~~_____~~

~~Signature~~

~~_____~~

~~Date".~~

~~(c) If a personal financial emergency necessitates the disbursement of a debtor's money to one (1) or more of the debtor's creditors before the expiration of the third business day after the date an agreement is~~

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~~signed, a debtor may waive the right to cancel. To waive the right, the individual must send or deliver a signed, dated statement in the debtor's own words describing the circumstances that necessitate a waiver. The waiver must explicitly waive the right to cancel. A waiver by means of a standard form record is void.~~

SECTION 30. IC 28-1-29-8.8, AS ADDED BY P.L.35-2010, SECTION 130, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8.8. (a) If a contract debtor fails to make a payment to a licensee within ~~sixty (60)~~ **ninety (90)** days after the date a payment is due under an agreement, the agreement ~~is~~ **may be** considered canceled by the ~~contract debtor.~~ **licensee unless:**

(1) one (1) or more creditors included in the contract debtor's plan object to the termination; or

(2) subject to subsection (b), the contract debtor files a letter of continuation.

(b) A contract debtor may file a letter of continuation of an agreement even if the contract debtor did not make a payment within ~~sixty (60)~~ **ninety (90)** days after a payment was due. All of the following apply to a letter of continuation of an agreement:

(1) A contract debtor may file only one (1) letter of continuation with a licensee for ~~any~~ **each twelve (12) month period the** agreement **is in effect.**

(2) A letter of continuation must contain a detailed explanation of the reason or reasons for the missed payment.

(3) If an agreement for which a letter of continuation that meets the requirements of this subsection is filed, the agreement remains in effect and subject to cancellation for any future failure to make a payment as described in this ~~subsection.~~ **section.**

~~(4) An agreement between a licensee and a contract debtor must clearly provide for one (1) letter of continuation by a contract debtor.~~

~~(5)~~ **(4)** A contract debtor may not file a letter of continuation with a licensee ~~at~~ **during** the ~~beginning of~~ **first six (6) months** an agreement **is in effect.**

(5) If one (1) or more creditors included in the contract debtor's plan agree to continue the plan based on the explanation provided under subdivision (2), the contract debtor and the licensee shall modify the agreement then in effect between the contract debtor and the licensee to reflect the changes agreed to under the letter of continuation.

~~(b)~~ **(c)** If a licensee or a contract debtor terminates an agreement, the licensee shall immediately return to the contract debtor any money of

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the contract debtor held in trust for the benefit of the contract debtor.

SECTION 31. IC 28-1-29-9, AS AMENDED BY P.L.27-2012, SECTION 75, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 9. (a) All money paid to a licensee by or on behalf of ~~a~~ **an Indiana** contract debtor for distribution to creditors under a plan ~~is~~ **shall be** held in trust **in a separate account maintained specifically for the benefit of the licensee's Indiana contract debtors. However, as an alternative to maintaining a separate trust account specifically for the benefit of the licensee's Indiana contract debtors, a licensee may submit a request to the director for approval to maintain a trust account that holds both money paid to the licensee by or on behalf of Indiana contract debtors and money paid to the licensee by or on behalf of contract debtors who do not reside in Indiana. The request must include documentation of the licensee's account reconciliation procedures sufficient to demonstrate to the director that the licensee will be able to:**

(1) comply with the reconciliation requirements set forth in subsection (e) with respect to each Indiana contract debtor whose money is held in the account; and

(2) accurately determine the appropriate surety bond level under section 6(d) of this chapter at the time of each renewal of the licensee's license under this chapter.

Upon approval by the director of a request described in this subsection, the licensee shall maintain the documentation described in subdivisions (1) and (2) for review by department examiners during the course of the department's routine examinations under this chapter. Before the close of the same banking day ~~the~~ **that** funds are received **from an Indiana contract debtor,** the licensee shall deposit the money in ~~a~~ **the** trust account ~~established for the benefit of the contract debtor to whom the licensee is furnishing debt management services.~~ **required under this section.**

(b) A licensee shall do the following:

(1) Maintain separate records of account for each ~~individual~~ **contract debtor** to whom the licensee is furnishing debt management services **in Indiana.**

(2) Disburse money paid by or on behalf of ~~the~~ **a** contract debtor to creditors of the contract debtor as disclosed in the agreement **between the licensee and the contract debtor.**

(3) Make remittances not later than thirty (30) days after initial receipt of funds **from a contract debtor.** After the initial receipt of funds, remittances, **less fees and costs,** shall be made not later than thirty (30) days after receipt of funds, ~~less fees and costs,~~

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unless the reasonable payment of one (1) or more of the contract debtor's obligations requires that the funds be held for a longer period to accumulate a sum certain. For purposes of this section, the close-out fee set forth in section ~~8.3(c)~~ **8.3(d)** of this chapter is not considered an obligation of the contract debtor.

(4) Retain **for charges** in the ~~contract debtor's~~ trust account ~~for charges,~~ **required under this section** an amount less than or equal to the sum of one (1) month's ~~fee~~ **fees for the licensee's Indiana contract debtors whose money is held in the account,** as permitted by section 8.3(c)(2) of this chapter, plus ~~the~~ **a** close-out fee, as permitted by section ~~8.3(c)~~ **8.3(d)** of this chapter, **for each of the licensee's Indiana contract debtors whose money is held in the account,** unless a greater amount is approved in writing by the department.

(5) Promptly:

(A) correct any payments **on behalf of a contract debtor** that are not made or that are misdirected as a result of an error by the licensee or other person in control of the trust account; and

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

(c) A licensee may not commingle **the licensee's own funds with** money in ~~a~~ **the** trust account established **under this section** for the benefit of ~~a contract debtor to whom the licensee is furnishing debt management services with money of other persons.~~ **the licensee's Indiana contract debtors.**

(d) ~~A~~ **The** trust account **required under this section** must at all times have a cash balance equal to **at least** the sum of the balances of each ~~contract debtor's account.~~ **individual account maintained for each Indiana contract debtor whose money is held in the trust account.**

(e) ~~If a licensee has established a trust account under subsection (a),~~ The licensee shall reconcile the trust account **required under this section** at least every thirty (30) days after receipt of the bank statement. The reconciliation must compare the cash balance in the trust account **for all the licensee's Indiana contract debtors whose money is held in the account** with the sum of the balances in each **of those Indiana** contract debtor's ~~account.~~ **individual accounts.** If the licensee or the licensee's designee has more than one (1) trust account **under this section,** each trust account must be individually reconciled. **If the cash balance held in a trust account for the benefit of the licensee's Indiana contract debtors reflects a shortage when compared with the sum of the balances in each of those Indiana**

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contract debtor's individual accounts, the licensee shall immediately provide written notice to the department of that fact and of any remedial action taken by the licensee. If the cash balance held in a trust account for the benefit of the licensee's Indiana contract debtors reflects a surplus when compared with the sum of the balances in each of those Indiana contract debtor's individual accounts, the licensee shall attempt to remedy the surplus and shall retain, for review by department examiners, documentation of the actions taken.

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

(g) If a contract debtor terminates an agreement or it becomes reasonably apparent to a licensee that a plan has failed, the licensee shall, ~~promptly~~ **not later than fifteen (15) days after the effective date of the termination of the agreement or the date on which it becomes apparent to the licensee that the plan has failed, as applicable,** refund to the contract debtor all money paid by or on behalf of the contract debtor that has not been paid to creditors less the fee that is payable to the licensee under section ~~8.3(c)~~ **8.3(d)** of this chapter.

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

(i) Before adding or replacing any signatory on the trust account required under this section, the licensee shall:

(1) ensure that the new signatory is qualified based on a background check consistent with section 3(c) of this chapter; and

(2) maintain, for review by department examiners, documentation of the background check conducted.

~~(i)~~ **(j)** At least once ~~every three (3) months~~ **each month while an agreement between a licensee and a contract debtor is in effect,** the licensee shall render **to the contract debtor** an accounting **statement**

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~~to the contract debtor which must itemize~~ **that includes the following:**

(1) The **following information with respect to the month for which the accounting statement is prepared:**

(A) The total amount received from the contract debtor.

(B) The total amount paid **to** each creditor **on behalf of the contract debtor.**

(C) The amount of **any** charges deducted **by the licensee.** ~~and~~

(D) Any amount held in reserve **on behalf of the contract debtor.**

(2) A statement that the contract debtor's plan is regulated by the department, along with the department's contact information, including the department's address, Internet web site address, and toll free telephone number.

A licensee shall **also** provide ~~such~~ an accounting **statement described in this subsection** to a contract debtor not later than seven (7) days after written demand ~~but~~ **by the contract debtor for such a statement. However, the licensee** is not required to provide more than three (3) such **requested** accountings per six (6) month period.

~~(j)~~ **(k)** Upon the completion or termination of a contract between a licensee and a contract debtor, the licensee shall provide to the contract debtor a statement:

(1) indicating that the licensee no longer holds funds in trust for the contract debtor; and

(2) listing the name and address of:

(A) ~~each~~ **any** creditors paid in full; and

(B) any creditors remaining unpaid.

SECTION 32. IC 28-1-29-9.5, AS ADDED BY P.L.35-2010, SECTION 132, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 9.5. (a) A licensee may not, directly or indirectly, do any of the following:

(1) Misappropriate or misapply money held in trust.

(2) Exercise or attempt to exercise a power of attorney after a contract debtor has terminated an agreement.

(3) Initiate a transfer **to or** from a contract debtor's account at a bank or with another person unless the transfer is:

(A) a return of money to the contract debtor; or

(B) before the termination of an agreement, properly authorized by the agreement and this chapter, and for:

(i) payment to one (1) or more creditors under an agreement; or

(ii) payment of a fee.

(4) Offer a gift or bonus, premium, reward, or other compensation

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to a debtor for executing an agreement.

(5) Offer, pay, or give:

(A) a gift or bonus;

(B) a premium;

(C) a reward; or

(D) other compensation;

to a **lead generator or another** person for referring a prospective customer if the person making the referral has a financial interest in the outcome of debt management services provided to the customer.

(6) Receive a bonus, a commission, or other benefit for referring a debtor to a person.

(7) Structure a plan in a manner that would result in a negative amortization of any of a debtor's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt.

(8) Compensate the licensee's employees on the basis of a formula that incorporates the number of debtors the employee induces to enter into agreements. It is not a violation of this subsection for a licensee to use the number of successfully completed debt management plans as a criterion for compensation for the licensee's employees.

(9) Settle a debt or lead a contract debtor to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the contract debtor receives a certification by the creditor that the payment is in full settlement of the debt.

(10) Make a representation that:

(A) the licensee will furnish money to pay bills or prevent attachments;

(B) payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or

(C) participation in a plan will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment.

(11) Misrepresent that the licensee is authorized or competent to furnish legal advice or perform legal services.

(12) Represent in the licensee's agreements, disclosures required by this chapter, advertisements, or Internet web site that the licensee is:

(A) a nonprofit entity unless the licensee is organized and properly operating as a nonprofit entity under the law of the

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state in which **the** entity was formed; or

(B) a tax exempt entity unless the entity has received certification of tax exempt status from the Internal Revenue Service and is properly operating as a nonprofit entity under the law of the state in which the entity was formed.

(13) Take a confession of judgment or power of attorney to confess judgment against a contract debtor.

(14) Employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information.

(b) If a licensee furnishes debt management services to a debtor, the licensee may not, directly or indirectly, do any of the following:

(1) Purchase a debt or obligation of the debtor.

(2) Receive from or on behalf of the debtor:

(A) a promissory note or other negotiable instrument other than a check or a demand draft; or

(B) a postdated check or demand draft.

(3) Lend money or provide credit to the debtor.

(4) Obtain a mortgage or other security interest from any person in connection with the services provided to the debtor.

(5) Except as permitted by federal law, disclose the identity or identifying information of the debtor or the identity of the debtor's creditors, except:

(A) to the department, upon proper demand;

(B) to a creditor of the debtor, to the extent necessary to secure the cooperation of the creditor in a plan; or

(C) to the extent necessary to administer the plan.

(6) Charge the debtor for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt management services or educational services concerning personal finance, **except as permitted under section 8(j) of this chapter.**

(7) Furnish legal advice or perform legal services unless the person furnishing the advice or performing the services is licensed to practice law.

(c) This chapter does not authorize any person to engage in the practice of law.

(d) A licensee may not receive a gift, bonus, premium, reward, or other compensation, directly or indirectly, for advising, arranging, or assisting a debtor in connection with obtaining an extension of credit or other service from a lender or service provider.

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SECTION 33. IC 28-1-29-18, AS ADDED BY P.L.35-2010, SECTION 140, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 18. **(a)** If a licensee delegates any of the licensee's duties or obligations under an agreement or this chapter to another person, including an independent contractor **or a lead generator,** the licensee is liable for **any** conduct of the person which, if done by the licensee, would violate the agreement or this chapter.

(b) A lead generator or another person that:

(1) provides services to or for a licensee; and

(2) violates this chapter;

commits a deceptive act that is actionable under IC 24-5-0.5 and subject to the penalties of IC 24-5-0.5.

SECTION 34. IC 28-7-5-3, AS AMENDED BY P.L.90-2008, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. ~~No~~ **(a) Except as authorized by this chapter and unless a license is first obtained from the department, a** person shall **not** engage in business as a pawnbroker, act as a pawnbroker, transact or solicit business as a pawnbroker, or use in ~~an~~ **any** advertisement, **signage, or electronic or printed material, or in the person's business name,** a ~~word~~ **phrase** or statement that ~~states or represents~~ **includes "pawn", "pawnbroker", "pawn shop", "pawn loan", or any word or phrase that would reasonably lead another person to conclude** that the person is a pawnbroker, ~~except as authorized by this chapter and without first obtaining a license from the department.~~ **is engaging in business as a pawnbroker, or is engaging in conduct that would mislead or confuse a person into believing that the person is a pawnbroker or is engaging in business as a pawnbroker.**

(b) A pawnbroking transaction occurs in Indiana and is subject to the licensing requirements of this chapter and all other requirements of this chapter if a consumer who is a resident of Indiana enters into the pawnbroking transaction with a pawnbroker, or a person acting on behalf of the pawnbroker, that is located:

(1) in Indiana; or

(2) outside Indiana if the pawnbroker or person acting on behalf of the pawnbroker has advertised or solicited pawnbroking in Indiana by any means, including by mail, brochure, telephone, print, radio, television, the Internet, or electronic means.

A pawnbroking transaction does not occur in Indiana if a

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consumer who is a resident of Indiana enters into the pawnbroking transaction at a pawnbroker's place of business in another state.

SECTION 35. IC 28-7-5-4, AS AMENDED BY P.L.35-2010, SECTION 170, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) Application for a pawnbroker's license shall be submitted on a form prescribed by the ~~department~~ **director** and must include all information required by the ~~department.~~ **director.** An application submitted under this section must identify the location or locations at which the applicant proposes to engage in business as a pawnbroker in Indiana. If any business, other than the business of acting as a pawnbroker under this chapter, will be conducted by the applicant or another person at any location identified under this subsection, the applicant shall indicate for each location at which another business will be conducted:

(1) the nature of the other business;
(2) the name under which the other business operates;
(3) the address of the principal office of the other business;
(4) the name and address of the business's resident agent in Indiana; and
(5) any other information the director may require.

(b) An application submitted under this section must indicate whether any individual described in section 8(a)(2) or 8(a)(3) of this chapter at the time of the application:

(1) is under indictment for a felony under the laws of Indiana or any other jurisdiction; or
(2) has been convicted of or pleaded guilty or nolo contendere to a felony under the laws of Indiana or any other jurisdiction.

(c) The director may request that the applicant provide evidence of compliance with this section at:

(1) the time of application;
(2) the time of renewal of a license; or
(3) any other time considered necessary by the director.

(d) For purposes of subsection (c), evidence of compliance with this section may include:

(1) criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation for any individual described in subsection (b);
(2) credit histories; and
(3) other background checks considered necessary by the director.

If the director requests a national criminal history background check under subdivision (1) for an individual described in that subdivision,

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the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (c). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

SECTION 36. IC 28-7-5-5, AS AMENDED BY P.L.172-2011, SECTION 133, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. (a) The initial application and any renewal application shall be accompanied by a fee fixed by the department under IC 28-11-3-5. The initial application and any renewal application must include a financial statement that:

(1) is prepared in accordance with standards adopted by the director;

(2) indicates the applicant meets minimum financial responsibility standards adopted by the director; and

(3) is prepared by a third party acceptable to the director.

(b) The initial application and any renewal application must be accompanied by proof that the applicant:

(1) has executed a bond **in accordance with section 5.5 of this chapter and** payable to the state, in an amount determined by the director; and

(2) has obtained property and casualty insurance coverage, in an amount determined by the director;

in accordance with standards adopted by the director.

(c) Any standards adopted by the director and described in subsection (a)(1), (a)(2), or (b) must be made available:

(1) for public inspection and copying at the offices of the department under IC 5-14-3; and

(2) electronically through the computer gateway administered by the office of technology established by IC 4-13.1-2-1.

(d) If the department of state revenue notifies the department that a person is on the most recent tax warrant list, the department shall not issue or renew the person's license until:

(1) the person provides to the department a statement from the department of state revenue that the person's tax warrant has been satisfied; or

(2) the department receives a notice from the commissioner of the

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department of state revenue under IC 6-8.1-8-2(k).

SECTION 37. IC 28-7-5-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 5.5. (a) Each person engaged in the business of pawnbroking in Indiana must be covered by a surety bond in accordance with this section. The initial application and any renewal application for licensure under this chapter must be accompanied by proof that the applicant has executed a bond in accordance with this section.**

(b) A surety bond issued under this section must:

(1) provide coverage for the licensee and the licensee's employees and agents in an amount determined by the director;

(2) be in a form prescribed by the director;

(3) be in effect during the term of the license issued under this chapter;

(4) remain in effect during the two (2) years after the licensee ceases offering pawnbroking services to individuals in Indiana;

(5) be payable to the department for the benefit of:

(A) the state; and

(B) individuals who reside in Indiana when they agree to receive pawnbroking services from the licensee;

(6) be issued by a bonding, surety, or insurance company authorized to do business in Indiana and rated at least "A-" by at least one (1) nationally recognized investment rating service; and

(7) have payment conditioned upon the licensee's or any of the licensee's employees' or agents' noncompliance with or violation of this chapter or other applicable federal or state laws or regulations.

(c) The director may adopt rules or guidance documents with respect to the requirements for a surety bond as necessary to accomplish the purposes of this chapter.

(d) If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the licensee for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in an amount set by the director. The amount of the new or additional bond set by the director must be at least the amount of the bond before payment of the claim or judgment.

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(e) If for any reason a surety terminates a bond issued under this section, the licensee shall immediately notify the department and file a new surety bond in an amount determined by the director.

(f) Cancellation of a surety bond issued under this section does not affect any liability incurred or accrued during the period when the surety bond was in effect.

(g) The director may obtain satisfaction from a surety bond issued under this section if the director incurs expenses, issues a final order, or recovers a final judgment under this chapter.

(h) Notices required under this section must be in writing and delivered by certified mail, return receipt requested and postage prepaid, or by overnight delivery using a nationally recognized carrier.

SECTION 38. IC 28-7-5-10.1, AS AMENDED BY P.L.35-2010, SECTION 172, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10.1. (a) A licensee that decides to cease engaging in business as a pawnbroker in Indiana shall do the following not later than thirty (30) days before closing the licensee's pawnbroking business:

(1) Notify the department of:

(A) the licensee's intention to cease engaging in business as a pawnbroker in Indiana; and

(B) the date on which the licensee's pawnbroking business will cease.

(2) Surrender the license to the department.

(3) Provide the following to all pledgers that have loans outstanding with the licensee:

(A) Notice of:

(i) the licensee's intention to cease engaging in business as a pawnbroker in Indiana; and

(ii) the date on which the licensee's pawnbroking business will cease.

(B) Instructions, approved by the director, on how pledged articles may be redeemed before the date identified under clause (A)(ii).

(b) If:

(1) a licensee ceases engaging in business as a pawnbroker in Indiana without complying with subsection (a); and

(2) the director determines that it is in the public interest that the department oversees the liquidation of the licensee's business;

the director may appoint a liquidating agent to conclude the affairs of

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the licensee's pawnbroker business in Indiana. The department may use the proceeds of the licensee's bond under section ~~5~~ **5.5** of this chapter to pay the expenses of the liquidation.

(c) If:

(1) a license is revoked under section 13 of this chapter and the director determines that it is not in the best interests of the public for the licensee to liquidate the business; or

(2) the director otherwise determines that it is in the best interests of the public;

the director may appoint a liquidating agent to conclude the affairs of the licensee's pawnbroker business in Indiana. The department may use the proceeds of the licensee's bond under section ~~5~~ **5.5** of this chapter to pay the expenses of liquidation.

(d) If a pawnbroker gives notice to the department under subsection (a) that the pawnbroker intends to cease engaging in business as a pawnbroker in Indiana, the pawnbroker may accept during the two (2) months immediately following the maturity of a loan that the pawnbroker has made to any pledger, as described in section 30(a) of this chapter, partial payments from the pledger for the loan. A partial payment made under this subsection must be applied to the loan's principal and used to reduce the pledger's loan obligation. Acceptance of partial payments under this subsection does not require the pawnbroker to extend the two (2) month period described in section 30(a) of this chapter with respect to any loan.

SECTION 39. IC 28-7-5-30, AS AMENDED BY P.L.27-2012, SECTION 98, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 30. (a) Subject to subsections (b) and (c), upon the expiration of two (2) months from the maturity of the loan, a pawned article becomes the property of the pawnbroker and is subject to sale.

(b) Subsection (a) applies only if the pledger is given a reasonable opportunity during:

(1) the term of the loan; and

(2) the two (2) month period described in subsection (a);

to repay the loan and redeem the pawned article.

(c) During the term of the loan and the two (2) month period described in subsection (a), the pawnbroker may not allow the public to have access to the pawned article.

~~(d) If a pawnbroker gives notice to the department under section 10.1 of this chapter that the pawnbroker intends to cease engaging in business as a pawnbroker in Indiana, the pawnbroker may accept, through the two (2) month period described in subsection (a) with~~

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~~respect to any loan; partial payments from any pledger that has one (1) or more loans outstanding with the pawnbroker. A partial payment made under this subsection must be applied to a loan's principal and used to reduce the pledger's loan obligation. Acceptance of partial payments under this subsection does not require the pawnbroker to extend the two (2) month period described in subsection (a) with respect to any loan.~~

SECTION 40. IC 28-8-4-1, AS AMENDED BY P.L.89-2011, SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. This chapter does not apply to the following:

(1) The United States or an instrumentality of the United States.

(2) The state, a political subdivision of the state, or an instrumentality of the state or of a political subdivision of the state.

(3) A bank, a bank holding company, an industrial loan and investment company, a credit union, a savings association, a savings bank, a mutual bank, or a mutual savings bank organized under the laws of any state or the United States.

(4) A stored value card, **credit card, or debit card** issued by a state or federally chartered financial institution.

SECTION 41. IC 28-8-4-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 8.5. As used in this chapter, "individual" means a natural person.**

SECTION 42. IC 28-8-4-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 10. As used in this chapter, "licensed activities" means ~~the~~ **money transmission** activities:

(1) that a licensee engages in: ~~within~~

(A) from a place of business in Indiana; ~~and~~ **or**

(B) with a consumer who is a resident of Indiana and who enters into the transaction in Indiana; and

(2) for which a licensee has obtained a license under this chapter.

SECTION 43. IC 28-8-4-13, AS AMENDED BY P.L.89-2011, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 13. **(a)** As used in this chapter, "money transmission" means **an activity that:**

(1) **involves:**

(A) the sale or issuance of payment instruments primarily for personal, family, or household purposes; or

~~(2)~~ **(B)** engaging in the business of:

~~(A)~~ **(i)** receiving money for transmission from; or

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~~(B)~~ **(ii)** transmitting money to;

any location and by any means, including a payment instrument, wire, facsimile, or electronic transfer, primarily for personal, family, or household purposes; **and**

(2) is performed:

(A) from an office or place of business, wherever located; or

(B) over the Internet or by any other means of transmission.

(b) The term includes any activity described in subsection (a) that is performed by an authorized delegate, wherever located.

SECTION 44. IC 28-8-4-13.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 13.8. As used in this chapter, "organization" means a corporation, a government or governmental subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated organization, or any other entity, however organized.**

SECTION 45. IC 28-8-4-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 17. As used in this chapter, "person" means an individual ~~a partnership, an association, a joint stock association, a trust,~~ or ~~a corporation.~~ **an organization.**

SECTION 46. IC 28-8-4-18 IS REPEALED [EFFECTIVE JULY 1, 2014]. ~~Sec. 18. As used in this chapter, "security device" includes a surety bond, an irrevocable letter of credit, or other similar security device.~~

SECTION 47. IC 28-8-4-20, AS AMENDED BY P.L.172-2011, SECTION 134, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 20. (a) A person may not engage in the business of money transmission:

(1) from a place of business in Indiana; or

(2) with a consumer who is a resident of Indiana and who enters into the transaction in Indiana;

without a license required by this chapter.

(b) An application for a license must be:

(1) submitted on a form prescribed by the ~~department~~ **director** and must include the information required by the ~~department.~~ **director; and**

(2) accompanied by a nonrefundable application fee as fixed by the department under IC 28-11-3-5.

(c) An application submitted under this section must indicate

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whether any individuals described in section 35(b)(2) or 35(b)(3) of this chapter ~~(1) are, at the time of the application, under indictment for a felony under the laws of Indiana or any other jurisdiction; or (2)~~ have been convicted of ~~or pleaded guilty or nolo contendere to~~ a felony under the laws of Indiana or any other jurisdiction.

(d) The director may request evidence of compliance with this section at:

(1) the time of application;

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

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

(e) For purposes of subsection (d), evidence of compliance may include:

(1) criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation for an individual described in section 35(b)(2) or 35(b)(3) of this chapter;

(2) credit histories; and

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

If the director requests a national criminal history background check under subdivision (1) for an individual described in that subdivision, the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (d). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

(f) If the department of state revenue notifies the department that a person is on the most recent tax warrant list, the department shall not issue or renew the person's license until:

(1) the person provides to the department a statement from the department of state revenue that the person's tax warrant has been satisfied; or

(2) the department receives a notice from the commissioner of the department of state revenue under IC 6-8.1-8-2(k).

SECTION 48. IC 28-8-4-20.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE NOVEMBER 1, 2013]: **Sec. 20.5. (a) As used in this section, "Nationwide Mortgage Licensing System and Registry" or**

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"NMLSR" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of creditors, mortgage loan originators, and other financial services entities and their employees and agents.

(b) Subject to subsection (g), the director may designate the NMLSR to serve as the sole entity responsible for:

(1) processing applications and renewals for licenses under this chapter;

(2) issuing unique identifiers for licensees and entities exempt from licensing under this chapter; and

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

(c) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and section 47 of this chapter, the director shall regularly report significant or recurring violations of this chapter to the NMLSR.

(d) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and section 47 of this chapter, the director may report complaints received regarding licensees under this chapter to the NMLSR.

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

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

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

(1) Information stored in the NMLSR is subject to the confidentiality provisions of IC 5-14-3 and section 47 of this chapter. A person may not:

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

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

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

(2) Documents, materials, and other forms of information in

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the control or possession of the NMLSR that are confidential under section 47 of this chapter and that are:

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

(B) otherwise obtained by the NMLSR;

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

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

(A) to the director; or

(B) by the director;

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

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

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

(A) obtain information;

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

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

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

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

(7) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental

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agencies, the Conference of State Bank Supervisors, the Money Transmitters Regulators Association, or other associations representing governmental agencies, as established by rule or order of the director.

(8) Information or material that is subject to a privilege or confidentiality under subdivision (6) is not subject to:

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

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

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

(A) confidential supervisory information; or

(B) any information or material described in subdivision (6);

and that is inconsistent with subdivision (6) is superseded by this section.

(10) This section does not apply with respect to information or material that concerns the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a person described in section 35(b)(2) or 35(b)(3) of this chapter and that is included in the NMLSR for access by the public.

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

(A) require review of; and

(B) make available;

the audited financial statements of the NMLSR.

(12) Notwithstanding any other provision of law, any:

(A) application, renewal, or other form or document that:

(i) relates to licenses issued under this chapter; and

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

(B) document filed as an electronic record in a multistate automated repository established and operated for the licensing or registration of financial services entities and

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their employees; or

(C) electronic record filed through the NMLSR;

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

SECTION 49. IC 28-8-4-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 21. (a) An application for a license under this chapter must be:

(1) in writing;

(2) under oath; and

(3) in a form prescribed by the director.

(b) An application for a license must be accompanied by the following:

(1) A ~~security device~~ **surety bond** as required by section 27 of this chapter. ~~or a deposit as required by section 29 of this chapter.~~ If requested, the director may permit corporations that are directly or indirectly commonly controlled to engage in activities under this chapter pursuant to a single ~~security device~~ **surety bond** filed under section 27 of this chapter. ~~or a single deposit filed under section 29 of this chapter.~~

(2) A nonrefundable license fee as ~~provided in section 32 of this chapter.~~ **fixed by the department under IC 28-11-3-5.**

SECTION 50. IC 28-8-4-24, AS AMENDED BY P.L.217-2007, SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 24. An application **for licensure under this chapter** must contain the following:

(1) The name of the applicant.

(2) The applicant's principal address.

(3) A fictitious or trade name, if any, used by the applicant in the conduct of its business.

(4) The location of the applicant's business records.

(5) The history of the applicant's:

(A) material litigation; and

(B) criminal ~~indictments,~~ convictions ~~and guilty or nolo contendere pleas~~ for felonies involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

(6) A description of:

(A) the activities conducted by the applicant;

(B) the applicant's history of operations; and

(C) the business activities in which the applicant seeks to be engaged in Indiana.

(7) A list identifying the applicant's proposed authorized delegates

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in Indiana.

(8) A sample authorized delegate contract, if applicable.

(9) A sample form of payment instrument, if applicable.

(10) The location or locations at which the applicant and its authorized delegates propose to conduct the licensed activities in Indiana. If any business, other than the business of money transmission under this chapter, will be conducted by the applicant or another person at any location identified under this subdivision, the applicant shall indicate for each location at which another business will be conducted:

(A) the nature of the other business;

(B) the name under which the other business operates;

(C) the address of the principal office of the other business;

(D) the name and address of the business's resident agent in Indiana; and

(E) any other information that the director may require.

However, the applicant is not required to submit the information required by this subdivision if the location at which the other business will be conducted is the place of business of an authorized delegate that is not under common control with the applicant.

(11) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which such payment instruments will be payable.

(12) Documents revealing that the applicant has a net worth of at least ~~one~~ **six** hundred thousand dollars ~~($100,000),~~ **($600,000),** calculated in accordance with generally accepted accounting principles.

~~(13) In addition to the requirements of subdivision (12), an applicant that sells payment instruments at more than one (1) location or through authorized delegates must have an additional net worth of the lesser of:~~

~~(A) fifty thousand dollars ($50,000) for each location in Indiana;~~

~~(B) fifty thousand dollars ($50,000) for each authorized delegate located in Indiana; or~~

~~(C) five hundred thousand dollars ($500,000).~~

SECTION 51. IC 28-8-4-25, AS AMENDED BY P.L.89-2011, SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 25. In addition to the items listed in section 24 of this chapter, if an applicant **for licensure under this chapter** is not organized as a sole proprietorship, the applicant must provide the

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following items and information relating to the applicant's organizational structure:

(1) State of incorporation or organization.

(2) Date of incorporation or organization.

(3) A certificate from the state in which the applicant was incorporated or organized stating that the entity is in good standing, **or an another equivalent certification from the state in which the applicant was incorporated or organized.**

(4) A description of the organizational structure of the applicant, including the following:

(A) The identity of the parent of the applicant.

(B) The identity of each subsidiary of the applicant.

(C) The names of the stock exchanges, if any, in which the applicant, the parent, and the subsidiaries are publicly traded.

(5) The:

(A) name;

(B) business address;

(C) residence address; and

(D) employment history;

for each individual described in section 35(b)(2) or 35(b)(3) of this chapter.

(6) The:

(A) history of material litigation; and

(B) history of criminal ~~indictments~~ convictions ~~and guilty or nolo contendere pleas~~ for felonies involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction;

for each individual described in section 35(b)(2) or 35(b)(3) of this chapter.

(7) Except as provided in subdivision (8), copies of the applicant's audited financial statements for the current year and, if available, for the preceding two (2) years, including a:

(A) balance sheet;

(B) statement of income or loss;

(C) statement of changes in shareholder equity; and

(D) statement of changes in financial position.

A financial statement required to be submitted under this subdivision must be prepared by ~~a~~ **an independent** certified public accountant authorized to do business in the United States in accordance with AICPA Statements on Standards for Accounting and Review Services (SSARS).

(8) If the applicant is a wholly owned subsidiary of:

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(A) a corporation **or other organization** publicly traded in the United States, financial statements for the current year or the parent corporation's **or parent organization's** Form 10K reports filed with the United States Securities and Exchange Commission for the preceding three (3) years may be submitted with the applicant's unaudited financial statements; or

(B) a corporation **or other organization** publicly traded outside the United States, similar documentation filed with the parent corporation's **or parent organization's** non-United States regulator may be submitted with the applicant's unaudited financial statements.

(9) Copies of filings, if any, made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, not more than one (1) year before the date of filing of the application.

SECTION 52. IC 28-8-4-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 27. (a) ~~Except as provided in section 29 of this chapter,~~ An application **for licensure under this chapter** must be accompanied by a ~~security device that secures the faithful performance of the obligations of the licensee to receive, handle, transmit, and pay money in connection with the:~~

~~(1) sale and issuance of payment instruments; or~~

~~(2) transmission of money.~~ **surety bond in accordance with this section.**

(b) The ~~security device~~ **surety bond** required under subsection (a) must:

(1) be in ~~an~~ **the** amount ~~as provided under subsection (c);~~ **of three hundred thousand dollars ($300,000);**

~~(2) run to the state; and~~

~~(3)~~ **(2)** be in a form acceptable to the director;

~~(c) The security device must be in an amount calculated as follows:~~

~~STEP ONE: Subtract one (1) from the number of locations where the applicant proposes to engage in business under the license.~~

~~STEP TWO: Multiply the difference determined under STEP ONE by ten thousand dollars ($10,000).~~

~~STEP THREE: Add two hundred thousand dollars ($200,000) to the product determined under STEP TWO.~~

~~STEP FOUR: Pay the amount that is the lesser of:~~

~~(1) the sum determined in STEP THREE; or~~

~~(2) three hundred thousand dollars ($300,000). (d) If the security device filed is a bond, the aggregate liability of the surety shall~~

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~~not exceed the principal sum of the bond.~~

(3) be in effect during the term of the license issued under this chapter;

(4) remain in effect during the five (5) years after the licensee ceases offering money transmission services in Indiana;

(5) be payable to the department for the benefit of:

(A) the state;

(B) individuals who reside in Indiana when they agree to receive money transmission services from the licensee; and

(C) entities that do business in Indiana when they agree to receive money transmission services from the licensee;

(6) be issued by a bonding, surety, or insurance company authorized to do business in Indiana and rated at least "A-" by at least one (1) nationally recognized investment rating service; and

(7) have payment conditioned upon the licensee's or any of the licensee's employees' or agents' noncompliance with or violation of this chapter or other applicable federal or state laws or regulations.

(c) The director may adopt rules or guidance documents with respect to the requirements for a surety bond as necessary to accomplish the purposes of this chapter.

(d) If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the licensee for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in the amount needed to restore the amount of the surety bond to three hundred thousand dollars ($300,000).

(e) If for any reason a surety terminates a bond issued under this section, the licensee shall immediately notify the department and file a new surety bond in the amount of three hundred thousand dollars ($300,000).

(f) Cancellation of a surety bond issued under this section does not affect any liability incurred or accrued during the period when the surety bond was in effect.

(g) The director may obtain satisfaction from a surety bond issued under this section if the director incurs expenses, issues a final order, or recovers a final judgment under this chapter.

(h) Notices required under this section must be in writing and delivered by certified mail, return receipt requested and postage prepaid, or by overnight delivery using a nationally recognized

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carrier.

SECTION 53. IC 28-8-4-28 IS REPEALED [EFFECTIVE JULY 1, 2014]. ~~Sec. 28. (a) The security device provided for in section 27 of this chapter shall remain in effect until cancellation.~~

~~(b) A security device may be canceled not more than thirty (30) days after written notice is sent by first class mail to the director.~~

~~(c) Cancellation of a security device does not affect any liability incurred or accrued during the period when the security device was in effect.~~

SECTION 54. IC 28-8-4-29 IS REPEALED [EFFECTIVE JULY 1, 2014]. ~~Sec. 29. (a) In lieu of a security device, the licensee may deposit with the director, or with banks in the state as the licensee may designate and the director may approve, one (1) or more of the following:~~

~~(1) Cash.~~

~~(2) Interest-bearing stocks and bonds.~~

~~(3) Notes.~~

~~(4) Debentures.~~

~~(5) Other obligations:~~

~~(A) of the United States or any agency or instrumentality of the United States;~~

~~(B) guaranteed by the United States;~~

~~(C) of the state, a city, a county, a town, a village, a school district, or an instrumentality of the state; or~~

~~(D) guaranteed by the state.~~

~~(b) Each item deposited under subsection (a) must be calculated based on the lesser of:~~

~~(1) the principal amount; or~~

~~(2) the market amount.~~

~~(c) The aggregate amount deposited under subsection (a) must be not less than the amount required under section 27 of this chapter.~~

~~(d) The deposits made under subsection (a) shall be held to secure the faithful performance of the obligations of the licensee to receive, handle, transmit, and pay money in connection with the:~~

~~(1) sale and issuance of payment instruments; and~~

~~(2) transmission of money.~~

~~(e) An applicant that makes a deposit under subsection (a) is entitled to receive all interest and dividends from the deposit.~~

~~(f) An applicant that makes a deposit under subsection (a) has the right, with the approval of the director, to substitute other securities for those deposited, and shall be required to do so on written order of the director made for good cause shown.~~

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SECTION 55. IC 28-8-4-30 IS REPEALED [EFFECTIVE JULY 1, 2014]. ~~Sec. 30. (a) Except as provided in subsection (b), a security device filed under section 27 of this chapter and a deposit made under section 29 of this chapter must remain in place:~~

~~(1) during the time a licensee engages in money transmission operations in Indiana; and~~

~~(2) for five (5) years after the date a licensee ceases money transmission operations in Indiana.~~

~~(b) Prior to the expiration of the five (5) years in subsection (a)(2), the director may permit a licensee to:~~

~~(1) reduce a security device or a deposit to the amount of the licensee's outstanding payment instruments that remain in Indiana; or~~

~~(2) eliminate a security device or deposit, if the licensee has no outstanding payment instruments in Indiana.~~

SECTION 56. IC 28-8-4-31 IS REPEALED [EFFECTIVE JULY 1, 2013]. ~~Sec. 31. On or after the date when the licensee ceases money transmission operations in Indiana, the director may permit a licensee to substitute a letter of credit or other form of security device acceptable to the director for the security device or deposit.~~

SECTION 57. IC 28-8-4-32 IS REPEALED [EFFECTIVE JULY 1, 2013]. ~~Sec. 32. (a) An application must be accompanied by a nonrefundable application fee as fixed by the department under IC 28-11-3-5.~~

~~(b) If a license is granted, the application fee constitutes the license fee for the applicant's activities through March 31 of the year in which the initial license is granted.~~

SECTION 58. IC 28-8-4-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 33. (a) A license granted under this chapter permits a licensee to conduct business:

(1) at one (1) or more locations directly or indirectly owned by the licensee; or

(2) through one (1) or more authorized delegates.

(b) Each licensee shall maintain a policy of insurance issued by an insurer authorized to do business in Indiana that insures the applicant against loss by a criminal act or act of dishonesty. The principal sum of the policy shall be equivalent to the amount of the ~~required security device~~ **surety bond** required under section 27 of this chapter. ~~or deposit required under section 29 of this chapter.~~

(c) ~~Except as provided in subsection (d),~~ A licensee must at all times possess permissible investments with an aggregate market value calculated in accordance with generally accepted accounting principles

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of not less than the aggregate face amount of all outstanding payment instruments issued or sold by the licensee or an authorized delegate of the licensee in the United States.

~~(d) The director may waive the permissible investments requirement in subsection (c) if the dollar volume of a licensee's outstanding payment instruments does not exceed (1) the security device posted by the licensee under section 27 of this chapter. or (2) the deposit made by the licensee under section 29 of this chapter.~~

~~(e)~~ **(d)** A licensee that is a corporation **or a limited liability company** must at all times be in good standing with the secretary of state of the state in which the licensee was incorporated.

SECTION 59. IC 28-8-4-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 34. The director may permit corporations **or other organizations** that are directly or indirectly commonly controlled to engage in activities under this chapter, pursuant to a ~~security device~~ **surety bond** required under section 27 of this chapter. ~~or a deposit required under section 29 of this chapter.~~

SECTION 60. IC 28-8-4-35, AS AMENDED BY P.L.90-2008, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 35. (a) The director shall begin an investigation after an application **for licensure under this chapter** is complete.

(b) The director shall investigate the financial condition and responsibility, financial and business experience, and character and general fitness of:

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

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

(3) if known, each controlling person.

(c) The director may conduct an onsite investigation of the applicant, the reasonable cost of which shall be borne by the applicant.

(d) The director shall issue a license to an applicant authorizing the applicant to engage in the licensed activities in Indiana for a term expiring ~~March~~ **December** 31 of the year in which the license is issued if the director finds that:

(1) the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community; and

(2) the applicant has fulfilled the requirements imposed by this chapter.

(e) Upon application, the director shall determine whether a

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particular person qualifies as a controlling person. The director may waive any or all requirements of this chapter pertaining to a controlling person for good cause shown.

(f) If the director finds that:

(1) an applicant does not satisfy the requirements in subsection (d); or

(2) an application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license;

the director may deny the application. The director must set forth the reasons for the denial in writing and send a copy of the reasons to the applicant.

SECTION 61. IC 28-8-4-37, AS AMENDED BY P.L.217-2007, SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 37. The department shall fix an annual fee for renewal of a license under IC 28-11-3-5. The annual fee shall be paid on or before ~~March~~ **December** 31 of each year.

SECTION 62. IC 28-8-4-38, AS AMENDED BY P.L.217-2007, SECTION 79, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 38. (a) A licensee may renew a license by complying with the following:

(1) Filing with the director **or the director's designee** the annual ~~report~~ **renewal** in the form that is prescribed by the director and sent by the director to each licensee not ~~less than three (3) months immediately preceding the date established by the director for license renewal.~~ **later than December 31 of each year.** The ~~report~~ **renewal** must include the following, **which, except for the financial statements described in clause (A), must be filed not later than December 31:**

(A) Either:

(i) a copy of the licensee's most recent audited consolidated annual financial ~~statement,~~ **statements,** including a balance sheet, a statement of income or loss, a statement of changes in shareholder's equity, and a statement of changes in financial position; or

(ii) if the licensee is a wholly owned subsidiary, the parent corporation's **or parent organization's** most recent consolidated audited annual financial ~~statement~~ **statements** or the parent corporation's **or parent organization's** Form 10K reports filed with the Securities and Exchange Commission for the previous three (3) years, along with the licensee's unaudited annual financial ~~statement.~~ **statements.**

~~A~~ **The** financial ~~statement~~ **statements** required to be

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submitted under this clause must be prepared by ~~a~~ **an independent** certified public accountant authorized to do business in the United States in accordance with AICPA Statements on Standards for Accounting and Review Services (SSARS) ~~A financial statement not covering the immediately preceding twelve (12) month period is not considered the most recent statement for purposes of license renewal under this section.~~ **and must be filed with the director or the director's designee not later than April 30 of the year that immediately follows the calendar or fiscal year covered by the statements.**

(B) The number of payment instruments sold by the licensee in Indiana, the dollar amount of those instruments, and the dollar amount of outstanding payment instruments sold by the licensee calculated from the most recent quarter for which data is available before the date of the filing of the renewal application, but in no event more than one hundred twenty (120) days before the renewal date.

(C) Material changes to the information submitted by the licensee on its original application **or as part of a renewal** that have not been reported previously to the director on any other report **or renewal** required to be filed under this chapter.

(D) A list of the licensee's permissible investments.

(E) A list of the locations within Indiana at which business regulated by this chapter will be conducted by either the licensee or its authorized delegate, including information concerning any business, other than the business of money transmission under this chapter, that will be conducted at each identified location, as required under section 24(10) of this chapter.

(2) Paying the annual renewal fee described under section 37 of this chapter.

(b) A licensee that:

(1) does not:

(A) file:

(i) a renewal; ~~report;~~ or

(ii) any financial statements required by subsection (a)(1)(A);

by the renewal filing deadline set by the director; or

(B) pay the renewal fee by ~~March~~ **December** 31 of each year; and

(2) has not been granted an extension of time by the department

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to meet the requirements described in subdivision (1);

shall be notified by the department, in writing, that a hearing will be scheduled at which the licensee will be required to show cause why its license should not be suspended pending compliance with these requirements. If after the hearing the license is not suspended, the department shall require a daily late fee beginning with the date the renewal, ~~report,~~ the financial statements, or the annual renewal fee is required by this chapter in an amount fixed by the department under IC 28-11-3-5.

(c) The director may, for good cause shown, waive any requirement of this section.

SECTION 63. IC 28-8-4-40.6, AS AMENDED BY P.L.35-2010, SECTION 182, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 40.6. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, the licensee, or any individual described in section 35(b)(2) or 35(b)(3) of this chapter, has been convicted of ~~or pleaded guilty or nolo contendere to~~ a felony under the laws of Indiana or any other jurisdiction.

(b) If this section applies, the licensee shall provide to the department the information required under section 24(5)(B) or 25(6)(B) of this chapter, whichever applies:

(1) not later than thirty (30) days after the licensee or individual described in section 35(b)(2) or 35(b)(3) of this chapter has been convicted of ~~or pleaded guilty or nolo contendere to~~ the felony; or

(2) if the licensee's next license renewal fee under section 37 of this chapter is due before the date described in subdivision (1), along with the licensee's next license renewal fee under section 37 of this chapter.

SECTION 64. IC 28-8-4-49, AS AMENDED BY P.L.27-2012, SECTION 102, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 49. (a) Licensees desiring to conduct licensed activities through authorized delegates shall authorize each delegate to operate pursuant to an express written contract, which shall provide for the following:

(1) That the licensee appoints the person as its delegate with authority to sell payment instruments and accept funds to be transmitted by or on behalf of the licensee.

(2) That neither a licensee nor an authorized delegate may authorize a subdelegate without the written consent of the director.

(3) That licensees are subject to supervision and regulation by the

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director.

(4) An acknowledgment that the authorized delegate consents to the director's inspection, with or without prior notice to the licensee or authorized delegate, of the books, records, and accounts of an authorized delegate of the licensee when the director has a reasonable basis to believe that the licensee or authorized delegate is in violation of this chapter.

(5) That authorized delegates are under a duty to act only as authorized under the contract with the licensee and that an authorized delegate who exceeds the delegate's authority is subject to cancellation of the delegate's contract and disciplinary action by the director.

(b) Subject to sections 50 and 51 of this chapter, an authorized delegate of a licensee or of a person exempt from licensure under section 1 of this chapter is exempt from the licensing requirements of this chapter if the authorized delegate acts within the scope of the written contract executed under subsection (a) between the authorized delegate and the licensee or exempt person.

(c) A licensee shall give the department written notice of the resignation, discharge, or termination of an authorized delegate against whom allegations were made that accused the authorized delegate of:

(1) violating this chapter or other laws, regulations, rules, or industry standards of conduct applicable to money transmission; or

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

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

SECTION 65. IC 28-8-4-54 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 54. A claim against a licensee or its authorized delegate may be brought by:

(1) the claimant filing suit against the ~~security device~~ **surety bond** provided for in section 27 of this chapter; ~~or the deposit provided for in section 29 of this chapter;~~ or

(2) the director filing suit on behalf of a claimant, in one (1) action or in successive actions.

SECTION 66. IC 28-10-1-1, AS AMENDED BY P.L.27-2012, SECTION 106, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. A reference to a federal law or federal regulation in this title is a reference to the law or regulation as

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in effect December 31, ~~2011.~~ **2012.**

SECTION 67. IC 28-13-12-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. **(a)** The officers of a corporation must consist of **the following:**

(1) A president.

(2) One (1) or more officers whose duties are equivalent to those customarily performed by a ~~secretary~~ **chief financial officer** or cashier. ~~and~~

(3) An officer whose duties include preparing minutes of the directors' and shareholders' meetings, authenticating records of the corporation, and other duties customarily performed by a secretary.

(4) Any other officers prescribed by **the articles of incorporation or** the bylaws.

~~Each of the officers shall be chosen by the board of directors at the time and in the manner and for the terms as the bylaws of the corporation may prescribe. Each officer shall hold office until the officer's successor is chosen and has qualified.~~

(b) The president shall be chosen ~~from among~~ **by** the directors. **The highest acting officer, as designated by the directors, shall be chosen from among the directors.** If **the articles of incorporation or** the bylaws so provide, at least two (2) offices may be held by the same person, except that the duties of the president and ~~the secretary or cashier~~ **an officer described in subsection (a)(2)** may not be performed by the same person.

SECTION 68. IC 30-2-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. It is unlawful to enter into any agreement or contract for a purpose described in section 1 of this chapter unless the agreement or contract requires that all payments be made by the settlor to an account in a:

(1) bank;

(2) trust company;

(3) savings association; or

(4) credit union;

~~whose principal~~ **with an** office ~~is~~ in Indiana.

SECTION 69. **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 1081, 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:

Page 12, delete lines 38 through 42.

Delete page 13.

Page 14, delete lines 1 through 14.

Page 26, delete lines 23 through 31.

Page 34, delete lines 38 through 42.

Page 35, delete lines 1 through 17.

Page 35, line 21, delete "The" and insert **"After a lessor has filed an initial or a subsequent notification under section 1 of this chapter,** the".

Page 35, line 27, after "reorganization;" insert "**or**".

Page 35, line 31, delete "; or" and insert "**.**".

Page 35, delete lines 32 through 35, begin a new paragraph and insert:

"SECTION 17. IC 24-7-8-5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 5. Before appointing or hiring any director, executive officer, or Indiana store manager, a lessor must perform a criminal background check on the candidate and retain, until the department's next examination of the lessor is completed, records of the background check in the lessor's files.**".

Page 40, line 9, after "(C)" insert "**except as otherwise permitted under section 9(a) of this chapter,**".

Page 43, line 33, delete "IC 28-1-29-9;" and insert "**section 9 of this chapter;**".

Page 44, line 5, after "director," insert "**an application submitted to the department under this section must include**".

Page 45, line 5, delete "one hundred" and insert "**fifty**".

Page 45, line 5, delete "($100,000)," and insert "**($50,000),**".

Page 45, line 26, delete "one hundred" and insert "**fifty**".

Page 45, line 26, delete "($100,000);" and insert "**($50,000);**".

Page 45, line 27, delete "monthly" and insert "**of the highest daily**".

Page 45, line 28, after "residents" insert "**for each month**".

Page 45, line 29, delete "." and insert "**, not to exceed one hundred thousand dollars ($100,000).**".

Page 55, line 33, after "of" strike "a" and insert "**an Indiana**".

Page 55, line 35, after "." insert "**However, as an alternative to**

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maintaining a separate trust account specifically for the benefit of the licensee's Indiana contract debtors, a licensee may submit a request to the director for approval to maintain a trust account that holds both money paid to the licensee by or on behalf of Indiana contract debtors and money paid to the licensee by or on behalf of contract debtors who do not reside in Indiana. The request must include documentation of the licensee's account reconciliation procedures sufficient to demonstrate to the director that the licensee will be able to:

(1) comply with the reconciliation requirements set forth in subsection (e) with respect to each Indiana contract debtor whose money is held in the account; and

(2) accurately determine the appropriate surety bond level under section 6(d) of this chapter at the time of each renewal of the licensee's license under this chapter.

Upon approval by the director of a request described in this subsection, the licensee shall maintain the documentation described in subdivisions (1) and (2) for review by department examiners during the course of the department's routine examinations under this chapter.".

Page 55, line 36, after "day" strike "the" and insert "**that**".

Page 55, line 36, delete "a" and insert "**an Indiana**".

Page 55, line 37, delete "trust the" and insert "**the** trust".

Page 55, line 38, strike "for the benefit of the contract debtor.".

Page 55, line 39, after "services." insert "**required under this section.**".

Page 56, line 7, after "remittances" insert ", **less fees and costs,**".

Page 56, line 8, strike "less fees and costs,".

Page 56, delete lines 14 through 18, begin a new line block indented and insert:

"(4) Retain **for charges** in the ~~contract debtor's~~ trust account ~~for charges,~~ **required under this section** an amount less than or equal to the sum of one (1) month's ~~fee~~ **fees for the licensee's Indiana contract debtors whose money is held in the account,** as permitted by section 8.3(c)(2) of this chapter, plus ~~the~~ **a** close-out fee, as permitted by section ~~8.3(c)~~ **8.3(d)** of this chapter, **for each of the licensee's Indiana contract debtors whose money is held in the account,** unless a greater amount is approved in writing by the department.".

Page 56, line 31, after "to" insert "**at least**".

Page 56, line 32, strike "contract debtor's account." and insert "**individual account maintained for each Indiana contract debtor**

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whose money is held in the trust account.".

Page 56, delete lines 33 through 42, begin a new paragraph and insert:

"(e) ~~If a licensee has established a trust account under subsection (a),~~ The licensee shall reconcile the trust account **required under this section** at least every thirty (30) days after receipt of the bank statement. The reconciliation must compare the cash balance in the trust account **for all the licensee's Indiana contract debtors whose money is held in the account** with the sum of the balances in each **of those Indiana** contract debtor's ~~account.~~ **individual accounts.** If the licensee or the licensee's designee has more than one (1) trust account **under this section,** each trust account must be individually reconciled. **If the cash balance held in a trust account for the benefit of the licensee's Indiana contract debtors reflects a shortage when compared with the sum of the balances in each of those Indiana contract debtor's individual accounts, the licensee shall immediately provide written notice to the department of that fact and of any remedial action taken by the licensee. If the cash balance held in a trust account for the benefit of the licensee's Indiana contract debtors reflects a surplus when compared with the sum of the balances in each of those Indiana contract debtor's individual accounts, the licensee shall attempt to remedy the surplus and shall retain, for review by department examiners, documentation of the actions taken.**".

Page 57, delete lines 1 through 2.

Page 57, line 14, after "shall" insert ",".

Page 57, line 14, strike "promptly" and insert "**not later than fifteen (15) days after the effective date of the termination of the agreement or the date on which it becomes apparent to the licensee that the plan has failed, as applicable,**".

Page 57, delete lines 23 through 28, begin a new paragraph and insert:

"**(i) Before adding or replacing any signatory on the trust account required under this section, the licensee shall:**

(1) ensure that the new signatory is qualified based on a background check consistent with section 3(c) of this chapter; and

(2) maintain, for review by department examiners, documentation of the background check conducted.".

Page 60, delete lines 32 through 40.

Page 61, line 14, after "No" insert "**(a)**".

Page 61, between lines 27 and 28, begin a new paragraph and insert:

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"(b) A pawnbroking transaction occurs in Indiana and is subject to the licensing requirements of this chapter and all other requirements of this chapter if a consumer who is a resident of Indiana enters into the pawnbroking transaction with a pawnbroker, or a person acting on behalf of the pawnbroker, that is located:

(1) in Indiana; or

(2) outside Indiana if the pawnbroker or person acting on behalf of the pawnbroker has advertised or solicited pawnbroking in Indiana by any means, including by mail, brochure, telephone, print, radio, television, the Internet, or electronic means.

A pawnbroking transaction does not occur in Indiana if a consumer who is a resident of Indiana enters into the pawnbroking transaction at a pawnbroker's place of business in another state.".

Page 79, line 23, strike "Except as provided in subsection (d),".

Page 79, line 23, delete "a" and insert "A".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1081 as introduced.)

BURTON, Chair

Committee Vote: yeas 13, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Financial Institutions, to which was referred House Bill No. 1081, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 33, between lines 9 and 10, begin a new paragraph and insert:

"SECTION 15. IC 24-5-27 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

Chapter 27. Credit Card Surcharges by Sellers

Sec. 1. (a) This chapter applies to a sales or lease transaction that:

(1) is entered into at a seller's place of business located in Indiana; or

(2) is:

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(A) offered by a seller with or without a physical presence in Indiana to an Indiana customer; and

(B) entered into by an Indiana customer;

if the seller has advertised or solicited sales or leases in Indiana by any means, including by mail, brochure, telephone, print, radio, television, the Internet, or electronic means.

(b) Notwithstanding subsection (a)(2), this chapter does not apply to a sales or lease transaction in which an Indiana customer enters into a sales or lease transaction at a seller's place of business located in another state.

Sec. 2. As used in this chapter, "card issuer" means any person who issues a credit card, or the agent of that person with respect to the credit card.

Sec. 3. (a) As used in this chapter, "credit card" means any card, plate, or other device that exists for the purpose of obtaining property or services.

(b) The term includes a bank card, a debit card, a charge card, a prepaid card or stored value card, or another similar device.

(c) The term does not include a seller credit card (as defined in IC 24-4.5-1-301.5(41)).

Sec. 4. As used in this chapter, "discount" means a reduction made from the regular price of property or services.

Sec. 5. As used in this chapter, "Indiana customer" means:

(1) an individual who is:

(A) a resident of Indiana; and

(B) a customer in a sales or lease transaction offered by or entered into with a seller; or

(2) a business or another entity that is:

(A) domiciled in Indiana or has a physical presence in Indiana; and

(B) a customer in a sales or lease transaction offered by or entered into with a seller.

Sec. 6. (a) As used in this chapter, "seller" means a person, or an agent of the person, who sells or leases, or offers to sell or lease, property or services to an Indiana customer.

(b) The term does not include a card issuer.

Sec. 7. (a) As used in this chapter, "surcharge" means any means of increasing the regular price of property or services for a customer who pays for the property or services with a credit card rather than by cash, check, or similar means.

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

(1) Charges that are imposed for payment by credit card and

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that are:

(A) assessed by a public, municipally owned, or cooperatively owned utility; and

(B) approved by the Indiana utility regulatory commission, in the case of charges imposed by a utility described in clause (A) that is under the jurisdiction of the Indiana utility regulatory commission for the approval of rates and charges.

(2) Charges imposed under an approved state or federal tariff.

Sec. 8. A seller in any sales or lease transaction that is entered into at a seller's place of business located in Indiana may not impose a surcharge on any customer that elects to use a credit card as a means of payment instead of payment by cash, check, or similar means.

Sec. 9. Subject to section 1(b) of this chapter, in any sales or lease transaction that:

(1) is offered by a seller that, regardless of whether the seller has a physical presence in Indiana, has advertised or solicited sales or leases to Indiana customers by any means, including by mail, brochure, telephone, print, radio, television, the Internet, or electronic means; and

(2) is entered into by an Indiana customer;

the seller may not impose a surcharge on the Indiana customer if the Indiana customer elects to use a credit card as a means of payment instead of payment by cash, check, or similar means.

Sec. 10. (a) A card issuer may not, by contract or otherwise, prohibit a seller from offering a discount to:

(1) any customer in a sales or lease transaction that is entered into at a seller's place of business located in Indiana; or

(2) in the case of a seller described in section 9(1) of this chapter, an Indiana customer in a sales or lease transaction, other than a sales or lease transaction described in section 1(b) of this chapter, that is entered into by the Indiana customer;

for payment by cash, check, or similar means rather than for payment by credit card.

(b) A discount described in subsection (a) is not a surcharge for purposes of section 8 or 9 of this chapter if the discount is offered to all prospective customers and is disclosed clearly and conspicuously, verbally or in writing, at the point of sale, regardless of whether the point of sale is:

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(1) at a seller's place of business located in Indiana; or
(2) by telephone, Internet, or other electronic means with an Indiana customer.

Sec. 11. A person who violates this chapter commits a deceptive act under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.".

Page 54, line 15, after "debtor" delete ".".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1081 as printed February 1, 2013.)

HOLDMAN, Chairperson

Committee Vote: Yeas 7, Nays 0.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1081, which is eligible for third reading, be returned to second reading for purposes of amendment.

HOLDMAN

SENATE MOTION

Madam President: I move that Engrossed House Bill 1081 be amended to read as follows:

Page 86, line 13, after "by" insert "**the articles of incorporation or**".

Page 86, line 18, delete "by the directors".

Page 86, line 18, strike "from among" and insert "**by**".

Page 86, line 19, after "directors." insert "**The highest acting officer, as designated by the directors, shall be chosen from among the directors.**".

Page 86, line 19, after "If" insert "**the articles of incorporation or**".

(Reference is to EHB 1081 as printed March 15, 2013.)

HOLDMAN

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