
HOUSE BILL No. 1081

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.4; IC 24-4.5; IC 24-7-8; IC 28-1; IC 28-7-5; IC 28-8-4; IC 28-10-1-1; IC 28-13-12-1; IC 30-2-10-2.

Synopsis: Financial institutions and consumer credit. 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; and (7) funeral trusts. 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.

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

Burton, Moed

January 7, 2013, read first time and referred to Committee on Financial Institutions.

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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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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:

1 SECTION 1. IC 24-4.4-1-102, AS AMENDED BY P.L.27-2012,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2013 (RETROACTIVE)]: Sec. 102. (1) This article shall
4 be liberally construed and applied to promote its underlying purposes
5 and policies.
6 (2) The underlying purposes and policies of this article are:
7 (a) to permit and encourage the development of fair and
8 economically sound first lien mortgage lending practices; and
9 (b) to conform the regulation of first lien mortgage lending
10 practices to applicable state and federal laws, rules, regulations,
11 policies, and guidance.
12 (3) A reference to a requirement imposed by this article includes
13 reference to a related rule of the department adopted under this article.
14 (4) A reference to a federal law in this article is a reference to the
15 law as in effect December 31, ~~2011~~. **2012**.
16 SECTION 2. IC 24-4.4-1-301, AS AMENDED BY P.L.27-2012,
17 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JANUARY 1, 2013 (RETROACTIVE)]; Sec. 301. In addition to
 2 definitions appearing in subsequent chapters of this article, the
 3 following definitions apply throughout this article:

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

7 (a) controls;

8 (b) is controlled by; or

9 (c) is under common control with;

10 the person subject to this article.

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

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

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

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

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

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

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

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

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

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

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

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- 1 to be used as the principal dwelling of the buyer.
- 2 (6) "Credit" means the right granted by a creditor to a debtor to
- 3 defer payment of debt or to incur debt and defer its payment.
- 4 (7) "Creditor" means a person:
- 5 (a) that regularly engages in the extension of first lien
- 6 mortgage transactions that are subject to a credit service
- 7 charge or loan finance charge, as applicable, or are payable by
- 8 written agreement in more than four (4) installments (not
- 9 including a down payment); and
- 10 (b) to which the obligation is initially payable, either on the
- 11 face of the note or contract, or by agreement if there is not a
- 12 note or contract.
- 13 The term does not include a person described in subsection
- 14 (34)(a) in a tablefunded transaction. A creditor may be an
- 15 individual, a limited liability company, a sole proprietorship, a
- 16 partnership, a trust, a joint venture, a corporation, an
- 17 unincorporated organization, or other form of entity, however
- 18 organized.
- 19 (8) "Department" refers to the members of the department of
- 20 financial institutions.
- 21 (9) "Depository institution" has the meaning set forth in the
- 22 Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes
- 23 any credit union.
- 24 (10) "Director" refers to the director of the department of financial
- 25 institutions or the director's designee.
- 26 (11) "Dwelling" means a residential structure that contains one
- 27 (1) to four (4) units, regardless of whether the structure is
- 28 attached to real property. The term includes an individual:
- 29 (a) condominium unit;
- 30 (b) cooperative unit;
- 31 (c) mobile home; or
- 32 (d) trailer;
- 33 that is used as a residence.
- 34 (12) "Employee" means an individual who is paid wages or other
- 35 compensation by an employer required under federal income tax
- 36 law to file Form W-2 on behalf of the individual.
- 37 (13) "Federal banking agencies" means the Board of Governors
- 38 of the Federal Reserve System, the Office of the Comptroller of
- 39 the Currency, the Office of Thrift Supervision, the National Credit
- 40 Union Administration, and the Federal Deposit Insurance
- 41 Corporation.
- 42 (14) "First lien mortgage transaction" means:

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- 1 (a) a consumer loan; or
 2 (b) a consumer credit sale;
 3 that is or will be used by the debtor primarily for personal, family,
 4 or household purposes and that is secured by a mortgage or a land
 5 contract (or another consensual security interest equivalent to a
 6 mortgage or a land contract) that constitutes a first lien on a
 7 dwelling or on residential real estate upon which a dwelling is
 8 constructed or intended to be constructed.
 9 (15) "Immediate family member" means a spouse, child, sibling,
 10 parent, grandparent, or grandchild. The term includes stepparents,
 11 stepchildren, stepsiblings, and adoptive relationships.
 12 (16) "Individual" means a natural person.
 13 (17) "Licensee" means a person licensed as a creditor under this
 14 article.
 15 (18) "Loan" includes:
 16 (a) the creation of debt by:
 17 (i) the creditor's payment of or agreement to pay money to
 18 the debtor or to a third party for the account of the debtor; or
 19 (ii) the extension of credit by a person who engages as a
 20 seller in credit transactions primarily secured by an interest
 21 in land;
 22 (b) the creation of debt by a credit to an account with the
 23 creditor upon which the debtor is entitled to draw
 24 immediately; and
 25 (c) the forbearance of debt arising from a loan.
 26 (19) "Loan brokerage business" means any activity in which a
 27 person, in return for any consideration from any source, procures,
 28 attempts to procure, or assists in procuring, a mortgage
 29 transaction from a third party or any other person, whether or not
 30 the person seeking the mortgage transaction actually obtains the
 31 mortgage transaction.
 32 (20) "Loan processor or underwriter" means an individual who
 33 performs clerical or support duties as an employee at the direction
 34 of, and subject to the supervision and instruction of, a person
 35 licensed or exempt from licensing under this article. For purposes
 36 of this subsection, the term "clerical or support duties" may
 37 include, after the receipt of an application, the following:
 38 (a) The receipt, collection, distribution, and analysis of
 39 information common for the processing or underwriting of a
 40 mortgage transaction.
 41 (b) The communication with a consumer to obtain the
 42 information necessary for the processing or underwriting of a

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- 1 loan, to the extent that the communication does not include:
 2 (i) offering or negotiating loan rates or terms; or
 3 (ii) counseling consumers about mortgage transaction rates
 4 or terms.
- 5 (21) "Mortgage loan originator" means an individual who, for
 6 compensation or gain, or in the expectation of compensation or
 7 gain, regularly engages in taking a mortgage transaction
 8 application or in offering or negotiating the terms of a mortgage
 9 transaction that either is made under this article or under
 10 IC 24-4.5 or is made by an employee of a person licensed or
 11 exempt from licensing under this article or under IC 24-4.5, while
 12 the employee is engaging in the loan brokerage business. The
 13 term does not include the following:
- 14 (a) An individual engaged solely as a loan processor or
 15 underwriter as long as the individual works exclusively as an
 16 employee of a person licensed or exempt from licensing under
 17 this article.
- 18 (b) Unless the person or entity is compensated by:
 19 (i) a creditor;
 20 (ii) a loan broker;
 21 (iii) another mortgage loan originator; or
 22 (iv) any agent of a creditor, a loan broker, or another
 23 mortgage loan originator described in items (i) through (iii);
 24 a person or entity that performs only real estate brokerage
 25 activities and is licensed or registered in accordance with
 26 applicable state law.
- 27 (c) A person solely involved in extensions of credit relating to
 28 timeshare plans (as defined in 11 U.S.C. 101(53D)).
- 29 (22) "Mortgage servicer" means the last person to whom a
 30 mortgagor or the mortgagor's successor in interest has been
 31 instructed by a mortgagee to send payments on a loan secured by
 32 a mortgage.
- 33 (23) "Mortgage transaction" means:
 34 (a) a consumer loan; or
 35 (b) a consumer credit sale;
 36 that is or will be used by the debtor primarily for personal, family,
 37 or household purposes and that is secured by a mortgage or a land
 38 contract (or another consensual security interest equivalent to a
 39 mortgage or a land contract) on a dwelling or on residential real
 40 estate upon which a dwelling is constructed or intended to be
 41 constructed.
- 42 (24) "Nationwide Mortgage Licensing System and Registry" or

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- 1 "NMLSR" means a mortgage licensing system developed and
 2 maintained by the Conference of State Bank Supervisors and the
 3 American Association of Residential Mortgage Regulators for the
 4 licensing and registration of creditors and mortgage loan
 5 originators.
- 6 (25) "Nontraditional mortgage product" means any mortgage
 7 product other than a thirty (30) year fixed rate mortgage.
- 8 (26) "Organization" means a corporation, a government or
 9 government subdivision, an agency, a trust, an estate, a
 10 partnership, a limited liability company, a cooperative, an
 11 association, a joint venture, an unincorporated organization, or
 12 any other entity, however organized.
- 13 (27) "Payable in installments", with respect to a debt or an
 14 obligation, means that payment is required or permitted by written
 15 agreement to be made in more than four (4) installments not
 16 including a down payment.
- 17 (28) "Person" includes an individual or an organization.
- 18 (29) "Principal" of a mortgage transaction means the total of:
 19 (a) the net amount paid to, receivable by, or paid or payable
 20 for the account of the debtor; and
 21 (b) to the extent that payment is deferred, amounts actually
 22 paid or to be paid by the creditor for registration, certificate of
 23 title, or license fees if not included in clause (a).
- 24 (30) "Real estate brokerage activity" means any activity that
 25 involves offering or providing real estate brokerage services to the
 26 public, including the following:
 27 (a) Acting as a real estate agent or real estate broker for a
 28 buyer, seller, lessor, or lessee of real property.
 29 (b) Bringing together parties interested in the sale, purchase,
 30 lease, rental, or exchange of real property.
 31 (c) Negotiating, on behalf of any party, any part of a contract
 32 relating to the sale, purchase, lease, rental, or exchange of real
 33 property (other than in connection with providing financing
 34 with respect to the sale, purchase, lease, rental, or exchange of
 35 real property).
 36 (d) Engaging in any activity for which a person engaged in the
 37 activity is required to be registered or licensed as a real estate
 38 agent or real estate broker under any applicable law.
 39 (e) Offering to engage in any activity, or act in any capacity,
 40 described in this subsection.
- 41 (31) "Registered mortgage loan originator" means any individual
 42 who:

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- 1 (a) meets the definition of mortgage loan originator and is an
 2 employee of:
 3 (i) a depository institution;
 4 (ii) a subsidiary that is owned and controlled by a depository
 5 institution and regulated by a federal banking agency; or
 6 (iii) an institution regulated by the Farm Credit
 7 Administration; and
 8 (b) is registered with, and maintains a unique identifier
 9 through, the NMLSR.
- 10 (32) "Residential real estate" means any real property that is
 11 located in Indiana and on which there is located or intended to be
 12 constructed a dwelling.
- 13 (33) "Revolving first lien mortgage transaction" means a first lien
 14 mortgage transaction in which:
 15 (a) the creditor permits the debtor to obtain advances from
 16 time to time;
 17 (b) the unpaid balances of principal, finance charges, and other
 18 appropriate charges are debited to an account; and
 19 (c) the debtor has the privilege of paying the balances in
 20 installments.
- 21 (34) "Tablefunded" means a transaction in which:
 22 (a) a person closes a first lien mortgage transaction in the
 23 person's own name as a mortgagee with funds provided by one
 24 (1) or more other persons; and
 25 (b) the transaction is assigned, not later than one (1) business
 26 day after the funding of the transaction, to the mortgage
 27 creditor providing the funding.
- 28 (35) "Unique identifier" means a number or other identifier
 29 assigned by protocols established by the NMLSR.
- 30 (36) "Land contract" means a contract for the sale of real estate in
 31 which the seller of the real estate retains legal title to the real
 32 estate until the total contract price is paid by the buyer.
- 33 (37) "Bona fide nonprofit organization" means an organization
 34 that ~~the~~ does the following, as determined by the director, under
 35 criteria established by the director:
 36 (a) Maintains tax exempt status under Section 501(c)(3) of the
 37 Internal Revenue Code.
 38 (b) Promotes affordable housing or provides home ownership
 39 education or similar services.
 40 (c) Conducts the organization's activities in a manner that
 41 serves public or charitable purposes.
 42 (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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- 1 (ii) at any time during which the person exempt from
 2 licensing under this article employs a licensed mortgage
 3 loan originator;
 4 as applicable;
 5 (d) remain in effect during the two (2) years after:
 6 (i) the creditor ceases offering financial services to
 7 individuals in Indiana; or
 8 (ii) the person exempt from licensing under this article
 9 ceases to employ a licensed mortgage loan originator or to
 10 offer financial services to individuals in Indiana, whichever
 11 is later;
 12 as applicable;
 13 (e) be payable to the department for the benefit of:
 14 (i) the state; and
 15 (ii) individuals who reside in Indiana when they agree to
 16 receive financial services from the creditor or the person
 17 exempt from licensing under this article, as applicable;
 18 (f) be issued by a bonding, surety, or insurance company
 19 authorized to do business in Indiana and rated at least "A-"
 20 by at least one (1) nationally recognized investment rating
 21 service; and
 22 (g) have payment conditioned upon:
 23 (i) the creditor's or any of the creditor's licensed mortgage
 24 loan originators'; or
 25 (ii) the exempt person's or any of the exempt person's
 26 licensed mortgage loan originators';
 27 **noncompliance with or violation of this chapter, 750 IAC 9, or**
 28 **other federal or state laws or regulations applicable to**
 29 **mortgage lending.**
 30 (3) The director may adopt rules or guidance documents with
 31 respect to the requirements for a surety bond as necessary to
 32 accomplish the purposes of this article.
 33 (4) The penal sum of the surety bond shall be maintained in an
 34 amount that reflects the dollar amount of mortgage transactions
 35 originated as determined by the director. **If the principal amount of**
 36 **a surety bond required under this section is reduced by payment**
 37 **of a claim or judgment, the creditor or exempt person for whom**
 38 **the bond is issued shall immediately notify the director of the**
 39 **reduction and, not later than thirty (30) days after notice by the**
 40 **director, file a new or an additional surety bond in an amount set**
 41 **by the director. The amount of the new or additional bond set by**
 42 **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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1 evidence and require the production of any matter that is relevant to an
 2 investigation. The department shall determine the sufficiency of the
 3 records maintained and whether the person has made the required
 4 information reasonably available. The records concerning any
 5 transaction subject to this article shall be retained for two (2) years
 6 after the making of the final entry relating to the first lien mortgage
 7 transaction, but in the case of a revolving first lien mortgage
 8 transaction the two (2) year period is measured from the date of each
 9 entry.

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

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

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

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

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

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

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

3 (5) The department shall not make public:

- 4 (a) the name or identity of a person whose acts or conduct the
5 department investigates under this section; or
6 (b) the facts discovered in the investigation.

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

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

12 **(a) licensee; or**

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

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

16 **(ii) otherwise in violation of this article.**

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

24 ~~(6)~~ (7) If a creditor contracts with an outside vendor to provide a
25 service that would otherwise be undertaken internally by the creditor
26 and be subject to the department's routine examination procedures, the
27 person that provides the service to the creditor shall, at the request of
28 the director, submit to an examination by the department. If the director
29 determines that an examination under this subsection is necessary or
30 desirable, the examination may be made at the expense of the person
31 to be examined. If the person to be examined under this subsection
32 refuses to permit the examination to be made, the director may order
33 any creditor that is licensed under this article and that receives services
34 from the person refusing the examination to:

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

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

38 SECTION 5. IC 24-4.4-3-104.6, AS ADDED BY P.L.35-2010,
39 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 JULY 1, 2013]: Sec. 104.6. It is a violation of this article for a person
41 or individual subject to this article to:

42 (a) directly or indirectly employ any scheme, device, or artifice to

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- 1 defraud or mislead borrowers or lenders or to defraud any person;
- 2 (b) engage in any unfair or deceptive practice toward any person;
- 3 (c) obtain property by fraud or misrepresentation;
- 4 (d) solicit or enter into a contract with a borrower that provides in
- 5 substance that the person or individual subject to this article may
- 6 earn a fee or commission through "best efforts" to obtain a loan
- 7 even though no loan is actually obtained for the borrower;
- 8 (e) solicit, advertise, or enter into a contract for specific interest
- 9 rates, points, or other financing terms unless the terms are actually
- 10 available at the time of soliciting, advertising, or contracting;
- 11 (f) conduct any business covered by this article without holding
- 12 a valid license as required under this article, or assist or aid and
- 13 abet any person in the conduct of business under this article
- 14 without a valid license as required under this article;
- 15 (g) fail to make disclosures as required by this article or
- 16 regulation adopted under this article and any other applicable
- 17 state or federal law regulation;
- 18 (h) fail to comply with this article or rules adopted under this
- 19 article, or fail to comply with any other state or federal law, rule,
- 20 or regulation, applicable to any business authorized or conducted
- 21 under this article;
- 22 (i) make, in any manner, any false or deceptive statement or
- 23 representation, with regard to the rates, points, or other financing
- 24 terms or conditions for a mortgage transaction, or engage in bait
- 25 and switch advertising;
- 26 (j) negligently make any false statement or knowingly and
- 27 willfully make any omission of material fact in connection with
- 28 any information or reports filed with a governmental agency or
- 29 the NMLSR or in connection with any investigation conducted by
- 30 the director or another governmental agency;
- 31 (k) make any payment, threat, or promise, directly or indirectly,
- 32 to any person for the purposes of influencing the independent
- 33 judgment of the person in connection with a mortgage transaction,
- 34 or make any payment, threat, or promise, directly or indirectly, to
- 35 any appraiser of a property, for the purposes of influencing the
- 36 independent judgment of the appraiser with respect to the value
- 37 of the property;
- 38 (l) collect, charge, attempt to collect or charge, or use or propose
- 39 any agreement purporting to collect or charge any fee prohibited
- 40 by this article;
- 41 (m) cause or require a borrower to obtain property insurance
- 42 coverage in an amount that exceeds the replacement cost of the

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1 improvements as established by the property insurer;
 2 (n) fail to account truthfully for money belonging to a party to a
 3 mortgage transaction; ~~or~~
 4 (o) knowingly withhold, abstract, remove, mutilate, destroy, or
 5 secrete any books, records, computer records, or other
 6 information subject to examination under this article; **or**
 7 **(p) for a first lien mortgage transaction the closing for which**
 8 **takes place after June 30, 2013:**

9 **(i) close the transaction unless the person or individual is**
 10 **licensed by the department of insurance under**
 11 **IC 27-1-15.6-3; or**

12 **(ii) with respect to an individual, act as a closing agent**
 13 **unless the individual is licensed by the department of**
 14 **insurance under IC 27-1-15.6-18(4).**

15 SECTION 6. IC 24-4.5-1-102, AS AMENDED BY P.L.27-2012,
 16 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JANUARY 1, 2013 (RETROACTIVE)]: Sec. 102. (1) This article shall
 18 be liberally construed and applied to promote its underlying purposes
 19 and policies.

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

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

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

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

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

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

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

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

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

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

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

- 5 (a) is in substance a disguised consumer credit transaction; or
6 (b) involves the application of subterfuge for the purpose of
7 avoiding this article.

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

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

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

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

20 SECTION 7. IC 24-4.5-1-201, AS AMENDED BY P.L.90-2008,
21 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2013]: Sec. 201. (1) Except as otherwise provided in this
23 section, this article applies to sales, leases, and loans made in this state
24 and to modifications, including refinancings, consolidations, and
25 deferrals, made in this state, of sales, leases, and loans, wherever made.
26 For purposes of this article, the following apply:

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

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

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

39 (d) Except as provided in ~~subdivision~~ **subdivisions (e) and (f)**, a
40 sale, lease, or loan transaction occurs in Indiana if a consumer
41 who is a resident of Indiana enters into a consumer sale, lease, or
42 loan transaction with a creditor or a person acting on behalf of the

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1 creditor in another state and the creditor or the person acting on
 2 behalf of the creditor has advertised or solicited sales, leases, or
 3 loans in Indiana by any means, including by mail, brochure,
 4 telephone, print, radio, television, the Internet, or electronic
 5 means. However, during the period beginning July 1, 2007, and
 6 ending June 30, 2009, this subdivision does not apply to an
 7 affiliate or a subsidiary of a financial corporation issued a
 8 certificate of authority to operate as an industrial loan and
 9 investment company under IC 28-5 if all of the following apply:

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

18 (ii) The industrial loan and investment company provides
 19 written consent allowing the department to consult with and
 20 review information provided by other state regulators, as may
 21 be requested by the department, concerning the activities
 22 identified in clause (i) of any affiliate or subsidiary engaging
 23 in consumer lending to Indiana residents in the states
 24 identified under clause (i).

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

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

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

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

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

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

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

27 (5) Notwithstanding other provisions of this section:

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

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

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

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

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

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

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

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

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

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

12 SECTION 8. IC 24-4.5-1-301.5, AS AMENDED BY P.L.27-2012,
13 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JANUARY 1, 2013 (RETROACTIVE)]: Sec. 301.5. In addition to
15 definitions appearing in subsequent chapters in this article, the
16 following definitions apply throughout this article:

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

- 20 (a) controls;
- 21 (b) is controlled by; or
- 22 (c) is under common control with;

23 the person subject to this article.

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

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

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

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

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

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- 1 (b) fees for preparation of a deed, settlement statement, or other
- 2 documents;
- 3 (c) escrows for future payments of taxes and insurance;
- 4 (d) fees for notarizing deeds and other documents;
- 5 (e) appraisal fees; and
- 6 (f) fees for credit reports.
- 7 (6) "Conspicuous" refers to a term or clause when it is so written
- 8 that a reasonable person against whom it is to operate ought to have
- 9 noticed it.
- 10 (7) "Consumer credit" means credit offered or extended to a
- 11 consumer primarily for a personal, family, or household purpose.
- 12 (8) "Consumer credit sale" is a sale of goods, services, or an interest
- 13 in land in which:
- 14 (a) credit is granted by a person who regularly engages as a seller
- 15 in credit transactions of the same kind;
- 16 (b) the buyer is a person other than an organization;
- 17 (c) the goods, services, or interest in land are purchased primarily
- 18 for a personal, family, or household purpose;
- 19 (d) either the debt is payable in installments or a credit service
- 20 charge is made; and
- 21 (e) with respect to a sale of goods or services, either:
- 22 (i) the **sale** amount ~~financed~~ does not exceed ~~fifty~~
- 23 **fifty-three** thousand dollars ~~(\$50,000)~~ **(\$53,000) or another**
- 24 **amount as adjusted in accordance with the annual**
- 25 **adjustment of the exempt threshold amount specified in**
- 26 **Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as**
- 27 **applicable); or**
- 28 (ii) the debt is secured by personal property used or expected
- 29 to be used as the principal dwelling of the buyer.
- 30 Unless the sale is made subject to this article by agreement
- 31 (IC 24-4.5-2-601), "consumer credit sale" does not include a sale
- 32 in which the seller allows the buyer to purchase goods or services
- 33 pursuant to a lender credit card or similar arrangement or except
- 34 as provided with respect to disclosure (IC 24-4.5-2-301), debtors'
- 35 remedies (IC 24-4.5-5-201), providing payoff amounts
- 36 (IC 24-4.5-2-209), and powers and functions of the department
- 37 (IC 24-4.5-6) a sale of an interest in land which is a first lien
- 38 mortgage transaction.
- 39 (9) "Consumer loan" means a loan made by a person regularly
- 40 engaged in the business of making loans in which:
- 41 (a) the debtor is a person other than an organization;
- 42 (b) the debt is primarily for a personal, family, or household

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- 1 purpose;
- 2 (c) either the debt is payable in installments or a loan finance
- 3 charge is made; and
- 4 (d) either:
 - 5 (i) the **principal loan amount** does not exceed ~~fifty fifty-three~~
 - 6 **thousand dollars (\$50,000); (\$53,000) or another amount as**
 - 7 **adjusted in accordance with the annual adjustment of the**
 - 8 **exempt threshold amount specified in Regulation Z (12**
 - 9 **CFR 226.3 or 12 CFR 1026.3(b), as applicable); or**
 - 10 (ii) the debt is secured by an interest in land or by personal
 - 11 property used or expected to be used as the principal dwelling
 - 12 of the debtor.

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

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

17 (11) "Creditor" means a person:

- 18 (a) who regularly engages in the extension of consumer credit that
- 19 is subject to a credit service charge or loan finance charge, as
- 20 applicable, or is payable by written agreement in more than four
- 21 (4) installments (not including a down payment); and
- 22 (b) to whom the obligation is initially payable, either on the face
- 23 of the note or contract, or by agreement when there is not a note
- 24 or contract.

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

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

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

- 33 (a) condominium unit;
- 34 (b) cooperative unit;
- 35 (c) mobile home; or
- 36 (d) trailer;

37 that is used as a residence.

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

42 (16) "Employee" means an individual who is paid wages or other

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1 compensation by an employer required under federal income tax law
2 to file Form W-2 on behalf of the individual.

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

7 (18) "First lien mortgage transaction" means:

- 8 (a) a consumer loan; or
9 (b) a consumer credit sale;

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

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

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

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

- 25 (a) by the lender's honoring a draft or similar order for the
26 payment of money drawn or accepted by the debtor;
27 (b) by the lender's payment or agreement to pay the debtor's
28 obligations; or
29 (c) by the lender's purchase from the obligee of the debtor's
30 obligations.

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

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

39 (24) "Loan processor or underwriter" means an individual who
40 performs clerical or support duties as an employee at the direction of,
41 and subject to the supervision and instruction of, a person licensed or
42 exempt from licensing under this article. For purposes of this

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1 subsection, the term "clerical or support duties" may include, after the
2 receipt of an application, the following:

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

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

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

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

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

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

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

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

31 (i) a creditor;

32 (ii) a loan broker;

33 (iii) another mortgage loan originator; or

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

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

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

41 (26) "Mortgage servicer" means the last person to whom a
42 mortgagor or the mortgagor's successor in interest has been instructed

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1 by a mortgagee to send payments on a loan secured by a mortgage.

2 (27) "Mortgage transaction" means:

3 (a) a consumer loan; or

4 (b) a consumer credit sale;

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

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

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

17 (30) "Official fees" means:

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

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

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

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

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

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

37 (a) the spouse of the individual;

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

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

42 (d) any other relative, by blood or marriage, of the individual or

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- 1 the individual's spouse who shares the same home with the
 2 individual.
- 3 (35) "Person related to" with respect to an organization means:
 4 (a) a person directly or indirectly controlling, controlled by, or
 5 under common control with the organization;
 6 (b) a director, an executive officer, or a manager of the
 7 organization or a person performing similar functions with respect
 8 to the organization or to a person related to the organization;
 9 (c) the spouse of a person related to the organization; and
 10 (d) a relative by blood or marriage of a person related to the
 11 organization who shares the same home with the person.
- 12 (36) "Presumed" or "presumption" means that the trier of fact must
 13 find the existence of the fact presumed, unless and until evidence is
 14 introduced that would support a finding of its nonexistence.
- 15 (37) "Real estate brokerage activity" means any activity that
 16 involves offering or providing real estate brokerage services to the
 17 public, including the following:
 18 (a) Acting as a real estate agent or real estate broker for a buyer,
 19 seller, lessor, or lessee of real property.
 20 (b) Bringing together parties interested in the sale, purchase,
 21 lease, rental, or exchange of real property.
 22 (c) Negotiating, on behalf of any party, any part of a contract
 23 relating to the sale, purchase, lease, rental, or exchange of real
 24 property (other than in connection with providing financing with
 25 respect to the sale, purchase, lease, rental, or exchange of real
 26 property).
 27 (d) Engaging in any activity for which a person is required to be
 28 registered or licensed as a real estate agent or real estate broker
 29 under any applicable law.
 30 (e) Offering to engage in any activity, or act in any capacity,
 31 described in this subsection.
- 32 (38) "Registered mortgage loan originator" means any individual
 33 who:
 34 (a) meets the definition of mortgage loan originator and is an
 35 employee of:
 36 (i) a depository institution;
 37 (ii) a subsidiary that is owned and controlled by a depository
 38 institution and regulated by a federal banking agency; or
 39 (iii) an institution regulated by the Farm Credit
 40 Administration; and
 41 (b) is registered with, and maintains a unique identifier through,
 42 the NMLSR.

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

3 (a) extended consumer credit:

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

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

7 in the preceding calendar year; or

8 (b) extends or will extend consumer credit:

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

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

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

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

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

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

27 (a) a consumer loan; or

28 (b) a consumer credit sale;

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

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

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

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

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- 1 (a) Maintains tax exempt status under Section 501(c)(3) of the
- 2 Internal Revenue Code.
- 3 (b) Promotes affordable housing or provides home ownership
- 4 education or similar services.
- 5 (c) Conducts the organization's activities in a manner that
- 6 serves public or charitable purposes.
- 7 (d) Receives funding and revenue and charges fees in a
- 8 manner that does not encourage the organization or the
- 9 organization's employees to act other than in the best interests
- 10 of the organization's clients.
- 11 (e) Compensates the organization's employees in a manner that
- 12 does not encourage employees to act other than in the best
- 13 interests of the organization's clients.
- 14 (f) Provides to, or identifies for, debtors mortgage transactions
- 15 with terms that are favorable to the debtor (as described in
- 16 section 202(b)(15) of this chapter) and comparable to
- 17 mortgage transactions and housing assistance provided under
- 18 government housing assistance programs.
- 19 (g) Maintains certification by the United States Department of
- 20 Housing and Urban Development or employs counselors who
- 21 are certified by the Indiana housing and community
- 22 development authority.

23 **(46) "Incident to the extension of credit", with respect to a**
 24 **credit service charge or a loan finance charge, means a charge**
 25 **that:**

- 26 (a) is assessed at any time during the duration of a
- 27 consumer credit transaction; and
- 28 (b) would not be assessed to a consumer in a comparable
- 29 cash transaction;
- 30 **whether imposed by the original creditor or by any assignee**
- 31 **or servicer in the consumer credit transaction.**

32 SECTION 9. IC 24-4.5-2-106 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JANUARY 1, 2013 (RETROACTIVE)]:
 34 Sec. 106. (1) "Consumer lease" means a lease of goods:

- 35 (a) which a lessor regularly engaged in the business of leasing
- 36 makes to a person, other than an organization, who takes under
- 37 the lease primarily for a personal, family, or household purpose;
- 38 (b) in which the amount payable under the lease does not exceed
- 39 **fifty fifty-three thousand dollars (\$50,000); (\$53,000) or another**
- 40 **amount as adjusted in accordance with the annual adjustment**
- 41 **of the exempt threshold amount specified in Regulation Z (12**
- 42 **CFR 226.3 or 12 CFR 1026.3(b), as applicable); and**

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1 (c) which is for a term exceeding four (4) months.
 2 (2) "Consumer lease" does not include a lease made pursuant to a
 3 lender credit card or similar arrangement.
 4 SECTION 10. IC 24-4.5-2-602, AS AMENDED BY P.L.27-2012,
 5 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JANUARY 1, 2013 (RETROACTIVE)]: Sec. 602. (1) A "consumer
 7 related sale" is a sale of goods, services, or an interest in land in which:
 8 (a) credit is granted by a person that is not regularly engaged as
 9 a seller in credit transactions of the same kind;
 10 (b) the buyer is a person other than an organization;
 11 (c) the goods, services, or interest in land are purchased primarily
 12 for a personal, family, or household purpose;
 13 (d) either the debt is payable in installments or a credit service
 14 charge is made; and
 15 (e) with respect to a sale of goods or services:
 16 (i) either the **sale** amount ~~financed~~ does not exceed ~~fifty~~
 17 **fifty-three** thousand dollars ~~(\$50,000)~~ **(\$53,000)** or **another**
 18 **amount as adjusted in accordance with the annual**
 19 **adjustment of the exempt threshold amount specified in**
 20 **Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as**
 21 **applicable);** or
 22 (ii) the debt is secured by personal property used or expected
 23 to be used as the principal dwelling of the buyer.
 24 (2) With respect to a consumer related sale not made pursuant to a
 25 revolving charge account, the parties may contract for an amount
 26 comprising the amount financed and a credit service charge not in
 27 excess of twenty-one percent (21%) per year calculated according to
 28 the actuarial method on the unpaid balances of the amount financed.
 29 (3) With respect to a consumer related sale made pursuant to a
 30 revolving charge account, the parties may contract for a credit service
 31 charge not in excess of that permitted by the provisions on credit
 32 service charge for revolving charge accounts (IC 24-4.5-2-207).
 33 (4) A person engaged in consumer related sales is not required to
 34 comply with IC 24-4.5-6-201 through IC 24-4.5-6-203.
 35 SECTION 11. IC 24-4.5-3-503.3, AS ADDED BY P.L.35-2010,
 36 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2014]: Sec. 503.3. (1) Each:
 38 (a) creditor licensed by the department under this article; and
 39 (b) **entity person** exempt from licensing under this article that
 40 employs a licensed mortgage loan originator;
 41 must be covered by a surety bond in accordance with this section.
 42 (2) A surety bond **must:**

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- 1 (a) ~~must~~ provide coverage for:
 2 (i) ~~each a~~ creditor described in subsection (1)(a); and
 3 (ii) ~~each an~~ exempt ~~entity~~ **person** described in subsection
 4 (1)(b);
 5 in an amount as prescribed in subsection (4); ~~and~~
 6 (b) ~~must~~ be in a form as prescribed by the director;
 7 (c) **be in effect:**
 8 (i) **during the term of the creditor's license under this**
 9 **chapter; or**
 10 (ii) **at any time during which the person exempt from**
 11 **licensing under this article employs a licensed mortgage**
 12 **loan originator;**
 13 **as applicable;**
 14 (d) **remain in effect during the two (2) years after:**
 15 (i) **the creditor ceases offering financial services to**
 16 **individuals in Indiana; or**
 17 (ii) **the person exempt from licensing under this article**
 18 **ceases to employ a licensed mortgage loan originator or to**
 19 **offer financial services to individuals in Indiana, whichever**
 20 **is later;**
 21 **as applicable;**
 22 (e) **be payable to the department for the benefit of:**
 23 (i) **the state; and**
 24 (ii) **individuals who reside in Indiana when they agree to**
 25 **receive financial services from the creditor or the person**
 26 **exempt from licensing under this article, as applicable;**
 27 (f) **be issued by a bonding, surety, or insurance company**
 28 **authorized to do business in Indiana and rated at least "A-"**
 29 **by at least one (1) nationally recognized investment rating**
 30 **service; and**
 31 (g) **have payment conditioned upon:**
 32 (i) **the creditor's or any of the creditor's licensed mortgage**
 33 **loan originators'; or**
 34 (ii) **the exempt person's or any of the exempt person's**
 35 **licensed mortgage loan originators';**
 36 **noncompliance with or violation of this chapter, 750 IAC 9, or**
 37 **other federal or state laws or regulations applicable to**
 38 **mortgage lending.**
 39 (3) The director may adopt rules or guidance documents with
 40 respect to the requirements for surety bonds as necessary to accomplish
 41 the purposes of this article.
 42 (4) The penal sum of the surety bond shall be maintained in an

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

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

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

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

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

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

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

32 SECTION 12. IC 24-4.5-3-602, AS AMENDED BY P.L.27-2012,
 33 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JANUARY 1, 2013 (RETROACTIVE)]: Sec. 602. (1) A "consumer
 35 related loan" is a loan in which the following apply:

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

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

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

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

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- 1 (e) Either:
- 2 (i) the ~~principal loan amount~~ does not exceed ~~fifty~~ **fifty-three**
- 3 ~~thousand dollars (\$50,000);~~ **(\$53,000) or another amount as**
- 4 **adjusted in accordance with the annual adjustment of the**
- 5 **exempt threshold amount specified in Regulation Z (12**
- 6 **CFR 226.3 or 12 CFR 1026.3(b), as applicable); or**
- 7 (ii) the debt is secured by an interest in land or by personal
- 8 property used or expected to be used as the principal dwelling
- 9 of the debtor.
- 10 (2) With respect to a consumer related loan, including one made
- 11 pursuant to a revolving loan account, the parties may contract for the
- 12 payment by the debtor of a loan finance charge not in excess of that
- 13 permitted by the provisions on loan finance charge for consumer loans
- 14 other than supervised loans (IC 24-4.5-3-201).
- 15 (3) A person engaged in consumer related loans is not required to
- 16 comply with:
- 17 (a) the licensing requirements set forth in section 503 of this
- 18 chapter; or
- 19 (b) IC 24-4.5-6-201 through IC 24-4.5-6-203.
- 20 SECTION 13. IC 24-4.5-6-106, AS AMENDED BY P.L.27-2012,
- 21 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 22 JULY 1, 2013]: Sec. 106. (1) In administering this article and in order
- 23 to determine whether the provisions of this article are being complied
- 24 with by persons engaging in acts subject to this article, the department
- 25 may examine the records of persons and may make investigations of
- 26 persons as may be necessary to determine compliance. Records subject
- 27 to examination under this section include the following:
- 28 (a) Training, operating, and policy manuals.
- 29 (b) Minutes of:
- 30 (i) management meetings; and
- 31 (ii) other meetings.
- 32 (c) Other records that the department determines are necessary to
- 33 perform its investigation or examination.
- 34 The department may also administer oaths or affirmations, subpoena
- 35 witnesses, and compel the attendance of witnesses, including directors,
- 36 executive officers, managers, principals, mortgage loan originators,
- 37 employees, independent contractors, agents, and customers of the
- 38 licensee, individual, or person subject to this article. The department
- 39 may also adduce evidence, and require the production of any matter
- 40 which is relevant to the investigation. The department shall determine
- 41 the sufficiency of the records maintained and whether the person has
- 42 made the required information reasonably available. The records

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1 pertaining to any transaction subject to this article shall be retained for
 2 two (2) years after making the final entry relating to the consumer
 3 credit transaction, but in the case of a revolving loan account or
 4 revolving charge account, the two (2) years is measured from the date
 5 of each entry.

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

8 (a) The authority to require a creditor to refund overcharges
 9 resulting from the creditor's noncompliance with the terms of
 10 consumer credit sales, consumer leases, or consumer loans.

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

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

15 (3) If the department:

16 (a) investigates; or

17 (b) examines the books and records of;

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

31 (4) The department shall be given free access to the records
 32 wherever located. In making any examination or investigation
 33 authorized by this article, the director may control access to any
 34 documents and records of the licensee or person under examination or
 35 investigation. The director may take possession of the documents and
 36 records or place a person in exclusive charge of the documents and
 37 records in the place where the documents are usually kept. During the
 38 period of control, the licensee or person may not remove or attempt to
 39 remove any of the documents and records except under a court order
 40 or with the consent of the director. Unless the director has reasonable
 41 grounds to believe the documents or records of the licensee or person
 42 have been, or are, at risk of being altered or destroyed for purposes of

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1 concealing a violation of this article, the licensee or person being
 2 examined or investigated is entitled to access to the documents or
 3 records as necessary to conduct the licensee's or person's ordinary
 4 business affairs. If the person's records are located outside Indiana, the
 5 records shall be made available to the department at a convenient
 6 location within Indiana, or the person shall pay the reasonable and
 7 necessary expenses for the department or its representative to examine
 8 them where they are maintained. The department may designate
 9 comparable officials of the state in which the records are located to
 10 inspect them on behalf of the department.

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

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

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

23 **(a) licensee or registrant; or**

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

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

27 **(ii) otherwise in violation of this article.**

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

35 ~~(7)~~ **(8)** If a creditor contracts with an outside vendor to provide a
 36 service that would otherwise be undertaken internally by the creditor
 37 and be subject to the department's routine examination procedures, the
 38 person that provides the service to the creditor shall, at the request of
 39 the director, submit to an examination by the department. If the director
 40 determines that an examination under this subsection is necessary or
 41 desirable, the examination may be made at the expense of the person
 42 to be examined. If the person to be examined under this subsection

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1 refuses to permit the examination to be made, the director may order
 2 any creditor that is licensed under this article and that receives services
 3 from the person refusing the examination to:

- 4 (a) discontinue receiving one (1) or more services from the
 5 person; or
 6 (b) otherwise cease conducting business with the person.

7 SECTION 14. IC 24-4.5-7-104, AS AMENDED BY P.L.217-2007,
 8 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2013]: Sec. 104. (1) "Small loan" means a loan:

- 10 (a) with a principal loan amount that is at least fifty dollars (\$50)
 11 and not more than five hundred fifty dollars (\$550); and
 12 (b) in which the lender holds the borrower's check **for a specific**
 13 **period**, or receives the borrower's written authorization to debit
 14 the borrower's account (**other than as a result of default**) under
 15 an agreement, either express or implied, for a specific period,
 16 before the lender:

- 17 (i) offers the check for deposit or presentment; or
 18 (ii) exercises the authorization to debit the borrower's account.

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

24 SECTION 15. IC 24-4.5-7-413, AS AMENDED BY P.L.35-2010,
 25 SECTION 87, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2014]: Sec. 413. (1) A person engaged in making small loans
 27 under this chapter shall post a bond to the department in the amount of
 28 fifty thousand dollars (\$50,000) for each location where small loans
 29 will be made, up to a maximum bond in an amount determined by the
 30 department. **director.**

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

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

- 36 **(a) provide coverage for a lender engaged in making small**
 37 **loans under this chapter in an amount as prescribed in**
 38 **subsection (1);**
 39 **(b) be in a form prescribed by the director;**
 40 **(c) be in effect during the term of the lender's license under**
 41 **this chapter;**
 42 **(d) remain in effect during the two (2) years after the lender**



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- 1 ceases offering financial services to individuals in Indiana;
- 2 (e) be payable to the department for the benefit of:
- 3 (i) the state; and
- 4 (ii) individuals who reside in Indiana when they agree to
- 5 receive financial services from the lender;
- 6 (f) be issued by a bonding, surety, or insurance company
- 7 authorized to do business in Indiana and rated at least "A-"
- 8 by at least one (1) nationally recognized investment rating
- 9 service; and
- 10 (g) have payment conditioned upon the lender's or any of the
- 11 lender's employees' or agents' noncompliance with or
- 12 violation of this article or other applicable federal or state
- 13 laws or regulations.

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

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

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

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

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

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

38 SECTION 16. IC 24-7-8-2, AS AMENDED BY P.L.35-2010,
 39 SECTION 93, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2013]: Sec. 2. The notification required under section 1 of this
 41 chapter must include the following:

- 42 (1) The name of the lessor.

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- 1 (2) The name in which business is transacted if different from
- 2 subdivision (1).
- 3 (3) The address of the principal office, which may be outside
- 4 Indiana.
- 5 (4) The address of all offices or stores, if any, in Indiana at which
- 6 rental purchase agreements are made.
- 7 (5) If rental purchase agreements are made in a place other than
- 8 an office or retail store in Indiana, a brief description of the
- 9 manner in which they are made.
- 10 (6) The address of the designated agent upon whom service of
- 11 process may be made in Indiana.
- 12 **(7) Whether the lessor or any director, executive officer, or**
- 13 **manager of the lessor has been convicted of a felony involving**
- 14 **fraud, deceit, or misrepresentation under Indiana law or the**
- 15 **laws of any other jurisdiction.**
- 16 ~~(7)~~ **(8)** Other information required by the director of the
- 17 department.

18 SECTION 17. IC 24-7-8-3 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. ~~If information in a~~
 20 ~~notification becomes inaccurate after filing, no further notification is~~
 21 ~~required until~~ The lessor is required to file a subsequent notification
 22 under section 4 of this chapter: **shall notify the department not later**
 23 **than thirty (30) days after:**

- 24 (1) the lessor has a change in name or address;
- 25 (2) the lessor opens a new office or store, closes an existing
- 26 office or store, or relocates an existing office or store;
- 27 (3) the lessor files for bankruptcy or reorganization;
- 28 (4) the lessor is notified that the lessor is subject to revocation
- 29 or suspension proceedings by a state or governmental
- 30 authority with respect to the lessor's rental purchase
- 31 activities; or
- 32 (5) any director, executive officer, or manager of the lessor
- 33 has been convicted of a felony involving fraud, deceit, or
- 34 misrepresentation under Indiana law or the laws of any other
- 35 jurisdiction.

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

- 41 (a) The name of the corporation.
- 42 (b) The place where its principal office is located.

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- 1 (c) The date of the meeting of the shareholders at which the
- 2 dissolution was authorized, and a copy of the notices of such meeting.
- 3 (d) A copy of the resolution of the shareholders authorizing the
- 4 dissolution.
- 5 (e) The manner of ~~its~~ **the resolution's** adoption and the vote by
- 6 which adopted.
- 7 (f) A copy of the notice published as hereinabove provided.
- 8 (g) The names and addresses of the then existing directors and
- 9 officers of the corporation.
- 10 (h) A copy of the order of the department authorizing the dissolution
- 11 of such corporation.
- 12 (i) A brief summary showing the manner in which the corporate
- 13 debts and liabilities were disposed of or paid. ~~and~~
- 14 (j) A complete itemized list, **in a format approved by the director**
- 15 **of the department**, of all ~~of~~ the corporate assets and property
- 16 distributed to ~~its~~ **the corporation's** shareholders ~~the name of each such~~
- 17 ~~shareholder, the amount distributed to each, and the date of~~
- 18 ~~distribution. and any other information required by the director of~~
- 19 ~~the department.~~
- 20 SECTION 19. IC 28-1-11-5, AS AMENDED BY P.L.217-2007,
- 21 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 22 JULY 1, 2013]: Sec. 5. (a) Any bank or trust company shall have power
- 23 to purchase, hold, and convey real estate for the following purposes,
- 24 and for no others:
- 25 (1) Such as shall be necessary for the convenient transaction of its
- 26 business.
- 27 (2) Such as shall be mortgaged to it or to its assignor immediate
- 28 or remote, in good faith by way of security for debts.
- 29 (3) Such as shall be conveyed to it in satisfaction of debts
- 30 contracted in the course of its dealings, or in satisfaction of debts,
- 31 notes, or mortgages purchased by or assigned to it, or in exchange
- 32 for real estate so conveyed to it.
- 33 (4) Such as it shall purchase at sales under judgments, decrees, or
- 34 mortgages held by the bank or trust company or shall purchase to
- 35 secure debts due it.
- 36 (b) Except with the approval in writing of the department, after July
- 37 1, 1933, the sum invested in real estate and buildings used for the
- 38 convenient transaction of its business shall not exceed fifty percent
- 39 (50%) of the capital and surplus of such bank or trust company. Such
- 40 investment may be made in the stock of a corporation organized to own
- 41 and hold the real estate and building occupied and used wholly or in
- 42 part by such bank or trust company.

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

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

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

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

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

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

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

31 (1) the board of directors of the bank or trust company, by
 32 resolution:

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

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

38 (2) the director determines that:

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

42 (B) the bank or trust company is holding the real estate to use

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1 the real estate in the future for one (1) of the purposes set forth
2 in subsection (d)(1) and (d)(2).

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

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

12 (1) an attorney at law authorized to practice in Indiana; or
13 (2) **persons under the supervision and control of an attorney**
14 **at law authorized to practice in Indiana;**
15 **to the extent the attorney's debt management services are**
16 **incidental to the attorney's practice of law.**

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

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

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

31 (1) "Person" includes individuals, sole proprietorships,
32 partnerships, limited liability companies, trusts, joint ventures,
33 corporations, unincorporated organizations, other entities, and
34 their affiliates, however organized.

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

42 (A) A person that simply holds any money, funds, check,

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- 1 personal check, money order, personal money order, draft, or
 2 any other instrument for the transmission of money.
 3 (B) A person or an entity known as a "budget service
 4 company".
 5 The term does not include a person that provides debt settlement
 6 services (as defined in IC 24-5-15-2.5).
 7 (3) "License" means a license issued under the provisions of this
 8 chapter.
 9 (4) "Licensee" means any person to whom a license has been
 10 issued pursuant to the provisions of this chapter.
 11 (5) "Contract debtor" means a debtor who has entered into a
 12 written agreement with a licensee.
 13 (6) "Debt" means an obligation arising out of personal, family, or
 14 household use.
 15 (7) "Debtor" means an individual whose principal debts and
 16 obligations arise out of personal, family, or household use and
 17 ~~shall not apply to persons whose principal indebtedness arises out~~
 18 ~~of business purpose transactions.~~
 19 (8) "Department" means the members of the department of
 20 financial institutions.
 21 ~~(9) "Finances" means a savings deposit that is: (A) made on~~
 22 ~~behalf of a contract debtor; (B) owned and controlled exclusively~~
 23 ~~by the contract debtor and not a licensee who has a power of~~
 24 ~~attorney of the contract debtor; and (C) placed in a bank or~~
 25 ~~savings institution chartered by the state or federal government.~~
 26 **(9) "Indiana contract debtor" means a contract debtor whose**
 27 **principal residence is located in Indiana.**
 28 (10) "Affiliate" means a person that, directly or indirectly, through
 29 one (1) or more intermediaries:
 30 (A) controls;
 31 (B) is controlled by; or
 32 (C) is under common control with;
 33 a person subject to this chapter.
 34 (11) "Fee" means the total amount of money charged to a contract
 35 debtor by a debt management company for the administration of
 36 a debt management plan.
 37 (12) "Plan" means a written debt repayment program in which a
 38 debt management company furnishes debt management services
 39 to a contract debtor and that includes a schedule of payments to
 40 be made by or on behalf of the contract debtor and used to pay
 41 debts owed by the contract debtor.
 42 (13) "Principal amount of the debt" means the total amount of a

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- 1 debt at the time the contract debtor enters into an agreement.
- 2 (14) "Agreement" means an agreement between a debt
- 3 management company and a debtor for the performance of debt
- 4 management services.
- 5 (15) "Trust account" means an account held by a licensee that is:
- 6 (A) established in a bank insured by the Federal Deposit
- 7 Insurance Corporation;
- 8 (B) separate from other accounts held by the licensee;
- 9 **(C) maintained specifically for the benefit of the licensee's**
- 10 **Indiana contract debtors;**
- 11 ~~(D)~~ **(D)** designated as a trust account ~~or other account~~
- 12 ~~designated to indicate~~ **indicating** that the money in the **trust**
- 13 account is not the money of the licensee; and
- 14 ~~(E)~~ **(E)** used to hold money of one (1) or more **Indiana**
- 15 contract debtors for disbursement to creditors of the **Indiana**
- 16 contract debtors.
- 17 (16) "Month" means a calendar month.
- 18 (17) "Day" means a calendar day.
- 19 (18) "Concessions" means assent to repayment of a debt on terms
- 20 more favorable to a contract debtor than the terms of the contract
- 21 between ~~the~~ **that** debtor and a creditor.
- 22 (19) "Good faith" means honesty in fact and the observance of
- 23 reasonable standards of fair dealing.
- 24 (20) "Control of a related interest" refers to a situation in which
- 25 a person, directly or indirectly, or through or in concert with one
- 26 (1) or more other persons, possesses any of the following:
- 27 (A) The ownership of, control of, or power to vote at least
- 28 twenty-five percent (25%) of the voting securities of a related
- 29 interest.
- 30 (B) The control in any manner of the election of a majority of
- 31 the directors of a related interest.
- 32 (C) The power to exercise a controlling influence over the
- 33 management or policies of a related interest. For purposes of
- 34 this clause, a person is presumed to have control, including the
- 35 power to exercise a controlling influence over the management
- 36 or policies of the related interest, if the person:
- 37 (i) is an executive officer or a director of the related interest
- 38 and directly or indirectly owns, controls, or has the power to
- 39 vote more than ten percent (10%) of any class of voting
- 40 securities of the related interest; or
- 41 (ii) directly or indirectly owns, controls, or has the power to
- 42 vote more than ten percent (10%) of any class of voting

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1 securities of the related interest and no other person owns,
 2 controls, or has the power to vote a greater percentage of
 3 that class of voting securities.

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

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

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

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

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

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

20 (2) the person:

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

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

25 (i) Mail.

26 (ii) Personal delivery.

27 (iii) Telephone.

28 (iv) Radio.

29 (v) Television.

30 (vi) The Internet or other electronic communications.

31 (vii) Any other means of communication.

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

34 (1) the time of application;

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

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

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

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

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1 (2) credit histories; and

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

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

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

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

26 (f) A license issued under this section, ~~(1)~~ except in a transaction
27 approved under section 3.1 of this chapter, is not assignable or
28 transferable. ~~and (2)~~ In order to remain in force, **a license issued under**
29 **this section** must be renewed every year in the manner prescribed by
30 the director of the department. The director of the department shall
31 prescribe the form of the renewal application. In order to be accepted
32 for processing, a renewal application must be accompanied by the
33 **following:**

- 34 **(1) The license renewal fee imposed under subsection (d). and**
35 **(2) The licensee's most recent audited financial statements**
36 **covering the licensee's immediately preceding fiscal year, as**
37 **prepared by an independent certified public accountant in**
38 **compliance with the requirements set forth in section 5(d) of**
39 **this chapter. If the licensee's financial statements for the**
40 **immediately preceding fiscal year are not available at the time**
41 **of renewal, the licensee has one hundred twenty (120) days**
42 **after the end of the immediately preceding fiscal year to file**

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- 1 **the financial statements.**
- 2 **(3)** All **other** information and documents requested by the
- 3 director of the department.
- 4 (g) If the department of state revenue notifies the department that a
- 5 person is on the most recent tax warrant list, the department shall not
- 6 issue or renew the person's license until:
- 7 (1) the person provides to the department a statement from the
- 8 department of state revenue that the person's tax warrant has been
- 9 satisfied; or
- 10 (2) the department receives a notice from the commissioner of the
- 11 department of state revenue under IC 6-8.1-8-2(k).
- 12 SECTION 23. IC 28-1-29-5, AS AMENDED BY P.L.35-2010,
- 13 SECTION 123, IS AMENDED TO READ AS FOLLOWS
- 14 [EFFECTIVE JULY 1, 2013]: Sec. 5. (a) Every person doing business
- 15 as a debt management company shall make application to the
- 16 department for a license to engage in such business. Such application
- 17 shall be in the form prescribed by the ~~department~~ **director** and shall
- 18 contain such information as the ~~department~~ **director** may require.
- 19 (b) The department may not issue a license unless the department
- 20 finds that the financial responsibility, character, and fitness of:
- 21 (1) the applicant and any significant affiliate of the applicant;
- 22 (2) each executive officer, director, or manager of the applicant,
- 23 or any other individual having a similar status or performing a
- 24 similar function for the applicant; ~~and~~
- 25 (3) if known, each person directly or indirectly owning of record
- 26 or owning beneficially at least ten percent (10%) of the
- 27 outstanding shares of any class of equity security of the applicant;
- 28 **and**
- 29 **(4) each of the applicant's:**
- 30 **(A) employees; or**
- 31 **(B) agents;**
- 32 **authorized to initiate transactions involving the trust account**
- 33 **required under IC 28-1-29-9;**
- 34 warrant belief that the business will be operated honestly and fairly
- 35 under this chapter. The department is entitled to request evidence of an
- 36 applicant's financial responsibility, character, and fitness.
- 37 (c) An application submitted under this section must indicate
- 38 whether any individuals described in subsection (b)(2), ~~or~~ (b)(3), ~~or~~
- 39 **(b)(4):**
- 40 (1) are, at the time of the application, under indictment for a
- 41 felony under **Indiana law** ~~or~~ the laws of ~~Indiana~~ ~~or~~ any other
- 42 jurisdiction; or

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

4 **(d) Unless waived upon written request to and approval by the**
5 **director, copies of the applicant's audited financial statements for**
6 **the applicant's most recently concluded fiscal year and, if**
7 **available, for the applicant's two (2) fiscal years immediately**
8 **preceding the applicant's most recently concluded fiscal year,**
9 **including a:**

- 10 (1) balance sheet;
- 11 (2) statement of income or loss;
- 12 (3) statement of changes in shareholder equity; and
- 13 (4) statement of changes in financial position.

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

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

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

26 SECTION 24. IC 28-1-29-6, AS AMENDED BY P.L.35-2010,
27 SECTION 124, IS AMENDED TO READ AS FOLLOWS
28 [EFFECTIVE JULY 1, 2014]: Sec. 6. **(a)** Each application for a license
29 ~~shall~~ **must** be accompanied by proof that the applicant has executed a
30 **surety bond payable to the department, in an amount determined by the**
31 **director and in accordance with the standards adopted by the director.**
32 **Said bond shall also indemnify any person damaged by failure on the**
33 **part of the licensee to conduct the business in accordance with the**
34 **provisions of this chapter. in accordance with this section.**

- 35 **(b) A surety bond issued under this section must:**
- 36 **(1) be in a form prescribed by the director;**
- 37 **(2) be in effect during the term of the license issued under this**
- 38 **chapter;**
- 39 **(3) remain in effect during the two (2) years after the licensee**
- 40 **ceases offering debt management services to individuals in**
- 41 **Indiana;**
- 42 **(4) be payable to the department for the benefit of:**

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- 1 (A) the state; and
 2 (B) individuals who reside in Indiana when they agree to
 3 receive debt management services from the licensee;
 4 (5) be in an amount equal to:
 5 (A) one hundred thousand dollars (\$100,000), in the case of
 6 an initial surety bond issued under this section; or
 7 (B) the amount prescribed under subsection (d), beginning
 8 with the first renewal of a license under this chapter;
 9 (6) be issued by a bonding, surety, or insurance company
 10 authorized to do business in Indiana and rated at least "A-"
 11 by at least one (1) nationally recognized investment rating
 12 service; and
 13 (7) have payment conditioned upon the licensee's or any of the
 14 licensee's employees' or agents' noncompliance with or
 15 violation of this chapter or other applicable federal or state
 16 laws or regulations.
 17 (c) The director may adopt rules or guidance documents with
 18 respect to the requirements for a surety bond as necessary to
 19 accomplish the purposes of this chapter.
 20 (d) Beginning with the first renewal of a license under this
 21 chapter, each year that a licensee continues to offer debt
 22 management services to individuals in Indiana, the licensee shall
 23 file a new or an additional surety bond in an amount that ensures
 24 that the licensee's surety bond under this section is equal to the
 25 greater of the following:
 26 (1) one hundred thousand dollars (\$100,000); or
 27 (2) the average monthly balance of funds held in trust for
 28 Indiana residents during the licensee's most recently
 29 concluded fiscal year.
 30 (e) If the principal amount of a surety bond required under this
 31 section is reduced by payment of a claim or judgment, the licensee
 32 for whom the bond is issued shall immediately notify the director
 33 of the reduction and, not later than thirty (30) days after notice by
 34 the director, file a new or an additional surety bond in an amount
 35 set by the director. The amount of the new or additional bond set
 36 by the director must be at least the amount of the bond before
 37 payment of the claim or judgment.
 38 (f) If for any reason a surety terminates a bond issued under this
 39 section, the licensee shall immediately notify the department and
 40 file a new surety bond in an amount as prescribed in subsection
 41 (b)(5).
 42 (g) Cancellation of a surety bond issued under this section does

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

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

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

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

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

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

23 (2) if the licensee's next license renewal fee under section 3(d) of
24 this chapter is due before the date described in subdivision (1),
25 along with the licensee's next license renewal fee under section
26 3(d) of this chapter.

27 (c) Not later than thirty (30) days after a licensee has been served
28 with notice of a civil action **that is for the violation of this chapter by**
29 **the licensee (or by an employee or agent of the licensee) and that is**
30 **brought** by or on behalf of a debtor who resides or resided in Indiana
31 on:

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

34 (2) the date the civil action is filed;

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

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

42 SECTION 26. IC 28-1-29-7.7, AS AMENDED BY P.L.27-2012,

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1 SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2013]: Sec. 7.7. (a) A licensee may not furnish debt
3 management services to a debtor unless:

- 4 (1) the licensee has prepared a budget analysis; and
5 (2) if the debtor is to make regular, periodic payments, the
6 licensee:

- 7 (A) has prepared a plan for the debtor;
8 (B) has made a determination, based on the licensee's analysis
9 of the information provided by the debtor and otherwise
10 available to the licensee, that the plan is suitable for the debtor
11 and the debtor will be able to meet the payment obligations
12 under the plan; and
13 (C) believes that each creditor of the debtor listed as a
14 participating creditor in the plan will accept payment of the
15 debtor's debts as provided in the plan.

16 (b) Before a debtor enters into an agreement with a licensee to
17 engage in a plan, the licensee shall:

- 18 (1) provide the debtor with a copy of the budget analysis and plan
19 required by subsection (a) in a form that identifies the licensee
20 and that the debtor may keep whether or not the debtor enters into
21 the agreement;
22 (2) inform the debtor of the availability, at the debtor's option, of
23 assistance provided through a toll free communication system or
24 in person, where reasonably available to residents in Indiana,
25 regarding the budget analysis and plan required by subsection (a);
26 and
27 (3) with respect to all creditors identified by the debtor or
28 otherwise known by the licensee to be creditors of the debtor,
29 provide the debtor with a list of:

- 30 (A) creditors that the licensee expects to participate in the plan
31 and grant concessions;
32 (B) creditors that the licensee expects to participate in the plan
33 but not grant concessions; **and**
34 (C) creditors that the licensee expects not to participate in the
35 plan. **and**
36 ~~(D) all other creditors.~~

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

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"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;
- (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

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- 1 concessions the licensee reasonably believes each creditor
 2 will offer; and
 3 (ii) the schedule of expected payments to each creditor,
 4 including the amount of each payment and the date on which
 5 the payment will be made.
 6 (E) Each creditor that the licensee believes will not participate
 7 in the plan and to which the licensee will not direct payment.
 8 (F) The manner in which the licensee will comply with the
 9 licensee's obligations under section ~~9(j)~~ **9(k)** of this chapter.
 10 (G) A statement that:
 11 (i) the licensee may terminate the agreement for good cause,
 12 upon return of unexpended money of the debtor; **and**
 13 ~~(ii) the debtor may cancel the agreement as provided in~~
 14 ~~section 8.6 of this chapter; and~~
 15 ~~(iii)~~ **(ii)** the debtor may contact the department with any
 16 questions or complaints regarding the licensee.
 17 (H) The address, telephone number, and Internet address or
 18 web site of the department.
 19 (b) For purposes of subsection (a)(5), delivery of an electronic
 20 record occurs when:
 21 (1) the record is made available in a format in which the debtor
 22 may retrieve, save, and print the record; and
 23 (2) the debtor is notified that the record is available.
 24 (c) An agreement must provide that:
 25 (1) the debtor has a right to terminate the agreement at any time
 26 without penalty, notwithstanding the close-out fee as permitted by
 27 section ~~8.3(e)~~ **8.3(d)** of this chapter, or obligation, by giving the
 28 licensee written or electronic notice, in which event:
 29 (A) the licensee shall refund all unexpended money that the
 30 licensee or the licensee's agent has received from or on behalf
 31 of the debtor for the reduction or satisfaction of the debtor's
 32 debt; and
 33 (B) all powers of attorney granted by the debtor to the licensee
 34 are revoked and ineffective;
 35 (2) the debtor authorizes any bank insured by the Federal Deposit
 36 Insurance Corporation in which the licensee or the licensee's
 37 agent has established a trust account to disclose to the department
 38 any financial records relating to the trust account;
 39 (3) the licensee shall notify the debtor within five (5) days after
 40 learning of a creditor's final decision to reject or withdraw from
 41 a plan under the agreement; and
 42 (4) the notice under subdivision (3) must include:

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- 1 (A) the identity of the creditor; and
 2 (B) a statement that the debtor has the right to modify or
 3 terminate the agreement.
- 4 (d) All creditors **included in the plan** must be notified of the
 5 debtor's and licensee's relationship.
- 6 (e) A licensee shall give to the contract debtor a dated receipt for
 7 each payment, at the time of the payment, unless the payment is made
 8 by check, money order, or automated clearinghouse withdrawal as
 9 authorized by the contract debtor.
- 10 (f) A licensee shall, upon cancellation by a contract debtor of the
 11 agreement, notify immediately in writing all creditors in the debt
 12 management plan of the cancellation by the contract debtor.
- 13 (g) A licensee may not enter into an agreement with a debtor unless
 14 a thorough, written budget analysis of the debtor indicates that the
 15 debtor can reasonably meet the payments required under a proposed
 16 plan. The following must be included in the budget analysis:
- 17 (1) Documentation and verification of all income considered. All
 18 income verification must be dated not more than sixty (60) days
 19 before the completion of the budget analysis.
- 20 (2) Monthly living expense figures, which must be reasonable for
 21 the particular family size and part of ~~the state:~~ **Indiana. If**
 22 **expenditure reductions are part of the planned budget for the**
 23 **debtor, details of the expected savings must be documented in**
 24 **the debtor's file and set forth in the budget provided to the**
 25 **debtor.**
- 26 (3) Documentation and verification, by a current credit bureau
 27 report, current debtor account statements, or direct documentation
 28 from the creditor, of monthly debt payments and balances to be
 29 paid outside the plan.
- 30 (4) Documentation and verification, by a current credit bureau
 31 report, current debtor account statements, or direct documentation
 32 from the creditor, of the monthly debt payments and current
 33 balances to be paid through the plan.
- 34 (5) The date of the budget analysis and the signature of the debtor.
- 35 (h) A licensee may not enter into an agreement with a contract
 36 debtor for a period longer than sixty (60) months. ~~Every thirty (30)~~
 37 ~~months, the licensee shall complete a thorough, written budget analysis~~
 38 ~~of the contract debtor to ensure the debt management plan is still~~
 39 ~~suitable for the contract debtor and the contract debtor will be able to~~
 40 ~~meet the payment obligations under the plan. If adjustments are needed~~
 41 ~~to change the indebtedness listed in the agreement, the licensee shall~~
 42 ~~execute a new agreement or modify, in writing, the existing agreement;~~

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1 using the revised figures. If during the term of the original agreement;
 2 the agreement is modified in writing or a new agreement is executed;
 3 a licensee:

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

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

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

17 (1) the operation of the other business; or

18 (2) the sale of other products and services;

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

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

22 (1) solicit sales of; and

23 (2) sell;

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

27 (k) A licensee shall maintain a toll free communication system,
 28 staffed at a level that reasonably permits a contract debtor to speak to
 29 a counselor, debt specialist, or customer service representative, as
 30 appropriate, during ordinary business hours.

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

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

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

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

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

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1 (1) the licensee and the debtor have agreed upon a plan and have
 2 signed an agreement that complies with sections 8 8-6; and 9.5 of
 3 this chapter; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 SECTION 29. IC 28-1-29-8.6 IS REPEALED [EFFECTIVE JULY
31 1, 2013]. See: 8-6: (a) A debtor may cancel an agreement before
32 midnight of the third business day after the debtor enters into the
33 agreement unless the agreement does not comply with subsection (b)
34 or section 8 or 9.5 of this chapter; in which event the debtor may cancel
35 the agreement at any time after the debtor enters into the agreement and
36 all fees paid by the debtor shall be refunded to the debtor. To exercise
37 the right to cancel, the debtor must give written notice to the licensee.
38 Notice by mail is given when mailed:

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

41 "NOTICE OF RIGHT TO CANCEL

42 You may cancel this agreement, without any penalty or

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1 obligation; at any time before midnight of the third business day
 2 that begins the day after you agree to it by electronic
 3 communication or by signing it.
 4 To cancel this agreement during this period; send an electronic
 5 mail message to
 6 _____ or mail or deliver a signed;
 7 Electronic mail address of licensee
 8 dated copy of this notice; or any other written notice to
 9 _____
 10 Name of licensee
 11 at _____ before midnight on
 12 Address of licensee
 13 _____.
 14 Date

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

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

19 I cancel this agreement;

20 _____

21 Print your name

22 _____

23 Signature

24 _____

25 Date":

26 (c) If a personal financial emergency necessitates the disbursement
 27 of a debtor's money to one (1) or more of the debtor's creditors before
 28 the expiration of the third business day after the date an agreement is
 29 signed; a debtor may waive the right to cancel. To waive the right; the
 30 individual must send or deliver a signed; dated statement in the debtor's
 31 own words describing the circumstances that necessitate a waiver. The
 32 waiver must explicitly waive the right to cancel. A waiver by means of
 33 a standard form record is void.

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

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

42 **(2) subject to subsection (b), the contract debtor files a letter**

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1 **of continuation.**

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

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

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

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

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

18 ~~(5) (4)~~ A contract debtor may not file a letter of continuation with
 19 a licensee ~~at during~~ the ~~beginning of~~ **first six (6) months** an
 20 ~~agreement is in effect.~~

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

27 ~~(b)~~ **(c)** If a licensee or a contract debtor terminates an agreement, the
 28 licensee shall immediately return to the contract debtor any money of
 29 the contract debtor held in trust for the benefit of the contract debtor.

30 SECTION 31. IC 28-1-29-9, AS AMENDED BY P.L.27-2012,
 31 SECTION 75, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2013]: Sec. 9. (a) All money paid to a licensee by or on behalf
 33 of a contract debtor for distribution to creditors under a plan ~~is shall be~~
 34 held in trust **in a separate account maintained specifically for the**
 35 **benefit of the licensee's Indiana contract debtors.** Before the close
 36 of the same banking day the funds are received ~~from a contract~~
 37 **debtor,** the licensee shall deposit the money in a ~~trust the~~ account
 38 ~~established~~ for the benefit of the contract debtor. ~~to whom the licensee~~
 39 ~~is furnishing debt management services.~~

40 (b) A licensee shall do the following:

41 (1) Maintain separate records of account for each ~~individual~~
 42 **contract debtor** to whom the licensee is furnishing debt

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1 management services **in Indiana.**

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

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

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

19 (5) Promptly:

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

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

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

30 (d) ~~A~~ **The trust account required under this section** must at all
31 times have a cash balance equal to the sum of the balances of each
32 contract debtor's account.

33 (e) ~~If a licensee has established a trust account under subsection (a);~~
34 The licensee shall reconcile the trust account **required under this**
35 **section** at least every thirty (30) days after receipt of the bank
36 statement. The reconciliation must compare the cash balance in the
37 trust account with the sum of the balances in each contract debtor's
38 account. If the licensee or the licensee's designee has more than one (1)
39 trust account **under this section**, each trust account must be
40 individually reconciled. **If the cash balance in a trust account does**
41 **not reconcile with the sum of the balances in each contract debtor's**
42 **account for any reason, the licensee shall immediately provide**

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1 **written notice to the department of that fact and of any remedial**
 2 **action taken by the licensee.**

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

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

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

23 **(i) Before adding or replacing any signatory on the trust account**
 24 **required under this section, the licensee shall provide to the**
 25 **director written notice that:**

26 **(1) identifies the new signatory; and**

27 **(2) includes evidence of the signatory's compliance with**
 28 **section 3(c) of this chapter.**

29 ~~(j) At least once every three (3) months~~ **(j) At least once every month while an**
 30 **agreement between a licensee and a contract debtor is in effect, the**
 31 **licensee shall render to the contract debtor an accounting statement**
 32 **to the contract debtor which must itemize that includes the following:**

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

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

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

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

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

41 **(2) A statement that the contract debtor's plan is regulated by**
 42 **the department, along with the department's contact**

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1 **information, including the department's address, Internet web**
 2 **site address, and toll free telephone number.**

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

8 (⌋) **(k)** Upon the completion or termination of a contract between a
 9 licensee and a contract debtor, the licensee shall provide to the contract
 10 debtor a statement:

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

13 (2) listing the name and address of:

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

15 (B) any creditors remaining unpaid.

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

20 (1) Misappropriate or misapply money held in trust.

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

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

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

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

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

30 (ii) payment of a fee.

31 (4) Offer a gift or bonus, premium, reward, or other compensation
 32 to a debtor for executing an agreement.

33 (5) Offer, pay, or give:

34 (A) a gift or bonus;

35 (B) a premium;

36 (C) a reward; or

37 (D) other compensation;

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

42 (6) Receive a bonus, a commission, or other benefit for referring

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- 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 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

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- 1 licensee may not, directly or indirectly, do any of the following:
- 2 (1) Purchase a debt or obligation of the debtor.
- 3 (2) Receive from or on behalf of the debtor:
- 4 (A) a promissory note or other negotiable instrument other
- 5 than a check or a demand draft; or
- 6 (B) a postdated check or demand draft.
- 7 (3) Lend money or provide credit to the debtor.
- 8 (4) Obtain a mortgage or other security interest from any person
- 9 in connection with the services provided to the debtor.
- 10 (5) Except as permitted by federal law, disclose the identity or
- 11 identifying information of the debtor or the identity of the debtor's
- 12 creditors, except:
- 13 (A) to the department, upon proper demand;
- 14 (B) to a creditor of the debtor, to the extent necessary to secure
- 15 the cooperation of the creditor in a plan; or
- 16 (C) to the extent necessary to administer the plan.
- 17 (6) Charge the debtor for or provide credit or other insurance,
- 18 coupons for goods or services, membership in a club, access to
- 19 computers or the Internet, or any other matter not directly related
- 20 to debt management services or educational services concerning
- 21 personal finance, **except as permitted under section 8(j) of this**
- 22 **chapter.**
- 23 (7) Furnish legal advice or perform legal services unless the
- 24 person furnishing the advice or performing the services is
- 25 licensed to practice law.
- 26 (c) This chapter does not authorize any person to engage in the
- 27 practice of law.
- 28 (d) A licensee may not receive a gift, bonus, premium, reward, or
- 29 other compensation, directly or indirectly, for advising, arranging, or
- 30 assisting a debtor in connection with obtaining an extension of credit
- 31 or other service from a lender or service provider.
- 32 SECTION 33. IC 28-1-29-16, AS ADDED BY P.L.35-2010,
- 33 SECTION 138, IS AMENDED TO READ AS FOLLOWS
- 34 [EFFECTIVE JULY 1, 2013]: Sec. 16. Unless the department provides
- 35 otherwise in a rule, the disclosures and documents required by this
- 36 chapter must be in English. ~~If a licensee communicates with a debtor~~
- 37 ~~primarily in a language other than English, the licensee shall furnish a~~
- 38 ~~translation of the disclosures and documents required by this chapter~~
- 39 ~~from the other language into English. a language understood by the~~
- 40 ~~debtor.~~
- 41 SECTION 34. IC 28-1-29-18, AS ADDED BY P.L.35-2010,
- 42 SECTION 140, IS AMENDED TO READ AS FOLLOWS

COPY



1 [EFFECTIVE JULY 1, 2013]: Sec. 18. (a) If a licensee delegates any
 2 of the licensee's duties or obligations under an agreement or this
 3 chapter to another person, including an independent contractor **or a**
 4 **lead generator**, the licensee is liable for **any** conduct of the person
 5 which, if done by the licensee, would violate the agreement or this
 6 chapter.

7 (b) **A lead generator or another person that:**

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

9 (2) **violates this chapter;**

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

12 SECTION 35. IC 28-7-5-3, AS AMENDED BY P.L.90-2008,
 13 SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2013]: Sec. 3. ~~No~~ **Except as authorized by this chapter and**
 15 **unless a license is first obtained from the department, a person shall**
 16 **not** engage in business as a pawnbroker, act as a pawnbroker, transact
 17 or solicit business as a pawnbroker, or use in ~~an~~ **any** advertisement,
 18 **signage, or electronic or printed material, or in the person's**
 19 **business name, a word phrase or statement that states or represents**
 20 **includes "pawn", "pawnbroker", "pawn shop", "pawn loan", or**
 21 **any word or phrase that would reasonably lead another person to**
 22 **conclude** that the person is a pawnbroker, ~~except as authorized by this~~
 23 ~~chapter and without first obtaining a license from the department:~~ **is**
 24 **engaging in business as a pawnbroker, or is engaging in conduct**
 25 **that would mislead or confuse a person into believing that the**
 26 **person is a pawnbroker or is engaging in business as a**
 27 **pawnbroker.**

28 SECTION 36. IC 28-7-5-4, AS AMENDED BY P.L.35-2010,
 29 SECTION 170, IS AMENDED TO READ AS FOLLOWS
 30 [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) Application for a
 31 pawnbroker's license shall be submitted on a form prescribed by the
 32 ~~department~~ **director** and must include all information required by the
 33 ~~department~~ **director**. An application submitted under this section must
 34 identify the location or locations at which the applicant proposes to
 35 engage in business as a pawnbroker in Indiana. If any business, other
 36 than the business of acting as a pawnbroker under this chapter, will be
 37 conducted by the applicant or another person at any location identified
 38 under this subsection, the applicant shall indicate for each location at
 39 which another business will be conducted:

40 (1) the nature of the other business;

41 (2) the name under which the other business operates;

42 (3) the address of the principal office of the other business;

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1 (4) the name and address of the business's resident agent in
 2 Indiana; and
 3 (5) any other information the director may require.
 4 (b) An application submitted under this section must indicate
 5 whether any individual described in section 8(a)(2) or 8(a)(3) of this
 6 chapter at the time of the application:
 7 (1) is under indictment for a felony under the laws of Indiana or
 8 any other jurisdiction; or
 9 (2) has been convicted of or pleaded guilty or nolo contendere to
 10 a felony under the laws of Indiana or any other jurisdiction.
 11 (c) The director may request that the applicant provide evidence of
 12 compliance with this section at:
 13 (1) the time of application;
 14 (2) the time of renewal of a license; or
 15 (3) any other time considered necessary by the director.
 16 (d) For purposes of subsection (c), evidence of compliance with this
 17 section may include:
 18 (1) criminal background checks, including a national criminal
 19 history background check (as defined in IC 10-13-3-12) by the
 20 Federal Bureau of Investigation for any individual described in
 21 subsection (b);
 22 (2) credit histories; and
 23 (3) other background checks considered necessary by the director.
 24 If the director requests a national criminal history background check
 25 under subdivision (1) for an individual described in that subdivision,
 26 the director shall require the individual to submit fingerprints to the
 27 department or to the state police department, as appropriate, at the time
 28 evidence of compliance is requested under subsection (c). The
 29 individual to whom the request is made shall pay any fees or costs
 30 associated with the fingerprints and the national criminal history
 31 background check. The national criminal history background check
 32 may be used by the director to determine the individual's compliance
 33 with this section. The director or the department may not release the
 34 results of the national criminal history background check to any private
 35 entity.
 36 SECTION 37. IC 28-7-5-5, AS AMENDED BY P.L.172-2011,
 37 SECTION 133, IS AMENDED TO READ AS FOLLOWS
 38 [EFFECTIVE JULY 1, 2014]: Sec. 5. (a) The initial application and
 39 any renewal application shall be accompanied by a fee fixed by the
 40 department under IC 28-11-3-5. The initial application and any renewal
 41 application must include a financial statement that:
 42 (1) is prepared in accordance with standards adopted by the

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- 1 director;
- 2 (2) indicates the applicant meets minimum financial responsibility
- 3 standards adopted by the director; and
- 4 (3) is prepared by a third party acceptable to the director.
- 5 (b) The initial application and any renewal application must be
- 6 accompanied by proof that the applicant:
- 7 (1) has executed a bond **in accordance with section 5.5 of this**
- 8 **chapter and** payable to the state, in an amount determined by the
- 9 director; and
- 10 (2) has obtained property and casualty insurance coverage, in an
- 11 amount determined by the director;
- 12 in accordance with standards adopted by the director.
- 13 (c) Any standards adopted by the director and described in
- 14 subsection (a)(1), (a)(2), or (b) must be made available:
- 15 (1) for public inspection and copying at the offices of the
- 16 department under IC 5-14-3; and
- 17 (2) electronically through the computer gateway administered by
- 18 the office of technology established by IC 4-13.1-2-1.
- 19 (d) If the department of state revenue notifies the department that a
- 20 person is on the most recent tax warrant list, the department shall not
- 21 issue or renew the person's license until:
- 22 (1) the person provides to the department a statement from the
- 23 department of state revenue that the person's tax warrant has been
- 24 satisfied; or
- 25 (2) the department receives a notice from the commissioner of the
- 26 department of state revenue under IC 6-8.1-8-2(k).
- 27 SECTION 38. IC 28-7-5-5.5 IS ADDED TO THE INDIANA CODE
- 28 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 29 1, 2014]: **Sec. 5.5. (a) Each person engaged in the business of**
- 30 **pawnbroking in Indiana must be covered by a surety bond in**
- 31 **accordance with this section. The initial application and any**
- 32 **renewal application for licensure under this chapter must be**
- 33 **accompanied by proof that the applicant has executed a bond in**
- 34 **accordance with this section.**
- 35 (b) A surety bond issued under this section must:
- 36 (1) provide coverage for the licensee and the licensee's
- 37 employees and agents in an amount determined by the
- 38 director;
- 39 (2) be in a form prescribed by the director;
- 40 (3) be in effect during the term of the license issued under this
- 41 chapter;
- 42 (4) remain in effect during the two (2) years after the licensee

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- 1 ceases offering pawnbroking services to individuals in
- 2 Indiana;
- 3 (5) be payable to the department for the benefit of:
- 4 (A) the state; and
- 5 (B) individuals who reside in Indiana when they agree to
- 6 receive pawnbroking services from the licensee;
- 7 (6) be issued by a bonding, surety, or insurance company
- 8 authorized to do business in Indiana and rated at least "A-"
- 9 by at least one (1) nationally recognized investment rating
- 10 service; and
- 11 (7) have payment conditioned upon the licensee's or any of the
- 12 licensee's employees' or agents' noncompliance with or
- 13 violation of this chapter or other applicable federal or state
- 14 laws or regulations.

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

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

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

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

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

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

40 SECTION 39. IC 28-7-5-10.1, AS AMENDED BY P.L.35-2010,
 41 SECTION 172, IS AMENDED TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2013]: Sec. 10.1. (a) A licensee that decides to

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1 cease engaging in business as a pawnbroker in Indiana shall do the
 2 following not later than thirty (30) days before closing the licensee's
 3 pawnbroking business:

4 (1) Notify the department of:

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

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

9 (2) Surrender the license to the department.

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

12 (A) Notice of:

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

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

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

20 (b) If:

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

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

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

29 (c) If:

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

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

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

39 **(d) If a pawnbroker gives notice to the department under**
 40 **subsection (a) that the pawnbroker intends to cease engaging in**
 41 **business as a pawnbroker in Indiana, the pawnbroker may accept**
 42 **during the two (2) months immediately following the maturity of**

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1 a loan that the pawnbroker has made to any pledger, as described
 2 in section 30(a) of this chapter, partial payments from the pledger
 3 for the loan. A partial payment made under this subsection must
 4 be applied to the loan's principal and used to reduce the pledger's
 5 loan obligation. Acceptance of partial payments under this
 6 subsection does not require the pawnbroker to extend the two (2)
 7 month period described in section 30(a) of this chapter with respect
 8 to any loan.

9 SECTION 40. IC 28-7-5-30, AS AMENDED BY P.L.27-2012,
 10 SECTION 98, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2013]: Sec. 30. (a) Subject to subsections (b) and (c), upon the
 12 expiration of two (2) months from the maturity of the loan, a pawned
 13 article becomes the property of the pawnbroker and is subject to sale.

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

- 16 (1) the term of the loan; and
- 17 (2) the two (2) month period described in subsection (a);

18 to repay the loan and redeem the pawned article.

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

22 (d) If a pawnbroker gives notice to the department under section
 23 10.1 of this chapter that the pawnbroker intends to cease engaging in
 24 business as a pawnbroker in Indiana, the pawnbroker may accept,
 25 through the two (2) month period described in subsection (a) with
 26 respect to any loan, partial payments from any pledger that has one (1)
 27 or more loans outstanding with the pawnbroker. A partial payment
 28 made under this subsection must be applied to a loan's principal and
 29 used to reduce the pledger's loan obligation. Acceptance of partial
 30 payments under this subsection does not require the pawnbroker to
 31 extend the two (2) month period described in subsection (a) with
 32 respect to any loan.

33 SECTION 41. IC 28-8-4-1, AS AMENDED BY P.L.89-2011,
 34 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2013]: Sec. 1. This chapter does not apply to the following:

- 36 (1) The United States or an instrumentality of the United States.
- 37 (2) The state, a political subdivision of the state, or an
 38 instrumentality of the state or of a political subdivision of the
 39 state.
- 40 (3) A bank, a bank holding company, an industrial loan and
 41 investment company, a credit union, a savings association, a
 42 savings bank, a mutual bank, or a mutual savings bank organized



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1 under the laws of any state or the United States.

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

4 SECTION 42. IC 28-8-4-8.5 IS ADDED TO THE INDIANA CODE
5 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
6 1, 2013]: **Sec. 8.5. As used in this chapter, "individual" means a
7 natural person.**

8 SECTION 43. IC 28-8-4-10 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 10. As used in
10 this chapter, "licensed activities" means ~~the~~ **money transmission**
11 activities:

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

13 **(A) from a place of business in Indiana; and or**

14 **(B) with a consumer who is a resident of Indiana and who
15 enters into the transaction in Indiana; and**

16 (2) for which a licensee has obtained a license under this chapter.

17 SECTION 44. IC 28-8-4-13, AS AMENDED BY P.L.89-2011,
18 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JANUARY 1, 2014]: Sec. 13. **(a)** As used in this chapter, "money
20 transmission" means **an activity that:**

21 **(1) involves:**

22 **(A)** the sale or issuance of payment instruments primarily for
23 personal, family, or household purposes; or

24 ~~(2)~~ **(B)** engaging in the business of:

25 ~~(A)~~ **(i)** receiving money for transmission from; or

26 ~~(B)~~ **(ii)** transmitting money to;

27 any location and by any means, including a payment
28 instrument, wire, facsimile, or electronic transfer, primarily for
29 personal, family, or household purposes; **and**

30 **(2) is performed:**

31 **(A) from an office or place of business, wherever located;
32 or**

33 **(B) over the Internet or by any other means of
34 transmission.**

35 **(b) The term includes any activity described in subsection (a)
36 that is performed by an authorized delegate, wherever located.**

37 SECTION 45. IC 28-8-4-13.8 IS ADDED TO THE INDIANA
38 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
39 [EFFECTIVE JULY 1, 2013]: **Sec. 13.8. As used in this chapter,
40 "organization" means a corporation, a government or
41 governmental subdivision, an agency, a trust, an estate, a
42 partnership, a limited liability company, a cooperative, an**

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1 **association, a joint venture, an unincorporated organization, or**
 2 **any other entity, however organized.**

3 SECTION 46. IC 28-8-4-17 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 17. As used in this
 5 chapter, "person" means an individual ~~a partnership; an association; a~~
 6 ~~joint stock association; a trust; or a corporation.~~ **an organization.**

7 SECTION 47. IC 28-8-4-18 IS REPEALED [EFFECTIVE JULY 1,
 8 2014]. Sec. 18. ~~As used in this chapter, "security device" includes a~~
 9 ~~surety bond; an irrevocable letter of credit; or other similar security~~
 10 ~~device.~~

11 SECTION 48. IC 28-8-4-20, AS AMENDED BY P.L.172-2011,
 12 SECTION 134, IS AMENDED TO READ AS FOLLOWS
 13 [EFFECTIVE JANUARY 1, 2014]: Sec. 20. (a) A person may not
 14 engage in the business of money transmission:

- 15 **(1) from a place of business in Indiana; or**
 16 **(2) with a consumer who is a resident of Indiana and who**
 17 **enters into the transaction in Indiana;**

18 without a license required by this chapter.

19 (b) An application for a license must be:

- 20 **(1) submitted on a form prescribed by the ~~department~~ director**
 21 **and must include the information required by the ~~department~~**
 22 **director; and**
 23 **(2) accompanied by a nonrefundable application fee as fixed**
 24 **by the department under IC 28-11-3-5.**

25 (c) An application submitted under this section must indicate
 26 whether any individuals described in section 35(b)(2) or 35(b)(3) of
 27 this chapter ~~(1) are, at the time of the application, under indictment for~~
 28 ~~a felony under the laws of Indiana or any other jurisdiction; or (2) have~~
 29 ~~been convicted of or pleaded guilty or nolo contendere to a felony~~
 30 ~~under the laws of Indiana or any other jurisdiction.~~

31 (d) The director may request evidence of compliance with this
 32 section at:

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

36 (e) For purposes of subsection (d), evidence of compliance may
 37 include:

- 38 (1) criminal background checks, including a national criminal
 39 history background check (as defined in IC 10-13-3-12) by the
 40 Federal Bureau of Investigation for an individual described in
 41 section 35(b)(2) or 35(b)(3) of this chapter;
 42 (2) credit histories; and

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1 (3) other background checks considered necessary by the director.
 2 If the director requests a national criminal history background check
 3 under subdivision (1) for an individual described in that subdivision,
 4 the director shall require the individual to submit fingerprints to the
 5 department or to the state police department, as appropriate, at the time
 6 evidence of compliance is requested under subsection (d). The
 7 individual to whom the request is made shall pay any fees or costs
 8 associated with the fingerprints and the national criminal history
 9 background check. The national criminal history background check
 10 may be used by the director to determine the individual's compliance
 11 with this section. The director or the department may not release the
 12 results of the national criminal history background check to any private
 13 entity.

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

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

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

22 SECTION 49. IC 28-8-4-20.5 IS ADDED TO THE INDIANA
 23 CODE AS A NEW SECTION TO READ AS FOLLOWS
 24 [EFFECTIVE NOVEMBER 1, 2013]: **Sec. 20.5. (a) As used in this**
 25 **section, "Nationwide Mortgage Licensing System and Registry" or**
 26 **"NMLSR" means a mortgage licensing system developed and**
 27 **maintained by the Conference of State Bank Supervisors and the**
 28 **American Association of Residential Mortgage Regulators for the**
 29 **licensing and registration of creditors, mortgage loan originators,**
 30 **and other financial services entities and their employees and**
 31 **agents.**

32 (b) Subject to subsection (g), the director may designate the
 33 NMLSR to serve as the sole entity responsible for:

34 (1) processing applications and renewals for licenses under
 35 this chapter;

36 (2) issuing unique identifiers for licensees and entities exempt
 37 from licensing under this chapter; and

38 (3) performing other services that the director determines are
 39 necessary for the orderly administration of the department's
 40 licensing system under this chapter.

41 (c) Subject to the confidentiality provisions contained in
 42 IC 5-14-3, this section, and section 47 of this chapter, the director

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1 shall regularly report significant or recurring violations of this
2 chapter to the NMLSR.

3 (d) Subject to the confidentiality provisions contained in
4 IC 5-14-3, this section, and section 47 of this chapter, the director
5 may report complaints received regarding licensees under this
6 chapter to the NMLSR.

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

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

11 (g) The director's authority to designate the NMLSR under
12 subsection (b) is subject to the following:

13 (1) Information stored in the NMLSR is subject to the
14 confidentiality provisions of IC 5-14-3 and section 47 of this
15 chapter. A person may not:

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

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

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

25 (2) Documents, materials, and other forms of information in
26 the control or possession of the NMLSR that are confidential
27 under section 47 of this chapter and that are:

28 (A) furnished by the director, the director's designee, or a
29 licensee; or

30 (B) otherwise obtained by the NMLSR;

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

38 (3) Disclosure of documents, materials, and information:

39 (A) to the director; or

40 (B) by the director;

41 under this subsection does not result in a waiver of any
42 applicable privilege or claim of confidentiality with respect to

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1 the documents, materials, or information.

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

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

6 (A) obtain information;

7 (B) use information as evidence in a civil action or
8 proceeding; or

9 (C) use information to initiate a civil action or proceeding;
10 if the information may be obtained from the director or the
11 director's designee under any law.

12 (6) The requirements under any federal law or IC 5-14-3
13 regarding the privacy or confidentiality of any information or
14 material provided to the NMLSR, and any privilege arising
15 under federal or state law, including the rules of any federal
16 or state court, with respect to the information or material,
17 continue to apply to the information or material after the
18 information or material has been disclosed to the NMLSR.
19 The information and material may be shared with all state
20 and federal regulatory officials with financial services
21 industry oversight authority without the loss of privilege or
22 the loss of confidentiality protections provided by federal law
23 or IC 5-14-3.

24 (7) For purposes of this section, the director may enter
25 agreements or sharing arrangements with other governmental
26 agencies, the Conference of State Bank Supervisors, the
27 Money Transmitters Regulators Association, or other
28 associations representing governmental agencies, as
29 established by rule or order of the director.

30 (8) Information or material that is subject to a privilege or
31 confidentiality under subdivision (6) is not subject to:

32 (A) disclosure under any federal or state law governing the
33 disclosure to the public of information held by an officer or
34 an agency of the federal government or the respective
35 state; or

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

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

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- 1 (A) confidential supervisory information; or
 2 (B) any information or material described in subdivision
 3 (6);
 4 and that is inconsistent with subdivision (6) is superseded by
 5 this section.
 6 (10) This section does not apply with respect to information or
 7 material that concerns the employment history of, and
 8 publicly adjudicated disciplinary and enforcement actions
 9 against, a person described in section 35(b)(2) or 35(b)(3) of
 10 this chapter and that is included in the NMLSR for access by
 11 the public.
 12 (11) The director may require a licensee required to submit
 13 information to the NMLSR to pay a processing fee considered
 14 reasonable by the director. In determining whether the
 15 NMLSR processing fee is reasonable, the director shall:
 16 (A) require review of; and
 17 (B) make available;
 18 the audited financial statements of the NMLSR.
 19 (12) Notwithstanding any other provision of law, any:
 20 (A) application, renewal, or other form or document that:
 21 (i) relates to licenses issued under this chapter; and
 22 (ii) is made or produced in an electronic format;
 23 (B) document filed as an electronic record in a multistate
 24 automated repository established and operated for the
 25 licensing or registration of financial services entities and
 26 their employees; or
 27 (C) electronic record filed through the NMLSR;
 28 is considered a valid original document when reproduced in
 29 paper form by the department.
 30 SECTION 50. IC 28-8-4-21 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 21. (a) An application
 32 for a license under this chapter must be:
 33 (1) in writing;
 34 (2) under oath; and
 35 (3) in a form prescribed by the director.
 36 (b) An application for a license must be accompanied by the
 37 following:
 38 (1) A ~~security device~~ **surety bond** as required by section 27 of
 39 this chapter. ~~or a deposit as required by section 29 of this chapter.~~
 40 If requested, the director may permit corporations that are directly
 41 or indirectly commonly controlled to engage in activities under
 42 this chapter pursuant to a single ~~security device~~ **surety bond** filed

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1 under section 27 of this chapter. ~~or a single deposit filed under~~
 2 ~~section 29 of this chapter.~~

3 (2) A nonrefundable license fee as ~~provided in section 32 of this~~
 4 ~~chapter. fixed by the department under IC 28-11-3-5.~~

5 SECTION 51. IC 28-8-4-24, AS AMENDED BY P.L.217-2007,
 6 SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2013]: Sec. 24. An application **for licensure under this**
 8 **chapter** must contain the following:

- 9 (1) The name of the applicant.
 10 (2) The applicant's principal address.
 11 (3) A fictitious or trade name, if any, used by the applicant in the
 12 conduct of its business.
 13 (4) The location of the applicant's business records.
 14 (5) The history of the applicant's:
 15 (A) material litigation; and
 16 (B) criminal ~~indictments~~, convictions ~~and guilty or nolo~~
 17 ~~contendere pleas~~ for felonies involving fraud, deceit, or
 18 misrepresentation under the laws of Indiana or any other
 19 jurisdiction.
 20 (6) A description of:
 21 (A) the activities conducted by the applicant;
 22 (B) the applicant's history of operations; and
 23 (C) the business activities in which the applicant seeks to be
 24 engaged in Indiana.
 25 (7) A list identifying the applicant's proposed authorized delegates
 26 in Indiana.
 27 (8) A sample authorized delegate contract, if applicable.
 28 (9) A sample form of payment instrument, if applicable.
 29 (10) The location or locations at which the applicant and its
 30 authorized delegates propose to conduct the licensed activities in
 31 Indiana. If any business, other than the business of money
 32 transmission under this chapter, will be conducted by the
 33 applicant or another person at any location identified under this
 34 subdivision, the applicant shall indicate for each location at which
 35 another business will be conducted:
 36 (A) the nature of the other business;
 37 (B) the name under which the other business operates;
 38 (C) the address of the principal office of the other business;
 39 (D) the name and address of the business's resident agent in
 40 Indiana; and
 41 (E) any other information that the director may require.

42 However, the applicant is not required to submit the information

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1 required by this subdivision if the location at which the other
 2 business will be conducted is the place of business of an
 3 authorized delegate that is not under common control with the
 4 applicant.

5 (11) The name and address of the clearing bank or banks on
 6 which the applicant's payment instruments will be drawn or
 7 through which such payment instruments will be payable.

8 (12) Documents revealing that the applicant has a net worth of at
 9 least ~~one~~ **six** hundred thousand dollars (~~\$100,000~~), (**\$600,000**),
 10 calculated in accordance with generally accepted accounting
 11 principles.

12 ~~(13) In addition to the requirements of subdivision (12), an~~
 13 ~~applicant that sells payment instruments at more than one (1)~~
 14 ~~location or through authorized delegates must have an additional~~
 15 ~~net worth of the lesser of:~~

16 ~~(A) fifty thousand dollars (\$50,000) for each location in~~
 17 ~~Indiana;~~

18 ~~(B) fifty thousand dollars (\$50,000) for each authorized~~
 19 ~~delegate located in Indiana; or~~

20 ~~(C) five hundred thousand dollars (\$500,000).~~

21 SECTION 52. IC 28-8-4-25, AS AMENDED BY P.L.89-2011,
 22 SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2013]: Sec. 25. In addition to the items listed in section 24 of
 24 this chapter, if an applicant **for licensure under this chapter** is not
 25 organized as a sole proprietorship, the applicant must provide the
 26 following items and information relating to the applicant's
 27 organizational structure:

28 (1) State of incorporation or organization.

29 (2) Date of incorporation or organization.

30 (3) A certificate from the state in which the applicant was
 31 incorporated or organized stating that the entity is in good
 32 standing, **or an another equivalent certification from the state**
 33 **in which the applicant was incorporated or organized.**

34 (4) A description of the organizational structure of the applicant,
 35 including the following:

36 (A) The identity of the parent of the applicant.

37 (B) The identity of each subsidiary of the applicant.

38 (C) The names of the stock exchanges, if any, in which the
 39 applicant, the parent, and the subsidiaries are publicly traded.

40 (5) The:

41 (A) name;

42 (B) business address;

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- 1 (C) residence address; and
 2 (D) employment history;
 3 for each individual described in section 35(b)(2) or 35(b)(3) of
 4 this chapter.
 5 (6) The:
 6 (A) history of material litigation; and
 7 (B) history of criminal ~~indictments~~ convictions ~~and guilty or~~
 8 ~~nolo contendere pleas~~ for felonies involving fraud, deceit, or
 9 misrepresentation under the laws of Indiana or any other
 10 jurisdiction;
 11 for each individual described in section 35(b)(2) or 35(b)(3) of
 12 this chapter.
 13 (7) Except as provided in subdivision (8), copies of the applicant's
 14 audited financial statements for the current year and, if available,
 15 for the preceding two (2) years, including a:
 16 (A) balance sheet;
 17 (B) statement of income or loss;
 18 (C) statement of changes in shareholder equity; and
 19 (D) statement of changes in financial position.
 20 A financial statement required to be submitted under this
 21 subdivision must be prepared by ~~a~~ **an independent** certified
 22 public accountant authorized to do business in the United States
 23 in accordance with AICPA Statements on Standards for
 24 Accounting and Review Services (SSARS).
 25 (8) If the applicant is a wholly owned subsidiary of:
 26 (A) a corporation **or other organization** publicly traded in the
 27 United States, financial statements for the current year or the
 28 parent corporation's **or parent organization's** Form 10K
 29 reports filed with the United States Securities and Exchange
 30 Commission for the preceding three (3) years may be
 31 submitted with the applicant's unaudited financial statements;
 32 or
 33 (B) a corporation **or other organization** publicly traded
 34 outside the United States, similar documentation filed with the
 35 parent corporation's **or parent organization's** non-United
 36 States regulator may be submitted with the applicant's
 37 unaudited financial statements.
 38 (9) Copies of filings, if any, made by the applicant with the
 39 United States Securities and Exchange Commission, or with a
 40 similar regulator in a country other than the United States, not
 41 more than one (1) year before the date of filing of the application.
 42 SECTION 53. IC 28-8-4-27 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 27. (a) Except as
 2 provided in section 29 of this chapter, An application for licensure
 3 **under this chapter** must be accompanied by a security device that
 4 secures the faithful performance of the obligations of the licensee to
 5 receive; handle; transmit; and pay money in connection with the:

- 6 (1) sale and issuance of payment instruments; or
 7 (2) transmission of money: **surety bond in accordance with this**
 8 **section.**

9 (b) The security device **surety bond** required under subsection (a)
 10 must:

- 11 (1) be in ~~an~~ **the** amount as provided under subsection (c); **of three**
 12 **hundred thousand dollars (\$300,000);**
 13 (2) ~~run to the state;~~ and
 14 (3) **(2)** be in a form acceptable to the director;

15 (c) The security device must be in an amount calculated as follows:
 16 STEP ONE: Subtract one (1) from the number of locations where
 17 the applicant proposes to engage in business under the license.
 18 STEP TWO: Multiply the difference determined under STEP

19 ONE by ten thousand dollars (\$10,000).
 20 STEP THREE: Add two hundred thousand dollars (\$200,000) to
 21 the product determined under STEP TWO.

22 STEP FOUR: Pay the amount that is the lesser of:

- 23 (1) the sum determined in STEP THREE; or
 24 (2) three hundred thousand dollars (\$300,000). (d) If the security
 25 device filed is a bond, the aggregate liability of the surety shall
 26 not exceed the principal sum of the bond.

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

29 (4) remain in effect during the five (5) years after the licensee
 30 ceases offering money transmission services in Indiana;

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

- 32 (A) the state;
 33 (B) individuals who reside in Indiana when they agree to
 34 receive money transmission services from the licensee; and
 35 (C) entities that do business in Indiana when they agree to
 36 receive money transmission services from the licensee;

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

41 (7) have payment conditioned upon the licensee's or any of the
 42 licensee's employees' or agents' noncompliance with or

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- 1 violation of this chapter or other applicable federal or state
2 laws or regulations.
- 3 (c) The director may adopt rules or guidance documents with
4 respect to the requirements for a surety bond as necessary to
5 accomplish the purposes of this chapter.
- 6 (d) If the principal amount of a surety bond required under this
7 section is reduced by payment of a claim or judgment, the licensee
8 for whom the bond is issued shall immediately notify the director
9 of the reduction and, not later than thirty (30) days after notice by
10 the director, file a new or an additional surety bond in the amount
11 needed to restore the amount of the surety bond to three hundred
12 thousand dollars (\$300,000).
- 13 (e) If for any reason a surety terminates a bond issued under
14 this section, the licensee shall immediately notify the department
15 and file a new surety bond in the amount of three hundred
16 thousand dollars (\$300,000).
- 17 (f) Cancellation of a surety bond issued under this section does
18 not affect any liability incurred or accrued during the period when
19 the surety bond was in effect.
- 20 (g) The director may obtain satisfaction from a surety bond
21 issued under this section if the director incurs expenses, issues a
22 final order, or recovers a final judgment under this chapter.
- 23 (h) Notices required under this section must be in writing and
24 delivered by certified mail, return receipt requested and postage
25 prepaid, or by overnight delivery using a nationally recognized
26 carrier.
- 27 SECTION 54. IC 28-8-4-28 IS REPEALED [EFFECTIVE JULY 1,
28 2014]. Sec. 28: (a) The security device provided for in section 27 of
29 this chapter shall remain in effect until cancellation:
- 30 (b) A security device may be canceled not more than thirty (30) days
31 after written notice is sent by first class mail to the director:
- 32 (c) Cancellation of a security device does not affect any liability
33 incurred or accrued during the period when the security device was in
34 effect.
- 35 SECTION 55. IC 28-8-4-29 IS REPEALED [EFFECTIVE JULY 1,
36 2014]. Sec. 29: (a) In lieu of a security device, the licensee may deposit
37 with the director, or with banks in the state as the licensee may
38 designate and the director may approve, one (1) or more of the
39 following:
- 40 (1) Cash.
- 41 (2) Interest-bearing stocks and bonds.
- 42 (3) Notes.

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- 1 (4) Debentures.
 2 (5) Other obligations:
 3 (A) of the United States or any agency or instrumentality of the
 4 United States;
 5 (B) guaranteed by the United States;
 6 (C) of the state, a city, a county, a town, a village, a school
 7 district, or an instrumentality of the state; or
 8 (D) guaranteed by the state.
 9 (b) Each item deposited under subsection (a) must be calculated
 10 based on the lesser of:
 11 (1) the principal amount; or
 12 (2) the market amount.
 13 (c) The aggregate amount deposited under subsection (a) must be
 14 not less than the amount required under section 27 of this chapter.
 15 (d) The deposits made under subsection (a) shall be held to secure
 16 the faithful performance of the obligations of the licensee to receive,
 17 handle, transmit, and pay money in connection with the:
 18 (1) sale and issuance of payment instruments; and
 19 (2) transmission of money.
 20 (e) An applicant that makes a deposit under subsection (a) is entitled
 21 to receive all interest and dividends from the deposit.
 22 (f) An applicant that makes a deposit under subsection (a) has the
 23 right, with the approval of the director, to substitute other securities for
 24 those deposited; and shall be required to do so on written order of the
 25 director made for good cause shown.
 26 SECTION 56. IC 28-8-4-30 IS REPEALED [EFFECTIVE JULY 1,
 27 2014]. Sec. 30: (a) Except as provided in subsection (b); a security
 28 device filed under section 27 of this chapter and a deposit made under
 29 section 29 of this chapter must remain in place:
 30 (1) during the time a licensee engages in money transmission
 31 operations in Indiana; and
 32 (2) for five (5) years after the date a licensee ceases money
 33 transmission operations in Indiana.
 34 (b) Prior to the expiration of the five (5) years in subsection (a)(2);
 35 the director may permit a licensee to:
 36 (1) reduce a security device or a deposit to the amount of the
 37 licensee's outstanding payment instruments that remain in
 38 Indiana; or
 39 (2) eliminate a security device or deposit, if the licensee has no
 40 outstanding payment instruments in Indiana.
 41 SECTION 57. IC 28-8-4-31 IS REPEALED [EFFECTIVE JULY 1,
 42 2013]. Sec. 31: On or after the date when the licensee ceases money

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1 transmission operations in Indiana, the director may permit a licensee
 2 to substitute a letter of credit or other form of security device
 3 acceptable to the director for the security device or deposit.

4 SECTION 58. IC 28-8-4-32 IS REPEALED [EFFECTIVE JULY 1,
 5 2013]. Sec. 32: (a) An application must be accompanied by a
 6 nonrefundable application fee as fixed by the department under
 7 IC 28-11-3-5.

8 (b) If a license is granted, the application fee constitutes the license
 9 fee for the applicant's activities through March 31 of the year in which
 10 the initial license is granted.

11 SECTION 59. IC 28-8-4-33 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 33. (a) A license
 13 granted under this chapter permits a licensee to conduct business:

14 (1) at one (1) or more locations directly or indirectly owned by the
 15 licensee; or

16 (2) through one (1) or more authorized delegates.

17 (b) Each licensee shall maintain a policy of insurance issued by an
 18 insurer authorized to do business in Indiana that insures the applicant
 19 against loss by a criminal act or act of dishonesty. The principal sum
 20 of the policy shall be equivalent to the amount of the required security
 21 device **surety bond** required under section 27 of this chapter. ~~or~~
 22 ~~deposit required under section 29 of this chapter.~~

23 (c) Except as provided in subsection (d), a licensee must at all times
 24 possess permissible investments with an aggregate market value
 25 calculated in accordance with generally accepted accounting principles
 26 of not less than the aggregate face amount of all outstanding payment
 27 instruments issued or sold by the licensee or an authorized delegate of
 28 the licensee in the United States.

29 (d) ~~The director may waive the permissible investments requirement~~
 30 ~~in subsection (c) if the dollar volume of a licensee's outstanding~~
 31 ~~payment instruments does not exceed (1) the security device posted by~~
 32 ~~the licensee under section 27 of this chapter. or (2) the deposit made by~~
 33 ~~the licensee under section 29 of this chapter.~~

34 (e) (d) A licensee that is a corporation **or a limited liability**
 35 **company** must at all times be in good standing with the secretary of
 36 state of the state in which the licensee was incorporated.

37 SECTION 60. IC 28-8-4-34 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 34. The director may
 39 permit corporations **or other organizations** that are directly or
 40 indirectly commonly controlled to engage in activities under this
 41 chapter, pursuant to a security device **surety bond** required under
 42 section 27 of this chapter. ~~or a deposit required under section 29 of this~~

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1 chapter:

2 SECTION 61. IC 28-8-4-35, AS AMENDED BY P.L.90-2008,
3 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2013]: Sec. 35. (a) The director shall begin an investigation
5 after an application **for licensure under this chapter** is complete.

6 (b) The director shall investigate the financial condition and
7 responsibility, financial and business experience, and character and
8 general fitness of:

- 9 (1) the applicant and any significant affiliate of the applicant;
10 (2) each executive officer, director, or manager of the applicant,
11 or any other individual having a similar status or performing a
12 similar function for the applicant; and
13 (3) if known, each controlling person.

14 (c) The director may conduct an onsite investigation of the
15 applicant, the reasonable cost of which shall be borne by the applicant.

16 (d) The director shall issue a license to an applicant authorizing the
17 applicant to engage in the licensed activities in Indiana for a term
18 expiring ~~March~~ **December** 31 of the year in which the license is issued
19 if the director finds that:

- 20 (1) the applicant's business will be conducted honestly, fairly, and
21 in a manner commanding the confidence and trust of the
22 community; and
23 (2) the applicant has fulfilled the requirements imposed by this
24 chapter.

25 (e) Upon application, the director shall determine whether a
26 particular person qualifies as a controlling person. The director may
27 waive any or all requirements of this chapter pertaining to a controlling
28 person for good cause shown.

29 (f) If the director finds that:

- 30 (1) an applicant does not satisfy the requirements in subsection
31 (d); or
32 (2) an application was submitted for the benefit of, or on behalf
33 of, a person who does not qualify for a license;

34 the director may deny the application. The director must set forth the
35 reasons for the denial in writing and send a copy of the reasons to the
36 applicant.

37 SECTION 62. IC 28-8-4-37, AS AMENDED BY P.L.217-2007,
38 SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 JULY 1, 2013]: Sec. 37. The department shall fix an annual fee for
40 renewal of a license under IC 28-11-3-5. The annual fee shall be paid
41 on or before ~~March~~ **December** 31 of each year.

42 SECTION 63. IC 28-8-4-38, AS AMENDED BY P.L.217-2007,

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1 SECTION 79, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2013]: Sec. 38. (a) A licensee may renew a license by
3 complying with the following:

4 (1) Filing with the director **or the director's designee** the annual
5 **report renewal** in the form that is prescribed by the director and
6 sent by the director to each licensee not ~~less than three (3) months~~
7 ~~immediately preceding the date established by the director for~~
8 ~~license renewal: later than December 31 of each year.~~ The
9 **report renewal** must include the following, **which, except for the**
10 **financial statements described in clause (A), must be filed not**
11 **later than December 31:**

12 (A) Either:

13 (i) a copy of the licensee's most recent audited consolidated
14 annual financial ~~statement; statements,~~ including a balance
15 sheet, a statement of income or loss, a statement of changes
16 in shareholder's equity, and a statement of changes in
17 financial position; or

18 (ii) if the licensee is a wholly owned subsidiary, the parent
19 corporation's **or parent organization's** most recent
20 consolidated audited annual financial ~~statement statements~~
21 or the parent corporation's **or parent organization's** Form
22 10K reports filed with the Securities and Exchange
23 Commission for the previous three (3) years, along with the
24 licensee's unaudited annual financial ~~statement. statements.~~

25 ~~A~~ **The financial statement statements** required to be
26 submitted under this clause must be prepared by ~~a~~ **an**
27 **independent** certified public accountant authorized to do
28 business in the United States in accordance with AICPA
29 Statements on Standards for Accounting and Review Services
30 (SSARS) ~~A financial statement not covering the immediately~~
31 ~~preceding twelve (12) month period is not considered the most~~
32 ~~recent statement for purposes of license renewal under this~~
33 ~~section: and must be filed with the director or the director's~~
34 ~~designee not later than April 30 of the year that~~
35 ~~immediately follows the calendar or fiscal year covered by~~
36 ~~the statements.~~

37 (B) The number of payment instruments sold by the licensee
38 in Indiana, the dollar amount of those instruments, and the
39 dollar amount of outstanding payment instruments sold by the
40 licensee calculated from the most recent quarter for which data
41 is available before the date of the filing of the renewal
42 application, but in no event more than one hundred twenty

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- 1 (120) days before the renewal date.
- 2 (C) Material changes to the information submitted by the
- 3 licensee on its original application **or as part of a renewal**
- 4 that have not been reported previously to the director on any
- 5 other report **or renewal** required to be filed under this chapter.
- 6 (D) A list of the licensee's permissible investments.
- 7 (E) A list of the locations within Indiana at which business
- 8 regulated by this chapter will be conducted by either the
- 9 licensee or its authorized delegate, including information
- 10 concerning any business, other than the business of money
- 11 transmission under this chapter, that will be conducted at each
- 12 identified location, as required under section 24(10) of this
- 13 chapter.
- 14 (2) Paying the annual renewal fee described under section 37 of
- 15 this chapter.
- 16 (b) A licensee that:
- 17 (1) does not:
- 18 (A) file:
- 19 (i) a renewal; ~~report~~; or
- 20 (ii) any financial statements required by subsection
- 21 (a)(1)(A);
- 22 by the renewal filing deadline set by the director; or
- 23 (B) pay the renewal fee by ~~March~~ **December** 31 of each year;
- 24 and
- 25 (2) has not been granted an extension of time by the department
- 26 to meet the requirements described in subdivision (1);
- 27 shall be notified by the department, in writing, that a hearing will be
- 28 scheduled at which the licensee will be required to show cause why its
- 29 license should not be suspended pending compliance with these
- 30 requirements. If after the hearing the license is not suspended, the
- 31 department shall require a daily late fee beginning with the date the
- 32 renewal, ~~report~~, the financial statements, or the annual renewal fee is
- 33 required by this chapter in an amount fixed by the department under
- 34 IC 28-11-3-5.
- 35 (c) The director may, for good cause shown, waive any requirement
- 36 of this section.
- 37 SECTION 64. IC 28-8-4-40.6, AS AMENDED BY P.L.35-2010,
- 38 SECTION 182, IS AMENDED TO READ AS FOLLOWS
- 39 [EFFECTIVE JULY 1, 2013]: Sec. 40.6. (a) This section applies if,
- 40 after a person has been issued a license or renewal license under this
- 41 chapter, the licensee, or any individual described in section 35(b)(2) or
- 42 35(b)(3) of this chapter, has been convicted of ~~or pleaded guilty or not~~

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1 ~~contendere~~ to a felony under the laws of Indiana or any other
2 jurisdiction.

3 (b) If this section applies, the licensee shall provide to the
4 department the information required under section 24(5)(B) or
5 25(6)(B) of this chapter, whichever applies:

6 (1) not later than thirty (30) days after the licensee or individual
7 described in section 35(b)(2) or 35(b)(3) of this chapter has been
8 convicted of ~~or pleaded guilty or nolo contendere~~ to the felony; or

9 (2) if the licensee's next license renewal fee under section 37 of
10 this chapter is due before the date described in subdivision (1),
11 along with the licensee's next license renewal fee under section 37
12 of this chapter.

13 SECTION 65. IC 28-8-4-49, AS AMENDED BY P.L.27-2012,
14 SECTION 102, IS AMENDED TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2013]: Sec. 49. (a) Licensees desiring to
16 conduct licensed activities through authorized delegates shall authorize
17 each delegate to operate pursuant to an express written contract, which
18 shall provide for the following:

19 (1) That the licensee appoints the person as its delegate with
20 authority to sell payment instruments and accept funds to be
21 transmitted by or on behalf of the licensee.

22 (2) That neither a licensee nor an authorized delegate may
23 authorize a subdelegate without the written consent of the
24 director.

25 (3) That licensees are subject to supervision and regulation by the
26 director.

27 (4) An acknowledgment that the authorized delegate consents to
28 the director's inspection, with or without prior notice to the
29 licensee or authorized delegate, of the books, records, and
30 accounts of an authorized delegate of the licensee when the
31 director has a reasonable basis to believe that the licensee or
32 authorized delegate is in violation of this chapter.

33 (5) That authorized delegates are under a duty to act only as
34 authorized under the contract with the licensee and that an
35 authorized delegate who exceeds the delegate's authority is
36 subject to cancellation of the delegate's contract and disciplinary
37 action by the director.

38 (b) Subject to sections 50 and 51 of this chapter, an authorized
39 delegate of a licensee or of a person exempt from licensure under
40 section 1 of this chapter is exempt from the licensing requirements of
41 this chapter if the authorized delegate acts within the scope of the
42 written contract executed under subsection (a) between the authorized

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1 delegate and the licensee or exempt person.

2 (c) A licensee shall give the department written notice of the
3 resignation, discharge, or termination of an authorized delegate
4 against whom allegations were made that accused the authorized
5 delegate of:

6 (1) violating this chapter or other laws, regulations, rules, or
7 industry standards of conduct applicable to money
8 transmission; or

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

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

14 SECTION 66. IC 28-8-4-54 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 54. A claim against a
16 licensee or its authorized delegate may be brought by:

17 (1) the claimant filing suit against the ~~security device~~ surety
18 bond provided for in section 27 of this chapter; ~~or the deposit~~
19 ~~provided for in section 29 of this chapter;~~ or

20 (2) the director filing suit on behalf of a claimant, in one (1)
21 action or in successive actions.

22 SECTION 67. IC 28-10-1-1, AS AMENDED BY P.L.27-2012,
23 SECTION 106, IS AMENDED TO READ AS FOLLOWS
24 [EFFECTIVE JULY 1, 2013]: Sec. 1. A reference to a federal law or
25 federal regulation in this title is a reference to the law or regulation as
26 in effect December 31, ~~2011~~. 2012.

27 SECTION 68. IC 28-13-12-1 IS AMENDED TO READ AS
28 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) The officers of
29 a corporation must consist of the following:

30 (1) A president.

31 (2) One (1) or more officers whose duties are equivalent to
32 those customarily performed by a secretary chief financial
33 officer or cashier. and

34 (3) An officer whose duties include preparing minutes of the
35 directors' and shareholders' meetings, authenticating records
36 of the corporation, and other duties customarily performed by
37 a secretary.

38 (4) Any other officers prescribed by the bylaws.

39 Each of the officers shall be chosen by the board of directors at the time
40 and in the manner and for the terms as the bylaws of the corporation
41 may prescribe. Each officer shall hold office until the officer's
42 successor is chosen and has qualified.

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1 **(b)** The president shall be chosen **by the directors** from among the
2 directors. If the bylaws so provide, at least two (2) offices may be held
3 by the same person, except that the duties of the president and ~~the~~
4 ~~secretary or cashier~~ **an officer described in subsection (a)(2)** may not
5 be performed by the same person.

6 SECTION 69. IC 30-2-10-2 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. It is unlawful to enter
8 into any agreement or contract for a purpose described in section 1 of
9 this chapter unless the agreement or contract requires that all payments
10 be made by the settlor to an account in a:

- 11 (1) bank;
- 12 (2) trust company;
- 13 (3) savings association; or
- 14 (4) credit union;
- 15 ~~whose principal~~ **with an** office is in Indiana.

16 SECTION 70. **An emergency is declared for this act.**

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