

IC 28-1-20

Chapter 20. General Provisions Concerning Banks and Trust Companies

IC 28-1-20-1

Repealed

(Repealed by Acts 1980, P.L.40, SEC.10.)

IC 28-1-20-1.1

Statements of account; dormant accounts; service and maintenance charges

Sec. 1.1. (a) When a statement of account has been delivered by a bank or savings bank to a depositor, the account, after the period of three (3) years from the date of its delivery, shall be deemed finally adjusted and its correctness conclusively presumed. A statement of account or a passbook is delivered to a depositor, within the meaning of this subsection, when received by the depositor or the depositor's agent in person or when mailed to the depositor at the depositor's last known address. This section does not relieve the depositor from the duty of exercising due diligence in the examination of the statement of account. A depositor must immediately notify the bank or savings bank upon discovery of any error in the statement of account.

(b) Any bank, savings bank, or trust company may impose and collect a monthly service charge and maintenance charge on dormant accounts, in amounts that:

- (1) are reasonable, as determined by resolution of the board of directors; and
- (2) are properly disclosed to the bank's, savings bank's, or trust company's depositors.

(c) For the purpose of this section:

- (1) a transaction account (as defined in 12 CFR 204.2(e)) is considered a dormant account after one (1) year from the date of the last transaction recorded on the books of the bank, savings bank, or trust company with respect to the account; and
- (2) any other account that is not a transaction account (as defined in 12 CFR 204.2(e)) is considered a dormant account after three (3) years from the date of the last transaction recorded on the books of the bank, savings bank, or trust company with respect to the account.

(d) Any bank, savings bank, or trust company may impose and collect monthly service charges and maintenance charges on active accounts that are carried by it on its books, in such amounts as may be agreed upon between it and its depositors.

(e) This section is applicable to national banking associations doing business in this state.

As added by Acts 1980, P.L.40, SEC.9. Amended by P.L.258-1989, SEC.1; P.L.122-1994, SEC.80; P.L.215-1999, SEC.3; P.L.89-2011, SEC.35.

IC 28-1-20-2

Repealed

(Repealed by P.L.215-1999, SEC.16.)

IC 28-1-20-3

Insolvency; void transfers

Sec. 3. All transfers of notes, bonds, bills of exchange and other evidences of debt owing to any bank or trust company; all transfers of deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either shareholders or creditors, made after the commission of an act of insolvency, or in contemplation thereof, with a view to preventing the application of its assets to the proper payment of its just liabilities, or with a view to the preference of one creditor to another, shall be null and void.

(Formerly: Acts 1933, c.40, s.245.)

IC 28-1-20-4

Naming conventions; department's investigatory and enforcement powers; penalties; marketing materials and solicitations

Sec. 4. (a) Except as provided in subsections (c), (d), (g), and (o), it is unlawful for any person, firm, limited liability company, or corporation (other than a bank or trust company, a bank holding company, a subsidiary of a bank or trust company, a subsidiary of a bank holding company, a subsidiary of a savings bank, or a subsidiary of a savings association organized or reorganized under IC 28 or statutes in effect at the time of organization or reorganization or under the laws of the United States):

(1) to use the word "bank", "banc", or "banco" as a part of the name or title of the person, firm, limited liability company, or corporation; or

(2) to advertise or represent the person, firm, limited liability company, or corporation to the public:

(A) as a bank or trust company or a corporate fiduciary; or

(B) as affording the services or performing the duties which by law only a bank or trust company or a corporate fiduciary is entitled to afford and perform.

(b) A financial institution organized under the laws of any state or the United States is authorized to do business in Indiana:

(1) at its principal office;

(2) at any branch office; or

(3) otherwise;

using a name other than its official entity name if the financial institution notifies the department at least ten (10) days before using the other name.

(c) Notwithstanding the prohibitions of this section, an out-of-state financial institution with the word "bank" in its legal name may use the word "bank" if the financial institution is insured by the Federal Deposit Insurance Corporation or its successor.

(d) Notwithstanding subsection (a), a building and loan association organized under IC 28-4 (before its repeal) may include in its name or title:

(1) the words "savings bank"; or

(2) the word "bank" if the name or title also includes either the words "savings bank" or letters "SB".

A building and loan association that includes "savings bank" in its title under this section does not by that action become a savings bank for purposes of IC 28-6.1.

(e) The name or title of a savings bank governed by IC 28-6.1 must include the words "savings bank" or the letters "SB".

(f) A savings association may include in its name the words "building and loan association".

(g) Notwithstanding subsection (a), a bank holding company (as defined in 12 U.S.C. 1841) may use the word "bank" or "banks" as a part of its name. However, this subsection does not permit a bank holding company to advertise or represent itself to the public as affording the services or performing the duties that by law a bank or trust company only is entitled to afford and perform.

(h) The department is authorized to investigate the business affairs of any person, firm, limited liability company, or corporation that uses "bank", "banc", or "banco" in its title or holds itself out as a bank, corporate fiduciary, or trust company for the purpose of determining whether the person, firm, limited liability company, or corporation is violating any of the provisions of this article, and, for that purpose, the department and its agents shall have access to any and all of the books, records, papers, and effects of the person, firm, limited liability company, or corporation. In making its examination, the department may examine any person and the partners, officers, members, or agents of the firm, limited liability company, or corporation under oath, subpoena witnesses, and require the production of the books, records, papers, and effects considered necessary. On application of the department, the circuit or superior court of the county in which the person, firm, limited liability company, or corporation maintains a place of business shall, by proper proceedings, enforce the attendance and testimony of witnesses and the production and examination of books, papers, records, and effects.

(i) The department is authorized to exercise the powers under IC 28-11-4 against a person, firm, limited liability company, or corporation that improperly holds itself out as a financial institution.

(j) A person, firm, limited liability company, or corporation who violates this section is subject to a penalty of five hundred dollars (\$500) per day for each and every day during which the violation continues. The penalty imposed shall be recovered in the name of the state on relation of the department and, when recovered, shall be paid into the financial institutions fund established by IC 28-11-2-9.

(k) The word "bank", "banc", or "banco" may not be included in the name of a corporate fiduciary.

(l) A person, firm, limited liability company, or corporation may

not use the name of an existing depository financial institution or holding company of a depository financial institution, or a name confusingly similar to that of an existing depository financial institution or holding company of a depository financial institution, when marketing to or soliciting business from a customer or prospective customer if the reference to the existing depository financial institution or holding company of a depository financial institution is:

(1) without the consent of the existing depository financial institution or holding company of a depository financial institution; and

(2) in a manner that could cause a reasonable person to believe that the marketing material or solicitation:

(A) originated from;

(B) is endorsed by; or

(C) is in any other way the responsibility of;

the existing depository financial institution or holding company of a depository financial institution.

(m) An existing depository financial institution or holding company of a depository financial institution may, in addition to any other remedies available under the law, report an alleged violation of subsection (l) to the department. If the department finds that the marketing material or solicitation in question is in violation of subsection (l), the department may direct the person, firm, limited liability company, or corporation to cease and desist from using that marketing material or solicitation in Indiana. If that person, firm, limited liability company, or corporation persists in using the marketing material or solicitation, the department may impose a civil penalty of up to fifteen thousand dollars (\$15,000) for each violation. Each instance in which the marketing material or solicitation is sent to a customer or prospective customer constitutes a separate violation of subsection (l).

(n) Nothing in subsection (l) or (m) prohibits the use of or reference to the name of an existing depository financial institution or holding company of a depository financial institution in marketing materials or solicitations, if the use or reference does not deceive or confuse a reasonable person regarding whether the marketing material or solicitation:

(1) originated from;

(2) is endorsed by; or

(3) is in any other way the responsibility of;

the existing depository financial institution or holding company of a depository financial institution.

(o) A person, firm, limited liability company, or corporation may use the word "bank", "banc", or "banco" if it would not create a substantial likelihood of misleading the public by implying that the person, firm, limited liability company, or corporation is a state or federally chartered bank or savings bank.

(p) As used in this section, "depository financial institution" has the meaning set forth in IC 28-1-1-6.

(q) The department may adopt rules under IC 4-22-2 to implement this section.

(Formerly: Acts 1933, c.40, s.246; Acts 1935, c.5, s.45.) As amended by P.L.142-1984, SEC.2; P.L.230-1985, SEC.2; P.L.3-1990, SEC.103; P.L.8-1991, SEC.15; P.L.33-1991, SEC.19; P.L.42-1993, SEC.31; P.L.122-1994, SEC.81; P.L.262-1995, SEC.33; P.L.79-1998, SEC.45; P.L.215-1999, SEC.4; P.L.63-2001, SEC.7 and P.L.134-2001, SEC.8; P.L.258-2003, SEC.6; P.L.73-2004, SEC.35; P.L.10-2006, SEC.31 and P.L.57-2006, SEC.31; P.L.90-2008, SEC.26.

IC 28-1-20-5

Depositors; withdrawal of deposits

Sec. 5. All persons, regardless of age, may become depositors in any bank or trust company and shall be subject to the same duties and liabilities respecting their deposits. Whenever a deposit is accepted by any bank or trust company in the name of any person, regardless of age, the deposit may be withdrawn by the depositor by any of the following methods:

- (1) Check or other instrument in writing. The check or other instrument in writing constitutes a receipt or acquittance if the check or other instrument in writing is signed by the depositor, and constitutes a valid release and discharge to the bank or trust company for all payments so made.
- (2) Electronic means through:
 - (A) preauthorized direct withdrawal;
 - (B) an automated teller machine;
 - (C) a debit card;
 - (D) a transfer by telephone;
 - (E) a network, including the Internet; or
 - (F) any:
 - (i) electronic terminal;
 - (ii) computer;
 - (iii) magnetic tape; or
 - (iv) other electronic means.

However, this section may not be construed to affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer under the federal Electronic Fund Transfer Act (15 U.S.C. 1693 et. seq.).

(Formerly: Acts 1933, c.40, s.247; Acts 1973, P.L.280, SEC.4.) As amended by P.L.19-1999, SEC.1; P.L.81-2001, SEC.2.

IC 28-1-20-6

Loans; misrepresenting age; estoppel by representation

Sec. 6. When, in case of any loan made by any bank or trust company, the borrower, or any other person furnishing security on behalf of the borrower, shall, as an inducement to the bank or trust company to make the loan, represent to it, in writing, that he or she is eighteen (18) years of age or older, whereas in fact such person or persons are under the age of eighteen (18) years, or shall otherwise

make any false statement or representation to the bank or trust company, and the bank or trust company is thereby deceived, and the loan is made in reliance upon such representation, neither the person so representing, nor any one in his or her behalf, nor any person otherwise legally liable to pay such loan, shall afterwards be allowed, as against such bank or trust company, to take advantage of the fact that the person making the representation was under eighteen (18) years of age, but each such person shall be estopped by such representation.

(Formerly: Acts 1933, c.40, s.248; Acts 1973, P.L.280, SEC.5.)

IC 28-1-20-7

Associations of banks and trust companies; authority to join

Sec. 7. With the consent and approval of the department, any bank or trust company may become associated with any organization or association of banks and trust companies, whether state or national, or both, if such organization or association is formed pursuant to federal legislation which confers on banks or trust companies in this state the privilege of participating in such organization or association, and the purposes thereof are not inconsistent with any law of this state.

(Formerly: Acts 1933, c.40, s.249.)

IC 28-1-20-8

Bank or trust company required to close; custody of business and property; petition to reopen; decision; appeal; liquidation

Sec. 8. (a) When and if any bank and/or trust company organized or reorganized under the provisions of this article, or any bank of discount and deposit or loan and trust and safe deposit company organized under any law enacted prior to February 24, 1933, shall be required to cease all banking operation within twenty (20) years from the time of its organization and promptly thereafter to close its business, such bank or trust company shall deliver over into the custody of the department all of its business and property for liquidation and the payment of its liabilities. Such delivery may be made by an instrument in writing executed pursuant to a resolution of the board of directors. Before, after, or contemporaneously with the delivery of all of its business and property to the department, such bank or trust company may, pursuant to a resolution of its boards of directors, file a petition with the department for authority to reopen its business and resume its banking operations. Such petition shall fix:

- (1) the date of the organization of such bank or trust company;
- (2) the day on which it desires to reopen its business and resume its banking operations, which may be the next succeeding business day after the delivery, or effective date of delivery fixed in any instrument in writing, of the business and property of such bank or trust company to the department;
- (3) such other facts as the board of directors of such bank or trust company shall deem pertinent; and

(4) the information required by IC 28-1-15-1 and such other information as the department may prescribe or require.

Thereupon, the department shall make, or cause to be made, a careful investigation and examination of such bank or trust company, the qualifications and experience of the officers thereof, and the public necessity for such bank or trust company in the community in which it is or has been doing business, and the department, after such investigation and examination, shall, upon the basis of its findings with respect to all of the matters specified in this section, approve or disapprove the right of such bank or trust company to reopen its business and resume its banking operations.

(b) Upon the filing of any such petition more than thirty (30) days before the day upon which such bank or trust company shall desire to reopen its business and resume its banking operations, the department shall approve or disapprove such petition, in writing, and notify such bank or trust company of its action not later than the last business day immediately preceding the day upon which such bank or trust company shall have requested the right to reopen its business and resume its banking operations. In the event that the department shall disapprove the right of such bank or trust company to reopen its business and resume its banking operations, such bank or trust company may appeal such order of the department to the circuit court of the county in which it has its principal office, and thereupon the matter shall be determined de novo.

(c) In the event that any bank or trust company shall deliver its business and property to the department and fail to file a request to reopen its business and resume its banking operations within ten (10) days after such delivery, or in the event that the department or the circuit court, if the decision of the department be appealed, shall disapprove the petition of any bank or trust company to reopen its business and resume its banking operations, such bank or trust company shall be liquidated pursuant to the provisions for voluntary liquidation contained in IC 28-1-9.

(Formerly: Acts 1933, c.40, s.250.) As amended by P.L.263-1985, SEC.74.