

## **IC 28-2-14**

### Chapter 14. Indiana Bank Holding Companies

#### **IC 28-2-14-1**

##### **Acquire**

Sec. 1. As used in this chapter, "acquire" means directly or indirectly:

- (1) to merge or consolidate with;
- (2) to assume control of; or
- (3) to purchase all or substantially all of the assets of.

*As added by P.L.265-1985, SEC.4.*

#### **IC 28-2-14-2**

##### **Bank**

Sec. 2. (a) As used in this chapter, "bank" means a financial institution:

- (1) that has been organized or reorganized under the laws of the United States or the state of Indiana;
- (2) that has its principal office in Indiana; and
- (3) that:
  - (A) is an "insured bank" (as defined in Section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) or is eligible to make application to become an insured depository institution under Section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815); or
  - (B) is a stock savings bank that was formed as a result of a conversion under IC 28-1-21.8 or IC 28-1-21.9 or incorporated under IC 28-12.

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

- (1) any institution that has been or is chartered by the Federal Home Loan Bank Board or the Office of Thrift Supervision;
- (2) institutions of the "Farm Credit System" as described in 12 U.S.C. 2001 through 2260, which include the Farm Credit Banks, the Federal Land Bank Associations, the Production Credit Associations, the Banks for Cooperatives, and any other institution that may become a part of the Farm Credit System, as chartered by and subject to the supervision of the Farm Credit Administration; or
- (3) any other institution that has been organized or reorganized as a savings association, credit union, or industrial loan and investment company.

*As added by P.L.265-1985, SEC.4. Amended by P.L.33-1991, SEC.28; P.L.42-1993, SEC.64; P.L.122-1994, SEC.89; P.L.79-1998, SEC.63.*

#### **IC 28-2-14-3**

##### **Bank holding company**

Sec. 3. (a) As used in this chapter, "bank holding company" means any company that controls one (1) or more banks.

(b) For the purposes of this chapter:

(1) a company is not a bank holding company by virtue of its ownership or control of shares in a fiduciary capacity, unless the shares are held for the benefit of the shareholders of the company;

(2) a company is not a bank holding company by virtue of its ownership or control of shares that are acquired by the company in connection with its underwriting of securities and that are held only for such a period of time as will permit the sale of the shares on a reasonable basis;

(3) a company formed for the sole purpose of participating in a proxy solicitation is not a bank holding company by virtue of its control of voting rights of shares acquired in the course of the solicitation; and

(4) a company is not a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two (2) years after the date of acquisition.

The department may extend, from time to time but for not more than one (1) year at a time, the two (2) year period referred to in subdivision (4), but the extensions may not, in the aggregate, exceed three (3) years.

(c) For the purposes of this chapter, any successor to a bank holding company is a bank holding company from the date as of which the predecessor company became a bank holding company.  
*As added by P.L.265-1985, SEC.4.*

#### **IC 28-2-14-4**

##### **Bank subsidiary**

Sec. 4. As used in this chapter, "bank subsidiary" means a bank controlled by a bank holding company.  
*As added by P.L.265-1985, SEC.4.*

#### **IC 28-2-14-5**

##### **Company**

Sec. 5. As used in this chapter, "company" means any corporation, limited liability company, partnership, joint-stock company, business trust, voting trust, joint venture, association, or similar organization, domestic or foreign. The term may or may not include a bank holding company as the context indicates. The term does not include a bank.  
*As added by P.L.265-1985, SEC.4. Amended by P.L.8-1993, SEC.446.*

#### **IC 28-2-14-6**

##### **Control**

Sec. 6. As used in this chapter, "control" means directly or indirectly:

(1) to own, control, or hold, with power to vote, twenty-five percent (25%) or more of the voting shares of a bank or company;

(2) to control in any manner the election of a majority of the directors or trustees of a bank or company; or

(3) to exercise a controlling influence over the management or policies of a bank or company, as determined by the Board of Governors of the Federal Reserve System after notice and opportunity for hearing.

*As added by P.L.265-1985, SEC.4.*

#### **IC 28-2-14-7**

##### **Department**

Sec. 7. As used in this chapter, "department" refers to the department of financial institutions created under IC 28-11-1-1.

*As added by P.L.265-1985, SEC.4. Amended by P.L.33-1991, SEC.29.*

#### **IC 28-2-14-8**

##### **Deposits**

Sec. 8. As used in this chapter, "deposits" means the sum of the total demand deposits and total time and savings deposits of a particular bank as shown in its most recently filed consolidated report of condition in the possession of the Board of Governors of the Federal Reserve System or other supervising agency.

*As added by P.L.265-1985, SEC.4.*

#### **IC 28-2-14-9**

##### **Repealed**

*(Repealed by P.L.33-1991, SEC.57.)*

#### **IC 28-2-14-10**

##### **Acquisitions of banks and bank holding companies**

Sec. 10. (a) Subject to the limitations provided in section 12 of this chapter and in IC 28-2-15-22(a) (repealed July 1, 1992) or IC 28-2-16-20(a), and after approval by the department:

(1) any bank holding company that has its principal office in Indiana is entitled to acquire one (1) or more banks or bank holding companies; and

(2) any company that has its principal office in Indiana is entitled to acquire two (2) or more banks or bank holding companies.

(b) Except as expressly permitted by this chapter and IC 28-2-13-19:

(1) a bank holding company that has its principal office in Indiana may not acquire a bank or a bank holding company; and

(2) a company that has its principal office in Indiana may not acquire two (2) or more banks or bank holding companies.

*As added by P.L.265-1985, SEC.4. Amended by P.L.36-1987, SEC.11; P.L.3-1990, SEC.102; P.L.33-1991, SEC.30; P.L.42-1993, SEC.65.*

#### **IC 28-2-14-11**

**Repealed**

*(Repealed by P.L.33-1991, SEC.57.)*

**IC 28-2-14-12**

**Bank or bank holding companies; application for acquisition; investigation; hearing; approval or disapproval**

Sec. 12. (a) If a company or bank holding company desires to acquire a bank or a bank holding company under this chapter, the company or bank holding company must file an application for approval of the acquisition with the department on forms prescribed by the department. Upon receipt of an application under this section, the department may:

- (1) accept the application for processing;
- (2) request additional information to complete the application;
- or
- (3) return the application if it is substantially incomplete.

The department shall take one (1) of those actions within ten (10) business days after receiving the application. Upon acceptance of an application for processing, the department shall notify the applicant and the bank or bank holding company proposed to be acquired of its acceptance of the application. The applicant shall publish notice of the acceptance of the application in a newspaper of general circulation in each county in which is located the principal office or a branch of the bank proposed to be acquired or a bank subsidiary of the bank holding company proposed to be acquired.

(b) Upon acceptance of an application for processing, the department shall conduct an investigation, to the extent the department considers necessary, into the condition of the applicant and the bank or bank holding company proposed to be acquired. The director may require additional information from the applicant and may hold public hearings with respect to the proposed acquisition. The department may require the applicant to produce any additional information the department considers necessary for the hearing. The department shall commence any public hearing held under this section not less than thirty (30) days and not more than sixty (60) days after the department's acceptance of an application for processing. The hearing shall be held at a place, date, and time specified by the department. The department may assign the task of conducting the hearing to a member or employee of the department. If the department decides to hold a public hearing under this section, the department shall notify the applicant no later than thirty (30) days after the department's acceptance of an application for processing and at least twenty (20) days before the hearing. The director also shall send written notice to the principal office of the bank proposed to be acquired, or to the principal office of each bank subsidiary of the bank holding company proposed to be acquired, at least twenty (20) days before the hearing and shall require the applicant to publish notice of the hearing at least twenty (20) days before the hearing in a newspaper of general circulation in each county in which is located the principal office or a branch of:

- (1) the bank; or
- (2) a bank subsidiary of the bank holding company;

proposed to be acquired. The shareholders of the bank or bank holding company proposed to be acquired and the shareholders of the applicant may appear and offer evidence at the hearing. At least ten (10) days before the hearing, a person desiring to appear and offer testimony must give the department written notice of the person's intent to testify. The applicant shall pay all expenses of publication, court reporter fees, department expenses, appropriate department per diem expense, and hearing room fees, as determined by the department.

(c) The department shall either approve or disapprove the proposed acquisition within:

- (1) sixty (60) days after the acceptance of an application for processing, if the department elects not to hold a public hearing; or
- (2) thirty (30) days after any public hearing held with respect to the proposed acquisition, if the department elects to hold a public hearing.

The department may extend the period for consideration of the application, upon written notice to the applicant, if the department determines that further information from the applicant is necessary for a decision or that any material information submitted is substantially inaccurate. However, an extension may not exceed an additional thirty (30) days.

(d) The department may not authorize an acquisition under this chapter unless the provisions of this chapter have been met.

(e) In deciding whether to approve an acquisition under this chapter, the department shall consider the following factors:

- (1) Whether the banks already controlled by the applicant are operated in a safe, sound, and prudent manner.
- (2) Whether the financial condition of the applicant or any of its affiliates will jeopardize the financial stability of the bank or bank holding company proposed to be acquired.
- (3) Whether the proposed merger or acquisition will result in a bank that has inadequate capital, unsatisfactory management, or poor earnings prospects.
- (4) Whether banks already controlled by the applicant have provided adequate and appropriate services, including services contemplated by the Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.), to the communities in which they are located.
- (5) Whether the applicant proposes to provide adequate and appropriate services, including services contemplated by the Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.), in the communities served by the bank or bank holding company proposed to be acquired.
- (6) Whether the management or other principals of the applicant are qualified by character and financial responsibility to control and operate in a legal and proper manner the bank or bank

holding company proposed to be acquired.

(7) Whether the interest of the depositors and creditors and the interest of the public generally will be jeopardized by the proposed acquisition.

(8) Whether the applicant furnishes all the information the department requires in reaching its decision.

(9) If the department holds a hearing under section 13 of this chapter, the finding required by section 14 of this chapter.

*As added by P.L.265-1985, SEC.4. Amended by P.L.36-1987, SEC.12; P.L.33-1991, SEC.31; P.L.14-1992, SEC.109; P.L.122-1994, SEC.90.*

### **IC 28-2-14-13**

#### **Request for hearing upon fairness of issuance and exchange of stock; hearing; issuance of securities**

Sec. 13. (a) At the time of the filing of an application with the department under section 12 of this chapter, the applicant may submit a written request asking the department to hold a hearing upon the fairness of the terms, conditions, and provisions of the proposed issuance and exchange of stock of the applicant for the stock of the bank or bank holding company proposed to be acquired. If a request is submitted under this subsection, the department may hold a public hearing upon the fairness of the exchange or upon any other matter with respect to the proposed acquisition. The shareholders of a bank or bank holding company proposed to be acquired and the shareholders of the applicant may appear and offer evidence at any public hearing at which the fairness of the exchange is to be determined. At least ten (10) days before the hearing, a person desiring to appear and offer testimony must give the department written notice of the person's intent to testify. The department may require the applicant to produce any additional information the department considers necessary for the hearing.

(b) Any public hearing held under this section must commence not less than thirty (30) days and not more than one hundred twenty (120) days after the date on which the department accepts the application for processing under section 12 of this chapter. The hearing shall be held at a place, date, and time specified by the department. The department may combine any hearing held under this section with a hearing held under section 12 of this chapter. The department may assign the task of conducting the hearing to a member or employee of the department. If the department decides to hold a public hearing under this section, it shall notify the applicant no later than thirty (30) days after the department's acceptance of an application for processing and at least twenty (20) days before the hearing. The applicant shall provide a written notice of the date, time, place, and purpose of the hearing to each bank that has an office in a county in which the bank proposed to be acquired, or a bank subsidiary of the bank holding company proposed to be acquired, has a principal office or branch. The bank or bank holding company proposed to be acquired shall transmit the written notice to

its shareholders. The notice must also be published at least twenty (20) days before the date of the hearing in a newspaper of general circulation in each county in which is located the principal office or a branch of the bank proposed to be acquired or the principal office or a branch of a bank subsidiary of the bank holding company proposed to be acquired. The notice must contain any other provision as the department may require. The applicant shall pay all expenses of providing the notice, publication, court reporter fees, department expenses, appropriate department per diem expense, and hearing room fees, as determined by the department.

(c) The issuance of securities described in subsection (d) is a transaction exempted from the registration requirements of IC 23-19-3-1 if, at the time the applicant submits a written request to the department under subsection (a), the applicant also submits to the securities commissioner appointed under IC 23-19-6-1(a) a notice in writing of all terms of the transaction and if the securities commissioner does not disallow the exemption within the next five (5) full business days.

(d) Subsection (c) applies to any security issued in exchange for one (1) or more bona fide outstanding securities, claims, or property interests, or partly in that exchange and partly for cash, under terms and conditions approved by the department after a hearing held under this section.

*As added by P.L.265-1985, SEC.4. Amended by P.L.122-1994, SEC.91; P.L.27-2007, SEC.29.*

#### **IC 28-2-14-14**

##### **Findings of fact**

Sec. 14. If the department accepts an application for processing under section 12 of this chapter, the department shall issue an order approving or disapproving the acquisition. The department shall include its findings of fact in the order. If the department holds a hearing under section 13 of this chapter, the findings of fact must include a finding that the terms and conditions of the acquisition and of the issuance and exchange of stock of the applicant for the stock of the bank or bank holding company proposed to be acquired are or are not fair and reasonable to the shareholders of the bank or bank holding company proposed to be acquired.

*As added by P.L.265-1985, SEC.4.*

#### **IC 28-2-14-15**

##### **Exemption from certain requirements**

Sec. 15. (a) An acquisition by a company of a bank or a bank holding company is exempt from the requirements of IC 28-1-2-23 if the acquisition is made under this chapter.

(b) If a bank will be:

- (1) acquired by a bank holding company; and
- (2) immediately merged with or consolidated into another bank owned by the acquiring bank holding company;

the acquisition of the bank is exempt from the provisions of this

chapter.

*As added by P.L.265-1985, SEC.4. Amended by P.L.262-1995, SEC.56.*

#### **IC 28-2-14-16**

##### **Suit to enjoin conduct or for damages by injured person; suit by department**

Sec. 16. Any person, company, bank, or bank holding company that may be or has been injured by reason of any conduct that constitutes or will constitute a violation of this chapter by any company or bank holding company may sue the company or bank holding company to enjoin the conduct or for damages, together with the costs of suit, including reasonable attorney's fees. In addition, the department may sue to enjoin any conduct that constitutes or will constitute a violation of this chapter or to require divestiture of any bank or bank holding company acquired in violation of this chapter.

*As added by P.L.265-1985, SEC.4.*

#### **IC 28-2-14-17**

##### **Rules**

Sec. 17. The department may adopt rules under IC 4-22-2 to implement this chapter.

*As added by P.L.265-1985, SEC.4.*

#### **IC 28-2-14-18**

##### **Succession to trust business of affiliated financial institution; resolution; filing; effective date**

Sec. 18. (a) As used in this section, "affiliate" includes the following:

- (1) A financial institution.
- (2) Any company that controls a financial institution and any other company that is controlled by the company that controls a financial institution.
- (3) A bank subsidiary of a financial institution.
- (4) Any company:
  - (A) that is controlled directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the financial institution or any company that controls the financial institution; or
  - (B) in which a majority of the company's directors or trustees constitute a majority of the persons holding any such office with a financial institution or any company that controls the financial institution.
- (5) Any:
  - (A) company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the financial institution or any subsidiary or affiliate of the financial institution; or
  - (B) investment company with respect to which a financial

institution or any affiliate of a financial institution is an investment advisor (as defined in section 2(a)(20) of the Investment Company Act of 1940 (15 U.S.C. 80a)).

(6) Any company that the department determines by regulation or order to have a relationship with the financial institution or any subsidiary or affiliate of the financial institution, such that covered transactions by the financial institution or its subsidiary with that company may be affected by the relationship to the detriment of the financial institution or its subsidiary.

(b) The term "affiliate" does not include the following:

(1) Any company engaged solely in holding the premises of the financial institution.

(2) Any company engaged solely in conducting a safe deposit business.

(3) Any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest.

(4) Any company whose control of a financial institution results from the exercise of rights arising from a bona fide debt previously contracted for. The exemption provided by this subdivision applies only:

(A) for the period specifically authorized under applicable state or federal law or regulation; or

(B) in the absence of a law or regulation described in clause

(A), for a period of two (2) years after:

(i) the date of the company's exercise of the rights arising from the debt; or

(ii) the effective date of the company's action under item (i);

whichever is later.

Upon application by the company or the financial institution, the department may authorize, for good cause shown, an extension of the period of exemption allowed under this subdivision. Extensions granted by the department under this subdivision may not exceed three (3) years in total.

(c) As used in this section, "financial institution" means any of the following that is organized or reorganized under the laws of the United States or any state (as defined in IC 28-2-17-19) and that has been granted fiduciary powers:

(1) A bank.

(2) A bank and trust company.

(3) A savings bank.

(4) A trust company.

(5) A corporate fiduciary.

(6) An industrial loan and investment company.

(7) A savings association.

(8) A bank of discount and deposit.

(9) A loan and trust and safe deposit company.

(d) As used in this section, "trust business" means all rights, powers, and duties granted to or imposed on a financial institution in

the exercise of its fiduciary powers, including the following:

(1) The authority to act as:

- (A) the administrator, coadministrator, executor, coexecutor, trustee, or cotrustee of or in respect to any estate or trust;
- (B) the guardian of any person or estate that is being administered under Indiana law;
- (C) an agent;
- (D) a custodian (including custodian under the Indiana Uniform Gifts to Minors Act); or
- (E) an attorney-in-fact.

The authority conferred by this subdivision includes any other duties, powers, and appointments regularly administered by, granted to, or conferred upon trust departments established and maintained under IC 28-1-12-3(a) or the departments of national banks and other financial institutions that are authorized to exercise fiduciary powers.

(2) All rights, powers, and duties arising from having been named or designated in any capacity described in subdivision (1) in any will or other writing whenever executed, including wills and other writings naming the predecessor affiliate that are executed after the effective date of the resolution anticipated by subsection (e).

(e) The board of directors of any bank holding company or other company that controls a financial institution may adopt a resolution to cause an affiliated financial institution to succeed to part or all of the trust business of another affiliate it controls. If a financial institution is not controlled by another company, the board of directors of the financial institution may adopt a resolution to cause part or all of its trust business to succeed to an affiliated financial institution. If the board of directors adopts such a resolution and files a certified copy of it as required by subsection (f), the successor affiliate becomes successor fiduciary in place of the predecessor affiliate with all the rights, powers, and duties that were granted to or imposed on the predecessor affiliate. The rights, powers, and duties vest in the successor affiliate, after the taking effect of the succession, irrespective of the date upon which the relation is established, and irrespective of the date of any related written agreement establishing the relationship or of the date of the death of any decedent whose estate is being so administered. Nothing done in connection with the succession effects a renunciation or revocation of any letters of administration or letters testamentary pertaining to the relation, nor does it effect a removal or resignation from the executorship, trusteeship, or other fiduciary relationship.

(f) If a resolution is adopted under this section, the board of directors shall file a certified copy of the resolution with the department. The board of directors may file the copy in person or by certified mail. The effective date of the succession to part or all of the trust business, as set forth in the resolution, is the date provided in the resolution, which must not be before or more than thirty (30) days after the date of filing of the resolution. If the resolution

provides no effective date, the effective date is the date of filing.  
*As added by P.L.280-1987, SEC.1. Amended by P.L.164-1988, SEC.7; P.L.257-1989, SEC.2; P.L.42-1993, SEC.66; P.L.262-1995, SEC.57; P.L.11-1998, SEC.7; P.L.213-2007, SEC.55; P.L.217-2007, SEC.53; P.L.90-2008, SEC.35.*

#### **IC 28-2-14-19**

##### **Assumed business names; bank holding companies; resolutions**

Sec. 19. (a) The board of directors of a bank holding company that adopts a resolution under section 18(c) of this chapter may in that resolution or a subsequent resolution provide that all or a part of the trust business of an Indiana affiliate of the bank holding company may be conducted under an assumed business name specified in the resolution.

(b) A copy of the resolution must be:

(1) certified by the secretary or the assistant secretary of the bank holding company;

(2) filed with the department; and

(3) recorded in the county recorder's office:

(A) in each county in which an Indiana affiliate affected by the resolution maintains an office at which trust business is conducted under an assumed business name provided for in the resolution; and

(B) on or before the earlier of:

(i) thirty (30) days after the adoption of the resolution; or

(ii) the first day trust business is conducted in any county under the assumed business name provided for in the resolution.

*As added by P.L.196-1991, SEC.1.*