IC 28

TITLE 28. FINANCIAL INSTITUTIONS

IC 28-1

ARTICLE 1. DEPARTMENT OF FINANCIAL INSTITUTIONS

IC 28-1-1

Chapter 1. Definitions and Application of Article

IC 28-1-1-1

Short title

Sec. 1. This article shall be known and may be cited as The Indiana Financial Institutions Act.

(Formerly: Acts 1933, c.40, s.1.) As amended by P.L.263-1985, SEC.1.

IC 28-1-1-2

Application of article

Sec. 2. This article applies to every financial institution and to other corporations and individuals as may by law after July 1, 1933, be subjected to the provisions of this article.

(Formerly: Acts 1933, c.40, s.2.) As amended by P.L.263-1985, SEC.2; P.L.42-1993, SEC.19.

IC 28-1-1-3

Definitions

Sec. 3. Unless a different meaning is required by the context, the following definitions apply throughout this article:

(1) "Financial institution" means any bank, trust company, corporate fiduciary, savings association, credit union, savings bank, bank of discount and deposit, or industrial loan and investment company organized or reorganized under the laws of this state, and includes licensees under IC 24-4.4, IC 24-4.5, and 750 IAC 9.

(2) "Bank" or "bank or trust company" means a financial institution organized or reorganized as a bank, bank of discount and deposit, or trust company under the laws of this state with the express power to receive and accept deposits of money subject to withdrawal by check, and possessing such other rights and powers granted by the provisions of this article in express terms or by implication. The term "bank" or "bank or trust company" does not include a savings association, credit union, or industrial loan and investment company.

(3) "Domestic corporation" means a corporation formed under the laws of this state, and "foreign corporation" means every other corporation.

(4) "Articles of incorporation" includes both the original articles of incorporation and any and all amendments thereto, except where the original articles of incorporation only are expressly

referred to, and includes articles of merger and consolidation, and, in the case of corporations organized before July 1, 1933, articles of reorganization, and all amendments thereto.
(5) "Incorporator" means one (1) of the signers of the original articles of incorporation.
(6) "Subscriber" means one who subscribes for shares of stock in a financial institution.
(7) "Shareholder" means one who is a holder of record of shares of stock in a financial institution.
(8) "Capital stock" means the aggregate amount of the par value of all shares of capital stock.
(9) "Capital" means the aggregate amount paid in on the shares of capital stock of a financial institution issued and outstanding.
(10) "Capital and surplus" or "unimpaired capital and unimpaired surplus" has the meaning set forth in 12 CFR 32.2.
(11) "Assets" includes all of the property and rights of every kind of a financial institution, and the term "fixed assets" means such assets as are not intended to be sold or disposed of in the ordinary course of business.
(12) "Principal office" means that office maintained by the financial institution in this state, the address of which is required by the provisions of this article to be kept on file in the office of the secretary of state.
(13) "Subscription" means any written agreement or undertaking, accepted by a financial institution, for the purchase of shares of capital stock in the financial institution.
(14) "Department" means the department of financial institutions.
(15) "Member" means a member of the department of financial institutions.
(16) "Branch" means any office, agency, mobile unit, messenger service, or other place of business at which deposits are received, checks paid, or money lent. The term does not include:
(A) the principal office of a bank;
(B) the principal office of an affiliate;
(C) a branch of an affiliate;
(D) an automated teller machine;
(E) a night depository;
(F) a temporary facility authorized in IC 28-2-13-22.5;
(G) a loan production office;
(H) a deposit production office; or
(I) other service delivery mechanisms not considered by the director to be a branch.
(17) "Subsidiary" means any foreign or domestic corporation or limited liability company in which the parent bank, savings bank, savings association, or industrial loan and investment company had at least eighty percent (80%) ownership before July 1, 1999, or is formed or acquired in accordance with IC 28-13-16 after June 30, 1999.
(18) "Savings bank" means a financial institution that:

(A) was organized, reorganized, or operating under IC 28-6 (before its repeal) before January 1, 1993;
(B) is formed as the result of a conversion under:
(i) IC 28-1-21.7;
(ii) IC 28-1-21.8;
(iii) IC 28-1-21.9; or
(iv) IC 28-1-30; or
(C) is incorporated under IC 28-12.

(19) "Corporate fiduciary" means a financial institution whose primary business purpose is to engage in the trust business (as defined in IC 28-14-1-8) and the execution and administration of fiduciary accounts as a nondepository trust company incorporated under Indiana law.

(Formerly: Acts 1933, c.40, s.3a; Acts 1945, c.348, s.1; Acts 1965, c.356, s.23; Acts 1971, P.L.394, SEC.1.) As amended by Acts 1977, P.L.289, SEC.1; P.L.262-1983, SEC.1; P.L.42-1993, SEC.20; P.L.122-1994, SEC.39; P.L.262-1995, SEC.1; P.L.192-1997, SEC.1; P.L.79-1998, SEC.34; P.L.62-1999, SEC.1; P.L.215-1999, SEC.1; P.L.213-2007, SEC.34; P.L.217-2007, SEC.32; P.L.89-2011, SEC.31; P.L.27-2012, SEC.35; P.L.137-2014, SEC.22.

IC 28-1-1-3.5
Affiliate relationship

Sec. 3.5. Except as otherwise provided, for purposes of this title, a company is an affiliate of any financial institution or other person subject to this title if the company bears the same relationship to the financial institution or person subject to this title as a company described in IC 28-1-18.2-1 bears to a bank.

As added by P.L.10-2006, SEC.27 and P.L.57-2006, SEC.27.

IC 28-1-1-4
"Fund"

Sec. 4. As used in IC 28-11, "fund" refers to the financial institutions fund established by IC 28-11-2-9.

As added by P.L.33-1991, SEC.2.

IC 28-1-1-5
References to savings associations

Sec. 5. A reference in the Indiana Code to any of the following shall be interpreted as a reference to a savings association (as defined in IC 28-15-1-11):

(1) Building and loan association.
(2) Savings and loan association.
(3) Rural loan and savings association.
(4) Guaranty loan and savings association.
(5) Mutual association.
(6) Stock association.

As added by P.L.193-1997, SEC.1.

IC 28-1-1-6

"Depository financial institution"

Sec. 6. For purposes of IC 28-1-23-16, "depository financial institution" means a financial institution that is:

(1) a commercial bank, organized or reorganized under the law of another state (as defined in IC 28-2-17-19) or United States law;

(2) a trust company, organized or reorganized under the law of another state (as defined in IC 28-2-17-19) or United States law;

(3) a credit union, organized or reorganized under the law of another state (as defined in IC 28-2-17-19) or United States law;

(4) a savings bank, organized or reorganized under the law of another state (as defined in IC 28-2-17-19) or United States law;

(5) a savings association, organized or reorganized under Indiana law, the law of another state (as defined in IC 28-2-17-19), or United States law;

(6) a bank of discount and deposit, organized or reorganized under the law of another state (as defined in IC 28-2-17-19) or United States law;

(7) an industrial loan and investment company, organized or reorganized under Indiana law, the law of another state (as defined in IC 28-2-17-19), or United States law; or

(8) a financial institution similar to those listed in subdivisions (1) through (7), organized or reorganized under Indiana law, the law of another state (as defined in IC 28-2-17-19), or United States law.

As added by P.L.81-2001, SEC.1.

IC 28-1-2

Chapter 2. Powers and Duties of the Department

IC 28-1-2-1
Repealed

(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-2
Repealed

(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-3
Repealed

(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-4
Repealed

(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-5
Repealed

(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-6
Prudent conduct of business

Sec. 6. Every financial institution to which this article is applicable shall conduct and transact its business in a safe and prudent manner; shall maintain such institution in a safe and solvent condition; and shall establish and maintain safe and sound methods for the conduct of such financial institution and its business and prudential affairs.

(Formerly: Acts 1933, c.40, s.9; Acts 1971, P.L.394, SEC.6.)

IC 28-1-2-6.5
Compliance with money laundering laws; investigation and enforcement by the department

Sec. 6.5. (a) A financial institution (as defined in IC 28-1-1-3(1)), except for a licensee under IC 24-4.5, shall comply with all state and federal money laundering statutes and regulations, including the following:

(1) The Bank Secrecy Act (31 U.S.C. 5311 et seq.).

(2) The USA Patriot Act of 2001 (P.L. 107-56).

(3) Any regulations, policies, or reporting requirements established by the Financial Crimes Enforcement Network of the United States Department of the Treasury.

(4) Any other state or federal money laundering statutes or regulations that apply to a financial institution (as defined in IC 28-1-1-3(1)) other than a licensee under IC 24-4.5.

(b) The department shall do the following:

(1) To the extent authorized or required by state law, investigate

potential violations of, and enforce compliance with, state money laundering statutes or regulations.

(2) Investigate potential violations of federal money laundering statutes or regulations and, to the extent authorized or required by federal law:

(A) enforce compliance with the federal statutes or regulations; or

(B) refer suspected violations of the federal statutes or regulations to the appropriate federal regulatory agencies.

As added by P.L.10-2006, SEC.28 and P.L.57-2006, SEC.28.

IC 28-1-2-7
Repealed
(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-8
Repealed
(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-9
Repealed
(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-10
Repealed
(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-11
Repealed
(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-12
Repealed
(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-13
Repealed
(Repealed by Acts 1971, P.L.394, SEC.31.)

IC 28-1-2-14
Repealed
(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-15
Repealed
(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-16
Repealed
(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-17
Repealed
(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-18
Repealed
(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-19
Repealed
(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-20
Repealed
(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-21
Repealed
(Repealed by Acts 1979, P.L.17, SEC.55.)

IC 28-1-2-22
Repealed
(Repealed by P.L.42-1993, SEC.103.)

IC 28-1-2-23
Change in control; department approval required; application; timeframe for department's decision; conditions for approval; exempt transactions; duty to report transfer of securities; investigation by director; prior notice exemption for certain transactions

Sec. 23. (a) A corporation or an individual acting directly, indirectly, or through or in concert with one (1) or more other corporations or individuals may not acquire control of any bank, trust company, stock savings bank, holding company, corporate fiduciary, or industrial loan and investment company unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days following receipt of an application to issue a notice approving the proposed change in control. The application shall contain the name and address of the corporation, individual, or individuals who propose to acquire control.

(b) The period for approval under subsection (a) may be extended:

(1) in the discretion of the director for an additional thirty (30) days; and

(2) not to exceed two (2) additional times for not more than forty-five (45) days each time if:

(A) the director determines that the corporation, individual, or individuals who propose to acquire control have not submitted substantial evidence of the qualifications described

in subsection (c);

(B) the director determines that any material information submitted is substantially inaccurate; or

(C) the director has been unable to complete the investigation of the corporation, individual, or individuals who propose to acquire control because of any delay caused by or the inadequate cooperation of the corporation, individual, or individuals.

(c) The department shall issue a notice approving the application only after it has become satisfied that both of the following apply:

(1) The corporation, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the bank, trust company, stock savings bank, bank holding company, corporate fiduciary, or industrial loan and investment company in a legal and proper manner.

(2) The interests of the stockholders, depositors, and creditors of the bank, trust company, stock savings bank, bank holding company, corporate fiduciary, or industrial loan and investment company and the interests of the public generally will not be jeopardized by the proposed change in control.

(d) As used in this section, "holding company" means any company (as defined in IC 28-2-15-5 before July 1, 1992, and as defined in IC 28-2-16-5 beginning July 1, 1992) that directly or indirectly controls one (1) or more state chartered financial institutions.

(e) As used in this section, "control", "controlling", "controlled by", or "under common control with" means possession of the power directly or indirectly to:

(1) direct or cause the direction of the management or policies of a bank, a trust company, a holding company, a corporate fiduciary, or an industrial loan and investment company, whether through the beneficial ownership of voting securities, by contract, or otherwise; or

(2) vote at least twenty-five percent (25%) of voting securities of a bank, a trust company, a holding company, a corporate fiduciary, or an industrial loan and investment company, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.

(f) The director may determine, in the director's discretion, that subsection (a) does not apply to a transaction if the director determines that the direct or beneficial ownership of the bank, trust company, stock savings bank, holding company, corporate fiduciary, or industrial loan and investment company will not change as a result of the transaction.

(g) The president or other chief executive officer of a financial institution or holding company shall report to the director any transfer or sale of shares of stock of the financial institution or holding company that results in direct or indirect ownership by a stockholder or an affiliated group of stockholders of at least ten

percent (10%) of the outstanding stock of the financial institution or holding company. The report required by this subsection must be made not later than ten (10) days after the president or other chief executive officer becomes aware of the transfer of the shares of stock on the books of the financial institution or holding company.

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

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

(1) The acquisition of voting shares through inheritance.

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

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

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

(Formerly: Acts 1933, c.40, s.25a; Acts 1965, c.356, s.20; Acts 1971, P.L.394, SEC.19.) As amended by P.L.164-1988, SEC.1; P.L.3-1990, SEC.99; P.L.33-1991, SEC.4; P.L.42-1993, SEC.21; P.L.122-1994, SEC.40; P.L.262-1995, SEC.2; P.L.134-2001, SEC.6; P.L.258-2003, SEC.4; P.L.213-2007, SEC.35; P.L.217-2007, SEC.33; P.L.35-2010, SEC.97; P.L.89-2011, SEC.32; P.L.6-2012, SEC.191; P.L.27-2012, SEC.36.

IC 28-1-2-23.5

Acquisition of control of stock savings banks

Sec. 23.5. This title does not prohibit the acquisition of control of one (1) or more stock savings banks by a bank holding company, a corporation, an individual, or individuals acting in concert with one (1) or more individuals if the acquisition is in compliance with section 23 of this chapter.

As added by P.L.42-1993, SEC.22.

IC 28-1-2-24

(Repealed by P.L.42-1993, SEC.103.)

IC 28-1-2-25

Repealed

(Repealed by P.L.42-1993, SEC.103.)

IC 28-1-2-26

Repealed

(Repealed by P.L.42-1993, SEC.103.)

IC 28-1-2-27

Repealed

(Repealed by P.L.42-1993, SEC.103.)

IC 28-1-2-28

Repealed

(Repealed by P.L.42-1993, SEC.103.)

IC 28-1-2-29

Repealed

(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-30

Confidential information; disclosure prohibited

Sec. 30. Except as otherwise provided, a member of the department or the director or deputy, assistant, or any other person having access to any such information may not disclose to any person, other than officially to the department, by the report made to it, or to the board of directors, partners, or owners, or in compliance with the order of a court, the names of the depositors or shareholders in any financial institution, or the amount of money on deposit therein at any time in favor of any depositor, or any other information concerning the affairs of any such financial institution.

(Formerly: Acts 1933, c.40, s.32; Acts 1937, c.33, s.2; Acts 1939, c.102, s.1; Acts 1945, c.348, s.21; Acts 1967, c.260, s.4; Acts 1971, P.L.394, SEC.14.) As amended by Acts 1978, P.L.2, SEC.2804; P.L.17-1984, SEC.8; P.L.33-1991, SEC.8.

IC 28-1-2-30.5

Keeping and handling of personal records; breach of security; disposal of personal records; winding up of business; providing records to the department

Sec. 30.5. (a) This section applies to the following:

(1) Any:

(A) financial institution;

(B) person required to file notification with the department under IC 24-4.5-6-202;

(C) person subject to IC 24-7; or

(D) other person subject to regulation by the department.

(2) Any person licensed or required to be licensed under IC 24-4.4 or IC 24-4.5.

(b) As used in this section, "customer", with respect to a person described in subsection (a), means an individual consumer, or the

individual's legal representative, who obtains or has obtained from the person a financial:

(1) product; or

(2) service;

that is to be used primarily for personal, family, or household purposes. The term does not include an affiliate of the person.

(c) As used in this section, "personal information" includes any of the following:

(1) An individual's first and last names or first initial and last name.

(2) Any of the following data elements:

(A) A Social Security number.

(B) A driver's license number.

(C) A state identification card number.

(D) A credit card number.

(E) A financial account number or debit card number.

(3) With respect to an individual, any of the following:

(A) Address.

(B) Telephone number.

(C) Information concerning the individual's:

(i) income or other compensation;

(ii) credit history;

(iii) credit score;

(iv) assets;

(v) liabilities; or

(vi) employment history.

(d) As used in this section, personal information is "encrypted" if the personal information:

(1) has been transformed through the use of an algorithmic process into a form in which there is a low probability of assigning meaning without use of a confidential process or key; or

(2) is secured by another method that renders the personal information unreadable or unusable.

(e) As used in this section, personal information is "redacted" if the personal information has been altered or truncated so that not more than the last four (4) digits of:

(1) a Social Security number;

(2) a driver's license number;

(3) a state identification number; or

(4) an account number;

are accessible as part of the personal information.

(f) As used in this section, "personal records" means any records that:

(1) are maintained, whether as a paper record or in an electronic or a computerized form, by a person to whom this section applies; and

(2) contain the unencrypted, unredacted personal information of one (1) or more customers or potential customers.

(g) A person to whom this section applies shall keep and handle

personal records in a manner that:

(1) reasonably safeguards the personal records from destruction, theft, or other loss; and

(2) protects the personal records from misuse.

(h) If a breach of the security of any personal records occurs, the person maintaining the records is subject to the disclosure requirements under IC 24-4.9-3, unless the person is exempt from the disclosure requirements under IC 24-4.9-3-4.

(i) A person to whom this section applies may not dispose of personal records without first:

(1) shredding, incinerating, or mutilating the personal records; or

(2) erasing or otherwise rendering illegible or unusable the personal information contained in the records.

(j) If a person to whom this section applies ceases doing business, the person shall, as part of the winding up of the business, safeguard any personal records maintained by the person in accordance with this section until such time as the person is entitled or required to destroy the records under:

(1) applicable law; or

(2) the person's own records maintenance policies.

(k) A person to whom this section applies shall provide at the person's cost any records that the director considers relevant or material to an examination, investigation, or other matter under consideration by the department.

As added by P.L.90-2008, SEC.20. Amended by P.L.1-2009, SEC.147; P.L.35-2010, SEC.98.

IC 28-1-2-31

Acceptance of examination by federal authority

Sec. 31. The department may, in its discretion, accept any examination of any financial institution made by federal authority in lieu of the examination made under the provisions of this article.

(Formerly: Acts 1933, c.40, s.33.) As amended by P.L.263-1985, SEC.9.

IC 28-1-2-32

Repealed

(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-33

Repealed

(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-34

Repealed

(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-35

Repealed

(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-36
Solicitation of political contributions; violations

Sec. 36. It is a Class A misdemeanor for a person to knowingly solicit from any officer or employee of the department any money or other property for political assessments or contributions.
(Formerly: Acts 1933, c.40, s.38.) As amended by Acts 1978, P.L.2, SEC.2806.

IC 28-1-2-37
Repealed

(Repealed by P.L.176-1996, SEC.35.)

IC 28-1-2-38
Repealed

(Repealed by P.L.33-1991, SEC.58.)

IC 28-1-2-39
Repealed

(Repealed by P.L.90-2008, SEC.80.)

IC 28-1-2-40
Five star mortgage program established; guidelines; requirements; certifications; fees; investigations; enforcement

Sec. 40. (a) As used in this section, "act" refers to the federal Credit Card Accountability Responsibility and Disclosure Act of 2009 as it applies to Indiana borrowers.

(b) If the department receives credible evidence from any source that a financial institution that issues to Indiana borrowers an unsecured credit card that is not a debit card, as a card issuer (as defined in 15 U.S.C. 1602(n)) is not in substantial compliance with the act, the director of the department shall send a notice of the evidence by certified mail to the financial institution's chief executive officer. The notice must:

(1) set forth the provisions of IC 5-13-9.5-1(c) and IC 5-13-9.5-1(d);

(2) describe the department's evidence that the financial institution is not in substantial compliance with the act;

(3) describe the consequences under IC 5-13-9.5-1(c) of a finding that the financial institution is not in substantial compliance with the act; and

(4) invite a reply that affirms or disputes the evidence of noncompliance with the act.

If a financial institution disputes the preliminary determination that it is not in substantial compliance with the act, but fails to convince the director of the department of its substantial compliance with the act, the financial institution may, within twenty (20) days of the date of the notice, request a hearing on the determination. If a hearing is requested, the department shall schedule the hearing not earlier than

twenty (20) days after the date of the request. If no hearing is requested, the department's determination that the financial institution is not in substantial compliance with the act is final.

(c) Except as otherwise provided in this section, any hearing requested by a financial institution under subsection (b) and the determination by the department are subject to IC 4-21.5-3. Judicial review of the department's final determination may be obtained in accordance with IC 4-21.5-5.

(d) If a financial institution does not contest the determination that it is not in substantial compliance with the act, or the financial institution is determined under subsection (b) to not be in substantial compliance with the act, the department shall immediately notify the chairperson of the board for depositories established under IC 5-13-12 of the determination.

(e) A financial institution that has been determined by the department to not be in substantial compliance with the act may petition the department for a hearing to demonstrate that the financial institution has taken the necessary steps to attain substantial compliance with the act, and to ensure future substantial compliance with the act. The hearing and the determination by the department are subject to IC 4-21.5-3. Judicial review of the department's final determination may be obtained in accordance with IC 4-21.5-5. Upon final determination by the department, or a final judgment in the case of pending judicial review, that the financial institution is in substantial compliance with the act, the department shall immediately notify the chairperson of the board for depositories established under IC 5-13-12 of the determination or judgment.

As added by P.L.115-2010, SEC.21.

IC 28-1-3
Repealed

(Repealed by P.L.141-1984, SEC.13.)

IC 28-1-3.1

Chapter 3.1. Liquidation of Financial Institutions

IC 28-1-3.1-1

Definitions

Sec. 1. (a) The definitions set forth in this section apply throughout this chapter.

(b) "Federal deposit insurance agency" means an agency or instrumentality of the United States that insures to any extent the deposits of a financial institution, including the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(c) "Insolvent" means a financial institution that:

(1) is incapable of meeting the demands of creditors or depositors on a timely basis; or

(2) has liabilities in excess of the total value of its assets as determined by the department.

(d) "Receiver" means a:

(1) federal deposit insurance agency;

(2) private deposit insurer of credit unions; or

(3) designated agent of the department.

(e) "Receivership court" means the court that the department has filed the notice of possession with, under this chapter.

As added by P.L.141-1984, SEC.2. Amended by P.L.8-1991, SEC.10; P.L.262-1995, SEC.3.

IC 28-1-3.1-2

Authority of department to take possession of business and property; conditions; duties of department

Sec. 2. (a) The department may take possession of the business and property of any financial institution except a consumer finance institution licensed to make supervised or regulated loans under IC 24-4.5, whenever it appears to the department that the financial institution:

(1) is insolvent or in imminent danger of insolvency;

(2) is in an unsafe or unsound condition;

(3) has refused to pay its deposits or obligations in accordance with the terms under which those deposits or obligations were incurred;

(4) has refused to submit its records and affairs for inspection or examination by the department or federal authorities;

(5) has violated any court order, statute, rule, or regulation of the department or its articles of incorporation and that continued control of its own affairs threatens injury to the public, the financial community, its depositors, or other creditors;

(6) requests through its board of directors that the department take possession for the benefit of depositors, other creditors, shareholders, or other persons;

(7) has an impairment of its capital (the capital of a bank or trust company shall, for the purpose of this subdivision, be considered to be unimpaired so long as the sound value of its

assets over and above its liabilities, exclusive of liabilities for capital notes, debentures, and capital stock, as determined by the department, equals or exceeds the minimum capital or capital stock required by the department for a bank or trust company);

(8) has neglected or refused, for a period of thirty (30) days, to comply with the terms of a duly issued order of the department, essential to preserve the solvency of the financial institution;

(9) has failed to pay the fees charged by the department under IC 28-11-3-5 after due notice of the amount of the fee has been given;

(10) has breached a fiduciary duty under IC 30-4-3-6; or

(11) has violated IC 30-4-3-7 in a way that has caused or may cause harm to fiduciary accounts.

(b) When the department makes a determination to take possession of the business and property of a financial institution under subsection (a), the department shall:

(1) make a finding to that effect and enter that finding on the records of the proceedings of the department; and

(2) cause a certified copy of the finding to be served on the president or other executive officer actively in charge of the financial institution and demand possession of the business, property, and records of the financial institution from the officer. The financial institution shall immediately surrender the possession to the department.

(c) The department or its receiver is not required to become the owner of any property to fulfill the liquidation requirements of this chapter.

As added by P.L.141-1984, SEC.2. Amended by P.L.33-1991, SEC.9; P.L.262-1995, SEC.4.

IC 28-1-3.1-3

Holding business and property until liquidation of affairs

Sec. 3. (a) When the department has taken possession of the business and property of a financial institution under the provisions of section 2 of this chapter, the department shall hold possession of the business and property until the affairs of the institution have been finally liquidated as provided in this chapter, unless the financial institution has undertaken the voluntary liquidation of its affairs under IC 28-1-9.

(b) If a corporate fiduciary is to be liquidated, the department may appoint an agent from within or outside the department to temporarily conduct the affairs of the corporate fiduciary until a receiver is appointed. The agent may be required to give bond and shall be paid reasonable compensation by the corporate fiduciary being liquidated.

As added by P.L.141-1984, SEC.2. Amended by P.L.262-1995, SEC.5.

IC 28-1-3.1-4

Notice; entry of cause; hearing; record; rights and liabilities of persons interested; Federal Deposit Insurance Corporation as

receiver

Sec. 4. (a) Immediately upon the taking possession of the business and property of any financial institution under section 2 of this chapter, the department shall give notice by:

(1) posting the notice at the main entrance of the principal office of the financial institution;

(2) causing the notice to be served upon the president or other executive officer actively in charge of the business of the financial institution; and

(3) filing the notice in the office of the circuit court in the county where the principal office of the financial institution is located.

(b) Upon the filing of the notice under subsection (a), the clerk shall:

(1) note the filing of the notice upon the records of the receivership court; and

(2) enter the cause as a civil action upon the dockets of the court under the name and style of "In the matter of the liquidation of _____" (inserting the name of the financial institution).

(c) The receivership court may hear and determine all issues and matters pertaining to or connected with the liquidation of the financial institution, including:

(1) the amount of the compensation and necessary expenses of any special representative, assistant, accountant, agent, or attorney employed by the department, or the receiver appointed by the department, as set forth in this chapter; and

(2) all papers and pleadings pertaining to the liquidation proceedings.

(d) All entries, orders, judgments, and decrees of the receivership court in connection with the liquidation proceedings shall be filed and entered of record in the cause of action.

(e) The rights and liabilities of a financial institution and of its creditors, depositors, shareholders, and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date of the filing of the notice of possession with the receivership court. In the case of mutual debts or mutual credits of equal priority between the financial institution and another person, the credits and debts shall be set off and the balance only shall be allowed or paid. The right to set off shall be determined as of the date of the filing of the notice of possession of the financial institution under subsection (a).

(f) Notwithstanding this section, if the Federal Deposit Insurance Corporation is appointed receiver of a financial institution, subsections (a)(3), (b), (c), and (d) do not apply, and applicable federal law governs the receivership.

As added by P.L.141-1984, SEC.2. Amended by P.L.35-2010, SEC.99.

IC 28-1-3.1-5

Receiver; appointment; vesting of title to all assets and right to

terminate affairs of institution; liens or claims against property

Sec. 5. (a) The department may appoint the receiver of the closed financial institution. Unless the receiver is the Federal Deposit Insurance Corporation, the department, upon acceptance of the appointment of a receiver, shall make immediate application to the receivership court for confirmation of the receiver. The receivership court shall approve the department's application if it finds that to do so would be in the public interest. The application may be acted on by the receivership court without any notice except that provided in section 4 of this chapter. The receiver shall give a bond the director considers appropriate. However, a federal deposit insurance agency shall not be required to post any bond. If the receiver is not a federal deposit insurance agency, the director may agree to reasonable compensation for the receiver.

(b) Upon appointment as receiver, title to all assets of the financial institution vest in the receiver without the execution of any instruments of conveyance, assignment, transfer, or endorsement. If no other receiver is appointed as provided in this chapter, the department shall act as receiver and has all of the powers and duties of a receiver as provided in this chapter.

(c) Except as otherwise provided, the sole and exclusive right to liquidate and terminate the affairs of any financial institution is vested in the receiver appointed under this section, and except as otherwise provided by law, no other receiver, assignee, trustee, or liquidating agent shall be appointed by any court or any other person.

(d) After the department has taken possession of the business and property for any financial institution, no suit, action, or other proceeding at law or in equity shall be commenced or prosecuted against the financial institution upon any debt, obligation, claim, or demand.

(e) No person, firm, limited liability company, corporation, or other entity holding any of the property or credits of the financial institution shall have any lien or charge against the property or credits for any payment, advance, or clearance made after the department has taken possession. A lien shall not attach to any of the assets or property of the financial institution by reason of the entry of any judgment recovered against the institution after the department has taken possession of its business and property and while the possession continues.

(f) A receiver appointed to liquidate a corporate fiduciary must have sufficient experience in fiduciary matters.

As added by P.L.141-1984, SEC.2. Amended by P.L.8-1993, SEC.438; P.L.262-1995, SEC.6; P.L.35-2010, SEC.100.

IC 28-1-3.1-6

Receiver; authority

Sec. 6. The receiver of a closed financial institution may do the following:

(1) Take possession of all books, records, and assets of the financial institution.

(2) Collect all debts, claims, and judgments belonging to the financial institution and do such other acts as are necessary to preserve and liquidate its assets.
(3) Execute in the name of the financial institution any instrument necessary or proper to effectuate its powers or perform its duties as receiver.
(4) Initiate, pursue, and defend litigation involving any right, claim, interest, or liability of the financial institution.
(5) Exercise any and all fiduciary functions of the financial institution as of the date of appointment as receiver.
(6) Borrow money as necessary in the liquidation of the financial institution and secure the borrowings by the pledge or mortgage of assets.
(7) Abandon or convey title to any holder of a mortgage, security deed, security interest, or lien against property in which the financial institution has an interest whenever the receiver determines that to continue to claim that interest is burdensome and of no advantage to the financial institution, its depositors, creditors, or shareholders.
(8) Subject to the approval of the receivership court:
(A) sell any and all real and personal property to compromise any debt, claim, or judgment due to the financial institution and discontinue any action or other proceeding pending; or
(B) pay off all mortgages, securities deeds, security agreements, and liens upon any real or personal property belonging to the financial institution and purchase at a judicial sale or at a sale authorized by court order, any real or personal property in order to protect the financial institution's equity in that property.
(9) If, at the time of liquidation, a closed financial institution holds property in trust for an individual or a corporation under or by virtue of a trust instrument, the administration of the property must be handled in the manner set forth in IC 28-1-9-7.

Notwithstanding this section, when the Federal Deposit Insurance Corporation is appointed receiver of a financial institution, subdivision (8) does not apply.

As added by P.L.141-1984, SEC.2. Amended by P.L.42-1993, SEC.23; P.L.262-1995, SEC.7; P.L.35-2010, SEC.101.

IC 28-1-3.1-7

Receiver's authority to sell assets; borrowing of money for deposit liabilities

Sec. 7. The receiver may, with ex parte approval of the receivership court, sell all or any part of the financial institution's assets to another state or federally chartered financial institution or to a federal deposit insurance agency acting in its corporate capacity. The Federal Deposit Insurance Corporation is not required to seek ex parte approval of the receivership court. The receiver may also borrow from a federal deposit insurance agency any amount necessary to facilitate the assumption of deposit liabilities by a newly

chartered or existing state or federally chartered financial institution, assigning any part or all of the assets of the financial institution as security for the loan.
As added by P.L.141-1984, SEC.2. Amended by P.L.35-2010, SEC.102.

IC 28-1-3.1-8
Claims; presentation; notice; rejection

Sec. 8. (a) All parties having claims against the closed financial institution shall present their claims supported by proof to the receiver within one hundred eighty (180) days after the department has taken possession.

(b) The receiver shall cause notice of the claims procedure prescribed by this section to be:

(1) published once a week for twelve (12) consecutive weeks in a newspaper of general circulation published in the county in which the receivership court is located; and

(2) mailed to each person whose name appears as a creditor upon books of the financial institution at the person's last address of record.

(c) Within one hundred eighty (180) days following receipt of claim, the receiver shall notify in writing any claimant whose claim has been rejected. Notice is effective when mailed. Any claimant whose claim has been rejected by the receiver may petition the receivership court for a hearing on the claim within sixty (60) days from the date the claim is rejected.

(d) If the Federal Deposit Insurance Corporation is the receiver, compliance with this section is not required.
As added by P.L.141-1984, SEC.2. Amended by P.L.35-2010, SEC.103.

IC 28-1-3.1-9
Late claims

Sec. 9. Any claims filed after the one hundred eighty (180) day claim period prescribed by section 8 of this chapter and subsequently accepted by the receiver or allowed by the receivership court shall be entitled to share in the distribution of assets only to the extent of the undistributed assets in the hands of the receiver on the date the claims are accepted or allowed. If the Federal Deposit Insurance Corporation is the receiver, compliance with this section is not required.
As added by P.L.141-1984, SEC.2. Amended by P.L.35-2010, SEC.104.

IC 28-1-3.1-10

(Repealed by P.L.42-1993, SEC.103.)

IC 28-1-3.1-10.1
Payment of claims; order

Sec. 10.1. (a) All claims against the financial institution that are proved to the satisfaction of the receiver or approved by the

receivership court shall be paid in the following order:

(1) Claims of persons referred to in IC 28-1-12-6 as having preference and priority.

(2) Administration expenses of the liquidation, including the following:

(A) Court costs.

(B) Compensation and actual expenses incurred by the department or the receiver in order to facilitate the liquidation.

(C) Compensation of each regular officer or employee of the receiver for the time actually devoted by the officer or employee to the liquidation of the financial institution at an amount not to exceed the compensation paid to the officer or employee for the performance of the regular duties of the officer or employee.

(D) Actual expenses of each regular officer or employee of the receiver that are necessarily incurred in the performance of the duties of the officer or employee in the liquidation.

(E) Compensation and expenses of any special representative, assistant, accountant, agent, or attorney employed by the receiver.

(F) The reasonable general overhead expenses that are incurred by the department or the receiver in the liquidation of the affairs of the financial institution.

(3) Claims given priority under other provisions of state or federal law.

(4) Deposit obligations.

(5) Other general liabilities.

(6) Debt subordinated to the claims of general creditors.

(7) Equity capital securities.

(b) Interest may not be paid on any claim until the full principal amount of every claim within the same class has been paid.

(c) If the Federal Deposit Insurance Corporation is the receiver, compliance with this section is not required.

As added by P.L.262-1995, SEC.8. Amended by P.L.35-2010, SEC.105.

IC 28-1-3.1-11

Rejection of executory contracts and leases

Sec. 11. (a) Within one hundred eighty (180) days of the date that the department has taken possession, the receiver may, at his election, reject:

(1) any executory contract to which the closed financial institution is a party without any further liability to the closed financial institution or the receiver; or

(2) any obligation of the financial institution as a lessee of real or personal property.

The receiver's election to reject a lease shall create no claim for rent other than rent accrued to the date of termination or for actual damages, if any, for the termination not to exceed the equivalent of

payment of rent for six (6) months.

(b) If the Federal Deposit Insurance Corporation is the receiver, compliance with this section is not required.

As added by P.L.141-1984, SEC.2. Amended by P.L.35-2010, SEC.106.

IC 28-1-3.1-12

Federal deposit insurance; payments of deposit liabilities; subrogation

Sec. 12. Whenever a federal deposit insurance agency pays or makes available for payment the insured deposit liabilities of a closed financial institution, the federal deposit insurance agency, whether or not it acts as receiver, shall be subrogated by operation of law to all rights against the closed financial institutions of each owner of a claim for deposit so paid by the federal deposit insurance agency to the extent necessary to enable the federal deposit insurance agency, under federal law, to make insurance payments available to depositors of closed financial institutions.

As added by P.L.141-1984, SEC.2.

IC 28-1-3.1-13

Successor to closed financial institution's fiduciary duties; appointment; powers and duties; notice of appointment to interested parties

Sec. 13. (a) The receiver, with the approval of the receivership court, may appoint a successor to all rights, obligations, assets, deposits, agreements, and trusts held by the closed financial institution as trustee, administrator, executor, guardian, agent, and all other fiduciary or representative capacities. The successor's duties and obligations begin upon appointment to the same extent binding upon the closed financial institution and as though the successor had originally assumed the duties and obligations. Specifically, the successor shall succeed to and be entitled to administer all trusteeships, administrations, executorships, guardianships, agencies, and all other fiduciary or representative proceedings to which the closed financial institution is named or appointed in wills, whenever probated, or to which it is appointed by any other instrument, court order, or by operation of law.

(b) This section shall not impair any right of the grantor or beneficiaries of trust assets to secure the appointment of a substituted trustee or manager.

(c) Within thirty (30) days after appointment, the successor shall give written notice, insofar as practical, to all interested parties named in:

(1) the books and records of the closed financial institution; or

(2) trust documents held by it;

that the successor has been appointed in accordance with applicable law.

(d) If the Federal Deposit Insurance Corporation is the receiver, compliance with this section is not required.

As added by P.L.141-1984, SEC.2. Amended by P.L.35-2010, SEC.107.

IC 28-1-3.1-14
Personal property left in possession of closed financial institution; appearances, claims, and disposition

Sec. 14. (a) The receiver shall cause notice to be mailed to:

(1) the owners of any personal property left in the possession of a closed financial institution for safekeeping or as bailee or depository for hire;

(2) all lessees; and

(3) other persons in possession of any safe deposit box, vault, or locker;

requiring those persons to appear and assert their claims to the property within sixty (60) days from the date of the notice. Within that time, the owner or owners of the property may appear and assert their claims to the property. Subject to approval of the receivership court, the receiver shall make the agreements or arrangements as may be necessary for the disposition of the property and the contents of the safe deposit boxes, vaults, or lockers and the termination of any leases or other contracts relating to the property.

(b) If the Federal Deposit Insurance Corporation is the receiver, compliance with this section is not required.

As added by P.L.141-1984, SEC.2. Amended by P.L.35-2010, SEC.108.

IC 28-1-3.1-15
Actions to enforce rights, demands, or claims vested in financial institution, shareholders, or creditors

Sec. 15. The receiver may, within ten (10) years after any cause of action has accrued against any of the directors, trustees, officers, owners, or employees of any closed financial institution, institute and maintain, in the name of the receiver, any action or proceeding for the enforcement of any right, demand, or claim that is vested in the financial institution or in the shareholders or creditors of the financial institution.

As added by P.L.141-1984, SEC.2.

IC 28-1-3.1-16
Articles of dissolution; contents; Federal Deposit Insurance Corporation as receiver; authority of department to act

Sec. 16. (a) When the proceedings described in this chapter have been completed, the receiver shall execute and file, in the manner provided in this section, articles of dissolution, setting forth the following information:

(1) The name of the financial institution.

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

(3) The names and addresses of the directors and officers of the financial institution at the time when the liquidation proceedings were begun.

(4) A brief summary of the aggregate amount of general claims finally allowed against the financial institution, the aggregate amount of claims allowed as preferred, and the aggregate amount of all other claims against the financial institution, together with a statement of the aggregate payments made on each of the groups of claims and with a reference to:

(A) the orders of the receiver or the receivership court authorizing those payments; and

(B) the current reports wherein a report of the payments so ordered is made;

as of the date of the taking possession of the financial institution by the department.

(5) A brief summary of the aggregate amount of payments made to the shareholders of the financial institution, whether of money or other property, and a reference to the orders of the receiver or the receivership court authorizing the payments and to the current reports wherein the report of the payment is made.

(b) If the Federal Deposit Insurance Corporation is the receiver, the following apply:

(1) Compliance with this section is not required.

(2) The department:

(A) may file the articles of dissolution; and

(B) may take all actions necessary to complete the dissolution of the financial institution.

As added by P.L.141-1984, SEC.2. Amended by P.L.35-2010, SEC.109.

IC 28-1-3.1-17

Articles of dissolution; execution; presentation; fee

Sec. 17. The articles of dissolution shall be executed in triplicate and shall be presented in triplicate to the secretary of state at his office (as provided in section 18 of this chapter) accompanied by the fees prescribed by law.

As added by P.L.141-1984, SEC.2.

IC 28-1-3.1-18

Articles of dissolution; duties of secretary of state

Sec. 18. Upon presentation of the articles of dissolution as provided in section 17 of this chapter, the secretary of state shall:

(1) endorse his approval upon each of the triplicate copies of the articles if he finds that they conform to law;

(2) when all fees have been paid as required by law:

(A) file one (1) copy of the articles in his office;

(B) issue a certificate of dissolution to the department; and

(C) return the certificate of dissolution to the department, together with two (2) copies of the articles of dissolution bearing the endorsement of his approval.

As added by P.L.141-1984, SEC.2.

IC 28-1-3.1-19

Articles of dissolution; filing with county recorder

Sec. 19. The department shall file for record with the county recorder of the county where the principal office of the financial institution is located one (1) of the triplicate copies of the articles of dissolution bearing the endorsement of the approval of the secretary of state as provided in section 18 of this chapter.

As added by P.L.141-1984, SEC.2.

IC 28-1-3.1-20

Dissolution and cessation of existence

Sec. 20. Upon the issuance of the certificate of dissolution and the recording of the articles of dissolution, as provided in section 19 of this chapter, the financial institution shall be dissolved and its existence shall cease.

As added by P.L.141-1984, SEC.2.

IC 28-1-3.1-21

Troubled or insolvent financial institutions; federal supervisory agencies; department's authority to approve transactions

Sec. 21. Whenever a federal supervisory agency is bidding, consolidating, merging, selling, or otherwise resolving or disposing of a troubled, an insolvent, or an imminently insolvent financial institution, the director of the department may approve any transaction, including the purchase of assets, the assumption of liabilities, a merger, or the formation of a new financial institution, if the transaction requires the approval of the department.

As added by P.L.42-1993, SEC.24. Amended by P.L.11-1998, SEC.1; P.L.35-2010, SEC.110.

IC 28-1-4

Chapter 4. Formation of Banks, Trust Companies, and Building and Loan Associations

IC 28-1-4-1
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-4-2
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-4-3
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-4-4
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-4-5
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-4-6
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-4-7
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-4-8
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-4-9
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-4-10
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-4-11
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-4-12
(Repealed by P.L.42-1993, SEC.103.)

IC 28-1-4-13
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-4-14
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-4-15
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-4-16
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-4-17
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5

Chapter 5. Banks, Trust Companies, and Building and Loan Associations Generally

IC 28-1-5-1

"Corporation" and "shareholder" defined

Sec. 1. (a) As used in this chapter, "corporation" means a bank, trust company, or savings association organized or reorganized under the provisions of this article and any bank of discount and deposit, loan and trust and safe deposit company, trust company, or savings association.

(b) As used in this chapter, "shareholder" means a person who is a holder of record of shares of stock in a corporation, including a member of a share account association or a deposit association, as those terms are defined in IC 28-15-1.

(Formerly: Acts 1933, c.40, s.89.) As amended by P.L.263-1985, SEC.19; P.L.266-1987, SEC.7; P.L.14-1992, SEC.66; P.L.79-1998, SEC.35.

IC 28-1-5-2

Corporate capacity and authority; general rights, powers, and privileges; authority to purchase and hold life insurance

Sec. 2. (a) Every corporation has the capacity to act that is possessed by a natural person, but has the authority to perform only those acts that are necessary, convenient, or expedient to accomplish the purposes for which it is formed and that are not repugnant to law.

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

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

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

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

(4) To acquire, own, hold, use, lease, mortgage, pledge, sell, convey, or otherwise dispose of property, real and personal, tangible and intangible, in the manner and to the extent hereinafter provided.

(5) To borrow money and to mortgage or pledge its property to secure the payment thereof, in the manner and to the extent hereinafter provided; but no financial institution having power to accept deposits of money shall pledge any of the assets of such financial institution as security for the safekeeping and prompt payment of any money so deposited, except that any such financial institution may, for the safekeeping and prompt payment of any money so deposited, give security of the kind authorized by any statute of this state or by the Congress of the United States. Notwithstanding this subdivision, a financial institution may receive deposits of state and federal public funds and may pledge securities or other assets for the repayment of

deposits if the pledge is permitted by applicable law or regulation.

(6) To conduct business in this state and elsewhere.

(7) To appoint such officers and agents as the business of the corporation may require and to do the following with respect to any officers or agents appointed:

(A) Define their duties.

(B) Fix their compensation, which may include compensation paid pursuant to any plan of deferred compensation approved by the corporation's board of directors.

(C) Enter into employment contracts with the corporation's officers and agents which set forth terms and conditions of employment.

(D) Provide the corporation's officers, agents, and employees with individual or group life insurance.

(E) Procure and maintain in effect for the benefit of the bank, insurance on the life or lives of designated officers or directors.

(8) To make bylaws for the government and regulation of its affairs.

(9) To cease doing business and to dissolve and surrender its corporate franchise.

(10) To do all acts and things necessary, convenient, or expedient to carry out the purposes for which it is formed.

(c) Subject to any limitations or restrictions that the department or a federal regulator may impose by regulation, rule, policy, or guidance, each corporation may purchase and hold life insurance as follows:

(1) Life insurance purchased or held in connection with employee compensation or benefit plans approved by the corporation's board of directors.

(2) Life insurance purchased or held to recover the cost of providing preretirement or postretirement employee benefits approved by the corporation's board of directors.

(3) Life insurance on the lives of borrowers.

(4) Life insurance held as security for a loan.

(5) Life insurance that a national bank may purchase or hold under 12 U.S.C. 24 (Seventh).

(Formerly: Acts 1933, c.40, s.90; Acts 1937, c.33, s.10; Acts 1963, c.179, s.1; Acts 1969, c.280, s.2; Acts 1971, P.L.394, SEC.23; Acts 1974, P.L.128, SEC.2.) As amended by P.L.266-1987, SEC.8; P.L.10-2006, SEC.29 and P.L.57-2006, SEC.29; P.L.35-2010, SEC.111; P.L.27-2012, SEC.37.

IC 28-1-5-3

Principal office; change of location

Sec. 3. Every corporation shall maintain an office or place of business in this state, which shall be known as the "principal office", and which shall be located in a county in which the corporation

conducts business. The post office address of the principal office shall be stated in the original articles of incorporation, at the time of the incorporation. Thereafter, the location of the principal office may be changed at any time or from time to time when authorized by the board of directors and approved by the department, by filing with the secretary of state on or before the day on which the change is to take effect, a certificate signed by the president or a vice president and by the secretary or cashier of the corporation and verified by one of the officers signing the certificate, stating the change to be made and reciting that the change is made pursuant to authorization by the board of directors.
(Formerly: Acts 1933, c.40, s.91.) As amended by P.L.33-1991, SEC.12.

IC 28-1-5-4
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-5
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-6
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-7
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-8
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-8.5
Shareholders' derivative proceedings; procedure
Sec. 8.5. (a) A person may not commence a proceeding in the right of a corporation unless the person was a shareholder of the corporation when the transaction complained of occurred or unless the person became a shareholder through transfer by operation of law from one who was a shareholder at that time. The derivative proceeding may not be maintained if it appears that the person commencing the proceeding does not fairly and adequately represent the interests of the shareholders in enforcing the right of the corporation.
(b) A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made, if any, to obtain action by the board of directors, and either that the demand was refused or ignored or why the shareholder did not make the demand. Whether or not a demand for action was made, if

the corporation commences an investigation of the charges made in the demand or complaint (including an investigation commenced under subsection (d)), the court may stay any proceeding until the investigation is completed.

(c) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given the shareholders affected. On termination of the proceeding, the court may require the plaintiff to pay any defendant's reasonable expenses (including attorney's fees) incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

(d) Unless prohibited by the articles of incorporation, the board of directors may establish a committee consisting of three (3) or more disinterested directors or other disinterested persons to determine:

(1) whether the corporation has a legal or equitable right or remedy; and

(2) whether it is in the best interests of the corporation to pursue that right or remedy, if any, or to dismiss a proceeding that seeks to assert that right or remedy on behalf of the corporation.

(e) In making a determination under subsection (d), the committee is not subject to the direction or control of or termination by the board. A vacancy on the committee may be filled by the majority of the remaining members by selection of another disinterested director or other disinterested person.

(f) If the committee determines that pursuit of a right or remedy through a derivative proceeding or otherwise is not in the best interests of the corporation, the merits of that determination shall be presumed to be conclusive against any shareholder making a demand or bringing a derivative proceeding with respect to such right or remedy, unless such shareholder can demonstrate that:

(1) the committee was not disinterested, as described in subsection (g); or

(2) the committee's determination was not made after an investigation conducted in good faith.

(g) For purposes of this section, a director or other person is disinterested if the director or other person:

(1) has not been made a party to a derivative proceeding seeking to assert the right or remedy in question, or has been made a party but only on the basis of a frivolous or insubstantial claim or for the sole purpose of seeking to disqualify the director or other person from serving on the committee;

(2) is able under the circumstances to render a determination in the best interests of the corporation; and

(3) is not an officer, employee, or agent of the corporation or of a related corporation. However, an officer, employee, or agent of the corporation or a related corporation who meets the standards of subdivisions (1) through (2) shall be considered disinterested in any case in which the right or remedy under

scrutiny is not assertable against a director or officer of the corporation or the related corporation.

(h) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the owner's behalf.

As added by P.L.266-1987, SEC.9.

IC 28-1-5-9
Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-10
Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-11
Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-11.5
Repealed

(Repealed by P.L.42-1993, SEC.103.)

IC 28-1-5-11.7
Repealed

(Repealed by P.L.42-1993, SEC.103.)

IC 28-1-5-12
Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-13
Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-5-14
Repealed

(Repealed by P.L.143-1984, SEC.1.)

IC 28-1-5-15
Books of accounts; minutes; stock transfer book

Sec. 15. Every corporation shall keep correct and complete books of accounts and minutes of the proceedings of its shareholders, directors, executives and/or finance committees, and it shall likewise keep, at its principal office, an original or a duplicate stock transfer book and/or records giving the names and addresses of all shareholders and the number of shares held by each.

(Formerly: Acts 1933, c.40, s.102; Acts 1935, c.5, s.20.)

IC 28-1-5-16

Requirement to provide property tax information in certain transactions

Sec. 16. With respect to a residential real property financing or refinancing, a corporation shall comply with IC 6-1.1-12-43.

As added by P.L.64-2004, SEC.29.

IC 28-1-5.5
Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-6
Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-7

Chapter 7. Merger and Consolidation of Banks, Trust Companies, and Building and Loan Associations

IC 28-1-7-0.5

Approval of department not required

Sec. 0.5. The approval of the department of an:

(1) agreement of merger; or

(2) agreement of consolidation;

is not required under this chapter if the corporation surviving the merger or consolidation is an institution organized or reorganized under the laws of the United States or a state (as defined in IC 28-2-17-19) other than Indiana.

As added by P.L.122-1994, SEC.41. Amended by P.L.171-1996, SEC.2.

IC 28-1-7-1

"Corporation", "shareholder"; authority to merge or consolidate; transactions involving savings banks; merger or consolidation of corporation and affiliate

Sec. 1. (a) As used in this chapter, "corporation" means:

(1) a bank;

(2) a trust company;

(3) a corporate fiduciary;

(4) a savings bank organized, reorganized, or formed as a result of a conversion after December 31, 1992;

(5) a savings association; or

(6) an industrial loan and investment company that maintains federal deposit insurance.

(b) As used in this chapter, "shareholder", with respect to a:

(1) mutual savings bank; or

(2) mutual savings association;

refers to a member of the mutual savings bank or mutual savings association.

(c) Any two (2) or more corporations that are organized or reorganized under the laws of any state (as defined in IC 28-2-17-19) or of the United States may merge into one (1) of such corporations, or may consolidate into a new corporation, to be organized under IC 28-12, by complying with the provisions of this chapter.

(d) A savings bank organized before January 1, 1993, may under section 25 of this chapter merge, consolidate, or join together with a bank or trust company. Except as provided in section 25 of this chapter, all other provisions of this chapter apply to the merger, consolidation, or joining together.

(e) A corporation organized or reorganized under the laws of a state (as defined in IC 28-2-17-19) or of the United States may merge or consolidate with one (1) or more of its affiliates (as defined in IC 28-1-18.2-1) by complying with all the provisions of this chapter. In effecting a merger or consolidation between a corporation and an affiliate, this chapter applies as if the affiliate were a corporation

except that a noncorporation survivor of a merger or consolidation does not retain powers of the corporation.
(Formerly: Acts 1933, c.40, s.114; Acts 1935, c.5, s.23.) As amended by P.L.263-1983, SEC.1; P.L.122-1994, SEC.42; P.L.262-1995, SEC.9; P.L.171-1996, SEC.3; P.L.192-1997, SEC.2; P.L.79-1998, SEC.36; P.L.35-2010, SEC.112; P.L.27-2012, SEC.38; P.L.13-2013, SEC.71.

IC 28-1-7-2
Manner of effecting merger

Sec. 2. The merger of any two (2) or more corporations shall be effected in the following manner. The board of directors of each corporation shall, by a resolution, approve a joint agreement of merger setting forth the following:

(a) The names of the corporations proposing to merge, and the name of the corporation into which such corporations propose to merge.

(b) The terms and conditions of the proposed merger.

(c) The manner and basis of converting the shares of the capital stock of each corporation into the shares of the surviving corporation, or, in whole or in part, into cash, property, shares, or other securities or obligations of any other corporation.

(d) A restatement of such provisions of the articles of incorporation of the surviving corporation as may be deemed necessary.

(e) Such other provisions with respect to the proposed merger as may be deemed necessary.

(Formerly: Acts 1933, c.40, s.115.) As amended by Acts 1979, P.L.257, SEC.1; P.L.141-1984, SEC.3; P.L.122-1994, SEC.43.

IC 28-1-7-3
Resolution of approving agreement; direction for submission to vote of shareholders

Sec. 3. The resolutions of the boards of directors shall direct that the agreement be submitted to a vote of the shareholders of the corporations at an annual or a special meeting. If the meeting is to be an annual meeting, notice of the submission of the agreement shall be included in the notice of the annual meeting. If the meeting is a special meeting, the special meeting shall be called by the resolution designating the meeting, and notice of the meeting shall be given at the time and in the manner provided in IC 28-13-5-8. A copy of the proposed agreement of merger shall be included with the notice of the annual or special meeting.
(Formerly: Acts 1933, c.40, s.116; Acts 1965, c.356, s.4.) As amended by P.L.263-1985, SEC.26; P.L.14-1992, SEC.67; P.L.122-1994, SEC.44.

IC 28-1-7-4
Department's approval of joint agreement of merger

Sec. 4. (a) After the resolutions approving a joint agreement of

merger have been adopted by the board of directors of each of the corporations, such resolutions and joint agreement shall be submitted for approval by the department. Subject to any approvals required under federal law, the department may, in its discretion, approve or disapprove the resolution and joint agreement.

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

(1) Whether the institutions subject to the proposed transaction are operated in a safe, sound, and prudent manner.

(2) Whether the financial condition of any institution subject to the proposed transaction will jeopardize the financial stability of any other institutions subject to the proposed transaction.

(3) Whether the proposed transaction under this chapter will result in an institution that has inadequate capital, unsatisfactory management, or poor earnings prospects.

(4) Whether the proposed transaction, in the department's judgment and considering the available information under the prevailing circumstances, will result in an institution that is more favorable to the stakeholders than if the entities were to remain separate.

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

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

(Formerly: Acts 1933, c.40, s.117.) As amended by P.L.263-1985, SEC.27; P.L.14-1992, SEC.68; P.L.122-1994, SEC.45; P.L.171-1996, SEC.4; P.L.90-2008, SEC.21; P.L.35-2010, SEC.113; P.L.27-2012, SEC.39.

IC 28-1-7-5

Submission of merger agreement; vote required

Sec. 5. The agreement of merger shall be submitted to a vote of the shareholders of each corporation, at the meeting directed by the resolution of the board of directors of each corporation, and the agreement shall be adopted by each corporation upon receiving the affirmative votes of the holders of a majority of the outstanding shares of the capital stock of the corporation. A mutual savings association or mutual savings bank shall adopt the agreement upon receiving the affirmative vote of fifty-one percent (51%) or more of the votes cast at the meeting called to consider such agreement of merger.

(Formerly: Acts 1933, c.40, s.118; Acts 1959, c.348, s.1.) As amended by P.L.122-1994, SEC.46; P.L.79-1998, SEC.37; P.L.90-2008, SEC.22.

IC 28-1-7-6
Notice of adoption of agreement and approval by department

Sec. 6. The secretary or cashier of each corporation shall promptly deliver or mail a written or printed notice of the adoption of the agreement and the approval by the department to each shareholder of record.

(Formerly: Acts 1933, c.40, s.119; Acts 1965, c.356, s.5.) As amended by P.L.122-1994, SEC.47.

IC 28-1-7-7
Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-7-8
Execution of merger agreement; administrative approval; abandonment of planned merger

Sec. 8. (a) After the adoption of the agreement of merger by the shareholders, the agreement shall be signed on behalf of each corporation by:

(1) its president or a vice president; and
(2) its secretary or cashier.

(b) If the department considers it to be advisable and in the best interests of the creditors and shareholders of any two (2) or more merging corporations, the corporations may merge by complying with the provisions of this chapter other than sections 3 and 5 of this chapter. However, in a merger under this subsection, waivers of the notice of meetings provided for in sections 3 and 5 of this chapter shall be procured from a majority of the shareholders of each of the merging corporations.

(c) A proposed merger may be abandoned (subject to contractual rights), without further shareholder action, in accordance with the procedure set forth in the agreement of merger or, if none is set forth, in the manner determined by the board of directors for the corporation that seeks to abandon the merger.

(Formerly: Acts 1933, c.40, s.121; Acts 1965, c.356, s.7.) As amended by P.L.263-1985, SEC.28; P.L.256-1989, SEC.2; P.L.122-1994, SEC.48.

IC 28-1-7-9
Execution and filing articles of merger

Sec. 9. (a) After the signing of the agreement of merger under section 8 of this chapter, articles of merger shall be executed and filed in the manner provided in this section, setting forth:

(1) the agreement of merger;
(2) the fact that the merger has been approved by the department;
(3) the signatures of the corporations that are parties to the agreement;
(4) the manner of its adoption; and
(5) the vote by which adopted by each of the corporations.

(b) The articles of merger shall be signed on behalf of each corporation by its president or a vice president and by its secretary or cashier and shall be acknowledged before a notary public. The articles of merger shall then be filed with the secretary of state.
(Formerly: Acts 1933, c.40, s.122.) As amended by P.L.263-1985, SEC.29; P.L.122-1994, SEC.49.

IC 28-1-7-10
Articles of merger; approval by secretary of state; issuance of certificate of merger

Sec. 10. Upon the filing of the articles of merger, the secretary of state shall:

(1) endorse the approval of the secretary of state upon each of the copies of the articles;
(2) retain one (1) copy of the articles;
(3) issue a certificate of merger; and
(4) return the remaining copies of the approved articles, together with the certificate of merger, to the surviving corporation or its designated agent.

(Formerly: Acts 1933, c.40, s.123.) As amended by P.L.122-1994, SEC.50.

IC 28-1-7-11
Consolidation; resolution approving joint agreements; contents

Sec. 11. The consolidation of any two (2) or more corporations, as authorized in section 1 of this chapter, shall be effected in the following manner. The board of directors of each corporation shall, by a resolution adopted by a majority vote of the members of such board, approve a joint agreement of consolidation setting forth the following:

(a) The names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, hereinafter designated as the new corporation.
(b) The terms and conditions of the proposed consolidation and the manner of carrying such consolidation into effect.
(c) The manner and basis of converting the shares of the capital stock of each corporation into the shares of the new corporation.
(d) With respect to the new corporation, all of the statements required by IC 28-12-2 to be set forth in original articles of incorporation for corporations formed under this article.
(e) Such other provisions with respect to the proposed consolidation as may be deemed necessary or desirable.

(Formerly: Acts 1933, c.40, s.124.) As amended by P.L.263-1985, SEC.30; P.L.14-1992, SEC.69.

IC 28-1-7-12
Consolidation; submission of resolutions and joint agreements to department; approval or disapproval

Sec. 12. (a) After the resolution approving a joint agreement of consolidation has been adopted by the board of directors of each of

the corporations, the resolutions and joint agreement shall be submitted to the department. The department may, in its discretion, approve or disapprove the resolutions and joint agreement.

(b) In deciding whether to approve or disapprove a transaction under this chapter, the department shall consider the following factors:

(1) Whether the institutions subject to the proposed transaction are operated in a safe, sound, and prudent manner.

(2) Whether the financial condition of any institution subject to the proposed transaction will jeopardize the financial stability of any other institutions subject to the proposed transaction.

(3) Whether the proposed transaction under this chapter will result in an institution that has inadequate capital, unsatisfactory management, or poor earnings prospects.

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

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

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

(Formerly: Acts 1933, c.40, s.125; Acts 1945, c.348, s.24.) As amended by P.L.263-1985, SEC.31; P.L.14-1992, SEC.70; P.L.122-1994, SEC.51; P.L.171-1996, SEC.5; P.L.90-2008, SEC.23.

IC 28-1-7-13
Shareholders' votes on consolidation agreements

Sec. 13. The agreement of consolidation shall be submitted to a vote of the shareholders of each corporation and shall be adopted upon receiving the same affirmative votes, and the adoption shall be followed by the same notice to shareholders as is prescribed in sections 3, 5, and 6 of this chapter, as if the consolidation were a merger.

(Formerly: Acts 1933, c.40, s.126.) As amended by P.L.263-1985, SEC.32; P.L.122-1994, SEC.52; P.L.90-2008, SEC.24.

IC 28-1-7-14
Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-7-15
Execution of agreement

Sec. 15. Upon the adoption of the agreement of consolidation, the agreement shall be signed as provided in section 8 of this chapter.

(Formerly: Acts 1933, c.40, s.128.) As amended by P.L.263-1985, SEC.33; P.L.122-1994, SEC.53.

IC 28-1-7-16
Execution and filing articles of consolidation

Sec. 16. Upon the execution of the agreement of consolidation by all of the corporations that are parties to the agreement, articles of consolidation shall be executed and filed with the secretary of state. The articles of consolidation must set forth the factors prescribed in section 9 of this chapter as if the consolidation was a merger.
(Formerly: Acts 1933, c.40, s.129.) As amended by P.L.263-1985, SEC.34; P.L.122-1994, SEC.54.

IC 28-1-7-17
Secretary of state; approval of articles of consolidation; issuance of certificates of consolidation and incorporation

Sec. 17. Upon the filing of the articles of consolidation, the secretary of state shall:

(1) endorse the approval of the secretary of state upon each of the copies of the articles;
(2) retain one (1) copy of the articles;
(3) issue a certificate of consolidation and incorporation to the new corporation; and
(4) return the remaining copies of the approved articles of consolidation, together with the certificate of consolidation and incorporation, to the new corporation or to its designated agent.

(Formerly: Acts 1933, c.40, s.130.) As amended by P.L.122-1994, SEC.55.

IC 28-1-7-18
Effective date of merger or consolidation

Sec. 18. Upon the issuance of a certificate of merger or a certificate of consolidation and incorporation by the secretary of state, the merger or consolidation, as the case may be, shall be effected.
(Formerly: Acts 1933, c.40, s.131.)

IC 28-1-7-19
Effect of merger or consolidation upon corporate structures, powers, privileges, and obligations

Sec. 19. When any such merger or consolidation shall have been effected, as provided in this chapter:

(a) the several corporations which are parties to the agreement of merger or of consolidation shall be a single corporation, which shall be:

(1) in case of a merger, the surviving corporation which is a party to the agreement of merger into which it has been agreed that the other corporations which are parties to the agreement shall be merged, which surviving corporation shall survive the merger; or
(2) in case of a consolidation, the new corporation into which it has been agreed that the corporations which are parties to the agreement of consolidation shall be consolidated;

(b) the separate existence of all the corporations which are parties to the agreement of merger or consolidation, except the surviving corporation in the case of a merger, shall cease;

(c) such single corporations shall have all of the rights, privileges, immunities, and powers and shall be subject to all of the duties and liabilities of a corporation organized under IC 28-1-4;

(d) such single corporation shall thereupon and thereafter possess all of the rights, privileges, immunities, powers, and franchises which such corporation would possess if it were organized under the provisions of this article; all property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares of capital stock, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed, and the title to any real estate, or any interest therein, under the laws of this state vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation;

(e) such single corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated, in the same manner and to the same extent as if such single corporation had itself incurred such liabilities and obligations, or contracted therefor, and any claim existing or any action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such single corporation may be substituted in its place; neither the rights of creditors nor any liens upon the property of any of such corporations shall be impaired by such merger or consolidation, but such liens shall be limited to the property upon which they were liens immediately prior to the time of such merger or consolidation, unless otherwise provided in the agreement of merger or consolidation and with the consent in writing of the parties affected; and

(f) in case of a merger, the articles of incorporation of the surviving corporation shall be supplanted and superseded to the extent, if any, that any provision or provisions of such articles shall be restated in the agreement of merger as provided by section 2(d) of this chapter, and such articles of incorporation shall be deemed to be thereby and to that extent amended. In case of a consolidation, the statements set forth in the agreement of consolidation, as provided in section 11(d) of this chapter, shall be deemed to be the articles of incorporation of the new corporation formed by such consolidation.

(Formerly: Acts 1933, c.40, s.132.) As amended by P.L.263-1985, SEC.35.

IC 28-1-7-20
Recording articles of merger or consolidation

Sec. 20. The surviving or new corporation resulting from a merger or consolidation shall, within ten (10) days after such merger or consolidation becomes effective, file for record one (1) of the copies of the articles of merger or consolidation bearing the endorsement of the approval of the secretary of state, or a copy of such agreement and endorsement certified by the secretary of state, in the office of the recorder of each county in which the principal office of any of the corporations that are parties to the agreement is located.

(Formerly: Acts 1933, c.40, s.133.) As amended by P.L.263-1985, SEC.36; P.L.14-1992, SEC.71; P.L.122-1994, SEC.56.

IC 28-1-7-21
Dissenters' rights; notice; method of asserting rights; payment for shareholder's shares; withdrawal of demand; determination of value; submission of certificates

Sec. 21. (a) This section does not apply to a shareholder of a:

(1) mutual savings bank; or

(2) mutual savings association;

that is the subject of a proposed merger or consolidation under this chapter.

(b) A shareholder entitled to vote on the adoption of an agreement of merger or consolidation may dissent from the merger or consolidation and obtain payment of the value of the shareholder's shares in the manner provided in this section.

(c) If a proposed merger or consolidation is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this section.

(d) A shareholder who desires to assert dissenters' rights under this section must:

(1) deliver to the corporation before the vote is taken written notice of the shareholder's demand for payment for the shareholder's shares if the proposed action is effected; and

(2) not vote the shareholder's shares in favor of the proposed action.

(e) If the merger or consolidation is effected, the surviving or new corporation shall pay to the shareholder, upon surrender of the certificate or certificates representing the shareholder's shares, the value of the shares as of the day before the date on which the vote was taken approving the merger or consolidation. A shareholder failing to satisfy the requirements of subsection (d) is not entitled to payment for the shareholder's shares under this section. Immediately after the vote is taken approving the merger or consolidation, the shareholder, except as otherwise provided in subsection (f), is entitled to payment only as provided in this section, ceases to be a shareholder, and is not entitled to vote or to exercise any other rights of a shareholder.

(f) A demand for payment made under subsection (d) may not be

withdrawn unless the corporation consents to the withdrawal. With respect to a shareholder who has made a demand for payment, the right of the shareholder to be paid the value of his shares ceases and his status as a shareholder is restored without prejudice to any corporate proceedings which may have been taken during the interim, and the shares held by the shareholder shall be treated for all purposes as if no objection and demand had been made by the shareholder, if:

(1) the shareholder's request to withdraw the shareholder's demand is consented to by the corporation;

(2) the merger or consolidation is abandoned;

(3) the shareholders revoke the authority to effect the merger or consolidation;

(4) a petition for the determination of value by a court is not filed within the time provided in this section; or

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

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

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

(i) The court shall render judgment against the surviving or new corporation for payment of an amount equal to the value of each dissenting share multiplied by the number of dissenting shares that

any dissenting shareholder who is a party is entitled to require the surviving or new corporation to purchase. The judgment is payable only upon the endorsement and delivery to the surviving or new corporation of the certificates for the shares described in the judgment. Any party may appeal from the judgment.

(j) Within twenty (20) days after the merger or consolidation is effected, the shareholder shall submit the certificate or certificates representing the shareholder's shares to the corporation for notation on the certificate or certificates that demand for payment has been made. The shareholder's failure to do so, at the option of the corporation, terminates the shareholder's rights under this section unless a court of competent jurisdiction, for good and sufficient cause shown, otherwise directs. If shares represented by a certificate on which notation has been so made are transferred, each new certificate issued for those shares shall bear a similar notation together with the name of the original dissenting holder of the shares, and a transferee of the shares acquires by the transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the value of the shares.

(Formerly: Acts 1933, c.40, s.134; Acts 1965, c.356, s.9.) As amended by P.L.238-1983, SEC.9; P.L.33-1991, SEC.13; P.L.14-1992, SEC.72; P.L.262-1995, SEC.10; P.L.27-2012, SEC.40.

IC 28-1-7-22

Effect of merger or consolidation upon fiduciary status of party

Sec. 22. If any bank, bank of discount and deposit, trust company, savings bank, corporate fiduciary, or savings association:

(1) is acting as the administrator, coadministrator, executor, coexecutor, trustee, or cotrustee of or in respect to any estate or trust, or as guardian of any person or estate which is being administered under the laws of this state; or

(2) has been named or designated as such in any will or other executed writing;

such relation, and all other similar fiduciary relations, and all rights, privileges, duties, and obligations shall remain unimpaired, and shall continue with the surviving or single corporation, from the effective date of the merger or consolidation.

(Formerly: Acts 1933, c.40, s.135.) As amended by P.L.122-1994, SEC.57; P.L.262-1995, SEC.11; P.L.79-1998, SEC.38.

IC 28-1-7-23

Effect of merger or consolidation upon letters of administration or letters testamentary

Sec. 23. Nothing done in connection with the consolidation or merger of any two (2) or more banks, banks of discount and deposit, trust companies, savings banks, corporate fiduciaries, or building and loan associations shall be deemed to be or to effect a renunciation or revocation of any letters of administration or letters testamentary, pertaining to such relation, nor a removal or resignation from any such executorship or trusteeship or any other fiduciary relationship.

(Formerly: Acts 1933, c.40, s.136.) As amended by P.L.122-1994, SEC.58; P.L.262-1995, SEC.12.

IC 28-1-7-24
Repealed

(Repealed by P.L.122-1994, SEC.122.)

IC 28-1-7-25
Savings banks; request for order to merge, consolidate, or join with acquiring bank or trust company; requirements

Sec. 25. (a) A savings bank organized before January 1, 1993, may request that the department order the savings bank to merge, consolidate, or join with an acquiring institution that is a bank, bank of discount and deposit, savings bank formed after December 31, 1992, savings association, or trust company.

(b) A savings bank may make a request under subsection (a) only if its board of trustees has, at a regular or special meeting called for that purpose, by a vote of at least two-thirds (2/3) of the then qualified and acting trustees, adopted a resolution stating that in the opinion of the board, the merger, consolidation, or other joining together is in the best interests of the depositors and other creditors of the savings bank.

(c) The department may order a merger, consolidation, or other joining requested under subsection (a) if it determines that:

(1) the depositors of the savings bank would not receive any liquidating dividend upon the dissolution of the savings bank; and

(2) the acquiring institution is willing to be the surviving corporation.

(d) The approval of the depositors of a savings bank organized before January 1, 1993, is not required for a merger, consolidation, or joining together under this section.

(e) To facilitate a merger, consolidation, or joining together under this section, the department may convert the charter, form of ownership, or operating powers of a savings bank into the charter, form of ownership, or operating powers of the acquiring institution. *As added by P.L.263-1983, SEC.2. Amended by P.L.122-1994, SEC.59; P.L.79-1998, SEC.39.*

IC 28-1-7.1

Chapter 7.1. Voluntary Supervisory Conversion

IC 28-1-7.1-1

"Depository financial institution"

Sec. 1. As used in this chapter, "depository financial institution" has the meaning set forth in IC 28-1-1-6, but does not include a credit union.

As added by P.L.89-2011, SEC.33.

IC 28-1-7.1-2

"Standard conversion"

Sec. 2. As used in this chapter, "standard conversion" refers to a transaction permitted under any of the following:

(1) IC 28-1-21.4.

(2) IC 28-1-21.6.

(3) IC 28-1-21.8.

(4) IC 28-1-21.9.

As added by P.L.89-2011, SEC.33.

IC 28-1-7.1-3

Depository financial institution with mutual ownership; authority to engage in voluntary supervisory conversion

Sec. 3. A depository financial institution with mutual ownership may engage in a voluntary supervisory conversion only as set forth in this chapter.

As added by P.L.89-2011, SEC.33.

IC 28-1-7.1-4

Voluntary supervisory conversion; types of transactions

Sec. 4. A voluntary supervisory conversion of a depository financial institution may include one (1) or more of the following transactions:

(1) A merger of the depository financial institution into an interim depository financial institution with stock ownership.

(2) Following a conversion of the depository financial institution, a sale of shares of the converted depository financial institution directly to an acquirer, which may be a person, company, depository institution, or depository institution holding company.

(3) A merger or consolidation with an existing or newly created depository financial institution. Except as provided in this chapter, a merger or consolidation under this subdivision must be authorized by, and is subject to, any other applicable laws and regulations.

As added by P.L.89-2011, SEC.33.

IC 28-1-7.1-5

Voluntary supervisory conversion; eligibility; conditions

Sec. 5. A depository financial institution with mutual ownership

is eligible for a voluntary supervisory conversion under this chapter if, in the judgment of the director, the voluntary supervisory conversion satisfies at least one (1) of the following conditions:

(1) Both of the following apply:

(A) The depository financial institution is significantly undercapitalized, or is undercapitalized and a standard conversion to stock form is not feasible.

(B) After the voluntary supervisory conversion, the converted depository financial institution will likely be a viable entity, or the one (1) or more entities resulting from the voluntary supervisory conversion will likely be viable entities.

(2) Severe financial conditions threaten the stability of the depository financial institution and a voluntary supervisory conversion to stock form is likely to:

(A) improve the financial condition of the depository financial institution; or

(B) result in one (1) or more entities with an improved financial condition.

(3) The depository financial institution is in receivership or conservatorship, or in imminent danger of receivership or conservatorship, and the voluntary supervisory conversion will enable the depository financial institution to:

(A) terminate the receivership or conservatorship; or

(B) avoid the institution of a receivership or conservatorship.

As added by P.L.89-2011, SEC.33.

IC 28-1-7.1-6

Director's determination of resulting entity's viability; conditions; authority of director to act; applicability of law governing mergers and consolidations; waiver of law

Sec. 6. (a) The director may determine under section 5(1)(B) of this chapter, based upon information then available to the director, that a voluntary supervisory conversion will likely result in a depository financial institution becoming a viable entity with stock ownership if all the following are satisfied:

(1) The depository financial institution resulting from the conversion will be adequately capitalized.

(2) The depository financial institution resulting from the conversion, and any person acquiring capital stock in the depository financial institution resulting from the conversion, will comply with all applicable supervisory policies.

(3) The depository financial institution involved in, or the one (1) or more entities resulting from, the conversion will be insured by the Federal Deposit Insurance Corporation.

(4) The voluntary supervisory conversion is in the best interest of:

(A) the depository financial institution involved in, or the one (1) or more entities resulting from, the conversion; and

(B) the public.

(5) The voluntary supervisory conversion will not injure or be detrimental to:

(A) the depository financial institutions involved in, or the one (1) or more entities resulting from, the conversion; or

(B) the public interest.

(b) The director may act on a voluntary supervisory merger, consolidation, sale, or other disposition on behalf of the department.

(c) Except as otherwise provided in this chapter, a provision of IC 28-1-7 concerning mergers or consolidations applies to a voluntary supervisory conversion under this chapter unless the director determines that the provision should be waived or considered inapplicable with respect to a particular voluntary supervisory conversion. The director may make a determination described in this subsection if the director finds, in the director's discretion, that the determination will:

(1) facilitate the consummation of the voluntary supervisory conversion; and

(2) in the director's judgment and considering the available information under the prevailing circumstances, result in one (1) or more entities that are more favorable to the public than if:

(A) the provision were not waived or considered inapplicable; or

(B) the voluntary supervisory conversion were not approved.

As added by P.L.89-2011, SEC.33. Amended by P.L.6-2012, SEC.192.

IC 28-1-7.1-7

Depositors; no right to participate in or approve conversion; no ownership interests in converted institution; liquidation account

Sec. 7. Depositors of a depository financial institution with mutual ownership do not have the right to approve or participate in a voluntary supervisory conversion, and will not have any legal or beneficial ownership interests in the converted depository financial institution, unless the department allows otherwise. Depositors may have interests in a liquidation account, if one is established.

As added by P.L.89-2011, SEC.33.

IC 28-1-7.1-8

Plan of conversion; adoption by board; contents

Sec. 8. A majority of the board of directors of a depository financial institution with mutual ownership must adopt a plan of voluntary supervisory conversion. The plan adopted must include the following:

(1) The name and address of the depository financial institution.

(2) The name and address of each proposed purchaser of conversion shares and a description of that purchaser's relationship to the depository financial institution.

(3) The title, per unit par value, number, and per unit and aggregate offering price of shares that the converted depository financial institution will issue.

(4) The number and percentage of shares that each investor will purchase or acquire in a merger or other combination.

(5) The aggregate number and percentage of shares that each director or officer of the converted depository financial institution, and any affiliates (as defined in IC 28-1-18.2-1) or associates (as defined in 12 CFR 563b.25) of the director or officer, will purchase.

(6) A description of any liquidation account to be established in connection with the voluntary supervisory conversion.

(7) Certified copies of all resolutions of the board of directors of the depository financial institution relating to the conversion.

As added by P.L.89-2011, SEC.33. Amended by P.L.27-2012, SEC.41.

IC 28-1-7.1-9

Application to department; required information and documents

Sec. 9. The following information and documents must be included in an application for a voluntary supervisory conversion made to the department:

(1) Evidence establishing that the depository financial institution with mutual ownership meets the eligibility requirements set forth in this chapter.

(2) An opinion of qualified, independent counsel or of an independent, certified public accountant concerning the tax consequences of the conversion, or an IRS ruling indicating that the transaction qualifies as a tax free reorganization.

(3) A plan of voluntary supervisory conversion that complies with section 8 of this chapter.

(4) A business plan, when required by the department.

(5) The depository financial institution's most recent audited financial statements and call report.

(6) A detailed explanation of how the current capital levels make the depository financial institution eligible to engage in a voluntary supervisory conversion under this chapter.

(7) A description of the estimated conversion expenses.

(8) Evidence supporting the value of any noncash asset contributions. Appraisals must be acceptable to the department and each noncash asset must meet all other department policy guidelines.

(9) Pro forma financial statements that reflect the effects of the transaction. The depository financial institution must identify its tangible, core, and risk based capital levels and show the adjustments necessary to compute the pro forma capital levels. The depository financial institution must prepare its pro forma statements in conformance with department regulations and policy.

(10) The proposed articles of incorporation and bylaws, if any, of the depository financial institution formed as a result of the voluntary supervisory conversion.

(11) The proposed stock certificate form, if any, for the

depository financial institution formed as a result of the voluntary supervisory conversion.

(12) A copy of any agreements between the depository financial institution formed as a result of the voluntary supervisory conversion and proposed purchasers.

(13) A copy and description of all existing and proposed employment contracts. The depository financial institution formed as a result of the voluntary supervisory conversion must include information describing the term, salary, and severance provisions of the contract, the identity and background of the officer or employee to be employed, and the amount of any conversion shares to be purchased by the officer or employee or his or her affiliates (as defined in IC 28-1-18.2-1) or associates (as defined in 12 CFR 563b.25).

(14) Any:

(A) required filings under federal law; or

(B) waivers of compliance with federal law obtained as a result of conflicts with state law.

(15) Applications for permission to organize a stock association and for approval of a merger, if applicable, and a copy of any application for Federal Home Loan Bank membership or FDIC insurance of accounts, if applicable.

(16) A statement describing any other applications required under federal or state banking laws for all transactions related to the conversion, copies of all dispositive documents issued by regulatory authorities relating to the applications, and, if requested by the department, copies of the applications and related documents.

(17) A description of any of the features of the application that do not conform to the requirements of this section, including any request for waiver of such requirements.

(18) An opinion of counsel acceptable to the department as to the legality of the voluntary supervisory conversion.

(19) Any other information or documents requested by the director.

As added by P.L.89-2011, SEC.33. Amended by P.L.27-2012, SEC.42.

IC 28-1-7.1-10

Denial of application; findings by director

Sec. 10. The director may not approve an application to engage in a voluntary supervisory conversion if the director makes any of the following findings:

(1) That the depository financial institution does not meet the eligibility requirements for a voluntary supervisory conversion under this chapter, or that the proceeds from the sale of the conversion stock, less the expenses of the conversion, would be insufficient to satisfy any applicable viability requirement.

(2) That the transaction is detrimental to or would cause potential injury to the depository financial institution or is

contrary to the public interest.

(3) That the depository financial institution or its acquirer, or the controlling parties or directors and officers of the depository financial institution or its acquirer, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion.

(4) That the depository financial institution fails to justify an employment contract incidental to the conversion, or that the employment contract will be an unsafe or unsound practice or represent a sale of control.

As added by P.L.89-2011, SEC.33.

IC 28-1-7.1-11

Approval of application; conditions

Sec. 11. (a) The director shall condition approval of a voluntary supervisory conversion application on the applicant satisfying all of the following:

(1) The depository financial institution must complete the conversion stock sale, if any, not later than three (3) months after the director approves the application. The director may grant an extension for good cause.

(2) The depository financial institution and its acquirer must comply with all applicable laws, rules, and regulations.

(3) The depository financial institution and its acquirer must satisfy any other requirements or conditions imposed by the director.

(4) The depository financial institution involved in, or the one (1) or more entities resulting from, the voluntary supervisory conversion must obtain insurance coverage of their deposits by the Federal Deposit Insurance Corporation.

(b) The director may condition approval of a voluntary supervisory conversion application on either of the following:

(1) The applicant must satisfy any conditions and restrictions the director imposes to prevent unsafe or unsound practices, to protect the public interest, or to prevent potential injury or detriment to the depository financial institution before and after the conversion. The director may impose these conditions and restrictions on the depository financial institution (before and after the conversion), its acquirer, controlling parties, or directors and officers of the depository financial institution or its acquirer.

(2) A larger amount of capital, if necessary, for safety and soundness reasons must be infused following the voluntary supervisory conversion.

As added by P.L.89-2011, SEC.33.

IC 28-1-7.2
Repealed

(Repealed by P.L.42-1993, SEC.103.)

IC 28-1-7.5

Chapter 7.5. Formation of Certain Bank Holding Companies

IC 28-1-7.5-1

"Holding company" defined

Sec. 1. (a) As used in this chapter, "holding company" refers to a corporation that:

(1) is attempting to acquire all the outstanding shares of a bank, trust company, corporate fiduciary, or stock savings bank under this chapter; or

(2) has completed such an acquisition;

depending upon the context in which the term is used.

(b) As used in this chapter, "stock savings bank" has the meaning set forth in IC 28-6.1-2-7.

As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994, SEC.60; P.L.262-1995, SEC.13.

IC 28-1-7.5-2

Acquisition of bank, trust company, corporate fiduciary, or stock savings bank by holding company under plan of exchange

Sec. 2. All the outstanding shares of common stock of any bank, trust company, corporate fiduciary, or stock savings bank may be acquired by any corporation organized under IC 23-1 if the acquisition is made under a plan of exchange approved in the manner provided in this chapter. Such a plan of exchange must provide for:

(1) the exchange of all the outstanding shares of common stock of the bank, trust company, corporate fiduciary, or stock savings bank for shares of common stock to be issued by the holding company at the rate of one (1) share of holding company stock for each share of bank, trust company, corporate fiduciary, or stock savings bank stock; and

(2) the redemption by the holding company, under unconditional rights granted by its articles of incorporation or bylaws or by agreement between the holding company and its shareholders, of all of the shares of common stock of the holding company that may be outstanding immediately before the exchange.

As added by P.L.238-1983, SEC.10. Amended by P.L.149-1986, SEC.62; P.L.122-1994, SEC.61; P.L.262-1995, SEC.14.

IC 28-1-7.5-3

Resolutions approving plan of exchange; contents; direction for submission to vote of shareholders

Sec. 3. (a) A bank, trust company, corporate fiduciary, or stock savings bank and a holding company that desire to effect an exchange of securities must, by resolutions adopted by the board of directors of each corporation, approve a plan of exchange which sets forth:

(1) the names of the holding company and the bank, trust company, corporate fiduciary, or stock savings bank;

(2) the terms and conditions of the exchange;

(3) the mode of carrying the exchange into effect;
(4) the manner of redemption of all shares of common stock of the holding company that may be outstanding immediately before the exchange;
(5) a restatement of such provisions of the articles of incorporation of the holding company as may be considered necessary or desirable to give effect to the exchange; and
(6) such other provisions with respect to the exchange as may be considered necessary or desirable.

(b) The resolution of the board of directors of the bank, trust company, corporate fiduciary, or stock savings bank and, if the plan of exchange provides for the amendment of the articles of incorporation of the holding company, the resolution of the board of directors of the holding company, must be submitted to a vote of the shareholders of the corporation, at a meeting of the shareholders. The meeting may be an annual or a special meeting of the shareholders. If the meeting of any corporation at which the plan is to be submitted is an annual meeting, notice of the submission of the plan must be included in the notice of the annual meeting. If the meeting is a special meeting, the meeting must be called by the resolution designating the meeting, and notice of the meeting must be given as provided by law. A copy of the proposed plan of exchange must be included with the notice of the annual or special meeting of shareholders given to each shareholder.

As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994, SEC.62; P.L.262-1995, SEC.15.

IC 28-1-7.5-4

Filing plan of exchange and statement disclosing required information with department

Sec. 4. (a) The bank, trust company, corporate fiduciary, or stock savings bank and the holding company shall file with the department three (3) copies of the plan of exchange certified by an officer of each as having been approved in accordance with section 3 of this chapter. They shall also file a statement which includes:

(1) information as to the earnings and financial condition of the bank, trust company, corporate fiduciary, or stock savings bank as of the end of its last preceding year as filed with the department, and similar information, to the extent readily available, as of a date not earlier than one hundred twenty (120) days before the filing of the plan of exchange;
(2) a balance sheet of the holding company as of the date of the most recent statement of condition of the bank, trust company, corporate fiduciary, or stock savings bank required by subdivision (1);
(3) a pro forma balance sheet of the holding company based on the assumption that the plan of exchange was effective as proposed at the date of the balance sheet of the holding company required by subdivision (2);
(4) a description of the business intended to be done by the

holding company and of any plans or proposals that the holding company may have to sell its assets or merge or consolidate with any other person, or to make any other material change in its investment policy, business, corporate structures, or management;

(5) a list of all persons who are or who have been selected to become directors or officers of the holding company, a description of their principal occupations, a list of all offices and positions held by them during the past five (5) years, and information about whether any of them:

(A) is under indictment for; or

(B) has been convicted of;

a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

(6) a description of any plans or proposals that the holding company may have to liquidate the bank, trust company, corporate fiduciary, or stock savings bank to sell its assets or merge or consolidate it with any person, or to make any other material change in its investment policy, business, corporate structure, or management;

(7) a copy of a preliminary proxy or information statement prepared for distribution to the shareholders of the bank, trust company, corporate fiduciary, or stock savings bank setting forth all material facts relating to the holding company and the proposed plan of exchange; and

(8) such other information as the director may prescribe.

(b) The statement must:

(1) assert the completeness and accuracy of the information referred to in subsection (a)(1) through (a)(8); and

(2) be made under oath or affirmation by an officer of the bank, trust company, corporate fiduciary, or stock savings bank and an officer of the holding company.

If any material change occurs in the facts set forth in the statement filed with the department, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the department within five (5) business days after the parties learn of the change.

As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994, SEC.63; P.L.262-1995, SEC.16; P.L.213-2007, SEC.36; P.L.217-2007, SEC.34; P.L.137-2014, SEC.23.

IC 28-1-7.5-5

Public hearing; requisites; procedures

Sec. 5. (a) At the time of the filing of a plan of exchange with the department, the bank, trust company, corporate fiduciary, or stock savings bank may submit a written request asking the department to hold a hearing on the matter. If such a request is submitted, the department shall hold a public hearing upon the fairness of the terms, conditions, and provisions of the plan of exchange and the proposed issuance and exchange of stock of the holding company for the stock

of the bank, trust company, corporate fiduciary, or stock savings bank. In addition, the department may on its own motion hold such a public hearing. The shareholders of the bank, the trust company, the corporate fiduciary, and the holding company and any other interested party may appear and become a party to the proceeding at any public hearing at which the fairness of the exchange is to be determined. The department shall require the bank, trust company, corporate fiduciary, or stock savings bank and the holding company to produce such evidence as the director considers necessary to the hearing.

(b) The department shall commence any public hearing held under this section not less than thirty (30) days and not more than one hundred twenty (120) days after the date on which the plan of exchange is filed with the department. The hearing shall be held at such place, date, and time as the department shall specify. The hearing may be held by any member or members of the department, by the director of the department, by a deputy director of the department, by the supervisor of the department's division of banks and trust companies, or by any employee of the department designated by the members of the department. At least ten (10) days before the hearing, the applicant shall publish notice of the hearing in a newspaper of general circulation in the county or counties where the principal offices of the bank, trust company, corporate fiduciary, or stock savings bank and the holding company are located and in the county where the hearing will be held. Written notice of the hearing shall be mailed at least ten (10) days before the hearing by the bank, trust company, corporate fiduciary, or stock savings bank and by the holding company to all of their respective shareholders. All expenses of publication, court reporter fees, department expenses, and hearing room fees shall be paid by:

(1) the bank, trust company, corporate fiduciary, or stock savings bank;
(2) the holding company; or
(3) both;

as specified in the plan of exchange.

(c) Except as otherwise provided in this section, the hearing and the determination made by the department are subject to IC 4-21.5-3.
As added by P.L.238-1983, SEC.10. Amended by P.L.7-1987, SEC.158; P.L.14-1992, SEC.74; P.L.122-1994, SEC.64; P.L.262-1995, SEC.17.

IC 28-1-7.5-6
Approval or disapproval of plan of exchange by department; order; findings of fact; judicial review

Sec. 6. (a) The department shall issue an order approving the plan of exchange as delivered to it by the bank, trust company, corporate fiduciary, or stock savings bank and the holding company, including any modifications to the plan as the board of directors of each corporation may approve, unless it finds that:

(1) the plan, including any modifications, would adversely

affect the financial stability or management of the bank, trust company, corporate fiduciary, or stock savings bank or the general capacity or intention to continue the safe and sound conduct of the bank, trust company, corporate fiduciary, or stock savings bank;

(2) the terms and conditions of the plan of exchange are unfair and unreasonable to the shareholders of the bank, trust company, corporate fiduciary, or stock savings bank; or

(3) the plans or proposals that the holding company has to liquidate the bank, trust company, corporate fiduciary, or stock savings bank, sell its assets or consolidate or merge it with any person, or to make any other material change in its investment policy, business, corporate structure, or management, are unfair and unreasonable to the shareholders of the bank, trust company, corporate fiduciary, or stock savings bank and not in the public interest.

(b) If a hearing is held on the plan of exchange, the department shall issue its order approving or disapproving the plan within ninety (90) days of the date of hearing. The department shall include its findings of fact in the order. If the department approves the plan, the findings of fact must include a finding that the terms and conditions of the plan and of the issuance and exchange of holding company stock for stock of the bank, trust company, corporate fiduciary, or stock savings bank are fair and reasonable to the shareholders of the bank, trust company, corporate fiduciary, or stock savings bank. Any party to the proceedings aggrieved by the order is entitled to a judicial review in accordance with IC 4-21.5-5.

(c) If no hearing is held on the plan of exchange, the department shall issue an order approving or disapproving the plan, within ninety (90) days after the date on which the plan of exchange is filed with the department. The department may issue the order without including its findings of facts.

As added by P.L.238-1983, SEC.10. Amended by P.L.7-1987, SEC.159; P.L.122-1994, SEC.65; P.L.262-1995, SEC.18.

IC 28-1-7.5-7

Submission of plan of exchange to shareholders; procedures; voting rights; approval; abandonment

Sec. 7. (a) If a plan of exchange is approved by the department, the plan shall be submitted to a vote of the shareholders of the bank, trust company, corporate fiduciary, or stock savings bank and, if the articles of incorporation of the holding company are to be amended in the plan, to a vote of the shareholders of the holding company, at the meeting or meetings of the shareholders directed by the resolutions of the board of directors of the corporation approving the plan of exchange. Each shareholder of the bank, trust company, corporate fiduciary, or stock savings bank shall be provided with a copy of a proxy or information statement setting forth material facts regarding the holding company and the plan of exchange at the same time as the shareholder is provided with the notice of the meeting.

Three (3) copies of the definitive proxy or information statement, one (1) of which shall be marked to indicate the changes from the preliminary statement filed under section 4 of this chapter, shall be filed with the department by the bank, trust company, corporate fiduciary, or stock savings bank not later than the date the statement is first sent, given, or delivered to shareholders.

(b) Each outstanding share of the bank, trust company, corporate fiduciary, or stock savings bank and, if the articles of incorporation of the holding company are to be amended in the plan, the holding company, is entitled to one (1) vote, regardless of class, on the approval of the plan of exchange unless the articles of incorporation in effect at the time of the vote provide for special, conditional, or limited voting rights, or for no right to vote. The holders of the outstanding shares of a class of the bank, trust company, corporate fiduciary, or stock savings bank and, if the articles of incorporation of the holding company are to be amended in the plan, the holding company are entitled to vote as a separate class on a proposed plan of exchange if the plan would:

(1) increase or decrease the aggregate number of authorized shares of the class;

(2) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(3) effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(4) change the designation, rights, preferences, or limitations of all or part of the shares of the class;

(5) change the shares of all or part of the class into a different number of shares of the same class;

(6) create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(7) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(8) limit or deny an existing preemptive right of all or part of the shares of the class; or

(9) cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(c) The plan of exchange is approved by the shareholders of a corporation when affirmative votes representing at least a majority (or such greater portion as the articles of incorporation may require) of the outstanding shares are received from shareholders entitled to vote on the plan. Notwithstanding shareholder adoption of the plan of exchange and at any time before the filing of articles of exchange with the secretary of state under section 9 of this chapter, the plan of exchange may be abandoned by a resolution of the board of directors

of the bank, trust company, corporate fiduciary, or stock savings bank or of the holding company.

As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994, SEC.66; P.L.262-1995, SEC.19; P.L.213-2007, SEC.37; P.L.217-2007, SEC.35.

IC 28-1-7.5-8

Dissenting shareholders; demand for payment of value of shares; withdrawal of demand; determination of value; procedures; limitations

Sec. 8. (a) If a shareholder votes in opposition to a plan of exchange at the meeting at which the plan is adopted by the shareholders, the shareholder may, within thirty (30) days after the date of the meeting, make written objection to the exchange and demand that the bank, trust company, corporate fiduciary, or stock savings bank pay him the value of his shares. If the plan of exchange is effected, the bank, trust company, corporate fiduciary, or stock savings bank shall pay to the shareholder, upon surrender of the certificate or certificates representing his shares, the value of the shares as of the day before the date on which the vote was taken approving the plan of exchange. Any shareholder failing to make demand within the thirty (30) day period is bound by the terms of the plan of exchange. Immediately after making such a demand, the shareholder, except as provided in subsection (b), is entitled to payment as provided in this section, ceases to be a shareholder, and is not entitled to vote or to exercise any other rights of a shareholder.

(b) A demand for payment made under subsection (a) may not be withdrawn unless the bank, trust company, corporate fiduciary, or stock savings bank consents to the withdrawal. With respect to a shareholder who has made a demand for payment, the right of the shareholder to be paid the value of his shares ceases and his status as a shareholder is restored, without prejudice to any corporate proceedings which may have been taken during the interim, and the shares held by the shareholder shall be treated for all purposes as if no objection and demand had been made by the shareholder, if:

(1) the shareholder's request to withdraw his demand is consented to by the bank, trust company, corporate fiduciary, or stock savings bank;

(2) the plan of exchange is abandoned;

(3) the shareholders revoke the authority to effect the exchange;

(4) a petition for the determination of value by a court is not filed within the time provided in this section; or

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

(c) Within ten (10) days after the plan of exchange is effected, the bank, trust company, corporate fiduciary, or stock savings bank shall mail or deliver written notice of the date of that action to each dissenting shareholder who has made demand under this section. The bank, trust company, corporate fiduciary, or stock savings bank shall use the shareholder's address which appears on the corporate records.

The notice shall include a written offer to the shareholder to pay for the shareholder's shares at a specified price considered by the corporation to be the value of the shares. If within thirty (30) days after the date on which the plan of exchange was effected the value of the shares is agreed upon, the bank, trust company, corporate fiduciary, or stock savings bank shall make payment to the shareholder for the shares. The bank, trust company, corporate fiduciary, or stock savings bank shall make the payment within ninety (90) days after the date on which the plan of exchange was effected, upon surrender of the certificates representing the shares. Upon payment of the agreed value, the dissenting shareholder ceases to have any interest in the shares.

(d) If within the period of thirty (30) days a dissenting shareholder and the bank, trust company, corporate fiduciary, or stock savings bank do not agree, then either the bank, trust company, corporate fiduciary, or stock savings bank or the dissenting shareholder may file a petition in a circuit or superior court in the county in this state where the principal office of the bank, trust company, corporate fiduciary, or stock savings bank is located requesting that the court determine the value of the shares. However, such a petition must be filed within ninety (90) days after the date on which the plan of exchange was effected.

(e) The court shall render judgment against the bank, trust company, corporate fiduciary, or stock savings bank for payment of an amount equal to the value of each dissenting share multiplied by the number of dissenting shares that any dissenting shareholder who is a party is entitled to require the bank, trust company, corporate fiduciary, or stock savings bank to purchase. The judgment is payable only upon the endorsement and delivery to the bank, trust company, corporate fiduciary, or stock savings bank of the certificates for the shares described in the judgment. Any party may appeal from the judgment.

(f) Within twenty (20) days after payment is demanded for a shareholder's shares, the shareholder shall submit the certificates to the bank, trust company, corporate fiduciary, or stock savings bank for notation on the certificates that demand for payment has been made. The failure of the shareholder to do so, at the option of the bank, trust company, corporate fiduciary, or stock savings bank, terminates the shareholder's rights under this section unless a court, for good and sufficient cause shown, otherwise directs. If shares are transferred, each new certificate issued for those shares shall bear a notation, together with the name of the original dissenting holder of the shares, and a transferee of the shares acquires by the transfer no rights in the bank, trust company, corporate fiduciary, or stock savings bank other than those which the original dissenting shareholder had after making demand for payment of the value of the shares.

As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994, SEC.67; P.L.262-1995, SEC.20.

IC 28-1-7.5-9

Articles of exchange; requisites; filing; certificate of exchange; issuance; effectiveness of plan

Sec. 9. (a) After the plan of exchange is approved by shareholders of the bank, trust company, corporate fiduciary, or stock savings bank and, if required, by the shareholders of the holding company, and unless the plan of exchange is subsequently abandoned, the bank, trust company, corporate fiduciary, or stock savings bank and the holding company shall prepare articles of exchange setting forth:

(1) the plan of exchange;

(2) the manner of the approval of the plan by the directors of the holding company and the bank, trust company, corporate fiduciary, or stock savings bank;

(3) the manner of its adoption and the vote by which adopted by the shareholders; and

(4) the fact that the plan of exchange has been approved by the department.

(b) The articles of exchange shall be signed under oath on behalf of each corporation. The articles of exchange shall be filed with the department. The department shall, if it approves the articles of exchange, endorse its approval on all copies and file them with the secretary of state. The secretary of state shall endorse the approval of the secretary of state on each of the copies and keep one (1) copy of the articles of exchange, issue a certificate of exchange, and deliver the remaining copies to the holding company.

(c) The plan of exchange becomes effective upon the issuance of the certificate of exchange by the secretary of state, unless a later date is specified.

As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994, SEC.68; P.L.262-1995, SEC.21.

IC 28-1-7.5-10

Plan of exchange; consummation by operation of law; effect

Sec. 10. At the time that the plan of exchange becomes effective:

(1) each shareholder ceases to be a shareholder of the bank, trust company, corporate fiduciary, or stock savings bank;

(2) the ownership of all shares of the issued and outstanding common stock of the bank, trust company, corporate fiduciary, or stock savings bank (except shares for which payment of value is required to be made under section 8 of this chapter) vest in the holding company automatically without any physical transfer or deposit of certificates representing those shares;

(3) the articles of incorporation of the holding company are amended to the extent that any provisions of those articles are restated in the plan of exchange;

(4) the holding company becomes the sole holder of the common stock of the bank, trust company, corporate fiduciary, or stock savings bank and has all of the rights, privileges, immunities and powers, and (except as otherwise provided in this chapter) is subject to all of the duties and liabilities, of a

shareholder of a bank, trust company, corporate fiduciary, or stock savings bank; and

(5) depending upon which option is provided for in the plan of exchange, certificates representing shares of common stock of the bank and trust company or corporate fiduciary (except shares for which payment of value is required to be made under section 8 of this chapter) become certificates representing either shares of the issued and outstanding common stock of the holding company, or the right to receive shares of stock issued by the holding company upon such terms as are specified in the plan of exchange.

As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994, SEC.69; P.L.262-1995, SEC.22.

IC 28-1-7.5-11

Redemption by holding company of its outstanding common stock

Sec. 11. Within thirty (30) days after the plan of exchange becomes effective, the holding company shall redeem all shares of common stock of the holding company that were outstanding immediately before the effective time of the exchange. The holding company shall redeem the shares in the manner provided in the plan of exchange.

As added by P.L.238-1983, SEC.10.

IC 28-1-7.5-12

Separate and distinct corporations; effect upon liability

Sec. 12. The bank, trust company, corporate fiduciary, or stock savings bank and the holding company are separate and distinct corporations. Notwithstanding any acts or omissions of the officers, directors, or shareholders of the corporations, neither of the corporations has any liability to the creditors, depositors, or shareholders of the other.

As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994, SEC.70; P.L.262-1995, SEC.23.

IC 28-1-7.5-13

Exemption from requirements of IC 28-1-2-23

Sec. 13. An acquisition by a holding company of control of a bank, trust company, corporate fiduciary, or stock savings bank is exempt from the requirements of IC 28-1-2-23 if the acquisition is made under this chapter.

As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994, SEC.71; P.L.262-1995, SEC.24.

IC 28-1-7.5-14

Acquisition under other lawful procedures unaffected

Sec. 14. This chapter does not prohibit the acquisition by a holding company of shares of stock of a bank, trust company, corporate fiduciary, or stock savings bank under any other procedure that may be authorized by law, under voluntary exchange, or under

an agreement with shareholders.
As added by P.L.238-1983, SEC.10. Amended by P.L.122-1994, SEC.72; P.L.262-1995, SEC.25.

IC 28-1-7.5-15
Limitations of IC 28-2-14 unaffected

Sec. 15. This chapter does not affect the limitations imposed on bank holding companies by IC 28-2-14.
As added by P.L.238-1983, SEC.10. Amended by P.L.19-1986, SEC.48.

IC 28-1-8

Chapter 8. Sale of Banks, Trust Companies, and Building and Loan Associations

IC 28-1-8-0.5

"Corporation" defined

Sec. 0.5. As used in this chapter, "corporation" means:

(1) a bank;
(2) a trust company;
(3) a corporate fiduciary;
(4) a savings bank;
(5) a savings association; or
(6) an industrial loan and investment company that maintains federal deposit insurance.

As added by P.L.171-1996, SEC.6. Amended by P.L.192-1997, SEC.3; P.L.79-1998, SEC.40.

IC 28-1-8-0.7

"Shareholder"

Sec. 0.7. As used in this chapter, "shareholder", with respect to a:

(1) mutual savings bank; or
(2) mutual savings association;

refers to a member of the mutual savings bank or mutual savings association.

As added by P.L.27-2012, SEC.43. Amended by P.L.13-2013, SEC.72.

IC 28-1-8-1

Disposition of property and assets; authority; compliance with procedures

Sec. 1. A corporation may sell, lease, exchange, or otherwise dispose of all or substantially all of its property and assets, including good will, by complying with the provisions of this chapter.

(Formerly: Acts 1933, c.40, s.137.) As amended by P.L.263-1985, SEC.37; P.L.122-1994, SEC.73; P.L.262-1995, SEC.26; P.L.27-2012, SEC.44.

IC 28-1-8-2

Resolution proposing sale or other disposition; submission to shareholders

Sec. 2. A sale, lease, exchange, or other disposition described in section 1 of this chapter must first be proposed by the board of directors by the adoption of a resolution that:

(1) sets forth the terms and conditions of the sale, lease, exchange, or other disposition; and
(2) directs that the proposed disposition be submitted to a vote of the shareholders at the annual meeting or a special meeting.

The meeting shall be called by the resolution and notice of the meeting shall be given in the manner provided in IC 28-13-5-8.

(Formerly: Acts 1933, c.40, s.138.) As amended by P.L.263-1985,

SEC.38; P.L.14-1992, SEC.75; P.L.122-1994, SEC.74; P.L.27-2012, SEC.45.

IC 28-1-8-3
Submission of resolution to department; conditions for approval; economic benefits to officers or directors

Sec. 3. (a) Before a proposed disposition described in section 1 of this chapter is submitted to a vote of the shareholders, the resolution proposing the disposition shall be submitted for the approval of the department.

(b) Subject to section 5(c) of this chapter, and any approvals required under federal law, the department may approve a resolution if the corporation has and will have assets in excess of the corporation's liabilities and either of the following applies:

(1) The corporation intends to merge out of existence under IC 28-1-7-1.

(2) The corporation intends to voluntarily dissolve under IC 28-1-9.

(c) An officer or a director of a corporation whose proposed disposition is approved by the department under subsection (b) may not negotiate for or receive any economic benefit in connection with any sale of assets under this chapter, except for:

(1) compensation and other benefits paid to the officer or director and to officers and directors of the purchasing institution in the ordinary course of business;

(2) any economic benefit realized by all shareholders as a result of the disposition; or

(3) any economic benefit received as part of a compensation or benefit plan existing at the time of the disposition and approved before the initiation of sale negotiations.

(d) If the department approves a resolution submitted under this section, the department shall:

(1) write or stamp on the resolution:

(A) the words "Approved by the Department of Financial Institutions of the State of Indiana"; and

(B) the date of the approval; and

(2) place the impression of the seal of the department and the signature of the director or the director's authorized designee beneath the approval stamp.

(Formerly: Acts 1933, c.40, s.139.) As amended by P.L.263-1985, SEC.39; P.L.14-1992, SEC.76; P.L.122-1994, SEC.75; P.L.35-2010, SEC.114; P.L.27-2012, SEC.46.

IC 28-1-8-4
Submission to shareholders; vote required

Sec. 4. If a resolution proposing a disposition described in section 1 of this chapter is approved by the department, the resolution may then be submitted to the shareholders at the annual meeting or a special meeting. The resolution shall be authorized upon receiving the affirmative votes of two-thirds (2/3) of the outstanding shares.

(Formerly: Acts 1933, c.40, s.140.) As amended by P.L.122-1994, SEC.76.

IC 28-1-8-5

Dissenting shareholders; effective date of disposition; mutual savings banks and mutual savings associations

Sec. 5. (a) Subject to subsection (c), the rights of dissenting shareholders in the case of a merger or consolidation, as set forth in IC 28-1-7-21, apply to the sale, lease, exchange, or other disposition of the property and assets of a corporation under this chapter. Any dissenting shareholder shall have such rights and remedies as provided for in IC 28-1-7-21.

(b) For purposes of the application of IC 28-1-7-21 to this chapter, the "effective date" of a sale, lease, exchange, or other disposition under this chapter, within the meaning of IC 28-1-7-21, is the date upon which the disposition was authorized by the shareholders of the corporation.

(c) In a proposed disposition described in section 3(b) of this chapter, if the corporation that is the subject of the proposed disposition is a mutual savings bank or a mutual savings association, the rights and remedies for dissenting shareholders set forth in IC 28-1-7-21 do not apply.

(Formerly: Acts 1933, c.40, s.141.) As amended by P.L.263-1985, SEC.40; P.L.122-1994, SEC.77; P.L.27-2012, SEC.47.

IC 28-1-8-6

Purchase of assets; submission of resolution and application to department; factors for department's approval; exceptions to approval requirement

Sec. 6. (a) Subject to the approval of the department, a corporation may purchase all or substantially all of the assets of one (1) or more other corporations that are organized or reorganized under the laws of any state (as defined in IC 28-2-17-19) or the United States.

(b) After the board of directors of a corporation agrees to purchase all or substantially all of the assets of one (1) or more corporations, the board resolution approving the purchase and an application in the form prescribed by the director of the department must be submitted for approval by the department.

(c) Subject to any approvals required under federal law, the department, in its discretion, may approve or disapprove an application and a board resolution submitted under subsection (b). In deciding whether to approve or disapprove the board resolution and application, the department shall consider the following factors:

(1) Whether the institutions subject to the proposed transaction are operated in a safe, sound, and prudent manner.

(2) Whether the financial condition of any institution subject to the proposed transaction will jeopardize the financial stability of any other institutions subject to the proposed transaction.

(3) Whether the proposed transaction under this chapter will result in an institution that has inadequate capital, unsatisfactory

management, or poor earnings prospects.

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

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

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

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

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

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

(2) the United States.

As added by P.L.171-1996, SEC.7. Amended by P.L.79-1998, SEC.41; P.L.27-2012, SEC.48.

IC 28-1-9

Chapter 9. Voluntary Dissolution of Banks, Trust Companies, and Building and Loan Associations

IC 28-1-9-1

Surrender of corporate rights before commencement of business; certificate of incorporators

Sec. 1. With the approval in writing of the department, the incorporators named in the articles of incorporation of any corporation organized under the provisions of this article may surrender the certificate of incorporation and all of the corporate rights and franchises of the corporation, at any time within one (1) year from the date of the issuance of the certificate and before the issuance of any of the shares of capital stock of the corporation and before the beginning by it of the business for which it was formed, by presenting to the secretary of state, at his office, accompanied by the fees prescribed by law, a certificate, in triplicate, signed and verified by the joint and several oaths of a majority of the incorporators, in the form prescribed by the secretary of state, showing that no shares of the capital stock of the corporation have been issued and that the amount, if any, actually paid in on the shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto, that such business has not been begun, that no debts remain unpaid, and that they surrender all rights and franchises.

(Formerly: Acts 1933, c.40, s.142.) As amended by P.L.263-1985, SEC.41.

IC 28-1-9-2

Authority to liquidate and dissolve; resolution; submission to shareholders; vote required

Sec. 2. Any bank, trust company, corporate fiduciary, savings bank organized after December 31, 1992, bank of discount and deposit, or savings association may liquidate its affairs and dissolve in the manner prescribed in this chapter. Whenever the board of directors, by a resolution adopted by a majority vote of the members of such board, shall deem it advisable to submit the question of dissolution, or whenever the board of directors shall be requested in writing by the holders of a majority of the outstanding shares of capital stock to submit the question of dissolution, the board of directors shall submit the question of dissolving the corporation to a vote of the shareholders of the corporation entitled to vote at such meeting as may be designated in such request, or, in the absence of such request or of such designation, in such resolution. The designated meeting may be an annual or a special meeting of the shareholders. If the designated meeting is an annual meeting, notice of the question of dissolution shall be included in the notice of the annual meeting. If the designated meeting is a special meeting of the shareholders, such special meeting shall be called by the board of directors, and notice of such meeting shall be given at the time and in the manner provided in IC 28-13-14-6. The dissolution shall be

authorized, subject to the provisions of section 3 of this chapter, upon receiving the affirmative votes of the holders of two-thirds (2/3) of the outstanding shares of stock of the corporation unless the corporation is a savings association authorized to dissolve by the provisions of this section, in which case the affirmative votes of the holders of a majority of the outstanding shares of stock shall be sufficient and dissolution shall thereby be authorized.
(Formerly: Acts 1933, c.40, s.143.) As amended by P.L.263-1985, SEC.42; P.L.14-1992, SEC.77; P.L.122-1994, SEC.78; P.L.262-1995, SEC.27; P.L.79-1998, SEC.42.

IC 28-1-9-3
Examinations; departmental approval of liquidation

Sec. 3. After the resolution submitting the question of dissolving the corporation shall have been adopted by the board of directors, such resolution shall be submitted to and shall be approved by the department before such resolution is submitted to a vote of the shareholders of such corporation. Upon the filing of such resolution, the department shall cause an examination to be made of the business and affairs of such corporation. If the department shall find, from such examination, that such corporation is solvent or that it has sufficient assets with which to pay all of its depositors and all of its other liabilities, it may enter an order in writing approving the dissolution of such corporation and authorizing the board of directors of such corporation to submit the question of dissolving such corporation to the shareholders, in the manner prescribed in this article. If the department shall find, from such examination, that such corporation is in an unsound or unsafe condition or has otherwise violated the provisions of IC 28-1-3.1-2, it may enter an order, in writing, disapproving of the voluntary dissolution of such corporation, and the department shall thereupon take possession of the business and property of such corporation and proceed to liquidate such corporation in the manner prescribed in and subject to the provisions of IC 28-1-3.1.
(Formerly: Acts 1933, c.40, s.144.) As amended by P.L.263-1985, SEC.43.

IC 28-1-9-4
Restrictions on dividends and business pending payment of debts and liabilities

Sec. 4. After the vote of the shareholders shall have been taken, as hereinbefore provided, no dividend or profits shall be paid to the shareholders, nor shall any part of the capital be withdrawn by or paid to the shareholders, in any manner whatsoever, nor shall such corporation transact any business whatsoever except such as may be necessary or incidental to its dissolution, until all of the debts and liabilities of the corporation of every kind are fully paid.
(Formerly: Acts 1933, c.40, s.145.)

IC 28-1-9-5

Liquidating agent; appointment; powers

Sec. 5. Upon the authorization of the dissolution by the shareholders, the board of directors, with the approval of the department, shall appoint one (1) or more liquidating agents, and their successors, designated as "agent" in this chapter, to act for and on behalf of the corporation, which agent shall have the power and authority to liquidate such corporation subject to such limitations as may be imposed by the board of directors not inconsistent with the provisions of this article. Such agent shall proceed to:

(a) cause a notice that the corporation is about to be dissolved to be published once in a newspaper of general circulation in the county in which the principal office of the corporation is located;

(b) dispose of all trust property as prescribed in section 7 of this chapter, and all property of the kind described in IC 28-1-3.1-14, in the same manner as a receiver is authorized to dispose of such property;

(c) collect all of the corporate assets and, for that purpose, may bring all actions, in his own name, that are necessary;

(d) enforce and collect, in his own name, the liability imposed by law upon shareholders, in the same manner and to the same extent as a receiver is authorized to enforce and collect such liability upon involuntary liquidation, as provided in IC 28-1-3.1-15;

(e) pay and discharge all of the corporate debts and liabilities in the same manner as is prescribed for a receiver in IC 28-1-3.1-6; and

(f) distribute the remaining corporate assets and property among the shareholders or such other persons as may be designated in the articles of incorporation, according to their respective interests, after the provisions of subdivisions (a) through (e) of this section shall have been fully complied with.

(Formerly: Acts 1933, c.40, s.146.) As amended by P.L.263-1985, SEC.44.

IC 28-1-9-6

Liquidating agent; authority

Sec. 6. (a) The agent shall have the right and authority to collect all debts, dues, claims, and demands belonging to such corporation, and upon order of the court wherein the statement of all debts and liabilities of such corporation shall have been or may be filed, and upon such terms and conditions as shall be fixed by such court, the agent may:

(1) sell or otherwise dispose of all or any part of the assets and property, including real estate, at public or private sale after notice;

(2) compound all bad or doubtful debts, dues, claims, and demands or sell or otherwise dispose of the same at public or private sale after notice; and

(3) compromise all claims and demands against such

corporation.

(b) The agent may prosecute, defend, or participate in any and all actions which were pending against the corporation when he was appointed and may likewise defend any action instituted thereafter. The agent shall, in the name of the corporation and on its behalf, execute, acknowledge, and deliver all deeds, conveyances, assignments, releases, or other instruments necessary and proper to effect any sale, lease, or transfer of real estate or personal property or to carry into effect any power conferred or duty imposed by this article. All such instruments shall be sealed with the corporate seal.
(Formerly: Acts 1933, c.40, s.147; Acts 1935, c.5, s.24.) As amended by P.L.263-1985, SEC.45.

IC 28-1-9-7
Trust and fiduciary property; disposition

Sec. 7. If, at the time of liquidation such corporation shall hold any property, real or personal, in trust for any individual or corporation under or by virtue of any trust instrument, the agent shall convey, assign, and deliver such property to the successor trustee named in the trust instrument under which such property is held, or if no successor trustee be named therein, to such individual or to a bank or trust company or corporate fiduciary that is qualified to exercise trust powers as may be designated in writing by the beneficiaries of such trust, or if no such designation is made after written notice to the beneficiaries, or if the beneficiaries are otherwise incompetent to designate a successor trustee, then to such individual or to such bank or trust company or corporate fiduciary that is qualified to exercise trust powers as may be appointed by the circuit, probate, or other court having jurisdiction of trusts in the county where the principal office of such corporation is located. No person eighteen (18) years of age or older shall be deemed incompetent by virtue of his age to name a successor trustee. If any such corporation, at the time of liquidation, shall be acting as administrator, executor, guardian, receiver or in any other fiduciary capacity under the appointment of any court, the agent shall convey, assign, and deliver all of the property of such trust and all of such trust business, to such individual or to such bank or trust company or corporate fiduciary that is qualified to execute trusts, as may be appointed by the court having jurisdiction of such trust, upon the order and direction of such court.
(Formerly: Acts 1933, c.40, s.148; Acts 1973, P.L.280, SEC.2.) As amended by P.L.262-1995, SEC.28.

IC 28-1-9-8
Petition of liquidating agent; statement of debts and liabilities; recommendations as to claims; suspension of creditor's right of action on claims

Sec. 8. Within sixty (60) days after such dissolution has been authorized by the shareholders, the agent shall file with the clerk of the circuit, superior or probate court of the county in which such

corporation has its principal place of business, a verified petition, in duplicate, which shall contain a complete statement of all debts and liabilities of such corporation, whether to creditors or shareholders setting forth the name and address of each creditor, and/or shareholder and the nature and amount of each claim, as disclosed by the books of such corporation, or otherwise coming to the knowledge of such agent, together with the recommendations of such agent as to the allowance or disallowance of such claims, but in making such recommendations, such agent shall not determine or recommend any preferences or priorities as to any claim or claims. The agent shall also file one (1) copy of such petition in the office of the department and retain one (1) copy thereof at the principal office of the corporation for inspection by creditors, shareholders or other persons interested. Upon the filing of such petition the same shall be docketed as a cause of action upon the records of the court wherein such petition is filed and thereupon such court shall be vested with exclusive jurisdiction to hear and determine all issues and matters pertaining to or connected with the allowance, disallowance and payment of claims against such corporation. No creditor or other person shall have any claim or any right to bring an action in any court upon any claim or to assert any right against such corporation after such dissolution has been authorized by the shareholders and before the date fixed for the filing of such petition with the clerk of such court.
(Formerly: Acts 1933, c.40, s.149.)

IC 28-1-9-9
Notice to creditors

Sec. 9. Upon the filing of such petition, the agent may, by mail, notify each creditor and/or shareholder whose name appears in the petition of the amount for which his claim was recommended for allowance, without priority, and shall, in such notice, specify the date that shall have been fixed by the court, not less than sixty (60) days from the date of such notice, within which all creditors and/or shareholders who may be dissatisfied with the recommendations of the agent as to the allowance or disallowance of claims may appear in court, and, by petition, assert their claims or any priorities thereon. At the same time the agent shall also give notice by publication, once each week, for three (3) successive weeks, in some newspaper of general circulation, printed or circulated in the county where the liquidation proceedings are pending that the petition and the recommendations as to the allowance or disallowance of claims has been filed with the court and specifying the date that shall have been fixed by the court, not less than sixty (60) days from the date of such notice, within which any creditors, shareholders or other persons interested, may appear, and, by petition filed in the court, assert any claims or priorities thereon or object to the allowances or disallowances recommended by such agent.
(Formerly: Acts 1933, c.40, s.150.)

IC 28-1-9-10
Creditor's petition asserting claim; priority or opposition to other claims; failure to appear; effect of liquidating agent's failure to petition

Sec. 10. Within the time fixed by the notice, any creditor, shareholder or other person interested may, by verified petition filed in the court, assert his claim, or any priority thereon, or oppose the allowance, of any claims appearing upon the statement, or asserted by any other creditor or shareholder and the agent or any creditor, shareholder or other person interested, within such time as may have been fixed by the court, may oppose the allowance with or without priority of the claims asserted by any creditor or shareholder. The court may, upon good cause shown, extend the time for the filing of any petition or objection by any person for the allowance or disallowance of any claim herein referred to. Any creditor or shareholder who fails to appear and file his petition as is provided within the time fixed by the notice or by any extension granted by the court shall be forever barred from asserting any claim different from that recommended by the agent or from asserting any claim or priority, and from contesting or opposing the allowance, with or without priority, of any claim asserted by any creditor. If such agent shall not file a petition, as hereinbefore prescribed in this section, within sixty (60) days after the dissolution shall have been authorized, any creditor or other person asserting any claim against or any right, title or interest in and to the assets of such corporation may bring an action founded on such claim or other right in the circuit or superior court of the county in which the principal office of such corporation is located. If such petition shall have been filed on or before the date fixed for the filing of such petition with the clerk of the circuit, superior or probate court all creditors or other persons asserting any claim or other right against such corporation shall enforce such claim or other right pursuant to the provisions prescribed in this section and not otherwise.
(Formerly: Acts 1933, c.40, s.151.)

IC 28-1-9-11
Unclaimed distributive portions

Sec. 11. In case depositors or other creditors or the holders of shares of any such corporation are unknown or shall fail or refuse to accept their distributive shares in the property and assets of such corporation, or are under any disability, or cannot be found after diligent inquiry, upon the final settlement of the liquidation, the liquidating agent shall treat the property as unclaimed property and comply with IC 32-34-1.
(Formerly: Acts 1933, c.40, s.152; Acts 1937, c.33, s.15.) As amended by P.L.35-2010, SEC.115.

IC 28-1-9-12
Authority to borrow

Sec. 12. After the authorization of the dissolution of such

corporation, the board of directors is hereby authorized to borrow money and to secure the payment thereof, in the same manner and to the extent that a receiver may borrow money and secure the payment thereof when any financial institution is in involuntary liquidation, as provided in IC 28-1-3.1-6.
(Formerly: Acts 1933, c.40, s.153.) As amended by P.L.263-1985, SEC.46.

IC 28-1-9-13
Articles of dissolution; execution and filing; contents

Sec. 13. Upon the completion of the dissolution, the corporation shall execute and file, in the manner hereinafter provided, articles of dissolution, setting forth the following:

(a) The name of the corporation.

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

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

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

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

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

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

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

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

(j) A complete itemized list, in a format approved by the director of the department, of all the corporate assets and property distributed to the corporation's shareholders and any other information required by the director of the department.
(Formerly: Acts 1933, c.40, s.154; Acts 1937, c.33, s.16.) As amended by P.L.216-2013, SEC.17.

IC 28-1-9-14
Articles of dissolution; presentation to department and to secretary of state

Sec. 14. The articles of dissolution shall be executed in triplicate, in the form prescribed by the department, by the president or a vice-president and by the secretary or cashier of the corporation, and shall be verified by the oaths of the officers signing such articles, and shall be presented in triplicate to the department as (and) to the secretary of state, at their offices, as hereinafter provided, accompanied by an affidavit of the publisher of the newspaper wherein the notice of dissolution was published, as hereinbefore provided, as to the publication of such notice, and by the fees prescribed by law.
(Formerly: Acts 1933, c.40, s.155.)

IC 28-1-9-15
Articles of dissolution; approval by department

Sec. 15. After the articles of dissolution shall have been executed and before they are presented to the secretary of state, they shall first be presented to the department. If the department finds that the articles of dissolution conform to law, it shall approve such articles, and its approval shall be evidenced in the manner prescribed in IC 28-12-5.

(Formerly: Acts 1933, c.40, s.156.) As amended by P.L.263-1985, SEC.47; P.L.14-1992, SEC.78.

IC 28-1-9-16
Certificate of incorporators or articles of dissolution; approval by secretary of state; filing; certificate of dissolution

Sec. 16. Upon presentation of the certificate of the incorporators, as provided in section 1 of this chapter, or of the articles of dissolution and proof of publication, as provided in section 14 of this chapter, the secretary of state, if he finds that it or they conform to law, shall endorse his approval upon each of the triplicate copies of the certificate or articles, as the case may be, and, when all fees shall have been paid as required by law, shall file one (1) copy of the certificate or articles and the accompanying proof of publication in his office, and shall issue a certificate of dissolution to the corporation, and shall return the certificate of dissolution to the corporation, together with two (2) copies of the certificate of the incorporators or articles of dissolution, as the case may be, bearing the endorsement of his approval.

(Formerly: Acts 1933, c.40, s.157.) As amended by P.L.263-1985, SEC.48.

IC 28-1-9-17
Certificate of incorporators or articles of dissolution; recording

Sec. 17. The corporation shall then file for record with the county recorder of the county or counties in which the articles of incorporation were or should have been recorded, as provided in IC 28-12-8, one (1) of the triplicate copies of the certificate of the incorporators or of the articles of dissolution bearing the endorsement of the approval of the secretary of state as provided in section 16 of this chapter.

(Formerly: Acts 1933, c.40, s.158.) As amended by P.L.263-1985, SEC.49; P.L.14-1992, SEC.79.

IC 28-1-9-18
Termination of corporate existence; existing liabilities

Sec. 18. (a) Upon the issuance of the certificate of dissolution and the recording of the certificate of the incorporators or the articles of dissolution, as the case may be, as provided in section 17 of this chapter, the corporation shall be dissolved and its existence shall cease.

(b) The dissolution of any corporation in accordance with the

provisions of this section shall not take away or impair any remedy against such corporation, its directors, officers, or shareholders for any liabilities incurred by the corporation previous to its dissolution if suit is brought and service of process is had, as provided by the laws of this state, within two (2) years after the date of such dissolution.
(Formerly: Acts 1933, c.40, s.159.) As amended by P.L.263-1985, SEC.50.

IC 28-1-9-19
Expired corporations; continuation for purposes of liquidation

Sec. 19. Every corporation whose term of existence, as fixed by the articles of incorporation, has expired shall continue its corporate capacity for two (2) years for the purpose of liquidating its affairs and distributing its assets to its shareholders, after paying all of its liabilities, and for no other purpose. For such purpose, every such corporation shall use its corporate name and shall be capable of prosecuting and defending actions and suits at law or in equity.
(Formerly: Acts 1933, c.40, s.160.)

IC 28-1-9-20
Pending liquidations; acceptance of chapter

Sec. 20. Any bank of discount and deposit, loan and trust and safe deposit company, or building and loan association organized under the provisions of any statute enacted prior to February 24, 1933, which is in voluntary liquidation on February 24, 1933, pursuant to any statute of this state may accept the provisions of this chapter and continue the liquidation of such corporation pursuant to the terms and provisions of this chapter.
(Formerly: Acts 1933, c.40, s.161.) As amended by P.L.263-1985, SEC.51.

IC 28-1-10
Repealed

(Repealed by P.L.164-1988, SEC.14.)

IC 28-1-11

Chapter 11. Powers of Banks and Trust Companies

IC 28-1-11-1

General and enumerated rights, privileges, and powers; "bank or trust company"

Sec. 1. (a) In addition to the general rights, privileges, and powers conferred by IC 28-1-5 through IC 28-1-9 and subject to the limitations and restrictions contained in this article and in the articles of incorporation, every bank or trust company shall possess and may exercise the rights, privileges, and powers enumerated in this chapter.

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

(Formerly: Acts 1933, c.40, s.170.) As amended by P.L.263-1985, SEC.58; P.L.3-1990, SEC.101; P.L.14-1992, SEC.80; P.L.42-1993, SEC.26; P.L.136-1994, SEC.1; P.L.27-2012, SEC.49.

IC 28-1-11-2

Fiscal or transfer agent; transportation agent; insurance producer or broker; attorney in fact

Sec. 2. Any bank or trust company shall have power to act as fiscal or transfer agent of the United States or of any state, municipality, body politic or corporation; and in such capacity to receive and disburse money; to transfer, register and countersign certificates of stock, bonds or other evidence of indebtedness; to authenticate and certify any such bonds and certificates of indebtedness; to act as agent to buy and sell domestic and foreign transportation; to solicit and write insurance as an insurance producer or broker for any insurance company authorized to do business in the state or states where the insurance producer or broker operates; and to act as attorney in fact or agent of any person or corporation, foreign or domestic, for any lawful purpose.

(Formerly: Acts 1933, c.40, s.171.) As amended by P.L.188-1997, SEC.3; P.L.63-2001, SEC.6 and P.L.134-2001, SEC.7; P.L.178-2003, SEC.89.

IC 28-1-11-2.5

Sale of life insurance policy or annuity contract

Sec. 2.5. (a) A bank or trust company may act as an insurance producer for the sale of any life insurance policy or annuity contract issued by a life insurance company authorized to do business in any state in which the agent operates.

(b) A bank or trust company that acts as an insurance producer for the sale of a life insurance policy or an annuity contract in Indiana:

(1) is subject to all requirements of IC 27; and

(2) must comply with the disclosure requirements under

IC 27-1-38.

(c) A bank or trust company may not condition:

(1) an extension of credit;

(2) a lease or sale of real or personal property;

(3) the performance of services; or

(4) the amount charged for:

(A) extending credit;

(B) leasing or selling real or personal property; or

(C) performing services;

upon a person's purchase of a life insurance policy or an annuity contract from the bank or trust company or an affiliate (as defined in IC 28-2-13-3) of the bank or trust company.

(d) This section does not prohibit a bank or trust company from requiring that a person, as a condition to a transaction, obtain a life insurance policy from an insurance company acceptable to the bank or trust company.

As added by P.L.262-1995, SEC.29. Amended by P.L.188-1997, SEC.4; P.L.130-2002, SEC.5; P.L.192-2003, SEC.2; P.L.178-2003, SEC.90.

IC 28-1-11-2.6
Repealed

(Repealed by P.L.130-2002, SEC.10.)

IC 28-1-11-3
Repealed

(Repealed by Acts 1980, P.L.40, SEC.8.)

IC 28-1-11-3.1
Powers necessary and usual in carrying on banking business; enumerated powers; application of rules

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

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

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

(2) To make such loans secured by mortgages on real property or leasehold, as the federal housing administrator insures or makes a commitment to insure, and to obtain such insurance.

(3) To purchase, invest in, and dispose of notes or bonds secured by mortgage or trust deed insured by the federal housing administrator or debentures issued by the federal housing administrator, or bonds or other securities issued by national mortgage associations.

(4) To extend credit to any state agency, with the approval of the department, notwithstanding any other provisions or limitations of IC 28-1. No law of this state prescribing the nature, amount, or form of security or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made, shall be deemed to apply to loans, advances of credit, or purchases made pursuant to subdivisions (1), (2), and (3) and this subdivision.

(5) To purchase, take, hold, and dispose of notes, and mortgages securing such notes, made to any joint stock land bank heretofore incorporated, in any case in which not less than ninety-nine percent (99%) of the stock of said joint stock land bank is owned by the bank or trust company at the time such notes or mortgages be acquired by the bank or trust company; and upon dissolution of any such joint stock land bank, or at any stage in the process of such dissolution, any bank or trust company then owning not less than ninety-nine percent (99%) of the stock of such joint stock land bank may take, hold, and dispose of any notes, mortgages, or other assets of such joint stock land bank of whatsoever nature, including real estate, wheresoever situated, which such joint stock land bank shall assign, transfer, convey, or otherwise make over to such bank or trust company by way of final or partial distribution of its assets to its stockholders upon such dissolution or in connection with the process of such dissolution. No law of this state prescribing the nature, amount, location, or form of security, or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loan or advances of credit may be made, or prescribing any ratio between the amount of any loan and the appraised value of the security for such loan, or requiring periodical reductions of the principal of any loan, shall be deemed to apply to loans, notes,

mortgages, real estate, or other assets mentioned in this subdivision.

(6) To adopt stock purchase programs for employees and to grant options to purchase, and to issue and sell, shares of its capital stock to its employees, or to a trustee on their behalf (which may be the bank or trust company issuing such capital stock), without first offering the same to its shareholders, for such consideration, not less than par value, and upon such terms and conditions as shall be approved by its board of directors and by the holders of a majority of its shares entitled to vote with respect thereto, and by the department. In the absence of actual fraud in the transaction, the judgment of the directors as to the consideration for the issuances of such options and the sufficiency thereof shall be conclusive. Any bank or trust company exercising the powers granted in this subsection may, to the extent approved by the department, have authorized and unissued stock required to fulfill any stock option or other arrangement authorized herein.

(7) Subject to such restrictions as the department may impose, to become the owner or lessor of personal or real property acquired upon the request and for the use of a customer and to incur such additional obligations as may be incident to becoming an owner or lessor of such property.

(8) To purchase or construct buildings and hold legal title thereto to be leased to municipal corporations or other public authorities, for public purposes, having resources sufficient to make payment of all rentals as they become due. Each lease agreement shall provide that upon expiration, the lessee will become the owner of the building.

(8.1) Subject to the prior written approval of the department, and notwithstanding section 5 of this chapter, to purchase, hold, and convey real estate which is:

(A) improved or to be improved by a single, freestanding building; and

(B) to be used, in part, as a branch or the principal office of that bank or trust company and, in part, as rental property for one (1) or more lessees.

Unless a written extension of time is given by the department, the bank or trust company shall open the branch or principal office within two (2) years from the acquisition date of the real estate. If the bank or trust company does not open a branch or its principal office on the real estate in that time period or if the bank or trust company removes its branch or principal office from the real estate, the bank or trust company shall divest itself of all interest in the real estate within five (5) years from the acquisition date of the real estate, if a branch was not opened, or five (5) years from the removal date of the branch office, whichever applies. Except with the written approval of the department, the sum invested in real estate and buildings used for the convenient transaction of its business as provided in this

subdivision shall not exceed fifty percent (50%) of the capital and surplus of the bank or trust company as provided in section 5 of this chapter.

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

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

As added by Acts 1980, P.L.40, SEC.7. Amended by P.L.33-1991, SEC.14; P.L.14-1992, SEC.81; P.L.136-1994, SEC.2; P.L.176-1996, SEC.11; P.L.194-1997, SEC.1; P.L.215-1999, SEC.2; P.L.10-2006, SEC.30 and P.L.57-2006, SEC.30; P.L.213-2007, SEC.38; P.L.217-2007, SEC.36; P.L.35-2010, SEC.116; P.L.27-2012, SEC.50.

IC 28-1-11-3.2

Request to exercise rights and privileges granted to national bank; procedures; appeal

Sec. 3.2. (a) As used in this section, "rights and privileges" means the power:

(1) to:

(A) create;

(B) deliver;

(C) acquire; or

(D) sell;

a product, a service, or an investment that is available to or offered by; or

(2) to engage in mergers, consolidations, reorganizations, or other activities or to exercise other powers authorized for;

national banks domiciled in Indiana.

(b) A bank that intends to exercise any rights and privileges that are:

(1) granted to national banks; but

(2) not authorized for banks under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

shall submit a letter to the department describing in detail the requested rights and privileges granted to national banks that the bank intends to exercise. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter submitted by the bank.

(c) The department shall promptly notify the requesting bank of the department's receipt of the letter submitted under subsection (b). Except as provided in subsection (e), the bank may exercise the requested rights and privileges sixty (60) days after the date on which the department receives the letter unless otherwise notified by the department.

(d) The department may deny the requested rights and privileges if the department finds that:

(1) national banks domiciled in Indiana do not possess the requested rights and privileges;
(2) the exercise of the requested rights and privileges by the bank would adversely affect the safety and soundness of the bank;
(3) the exercise of the requested rights and privileges by the bank would result in an unacceptable curtailment of consumer protection; or
(4) the failure of the department to approve the requested rights and privileges will not result in a competitive disadvantage to the bank.

(e) The sixty (60) day period referred to in subsection (c) may be extended by the department based on a determination that the bank's letter raised issues requiring additional information or additional time for analysis. If the sixty (60) day period is extended under this subsection, the bank may exercise the requested rights and privileges only if the bank receives prior written approval from the department. However:

(1) the department must:
(A) approve or deny the requested rights and privileges; or
(B) convene a hearing;
not later than sixty (60) days after the department receives the bank's letter; and
(2) if a hearing is convened, the department must approve or deny the requested rights and privileges not later than sixty (60) days after the hearing is concluded.

(f) The exercise of rights and privileges by a bank in compliance with and in the manner authorized by this section is not a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(g) If a bank receives approval to exercise the requested rights and privileges granted to national banks domiciled in Indiana, the department shall determine by order whether all banks may exercise the same rights and privileges. In making the determination required by this subsection, the department must ensure that the exercise of the rights and privileges by all banks will not:

(1) adversely affect their safety and soundness; or
(2) unduly constrain Indiana consumer protection provisions.

(h) If the department denies the request of a bank under this section to exercise any rights and privileges that are granted to national banks, the bank may appeal the decision of the department to the circuit court with jurisdiction in the county in which the principal office of the bank is located. In an appeal under this section, the court shall determine the matter de novo.

As added by P.L.194-1997, SEC.2. Amended by P.L.73-2004, SEC.34; P.L.213-2007, SEC.39; P.L.217-2007, SEC.37; P.L.35-2010, SEC.117.

IC 28-1-11-4
Investment securities

Sec. 4. (a) Except as otherwise provided in this article, the

business of dealing in investment securities by any bank or trust company is limited to purchasing and selling securities without recourse, solely upon the order and for the account of customers and in no event for its own account. A bank or trust company may not underwrite or guarantee all or any part of any issue of securities other than obligations issued or guaranteed by or on behalf of the state or any political subdivision of the state or any agency or instrumentality of either. A bank or trust company may purchase for its own account and sell investment securities under such limitations and restrictions as the department prescribes by regulation, rule, policy, or guidance, but in no event may the total amount of the investment securities of any one (1) obligor or maker, purchased or held by a bank or trust company for its own account, exceed at any time ten percent (10%) of the amount of the total equity capital of the bank or trust company. The limitations imposed by this section do not apply to the direct or indirect obligations of the United States or the direct obligations of a United States territory or insular possession or of the state of Indiana or any municipal corporation or taxing district in Indiana. A bank or trust company may purchase for its own account and sell shares of stock in federal or state chartered small business investment companies that have received a permit or license to operate under the federal Small Business Investment Act (15 U.S.C. 681). However, a bank or trust company may not acquire shares in any small business investment company if, upon the making of that acquisition, the aggregate amount of shares in small business investment companies then held by the bank would exceed five percent (5%) of its total equity capital.

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

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

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

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

(1) a federally chartered savings association; or

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

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

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

(1) is rated below the first four (4) rating classes by a generally recognized security rating service;
(2) is in default; or
(3) is otherwise considered speculative by the director.

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

(1) the bank or trust company at the time of purchase obtains financial information that is adequate to document the investment quality of the security; and
(2) the security is not otherwise considered speculative by the director.

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

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

(1) the stock of which is owned exclusively by other banks (as defined in IC 28-2-14-2), or by a bank holding company the stock of which is owned exclusively by other banks (as defined in IC 28-2-14-2); and
(2) that is engaged exclusively in providing services to other banks (as defined in IC 28-2-14-2), and to their officers, directors, and employees.

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

(h) Notwithstanding any other provision of this article, a bank or trust company may invest in a casualty insurance company organized solely for the purpose of insuring banks, trust companies, and bank holding companies and their officers and directors from and against liabilities, including those covered by bankers' blanket bonds and director and officer liability insurance and other public liability

insurance. The investment must take the form of:

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

(2) loans to such an association of banks.

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

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

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

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

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

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

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

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

(Formerly: Acts 1933, c.40, s.173; Acts 1935, c.5, s.26; Acts 1937, c.33, s.18; Acts 1959, c.125, s.1; Acts 1965, c.356, s.10; Acts 1967, c.260, s.11; Acts 1971, P.L.394, SEC.28.) As amended by P.L.141-1984, SEC.7; P.L.265-1985, SEC.2; P.L.169-1986, SEC.1; P.L.36-1987, SEC.8; P.L.165-1988, SEC.1; P.L.164-1988, SEC.3; P.L.8-1991, SEC.11; P.L.42-1993, SEC.27; P.L.176-1996, SEC.12; P.L.192-1997, SEC.4; P.L.79-1998, SEC.44; P.L.192-2003, SEC.3; P.L.89-2011, SEC.34; P.L.27-2012, SEC.51.

IC 28-1-11-5

Real estate

Sec. 5. (a) Any bank or trust company shall have power to purchase, hold, and convey real estate for the following purposes, and for no others:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) explains the reason why the real estate has not yet been

used as a bank or trust company office or facility; and

(2) the director determines that:

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

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

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

(Formerly: Acts 1933, c.40, s.174; Acts 1935, c.5, s.27; Acts 1943, c.86, s.1; Acts 1959, c.39, s.1; Acts 1965, c.356, s.11; Acts 1967, c.260, s.12.) As amended by P.L.263-1985, SEC.59; P.L.14-1992, SEC.82; P.L.213-2007, SEC.40; P.L.217-2007, SEC.38; P.L.216-2013, SEC.18.

IC 28-1-11-6

Appointment as fiduciary

Sec. 6. Any bank or trust company may be appointed and act under the order of appointment of any court of competent jurisdiction as commissioner for the sale of real estate, guardian of the person and estate of persons under the age of eighteen (18) years, and incapacitated persons (as defined in IC 29-3-1-7.5), or as trustee, receiver, conservator, or committee of the property or estate of a person, corporation, or company, in insolvency or bankruptcy proceedings, or as depository of money paid into court, whether for the benefit of a person, regardless of age, corporation, or party, and in any other fiduciary capacity.

(Formerly: Acts 1933, c.40, s.175; Acts 1973, P.L.280, SEC.3.) As amended by P.L.33-1989, SEC.27.

IC 28-1-11-7

Testamentary and probate fiduciary appointments

Sec. 7. Any bank or trust company shall have power to be appointed and to accept the appointment and act as executor or trustee under the last will and testament, or as administrator, with or without the will annexed, of the estate of any deceased person, and to be appointed and to act under the order of appointment of any court of competent jurisdiction as executor of or trustee under any last will and testament, whenever it shall be the successor to any corporation appointed in such last will and testament, whether such succession is the result of merger, consolidation or otherwise. Whenever a natural person is appointed with such corporation in any appointment as receiver, guardian, commissioner, trustee, executor, administrator with or without the will annexed, his appointment may be under such limitation of powers, and upon such terms and conditions as to the possession and control of the trust assets by such

corporation, or otherwise, and as to the bond or security, if any, to be given by him, as the person appointed and such corporation may agree and the court or judge making the appointment shall approve. Whenever any natural person who is appointed in any fiduciary capacity is required to give a bond or security for the faithful performance of his duties, such corporation shall have the power and authority to guarantee or become surety for such natural person if such corporation shall take possession and control of the assets belonging to any such estate or other fiduciary relationship, and if approved by the court having jurisdiction of the fiduciary.
(Formerly: Acts 1933, c.40, s.176.)

IC 28-1-11-8
Appointment as successor guardian, trustee, executor, or administrator

Sec. 8. Any bank or trust company shall have power to be appointed and to act under the order of appointment of any court of competent jurisdiction as guardian, trustee, executor or administrator, with or without the will annexed, on the application or consent of any person acting as such or entitled to such appointment and in the place and stead of such person, but such appointment shall be made upon such notice as is required by law to the persons interested in the estate or fund and on the consent of such of the principal beneficiaries or other persons interested in the estate or fund as the court or judge thereof making the appointment shall deem proper.
(Formerly: Acts 1933, c.40, s.177.)

IC 28-1-11-9
Trust business

Sec. 9. Any bank or trust company shall have power to take, accept and execute any and all legal trusts, duties, and powers in regard to the holding, management, sale and disposition of any property or estate, real or personal, wherever located, and the rents and profits thereof, which may be granted or confided to it by any court of competent jurisdiction, or by any person, corporation, municipality or other authority; to take, accept and execute any and all trusts and powers of whatsoever nature or description which may be conferred upon or entrusted or submitted to it by any person, firm, company, or any body politic, corporation, foreign or domestic, or other authority, by grant, assignment, transfer, devise, bequest or otherwise, or which may be entrusted or committed or transferred to it or vested in it by order of any court of competent jurisdiction; and generally to execute trusts of every description not inconsistent with the laws of this state or of the United States.
(Formerly: Acts 1933, c.40, s.178.)

IC 28-1-11-10
Service as fiduciary without bond; judicial control; requirement of security

Sec. 10. Except as otherwise provided in this chapter, any bank or

trust company shall have power to act in each and every fiduciary capacity permitted by the terms of this article, and as commissioner for the sale of real estate, without bond or other security, and administer oaths attested by the signature of its secretary or cashier and its seal wherever it is acting in any such fiduciary capacity and whenever an individual acting in the same capacity is authorized by law to administer oaths. The court having jurisdiction of the fiduciary at any time, whether before or after acceptance of any fiduciary appointment, may require a bond or other security, and upon failure of such corporation to give a bond or security as required, may remove such corporation and revoke its appointment. No bank or trust company shall pledge or deposit any of its assets as a condition to the exercise of any of its powers as a fiduciary.
(Formerly: Acts 1933, c.40, s.179.) As amended by P.L.263-1985, SEC.60.

IC 28-1-11-11
Safe deposits and escrows

Sec. 11. Any bank or trust company shall have power to receive, upon terms and conditions to be prescribed by such corporation, not inconsistent with the provisions of this section, upon deposit for safe-keeping, or in escrow, moneys, bonds, mortgages, jewelry, plate, stock, securities and valuable papers of any kind, and other personal property for hire, and to rent or lease receptacles for safe deposits of personal property. No bank or trust company nor any of the assets thereof shall be liable, for the value of any property received by it pursuant to the power conferred by this section nor for damages for the loss, theft or misappropriation thereof. Any bank or trust company may procure and carry a policy or policies of insurance for the benefit of the owners of any property received by it pursuant to the power conferred by this section.
(Formerly: Acts 1933, c.40, s.180.)

IC 28-1-11-12
Federal reserve system and federal deposit insurance corporation membership; federal securities

Sec. 12. Every bank or trust company shall have power:

(1) to purchase and hold for the purpose of becoming a member of the federal reserve system:

(A) so much of the capital stock of a federal reserve bank as shall qualify it for membership, pursuant to the Federal Reserve Act (12 U.S.C. 221 et seq.); and

(B) so much of the capital stock of the Federal Deposit Insurance Corporation as will qualify it for membership, pursuant to the Federal Deposit Insurance Act (12 U.S.C. 1811 through 1833e);

(2) to do anything necessary or appropriate to acquire and maintain insurance of its deposits in accordance with the provisions of any federal law in force on or after July 1, 1933;

(3) to become a member of the federal reserve system; and

(4) to have and exercise all powers, not in conflict with the laws of this state, which are conferred upon any such member by the Federal Reserve Act. With the express approval of the department, and except as otherwise provided in this chapter, any bank or trust company shall have the power to purchase and hold shares of the capital stock, bonds, notes, debentures, or any other securities or obligations issued at any time by any agency or instrumentality of the federal government. After July 1, 1933, no bank or trust company shall purchase the capital stock of any joint stock land bank organized pursuant to 12 U.S.C. 2001 through 2279aa-14 and hold the stock so purchased in an amount in excess of ten percent (10%) of the capital and surplus of such bank or trust company.

(Formerly: Acts 1933, c.40, s.181; Acts 1935, c.5, s.28; Acts 1937, c.33, s.19.) As amended by P.L.263-1985, SEC.61; P.L.8-1991, SEC.12; P.L.42-1993, SEC.28; P.L.213-2007, SEC.41; P.L.217-2007, SEC.39.

IC 28-1-11-12.5

Federal home loan bank; investments; membership; loans; transfer, assignment, and pledge of bonds, notes, contracts, mortgages, securities, and other property

Sec. 12.5. Subject to any limitations imposed by the department through policy, a bank or trust company may do any of the following:

(1) Invest the money deposited in the bank or trust company in the shares of the capital stock, bonds, debentures, notes, or other obligations of a federal home loan bank of the United States.

(2) Become a member of the federal home loan bank of the district in which Indiana is located or an adjoining district.

(3) Borrow money from:

(A) a federal home loan bank described in subdivision (2);

(B) the Federal Deposit Insurance Corporation; or

(C) any other corporation.

(4) Transfer, assign to, and pledge with a federal home loan bank described in subdivision (2), the Federal Deposit Insurance Corporation, or other corporation any of the bonds, notes, contracts, mortgages, securities, or any other property of the bank or trust company held or acquired as security for the payment of loans entered into under subdivision (3).

(5) Exercise all rights, powers, and privileges conferred upon, and do all things and perform all acts required of, members or shareholders of a federal home loan bank by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449).

As added by P.L.258-2003, SEC.5.

IC 28-1-11-13

Compensation for services

Sec. 13. Any bank or trust company shall have power to demand and receive for the faithful performance and discharge of services performed pursuant to the powers vested in it by this article

reasonable compensation, or such compensation as shall have been fixed by agreement of the parties, together with any and all advances necessarily paid out and expended in the discharge and performance of its duties, and unless otherwise agreed upon, interest at the legal rate on such advances. No compensation or commission paid or agreed to be paid for the negotiation of any loan or the execution of any trust by any such corporation shall be deemed to be interest within the meaning of any law of this state, nor shall any excess thereof over any rate of interest permitted by the laws of this state be decreed or held to be usury in any court of law or equity. The advances contemplated in this section may include the compensation paid for the employment of legal services when necessary for the protection of any trust or other fiduciary relation.
(Formerly: Acts 1933, c.40, s.182.) As amended by P.L.263-1985, SEC.62.

IC 28-1-11-14
Equity investments in community development corporations and community based economic development; limits; exceptions to limits; exposure to liability

Sec. 14. (a) As used in this section, "community based economic development" refers to activities that seek to address economic causes of poverty within specific geographic areas, revitalizing the economic and social base of low income communities through activities that include:

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

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

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

that primarily benefit low-income individuals and communities.

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

(d) Subject to the limitations of this section, other laws, and any regulation, rule, policy, or guidance adopted by the department concerning investments in community based economic development, any bank or trust company may invest directly or indirectly in equity

investments in a corporation, a limited partnership, a limited liability company, or another entity organized as:

(1) a community development corporation;

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

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

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

(A) primarily benefits low and moderate income individuals;

(B) primarily benefits low and moderate income areas;

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

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

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

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

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

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

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

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

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

As added by P.L.27-2012, SEC.52.

IC 28-1-12

Chapter 12. Regulation of Bank and Trust Company Fiduciaries

IC 28-1-12-1

Authority to serve as fiduciary

Sec. 1. (a) Any court or officer thereof having jurisdiction to grant letters of guardianship, to appoint a trustee, guardian, receiver, or committee of the estate of any person, to appoint a committee or trustee or a receiver in insolvency or bankruptcy proceedings, or in any other proceeding or action, under state or federal law, or to make any other fiduciary appointment contemplated and provided for in IC 28-1-11, may appoint any bank or trust company qualified under subsection (b) as such fiduciary. However, the bank or trust company is not required to accept the appointment.

(b) A bank or trust company is qualified to act as a fiduciary under subsection (a) if the bank or trust company is:

(1) organized under the provisions of IC 28;

(2) a national bank authorized to act as a fiduciary and that bank either:

(A) has its principal place of business in Indiana; or

(B) has its principal place of business in a state or territory of the United States, including the District of Columbia, that grants authority to serve in similar fiduciary capacities to banks and trust companies organized and doing business under the laws of Indiana; or

(3) organized and doing trust company business under the laws of a state or territory described in subdivision (2)(B).

(c) This section shall be construed to permit a bank or trust company that is organized and doing business under the laws of any state, territory, or district other than Indiana, including a national bank or national trust company doing business in any other state, to establish in Indiana, subject to the approval of the department, a place of business or agency for the conduct of business as a fiduciary if the law of the state, territory, or district in which the bank or trust company is located would allow an Indiana bank or trust company to establish a place of business or agency in that state, territory, or district for the conduct of business as a fiduciary.

(Formerly: Acts 1933, c.40, s.183.) As amended by Acts 1980, P.L.175, SEC.1; P.L.42-1993, SEC.29; P.L.122-1994, SEC.79.

IC 28-1-12-2

Control by court; accounts, statements, and reports

Sec. 2. Every bank or trust company appointed as a fiduciary, pursuant to the provisions of this article, shall be subject at all times to the orders, judgments, and decrees of the court from which it shall have accepted any such trust, appointment, or commission, as to such trust or other fiduciary relationship, and shall render to such court such itemized and verified accounts, statements, and reports as may be required by law, or as such court shall determine, in relation to

such particular trust or other fiduciary appointment.
(Formerly: Acts 1933, c.40, s.184.) As amended by P.L.263-1985, SEC.63.

IC 28-1-12-3
Fiduciary powers and obligations; trusts; holding of securities; segregation; records; transfers; investments in securities of investment companies or trusts having business ties with fiduciary

Sec. 3. (a) Every bank or trust company exercising trust powers or any powers as a fiduciary shall establish and maintain in its office a trust department in which it shall keep, separate and apart from its other business, separate books and accounts, and shall keep all securities and property, other than money, which is held by its trust department, at all times segregated from and unmingled with its own securities and property.

(b) Notwithstanding any other law, any bank or trust company holding securities as a fiduciary, custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of such securities in a clearing corporation (as defined in IC 26-1-8.1-102(a)(5)). When such securities are deposited in a clearing corporation, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation by any person regardless of the ownership of the securities; and certificates of small denomination may be merged into one (1) or more certificates of larger denomination. The records of the fiduciary and the records of the bank or trust company acting as custodian, managing agent, or custodian for a fiduciary shall at all times show the name of the party for whose account the securities are deposited.

(c) This section applies to any bank or trust company holding securities as a fiduciary, custodian, managing agent or custodian for a fiduciary, regardless of whether it owns capital stock of the clearing corporation.

(d) Title to the securities held by the clearing corporation may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing such securities.

(e) A bank or trust company acting as custodian for a fiduciary, shall, upon demand by the fiduciary, certify in writing to the fiduciary the securities deposited by such fiduciary in such clearing corporation for its account as fiduciary.

(f) Notwithstanding any other law, any bank or trust company holding United States government securities as a fiduciary, custodian or managing agent, and any bank or trust company holding United States government securities as custodian for a fiduciary may use the Federal Reserve Book-Entry procedure for the United States government securities. The records of such fiduciary and the records of such bank or trust company acting as custodian, managing agent, or custodian for a fiduciary shall at all times show the name of the

party for whose account the United States government securities are deposited.

(g) Title to the United States government securities registered by Book-Entry under subsection (f) may be transferred by bookkeeping entry on the books of the Federal Reserve without physical delivery of certificates representing the securities.

(h) A bank or trust company acting as custodian for a fiduciary, shall, upon demand by the fiduciary, certify in writing to the fiduciary the securities registered in the Federal Reserve for the account of the fiduciary.

(i) Notwithstanding any other law, a bank or trust company, to the extent that it exercises investment discretion as a fiduciary, custodian, managing agent, or otherwise with respect to the investment and reinvestment of assets that it maintains in its trust department, may invest and reinvest the assets, subject to the standard contained in IC 30-4-3-3(c), in the securities of any open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. 80a1-64, as amended. The fact that the bank or trust company, or any affiliate of the bank or trust company, is providing services to the investment company or trust as investment advisor, sponsor, distributor, custodian, transfer agent, registrar, or otherwise, and receiving reasonable remuneration for the services, does not preclude the bank or trust company from investing in the securities of such investment company or trust.

(Formerly: Acts 1933, c.40, s.185.) As amended by Acts 1977, P.L.290, SEC.1; P.L.257-1989, SEC.1; P.L.247-1995, SEC.25.

IC 28-1-12-4

Profit or commission on sales; necessity of specific authorization; surcharge

Sec. 4. No profit or commission, other than interest at the legal rate upon a loan or advancement, shall be taken or received by any bank or trust company or corporate fiduciary, directly or indirectly, out of any sale or purchase to or from any estate, guardianship, or trust of any kind of which it is the fiduciary, unless specifically authorized by agreement with the creator of the trust, or the court having jurisdiction thereof; and upon violation of this section such bank or trust company or corporate fiduciary shall be surcharged any profit so taken or received, and an amount equal thereto, in addition, and may be summarily removed as such fiduciary by the court having jurisdiction.

(Formerly: Acts 1933, c.40, s.189.) As amended by P.L.262-1995, SEC.31.

IC 28-1-12-5

Repealed

(Repealed by P.L.262-1995, SEC.91.)

IC 28-1-12-6

Liquidation preferences

Sec. 6. Upon the liquidation of any bank or trust company or corporate fiduciary while it is acting as guardian, trustee, receiver, administrator, executor, commissioner, or assignee for the benefit of creditors the person or persons beneficially entitled to receive property or proceeds thereof held by it, or any successor fiduciary that may be appointed, shall have preference and priority in all assets of such bank or trust company or corporate fiduciary over its general creditors, for all uninvested money held by such bank or trust company or corporate fiduciary in the fiduciary capacities above named, to the extent that such money is commingled with its general assets or is not duly accounted for.

(Formerly: Acts 1933, c.40, s.192; Acts 1937, c.33, s.25.) As amended by P.L.262-1995, SEC.32.

IC 28-1-12-7

Violations

Sec. 7. A person who violates this chapter commits a Class B infraction. In addition, if the person is an officer of any bank or trust company, he is subject to removal from office in the manner prescribed in IC 28-11-4.

(Formerly: Acts 1933, c.40, s.194; Acts 1937, c.33, s.27.) As amended by Acts 1978, P.L.2, SEC.2807; P.L.33-1991, SEC.15.

IC 28-1-12-8

Authorization for banks and trust companies to use fiduciary funds in conflict of interest transactions; conditions; notice; required consent

Sec. 8. (a) Unless otherwise provided in an agreement or a trust, a bank or trust company that holds funds or property as a fiduciary may use the funds or property to purchase from the bank, the trust company, or an affiliate of the bank or trust company a product, service, or security, including an insurance product or security that is underwritten by the bank, the trust company, an affiliate of the bank or trust company, or a syndicate or selling group that includes the bank, the trust company, or an affiliate of the bank or trust company if the:

(1) purchase price and any ongoing charges and costs are fair, reasonable, and substantially equivalent to the cost of similar products and services; and

(2) purchase complies with IC 30-4-3.5.

The compensation for the product, services, or security received by the bank, trust company, an affiliate of the bank or trust company, or a syndicate or selling group that includes the bank, the trust company, or an affiliate of the bank or trust company may be in addition to the compensation that the bank or trust company is otherwise entitled to from the fiduciary account.

(b) A bank or trust company that makes a purchase or sale described in subsection (a) shall disclose, at least annually, to each person entitled to receive statements of account activity from the

bank or trust company any purchase or sale made by the bank or trust company during the year. The disclosure must be in writing or an electronic format and include the following:

(1) Any capacity in which the bank, the trust company, or an affiliate of the bank or trust company acts for:

(A) the issuer of the securities; or

(B) the provider of the products or services;

that is the subject of the purchase or sale.

(2) A statement that the bank, the trust company, or an affiliate of the bank or trust company has an interest in the subject of the purchase or sale, if applicable.

(3) The rate and method by which that compensation was determined.

(4) The name, telephone number, street address, and mailing address of an officer of the bank or trust company who may be contacted for further information.

(5) A notice that the bank's or trust company's ability to make transactions described in subsection (a) ends upon receipt at any time of a notice of objection by a majority of the persons entitled to receive statements of account activity.

(c) The following apply to a purchase or sale under subsection (a):

(1) Except as provided in subdivisions (2) and (3), if the fiduciary relationship is a trust or an agency, the trustee or agent shall treat the purchase or sale under subsection (a) as if it were a conflict of interest transaction under IC 30-4-3-5 and shall give any notice and obtain any consent that may be required under IC 30-4-3-5, subject to the following:

(A) IC 30-2-14-16 applies to any notice required to be given by a trustee or an agent under this subdivision, subject to the following:

(i) If the fiduciary relationship is a revocable trust with one (1) or more living grantors, the trustee must give notice only to the living grantors, who shall be considered to have all income and principal interests in the trust at the time the notice is given. If a grantor is incapacitated, the trustee shall give notice to the grantor's court appointed guardian, the principal under a durable power of attorney, or a co-trustee of the revocable trust, unless the guardian, principal, or co-trustee is the bank or trust company that seeks the consent. If the representative of the incapacitated grantor is the bank or trust company that seeks the consent to a purchase or sale under subsection (a), the trustee shall obtain consent from the court.

(ii) If the fiduciary relationship is a revocable trust and the assets of the revocable trust are distributable to one (1) or more other trusts, notice shall be given to the trustees of the other trusts. However, if the bank or trust company that seeks the consent to a purchase or sale under subsection (a) is the trustee of another trust to which the assets of the revocable trust are distributable, the bank or trust company

shall give notice to those beneficiaries of the other trust who are entitled to receive statements of account activity from the bank or trust company.

(iii) If the fiduciary relationship is an agency, the principal must consent to the purchase or sale under subsection (a) in writing in advance of the transaction. The principal shall be considered to have all income and principal interests in the account at the time the notice of the proposed transaction is given. If the principal is incapacitated, consent must be obtained from the principal's court appointed guardian, unless the guardian of the incapacitated principal is the bank or trust company that seeks the consent. If the guardian of the incapacitated principal is the bank or trust company that seeks the consent, consent to a purchase or sale under subsection (a) must be obtained from the court supervising the principal's guardianship.

(B) If the fiduciary relationship is a trust, the following apply with respect to any consent required to be obtained under IC 30-4-3-5(a)(2):

(i) Notwithstanding the requirement under IC 30-4-3-5(a)(2)(A) that all interested persons provide written consent to the proposed action, and subject to subdivision (2), a trustee, for a proposed purchase or sale under subsection (a), need only obtain the written consent of a majority of the persons entitled to notice under IC 30-2-14-16, as modified by subdivision (1)(A). However, the trustee must obtain the written consent of at least one (1) beneficiary who is receiving income under the trust at the time of the notice and at least one (1) individual who would receive a distribution of principal if the trust were terminated at the time notice is given.

(ii) Upon obtaining the written consents required under item (i), the trustee need not wait until the period to make written objections under IC 30-2-14-16 ends in order to take the proposed action.

(2) Any consent granted under subdivision (1)(B)(i) may be revoked by a writing signed by a majority of the persons entitled to notice under IC 30-2-14-16, as modified by subdivision (1)(A). However, the revocation must be signed by:

(A) at least one (1) beneficiary who is receiving income under the trust at the time the revocation is signed; and

(B) at least one (1) individual who would receive a distribution of principal if the trust were terminated at the time the revocation is signed.

(3) The notice and consent otherwise required under subdivision (1) are not required if the purchase or sale under subsection (a) is specifically authorized:

(A) in the document creating the fiduciary relationship; or

(B) under IC 30-4-3-7.

As added by P.L.202-2007, SEC.1; P.L.226-2007, SEC.5. Amended by P.L.3-2008, SEC.219.

IC 28-1-13

Chapter 13. Loans and Investments of Banks and Trust Companies

IC 28-1-13-1

Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-13-1.1

"Capital and surplus" or "unimpaired capital and unimpaired surplus" defined

Sec. 1.1. As used in this chapter, "capital and surplus" or "unimpaired capital and unimpaired surplus" has the meaning set forth in 12 CFR 32.2.

As added by P.L.14-1992, SEC.83. Amended by P.L.176-1996, SEC.13; P.L.213-2007, SEC.42; P.L.217-2007, SEC.40.

IC 28-1-13-1.2

"Loans and extensions of credit" defined

Sec. 1.2. As used in this chapter, "loans and extensions of credit" has the meaning set forth in 12 CFR 32.2.

As added by P.L.14-1992, SEC.84. Amended by P.L.90-2008, SEC.25.

IC 28-1-13-1.3

"Person" defined

Sec. 1.3. As used in this chapter, "person" includes an individual, a sole proprietorship, a partnership, a joint venture, an association, a trust, an estate, a business trust, a limited liability company, a corporation, a sovereign government, or an agency, an instrumentality, or a political subdivision thereof, or any similar entity or organization.

As added by P.L.14-1992, SEC.85. Amended by P.L.8-1993, SEC.439.

IC 28-1-13-1.4

Repealed

(Repealed by P.L.176-1996, SEC.35.)

IC 28-1-13-1.5

Limits on total loans and extensions of credit to one borrower; loans and extensions not fully secured; loans and extensions fully secured; derivative transactions

Sec. 1.5. (a) The total loans and extensions of credit by a bank to a person outstanding at one (1) time and not fully secured, as determined in a manner consistent with subsection (b), by collateral having a market value at least equal to the amount of the loan or extension of credit may not exceed fifteen percent (15%) of the unimpaired capital and unimpaired surplus of the bank.

(b) The total loans and extensions of credit by a bank to a person

outstanding at one (1) time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding may not exceed ten percent (10%) of the unimpaired capital and unimpaired surplus of the bank. The limitation in this subsection is separate from and in addition to the limitation contained in subsection (a).

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

As added by P.L.14-1992, SEC.87. Amended by P.L.27-2012, SEC.53.

IC 28-1-13-1.6

Loans or extensions of credit not subject to limitations

Sec. 1.6. The limitations contained in section 1.5 of this chapter are subject to the following exceptions:

(1) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse are not subject to any limitation based on capital and surplus.

(2) The purchase of bankers' acceptances of the kind described in 12 U.S.C. 372 and issued by other banks are not subject to any limitation based on capital and surplus.

(3) Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples are subject to a limitation of thirty-five percent (35%) of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent (115%) of the outstanding amount of the loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(4) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by other such obligation fully guaranteed as to principal and interest by the United States are not subject to any limitation based on capital and surplus.

(5) Loans or extensions of credit to or secured by unconditional takeout commitment or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States are not subject to any limitation based on capital and surplus.

(6) Loans or extensions of credit secured by a segregated deposit account in the lending bank are not subject to any limitation based on capital and surplus.

(7) Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of banks, or other

agent in charge of the business and property of the financial institution, when such loans or extensions of credit are approved by the director, are not subject to any limitation based on capital and surplus.

As added by P.L.14-1992, SEC.88.

IC 28-1-13-1.7

Limit on total consumer credit obligation of one borrower

Sec. 1.7. (a) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper that carries a full recourse endorsement or unconditional guarantee by the person transferring the paper is subject under this section to a maximum limitation equal to twenty-five percent (25%) of the capital and surplus, notwithstanding the collateral requirements set forth in section 1.5(b) of this chapter.

(b) If the bank's files or the knowledge of the bank's officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of the loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

As added by P.L.14-1992, SEC.89.

IC 28-1-13-1.8

Limit on obligations secured by documents or instruments covering livestock; dealer discount of paper securing sale of dairy cattle with payment guaranteed by seller

Sec. 1.8. (a) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent (115%) of the face amount of the note covered are subject under this section, notwithstanding the collateral requirements set forth in section 1.5(b) of this chapter, to a maximum limitation equal to twenty-five percent (25%) of the capital and surplus.

(b) Loans and extensions of credit that arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller and that are secured by the cattle being sold, are subject under this section, notwithstanding the collateral requirements set forth in section 1.5(b) of this chapter, to a limitation of twenty-five percent (25%) of the capital and surplus.

As added by P.L.14-1992, SEC.90. Amended by P.L.141-2005, SEC.7.

IC 28-1-13-2

Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-13-3

Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-13-4

Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-13-5

Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-13-6

Extension of credit to officers, directors, or principal shareholders; compliance with federal restrictions

Sec. 6. Any bank or trust company may extend credit to an officer, a director, or a principal shareholder in accordance with the restrictions and provisions of Regulation O of the Board of Governors of the Federal Reserve System (12 CFR 215).

(Formerly: Acts 1933, c.40, s.200; Acts 1935, c.5, s.36; Acts 1937, c.33, s.28; Acts 1943, c.148, s.1; Acts 1955, c.25, s.1; Acts 1969, c.280, s.5.) As amended by Acts 1977, P.L.291, SEC.1; Acts 1978, P.L.2, SEC.2808; Acts 1981, P.L.250, SEC.1; P.L.265-1983, SEC.2; P.L.144-1984, SEC.1; P.L.14-1992, SEC.91.

IC 28-1-13-7

Repealed

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

IC 28-1-13-7.1

State chartered banks; real estate loans

Sec. 7.1. (a) As used in this section, "federally chartered bank" means a bank that was incorporated under 12 U.S.C. 21 et seq. and is doing business in Indiana.

(b) As used in this section, "rollover mortgage" means a loan that:

(1) is secured by a first mortgage on real estate improved by:

(A) a dwelling for one (1) to four (4) families; or

(B) a combination home and business building; and

(2) may be subject to rate adjustments at regularly scheduled times.

(c) As used in this section, "state chartered bank" means a bank that was incorporated under the laws of Indiana and is doing business in Indiana. The term includes a savings bank organized under the laws of Indiana.

(d) A state chartered bank may make, arrange, purchase, or sell loans or extensions of credit secured by liens or interests in real estate as:

(1) may be so made, arranged, purchased, or sold by a federally chartered bank under a federal law or regulation; or

(2) prescribed by order of the department or by a rule adopted by the department under IC 4-22-2.

(e) In addition to loans authorized by subsection (d), a state chartered bank may make rollover mortgage loans. A rollover mortgage loan made by a state chartered bank is subject to the following requirements and restrictions:

(1) At each scheduled adjustment time, if the loan is not then in default, the lender shall make rate adjustments available for the amount of the outstanding loan for the remaining term of the loan.

(2) Any adjustment in the loan must be made without administrative charges to the borrower.

(3) Scheduled adjustments of the loan must be at least one (1) year apart.

(4) The lender may not charge any penalty or other assessment for the prepayment of the loan by the borrower at the time of any adjustment.

(5) At each scheduled adjustment time, the lender and the borrower may agree to increase or decrease the interest rate applicable to the outstanding balance of the loan.

(6) At the option of the lender, the borrower may be granted the option to extend the amortization period for purposes of calculating monthly payments on the loan in accordance with the following rules:

(A) The extension of the amortization period may equal up to one-third (1/3) of the original amortization period, irrespective of whether this extends the amortization period beyond thirty (30) years.

(B) To the extent of any extension of the amortization period, the amortization period will be reduced upon a subsequent downward adjustment in the interest rate.

(f) The department may adopt an emergency rule under IC 4-22-2-37.1 to implement this section.

As added by P.L.33-1991, SEC.16. Amended by P.L.42-1993, SEC.30; P.L.45-1995, SEC.20.

IC 28-1-13-8

Loans on security of own shares; acquisition of shares; disposition

Sec. 8. No bank or trust company shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss under a debt previously contracted in good faith; and stock so purchased or acquired shall, within six (6) months from the time of its purchase, be sold or disposed of at public or private sale, unless otherwise ordered by the department.

(Formerly: Acts 1933, c.40, s.202.)

IC 28-1-13-9
Repealed
(Repealed by P.L.42-1993, SEC.103.)

IC 28-1-13-10
Officer and others accepting compensation for procuring loan, purchase, or discount; violations
Sec. 10. Except as otherwise provided, an officer, director, owner, partner, employee, or attorney of any bank or trust company who stipulates for, receives, or consents or agrees to receive, any fee, commission, gift, or thing of value, from any person, for the purpose of procuring or endeavoring to procure for any person any loan from or the purchase or discount of any paper, note, draft, check, or bill of exchange by the bank or trust company, commits a Class A misdemeanor.
(Formerly: Acts 1933, c.40, s.204.) As amended by Acts 1978, P.L.2, SEC.2809.

IC 28-1-13-11
Reduction of existing obligations held in excess of limitations
Sec. 11. Except as otherwise provided in this chapter, any bank or trust company which holds obligations of indebtedness in violation of the limitations prescribed in this chapter shall, not later than July 1, 1936, cause the amount of such obligations to conform to the limitations prescribed by this article and by the provisions of this chapter. The department may, in its discretion, extend the time for effecting such conformity, in individual instances, if the interests of the depositors will be protected and served by such extension. Upon the failure of any bank or trust company to comply with such limitations, in accordance with the terms of this section or in accordance with any order of the department with relation to such limitations, the department may declare that such bank or trust company is conducting its business in an unauthorized or unsafe manner and proceed in accordance with IC 28-1-3.1-2.
(Formerly: Acts 1933, c.40, s.205.) As amended by P.L.263-1985, SEC.68.

IC 28-1-13-12
Loans or credit to student loan marketing association; applicability of capital and surplus limitation
Sec. 12. Loans or extensions of credit to the Student Loan Marketing Association are not subject to any limitation based on capital and surplus.
As added by P.L.14-1992, SEC.92.

IC 28-1-13-13
Applicability of federal regulations
Sec. 13. The department may apply the provisions of 12 CFR 32 in the application and administration of this chapter.
As added by P.L.14-1992, SEC.93.

IC 28-1-13.5
Repealed

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

IC 28-1-14
Repealed

(Repealed by Acts 1981, P.L.253, SEC.1.)

IC 28-1-15

Chapter 15. Statements of Condition of Banks and Trust Companies

IC 28-1-15-1

Statement of condition

Sec. 1. The department may require every bank and trust company to prepare, submit and publish as many statements of condition as may be deemed necessary, in any year, but not more than four (4) statements during any year. Such statements of condition shall be verified and shall be prepared and submitted according to the forms and pursuant to such notice and on such dates as the department may designate.

(Formerly: Acts 1933, c.40, s.211; Acts 1935, c.5, s.38.) As amended by P.L.192-2003, SEC.4.

IC 28-1-15-2

Publication of statement of condition

Sec. 2. Every bank and trust company shall, when required by the department, publish its statement of condition in the form in which it is required by the department, as prescribed in section 1 of this chapter. Such statement of condition shall be published in a newspaper printed and published in the city or town in which such bank or trust company has its principal office, if a newspaper be printed in such city or town or, if no newspaper be printed in such city or town, then in the newspaper printed and published in the city or town nearest thereto in the same county or in an adjoining county. All such statements of condition shall be published at the expense of the bank or trust company making such statement, and such proof of publication shall be furnished the department as it may require.

(Formerly: Acts 1933, c.40, s.212.) As amended by P.L.263-1985, SEC.69.

IC 28-1-15-3

Furnishing information on condition of bank or trust company to federal agencies

Sec. 3. The department may furnish to the federal reserve board, to the federal reserve bank of which a bank or trust company may be or may become a member, to the Federal Deposit Insurance Corporation, to any other like agency of the federal government approved by the department, or to the examiners duly appointed by the federal reserve board, by a federal reserve bank, by the Federal Deposit Insurance Corporation, or any other like agency of the federal government approved by the department, copies of all examinations of the bank or trust company which is or may become a member of the federal reserve bank system, or whose deposits are or may become insured by the Federal Deposit Insurance Corporation, and may disclose to the examiners any information in reference to the condition of the affairs of the bank or trust company which is or may become a member of the federal reserve bank

system, or whose deposits are or may become insured by the Federal Deposit Insurance Corporation.
(Formerly: Acts 1933, c.40, s.213; Acts 1935, c.5, s.39.) As amended by P.L.8-1991, SEC.14.

IC 28-1-15-4
Violation; penalty; recovery

Sec. 4. Any bank or trust company which shall fail to prepare and submit any statement of condition required by the department, and any bank or trust company which shall violate any order of the department with respect to such statement or statements, shall be subject to a penalty of one hundred dollars ($100) for each day that shall elapse after the date fixed by the department for compliance with the terms of its notice concerning statements of condition. The penalty herein prescribed may be recovered in any court of competent jurisdiction, in an action by the state of Indiana, on the relation of "The Department of Financial Institutions" and when so recovered, such penalty shall be paid into the general fund of the state treasury.
(Formerly: Acts 1933, c.40, s.214.)

IC 28-1-16
Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-17
Repealed

(Repealed by P.L.265-1985, SEC.7.)

IC 28-1-18
Repealed

(Repealed by Acts 1982, P.L.167, SEC.3.)

IC 28-1-18.1
Repealed

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

IC 28-1-18.2

Chapter 18.2. Examination of Affiliates

IC 28-1-18.2-1

"Affiliate" defined; scope of term

Sec. 1. (a) As used in this chapter, "affiliate" means any of the following:

(1) Any company that controls a bank and any other company that is controlled by the company that controls a bank.

(2) A bank subsidiary of a bank.

(3) 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 bank or any company that controls the bank; or

(B) in which a majority of its directors or trustees constitute a majority of the persons holding any such office with a bank or any company that controls the bank;

(4) Any:

(A) company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the bank or any subsidiary or affiliate of the bank; or

(B) investment company with respect to which a bank or any affiliate of a bank is an investment advisor (as defined in section 2(a)(20) of the Investment Company Act of 1940 (15 U.S.C. 80a)).

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

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

(1) Any company, other than a bank, that is a subsidiary of a bank, unless a determination is made under section 1(a)(5) of this chapter not to exclude such subsidiary company from the definition of affiliate.

(2) Any company engaged solely in holding the premises of the bank.

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

(4) 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.

(5) Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized under applicable state or federal law or regulation, or in the absence of such law or regulation, for a period of two (2) years from the date of the exercise of such rights or the effective date of the act,

whichever date is later, subject, upon application, to authorization by the department for good cause shown of extensions in the aggregate shall not exceed three (3) years.

As added by P.L.33-1991, SEC.18. Amended by P.L.14-1992, SEC.94.

IC 28-1-18.2-1.1
"Company" defined

Sec. 1.1. As used in this chapter, "company" means a corporation, limited liability company, partnership, business trust, association, or similar organization. Unless specifically excluded, the term includes a bank.

As added by P.L.14-1992, SEC.95. Amended by P.L.8-1993, SEC.441.

IC 28-1-18.2-1.2
"Subsidiary" defined

Sec. 1.2. As used in this chapter, "subsidiary" with respect to a specified company means a company that is controlled by the specified company.

As added by P.L.14-1992, SEC.96.

IC 28-1-18.2-1.3
Control over another company; fiduciary ownership or control of shares

Sec. 1.3. (a) A company or shareholder is considered to have control over another company if:

(1) the company or shareholder, directly or indirectly, or acting through at least one (1) other person owns, controls, or has power to vote at least twenty-five percent (25%) of any class of voting securities of the other company;

(2) the company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company; or

(3) the department determines, after notice and opportunity for hearing, that the company or shareholder, directly or indirectly, exercises a controlling influence over the management or policies of the other company.

(b) Notwithstanding any other provision of this chapter, a company is not considered to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in subsection (a)(3) or if the company owning or controlling the shares is a business trust.

As added by P.L.14-1992, SEC.97.

IC 28-1-18.2-2
Statement of financial condition; requirements; extension of time; additional statements; penalty for failure to furnish statement

Sec. 2. (a) Within thirty (30) days after receipt of a request from the department, a bank or trust company shall furnish to the

department a statement of financial condition of the affiliates identified in the request.

(b) The statements furnished under subsection (a) must:

(1) be dated at least six (6) months apart; and

(2) contain the information that in the judgment of the department:

(A) is necessary to disclose fully the relations between the affiliate and the bank or trust company; and

(B) will enable the department to inform itself as to the effect of the relations upon the affairs of the bank or trust company.

(c) The department may, for good cause shown, extend the time for furnishing the statements requested under subsection (a).

(d) The department may request additional statements of financial condition with respect to an affiliate when, in its judgment, additional statements are necessary to obtain a full and complete knowledge of the conditions of the bank or trust company with which it is affiliated. Additional statements of condition shall be transmitted to the department in the form prescribed by the department.

(e) If a bank or trust company fails to furnish a statement of condition of an affiliate that may be required under this article, that bank or trust company is subject to a penalty of one hundred dollars ($100) for each day during which the failure continues. The department may recover a penalty imposed by this subsection in a court of competent jurisdiction.

As added by P.L.33-1991, SEC.18.

IC 28-1-18.2-3

Examination; report on failure to comply with department's recommendations or suggestions

Sec. 3. (a) In making the examination of a bank or trust company, the department shall include an examination of the affairs of all the bank or trust company's affiliates necessary to disclose fully the relations between the bank or trust company and its affiliates, and the effect of those relations upon the affairs of the bank or trust company.

(b) The department may publish the report of its examination of a bank or trust company, or an affiliate, which has not, within one hundred and twenty (120) days after notification of the recommendations or suggestions of the department, based on the examination, complied with the recommendations or suggestions to the department's satisfaction. The department must give the bank or trust company or the affiliate ninety (90) days notice prior to publication of a report under this subsection.

As added by P.L.33-1991, SEC.18.

IC 28-1-18.2-4

Powers of department; assessment of expenses; penalty for refusal to permit examination

Sec. 4. (a) In making the examination of an affiliate of a bank or trust company, the department has the same powers with respect to the examination as are conferred upon it in the examination of the

affairs of a bank or trust company by IC 28-11-3.

(b) The expenses incurred in making examinations of affiliates may be assessed by the department upon the affiliates examined, in proportion to the assets or resources held by the affiliates, upon the days of examination of the various affiliates, and in the manner and at the rate as fixed and prescribed by the department under IC 28-11-3-5.

(c) If an affiliate refuses to pay expenses assessed under subsection (b), or fails to do so within sixty (60) days after the date of the assessment, the expenses may be assessed against the affiliated bank or trust company, and, when so assessed, must be paid by that bank or trust company.

(d) If an affiliate of a bank or trust company refuses to permit the department to make an examination, the bank or trust company with which the affiliate is affiliated is subject to a penalty of not more than one hundred dollars ($100) for each day that the refusal continues. The penalty may be assessed by the department and collected in the same manner as expenses of examination.

As added by P.L.33-1991, SEC.18.

IC 28-1-18.2-5

Applicability of certain provisions of Federal Reserve Act and regulations; violations

Sec. 5. (a) For purposes of this section, a bank or trust company that is not a member of the Federal Reserve System is subject to Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c or 371c-1) and Federal Reserve Regulation W (12 CFR 223) to the same extent and in the same manner as though it were a member of the Federal Reserve System.

(b) A violation of Section 23A or 23B of the Federal Reserve Act (12 U.S.C. 371c or 371c-1) or Federal Reserve Regulation W (12 CFR 223) by a bank or trust company or a subsidiary of either constitutes a violation of this section.

As added by P.L.33-1991, SEC.18. Amended by P.L.141-2005, SEC.8.

IC 28-1-19
Repealed

(Repealed by P.L.14-1992, SEC.165.)

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.

IC 28-1-21
Repealed

(Repealed by P.L.193-1997, SEC.5.)

IC 28-1-21.1
Repealed

(Repealed by P.L.193-1997, SEC.5.)

IC 28-1-21.2
Repealed

(Repealed by P.L.193-1997, SEC.5.)

IC 28-1-21.3
Repealed

(Repealed by P.L.258-1989, SEC.6.)

IC 28-1-21.4

Chapter 21.4. Charter Conversion of a Building and Loan Association to a Stock Building and Loan Association

IC 28-1-21.4-1

"Mutual savings association"

Sec. 1. As used in this chapter, "mutual savings association" means any mutual savings association organized or reorganized under this title, and any savings association organized under any Indiana statute before February 24, 1933, that is in a mutual form.

As added by P.L.176-1996, SEC.14. Amended by P.L.79-1998, SEC.46.

IC 28-1-21.4-2

"Charter conversion"

Sec. 2. As used in this chapter, "charter conversion" means the conversion of a mutual savings association to a stock savings association, including any of the following:

(1) A conversion in connection with the formation of a holding company.

(2) An acquisition involving an existing corporation.

(3) A merger with an existing financial institution.

As added by P.L.176-1996, SEC.14. Amended by P.L.79-1998, SEC.47.

IC 28-1-21.4-3

"Conversion plan"

Sec. 3. As used in this chapter, "conversion plan" refers to the plan of charter conversion of a mutual savings association to a stock savings association required by this chapter.

As added by P.L.176-1996, SEC.14. Amended by P.L.79-1998, SEC.48.

IC 28-1-21.4-4

"Effective time of the charter conversion"

Sec. 4. As used in this chapter, "effective time of the charter conversion" means the date:

(1) that the articles of conversion are filed with the secretary of state under section 16 of this chapter; or

(2) designated in the articles of conversion.

As added by P.L.176-1996, SEC.14.

IC 28-1-21.4-5

Repealed

(Repealed by P.L.27-2012, SEC.54.)

IC 28-1-21.4-5.1

"Primary federal regulator"

Sec. 5.1. As used in this chapter, "primary federal regulator" means the federal agency primarily responsible for the regulation of:

(1) savings associations; or
(2) savings association holding companies;
organized under the laws of any state or the United States.
As added by P.L.27-2012, SEC.55.

IC 28-1-21.4-6
"Stock savings association"
Sec. 6. As used in this chapter, "stock savings association" means a savings association that is:
(1) owned by holders of capital stock; and
(2) formed by conversion under this chapter.
As added by P.L.176-1996, SEC.14. Amended by P.L.79-1998, SEC.49.

IC 28-1-21.4-7
"Voting parties"
Sec. 7. As used in this chapter, "voting parties" means the:
(1) depositors; and
(2) borrowers;
of a mutual savings association as provided in IC 28-13-6-2(f).
As added by P.L.176-1996, SEC.14. Amended by P.L.79-1998, SEC.50; P.L.215-1999, SEC.5.

IC 28-1-21.4-8
Power of mutual savings associations to convert charter
Sec. 8. Notwithstanding any provision of this title, a mutual savings association may convert its charter under this chapter with the approval of the department.
As added by P.L.176-1996, SEC.14. Amended by P.L.79-1998, SEC.51.

IC 28-1-21.4-9
Duty of department to prescribe procedures
Sec. 9. (a) The department shall prescribe procedures for charter conversions under this chapter.
(b) The procedures prescribed by the department must include the following:
(1) The savings association must prepare and submit a conversion plan to the department that provides the terms and conditions of the charter conversion as required by the department. The conversion plan must stipulate the manner of distribution of stock.
(2) The conversion plan must be adopted by at least a majority of the board of directors of the savings association.
(3) Upon approval of a plan of charter conversion by the board of directors of the savings association, the conversion plan and a certified copy of the resolution of the board of directors approving the conversion plan shall be submitted to the department for approval.
(4) The conversion plan must be conditioned upon the approval

of at least a majority of the total number of votes eligible to be cast at a regular or special meeting of the voting parties. In obtaining the approval of the conversion plan by the voting parties, the converting savings association shall provide to the voting parties the information regarding the conversion plan that the department requires. In determining the information that must be provided, the department shall give due consideration to the requirements of the regulations of the primary federal regulator relating to proxy statements governed by Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n).

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

As added by P.L.176-1996, SEC.14. Amended by P.L.79-1998, SEC.52; P.L.27-2012, SEC.56.

IC 28-1-21.4-10
Voting rights

Sec. 10. The voting parties of a mutual savings association have the voting rights set forth in IC 28-13-6-2 with respect to a charter conversion of the mutual savings association under this chapter.

As added by P.L.176-1996, SEC.14. Amended by P.L.79-1998, SEC.53.

IC 28-1-21.4-11
Approval or disapproval by department

Sec. 11. (a) The department may approve or disapprove the conversion plan filed under section 9 of this chapter.

(b) The department is not required to hold a hearing on the conversion plan.

(c) Solicitation of the votes of voting parties may occur before the savings association receives approval of the department if the director of the department has reviewed the proxy solicitation material and has notified the savings association in writing that the department does not object to the use of the material.

As added by P.L.176-1996, SEC.14. Amended by P.L.79-1998, SEC.54.

IC 28-1-21.4-12
Conditions for approval

Sec. 12. The department may not approve the conversion plan unless the department finds, after appropriate investigation or examination, all of the following:

(1) That the resulting stock savings association will operate in a safe, sound, and prudent manner.

(2) That the proposed charter conversion will not result in a stock savings association that has inadequate capital, unsatisfactory management, or poor earnings prospects.

(3) That the management or other principals of the savings association are qualified by character and financial

responsibility to control and operate in a legal and proper manner the proposed stock savings association.

(4) That the interests of the depositors, the creditors, and the public generally will not be jeopardized by the proposed charter conversion.

As added by P.L.176-1996, SEC.14. Amended by P.L.79-1998, SEC.55.

IC 28-1-21.4-13

Powers and duties at effective time of conversion

Sec. 13. At the effective time of the charter conversion, the resulting stock savings association:

(1) possesses all of the rights, privileges, immunities, and powers of a stock savings association;

(2) unless otherwise provided in this chapter, is subject to all of the statutes, regulations, duties, restrictions, obligations, and liabilities of a stock savings association;

(3) succeeds by operation of law to all rights and property of the converting savings association; and

(4) is subject to all debts, obligations, and liabilities of the converting savings association as if the stock savings association had incurred the debts and liabilities.

As added by P.L.176-1996, SEC.14. Amended by P.L.79-1998, SEC.56.

IC 28-1-21.4-14

Transitional period

Sec. 14. The department may authorize the resulting stock savings association to do the following:

(1) Wind up any activities legally engaged in by the savings association at the effective time of the charter conversion not permitted to stock savings associations.

(2) Retain for a transitional period any assets legally held by the savings association at the effective time of the charter conversion that otherwise may not be held by stock savings associations.

The terms and conditions of the transitional period under subdivisions (1) and (2) are subject to the discretion of the department. However, the transitional period may not exceed ten (10) years after the effective time of the charter conversion.

As added by P.L.176-1996, SEC.14. Amended by P.L.79-1998, SEC.57.

IC 28-1-21.4-15

Branches

Sec. 15. A stock savings association created by charter conversion may retain all branches lawfully established.

As added by P.L.176-1996, SEC.14. Amended by P.L.79-1998, SEC.58.

IC 28-1-21.4-16
Filing with secretary of state

Sec. 16. (a) To effect the charter conversion, the converting savings association must file with the secretary of state articles of charter conversion showing the approval of the director of the department.

(b) The converting savings association shall record copies of the articles of charter conversion with the county recorder of the county where the principal office of the stock savings association is located.

(c) The articles of charter conversion constitute articles of incorporation and must set forth the elements required in IC 28-12-2-1.

As added by P.L.176-1996, SEC.14. Amended by P.L.79-1998, SEC.59.

IC 28-1-21.4-17
Rules

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

As added by P.L.176-1996, SEC.14.

IC 28-1-21.5
Repealed

(Repealed by P.L.193-1997, SEC.5.)

IC 28-1-21.6

Chapter 21.6. Charter Conversion of Mutual or Stock Savings Associations to Commercial Banks

IC 28-1-21.6-1

"Charter conversion"

Sec. 1. As used in this chapter, "charter conversion" means the conversion of a savings association to a commercial bank.

As added by P.L.147-1990, SEC.2.

IC 28-1-21.6-2

"Commercial bank"

Sec. 2. As used in this chapter, "commercial bank" means a stock bank or trust company (as defined by IC 28-1-1-3(2)).

As added by P.L.147-1990, SEC.2. Amended by P.L.42-1993, SEC.35.

IC 28-1-21.6-3

"Department"

Sec. 3. As used in this chapter, "department" means the Indiana department of financial institutions and, if applicable, the department's authorized delegate.

As added by P.L.147-1990, SEC.2.

IC 28-1-21.6-4

"Effective time of the charter conversion"

Sec. 4. As used in this chapter, "effective time of the charter conversion" means:

(1) the date that articles of conversion are filed with the Indiana secretary of state; or

(2) the date designated in the articles of conversion.

As added by P.L.147-1990, SEC.2. Amended by P.L.122-1994, SEC.82.

IC 28-1-21.6-5

Repealed

(Repealed by P.L.27-2012, SEC.57.)

IC 28-1-21.6-5.1

"Primary federal regulator"

Sec. 5.1. As used in this chapter, "primary federal regulator" means the federal agency primarily responsible for the regulation of:

(1) savings associations; or

(2) savings association holding companies;

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

As added by P.L.27-2012, SEC.58.

IC 28-1-21.6-6

"Savings association"

Sec. 6. As used in this chapter, "savings association" means an

institution (as defined in 12 U.S.C. 1813(b)) that maintains the principal office of the institution in Indiana. The term includes federally chartered savings associations and savings banks, and state savings and loan associations and building and loan associations, whether in stock or mutual form of ownership. The term does not include mutual savings banks.
As added by P.L.147-1990, SEC.2.

IC 28-1-21.6-7
"Voting parties"

Sec. 7. As used in this chapter, "voting parties" means in the case of a mutual savings association the mutual savings association's depositors or members, and in the case of a stock savings association the stock savings association's stockholders. Voting parties have the voting rights stipulated by the bylaws of the converting savings association.
As added by P.L.147-1990, SEC.2.

IC 28-1-21.6-8
Conversion upon approval

Sec. 8. Any savings association may, upon approval of the department and, if required by federal law, the primary federal regulator, effect a charter conversion.
As added by P.L.147-1990, SEC.2. Amended by P.L.27-2012, SEC.59.

IC 28-1-21.6-9
Procedures for conversion

Sec. 9. The department shall prescribe procedures for charter conversions. The procedures prescribed by the department must include the following:

(1) The savings association shall prepare and submit a plan of charter conversion to the department that provides the terms and conditions of the charter conversion as required by the department. However, if the plan of charter conversion complies with the requirements of the primary federal regulator, the plan shall be considered adequate. In the case of a charter conversion by a mutual savings association, the plan of charter conversion shall stipulate the manner of distribution of stock in conformance with the primary federal regulator's regulations.

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

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

(4) The plan of charter conversion shall be conditioned upon the approval of not less than a majority of the total number of votes

cast at a regular or special meeting of the voting parties. In obtaining the approval of the plan of charter conversion by the voting parties, the converting savings association shall provide to the voting parties the information regarding the plan of charter conversion that the department requires. In determining the information that must be provided, the department shall give due consideration to the requirements of the primary federal regulator's regulations relating to proxy statements governed by Section 14 of the Securities and Exchange Act of 1934 (15 U.S.C. 78n).

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

As added by P.L.147-1990, SEC.2. Amended by P.L.42-1993, SEC.36; P.L.27-2012, SEC.60.

IC 28-1-21.6-10

Approval or disapproval of conversion plan; requirements

Sec. 10. (a) The department may approve or disapprove the plan of charter conversion filed under section 9 of this chapter.

(b) Solicitation of the votes of voting parties may occur before receipt of the approval of the department.

(c) The department may not approve the plan of charter conversion unless the department finds, after appropriate investigation or examination, and without the requirement of a public hearing, that the following requirements have been fulfilled:

(1) That the resulting commercial bank will operate in a safe, sound, and prudent manner.

(2) That the proposed charter conversion will not result in a commercial bank that has inadequate capital, unsatisfactory management, or poor earnings prospects.

(3) That the management or other principals of the savings association are qualified by character and financial responsibility to control and operate in a legal and proper manner the commercial bank proposed to be formed as a result of the charter conversion.

(4) That the interests of the depositors, the creditors, and the public generally will not be jeopardized by the proposed charter conversion.

As added by P.L.147-1990, SEC.2.

IC 28-1-21.6-11

Powers and duties of resulting commercial bank

Sec. 11. Upon conversion of a savings association, the resulting commercial bank:

(1) possesses all of the rights, privileges, immunities, and powers of a commercial bank;

(2) unless otherwise provided in this chapter, is subject to all of the duties, restrictions, obligations, and liabilities of a commercial bank; and

(3) succeeds by operation of law to all rights and property of the converting savings association and shall be subjected to all debts, obligations, and liabilities of the converting savings association as if the commercial bank had incurred the debts and liabilities.

As added by P.L.147-1990, SEC.2.

IC 28-1-21.6-12
Transitional powers

Sec. 12. The department may authorize the resulting commercial bank to do the following:

(1) Wind up any activities legally engaged in by the savings association at the time of charter conversion not permitted to commercial banks.

(2) Retain any assets legally held by the savings association at the effective time of the charter conversion that may not be held by commercial banks for a transitional period.

The terms and conditions of the transitional period under subdivisions (1) and (2) are subject to the discretion of the department. However, the transitional period may not exceed ten (10) years after the effective time of the charter conversion.

As added by P.L.147-1990, SEC.2. Amended by P.L.42-1993, SEC.37.

IC 28-1-21.6-13
Retention of branches

Sec. 13. Notwithstanding IC 28-2-13, a commercial bank created by charter conversion may retain all branches lawfully established.

As added by P.L.147-1990, SEC.2. Amended by P.L.42-1993, SEC.38.

IC 28-1-21.6-14
Articles of conversion; filing

Sec. 14. In order to effect the charter conversion, the converting savings association shall file articles of charter conversion, bearing the approval of the director of the department, with the secretary of state. The converting savings association shall also file copies of the articles of charter conversion with the county recorder of the county where the principal office of the commercial bank is located.

As added by P.L.147-1990, SEC.2.

IC 28-1-21.6-15
Statutes and rules applicable to converted bank

Sec. 15. Upon the effective time of charter conversion, the converted commercial bank shall, unless otherwise provided in this chapter, immediately become subject to all statutes and rules applicable to commercial banks.

As added by P.L.147-1990, SEC.2.

IC 28-1-21.7

Chapter 21.7. Charter Conversion of Mutual Savings Associations to Mutual Savings Banks

IC 28-1-21.7-1

"Department"

Sec. 1. As used in this chapter, "department" means the department of financial institutions and, if applicable, the department's authorized delegate.

As added by P.L.147-1990, SEC.3.

IC 28-1-21.7-2

"Effective time of the mutual bank conversion"

Sec. 2. As used in this chapter, "effective time of the mutual bank conversion" means:

(1) the date that articles of mutual bank conversion are filed with the secretary of state; or

(2) the date designated in the articles of mutual bank conversion.

As added by P.L.147-1990, SEC.3. Amended by P.L.122-1994, SEC.83.

IC 28-1-21.7-3

"Mutual bank"

Sec. 3. (a) As used in this chapter, "mutual bank" means a mutual savings bank governed by IC 28-6.1.

(b) A reference in IC 28-6.1 to formation and operation of a savings bank by a board means formation by conversion under this chapter and operation by a board of directors elected by members under IC 28-13.

(c) IC 28-6.1-3 does not apply to mutual banks formed by conversion under this chapter.

As added by P.L.147-1990, SEC.3. Amended by P.L.42-1993, SEC.39.

IC 28-1-21.7-4

"Mutual bank conversion"

Sec. 4. As used in this chapter, "mutual bank conversion" means the conversion of a savings association to a mutual bank.

As added by P.L.147-1990, SEC.3.

IC 28-1-21.7-5

Repealed

(Repealed by P.L.27-2012, SEC.61.)

IC 28-1-21.7-5.1

"Primary federal regulator"

Sec. 5.1. As used in this chapter, "primary federal regulator" means the federal agency primarily responsible for the regulation of:

(1) savings associations; or

(2) savings association holding companies;
organized under the laws of any state or the United States.
As added by P.L.27-2012, SEC.62.

IC 28-1-21.7-6
"Savings association"

Sec. 6. As used in this chapter, "savings association" means an institution (as defined in 12 U.S.C. 1813(b)) that maintains its principal office in Indiana. The term includes federally chartered savings associations and savings banks, and state savings and loan associations and building and loan associations, but only if held in the mutual form of ownership.
As added by P.L.147-1990, SEC.3.

IC 28-1-21.7-7
"Voting parties"

Sec. 7. As used in this chapter, "voting parties" means a mutual savings association's depositors or members. Voting parties have the voting rights stipulated by the bylaws of the converting savings association.
As added by P.L.147-1990, SEC.3.

IC 28-1-21.7-8
Conversion upon approval

Sec. 8. Any savings association may, upon approval of the department and, if required by federal law, the primary federal regulator, effect a mutual bank conversion.
As added by P.L.147-1990, SEC.3. Amended by P.L.27-2012, SEC.63.

IC 28-1-21.7-9
Procedures for conversion

Sec. 9. The department shall prescribe procedures for mutual bank conversions. The procedures prescribed by the department must include the following:

(1) The savings association shall prepare and submit a plan of mutual bank conversion to the department that provides the terms and conditions of the mutual bank conversion as required by the department. However, if the plan of mutual bank conversion complies with the requirements of the primary federal regulator, the plan shall be considered adequate.

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

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

(4) The plan of mutual bank conversion shall be conditioned

upon the approval of not less than a majority of the total number of votes cast at a regular or special meeting of the voting parties. The method used to notify the voting parties of the meeting held to consider a plan of mutual bank conversion must be approved by the director of the department. The director may require the converting savings association to provide the voting parties with information regarding the plan of mutual bank conversion.

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

As added by P.L.147-1990, SEC.3. Amended by P.L.33-1991, SEC.21; P.L.42-1993, SEC.40; P.L.122-1994, SEC.84; P.L.27-2012, SEC.64.

IC 28-1-21.7-10

Approval or disapproval of conversion plan; requirements

Sec. 10. (a) The department may approve or disapprove the plan of mutual bank conversion filed under section 9 of this chapter.

(b) Solicitation of the votes of voting parties may occur prior to receipt of the approval of the department.

(c) The department may not approve the plan of mutual bank conversion unless the department finds, after appropriate investigation or examination, and without the requirement of a public hearing, that the following requirements have been fulfilled:

(1) That the resulting mutual bank will operate in a safe, sound, and prudent manner.

(2) That the proposed mutual bank conversion will not result in a mutual bank that has inadequate capital, unsatisfactory management, or poor earnings prospects.

(3) That the management or other principals of the savings association are qualified by character and financial responsibility to control and operate in a legal and proper manner the mutual bank proposed to be formed as a result of the mutual bank conversion.

(4) That the interests of the depositors and creditors, and of the public generally, will not be jeopardized by the proposed mutual bank conversion.

As added by P.L.147-1990, SEC.3.

IC 28-1-21.7-11

Powers and duties of resulting mutual bank

Sec. 11. Upon conversion of a savings association, the resulting mutual bank:

(1) possesses all of the rights, privileges, immunities, and powers of a mutual bank;

(2) unless otherwise provided in this chapter, is subject to all of the duties, restrictions, obligations, and liabilities of a mutual bank; and

(3) succeeds by operation of law to all rights and property of the converting savings association and shall be subjected to all

debts, obligations, and liabilities of the converting savings association as if the mutual bank had incurred the debts and liabilities.

As added by P.L.147-1990, SEC.3.

IC 28-1-21.7-12

Transitional powers

Sec. 12. The department may authorize the resulting mutual bank to do the following:

(1) Wind up any activities legally engaged in by the savings association at the time of mutual bank conversion not permitted to mutual banks.

(2) Retain any assets legally held by the savings association at the time of the mutual bank conversion that may not be held by mutual banks for a transitional period.

The terms and conditions of the transitional period under subdivisions (1) and (2) are subject to the discretion of the department. However, the transitional period may not exceed ten (10) years after the effective time of the mutual bank conversion.

As added by P.L.147-1990, SEC.3. Amended by P.L.42-1993, SEC.41.

IC 28-1-21.7-13

Retention of branches

Sec. 13. Notwithstanding IC 28-6.1-12, a mutual bank created by charter conversion may retain all branches lawfully established.

As added by P.L.147-1990, SEC.3. Amended by P.L.42-1993, SEC.42.

IC 28-1-21.7-14

Articles of conversion; filing

Sec. 14. In order to effect the mutual bank conversion, the converting savings association shall file articles of mutual bank conversion, bearing the approval of the director of the department, with the Indiana secretary of state. The converting savings association shall also file copies of the articles of mutual bank conversion with the county recorder of the county where the principal office of the mutual bank is located.

As added by P.L.147-1990, SEC.3.

IC 28-1-21.7-15

Statutes and rules applicable to converted bank

Sec. 15. Upon the effective time of mutual bank conversion, the converted mutual bank, unless otherwise provided in this chapter, immediately becomes subject to all statutes and rules applicable to mutual banks.

As added by P.L.147-1990, SEC.3.

IC 28-1-21.8

Chapter 21.8. Charter Conversion of a Mutual or Stock Savings Association to a Stock Savings Bank

IC 28-1-21.8-1

Conversion plan

Sec. 1. As used in this chapter, "conversion plan" refers to the stock savings bank conversion plan required by this chapter.

As added by P.L.42-1993, SEC.43.

IC 28-1-21.8-2

Effective time of the charter conversion

Sec. 2. As used in this chapter, "effective time of the charter conversion" means:

(1) the date that articles of conversion are filed with the secretary of state; or

(2) the date designated in the articles of conversion.

As added by P.L.42-1993, SEC.43. Amended by P.L.122-1994, SEC.85.

IC 28-1-21.8-3

Repealed

(Repealed by P.L.27-2012, SEC.65.)

IC 28-1-21.8-3.1

Primary federal regulator

Sec. 3.1. As used in this chapter, "primary federal regulator" means the federal agency primarily responsible for the regulation of:

(1) savings associations; or

(2) savings association holding companies;

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

As added by P.L.27-2012, SEC.66.

IC 28-1-21.8-4

Savings association

Sec. 4. (a) As used in this chapter, "savings association" means an institution (as defined in 12 U.S.C. 1813(b)) that maintains its principal office in Indiana.

(b) The term includes:

(1) federally chartered savings associations and savings banks; and

(2) state savings and loan associations and building and loan associations;

whether in stock or mutual form of ownership.

(c) The term does not include mutual savings banks or stock savings banks.

As added by P.L.42-1993, SEC.43.

IC 28-1-21.8-5

Stock savings association

Sec. 5. As used in this chapter, "stock savings bank" means a savings bank owned by holders of capital stock and formed by conversion under this chapter.
As added by P.L.42-1993, SEC.43.

IC 28-1-21.8-6
Stock savings bank conversion

Sec. 6. As used in this chapter, "stock savings bank conversion" means the conversion of a savings association to a stock savings bank, including any of the following:

(1) A conversion in connection with the formation of a holding company.
(2) An acquisition involving an existing corporation.
(3) The merger with an existing financial institution.

As added by P.L.42-1993, SEC.43.

IC 28-1-21.8-7
Voting parties

Sec. 7. As used in this chapter, "voting parties" means the following:

(1) In the case of a mutual savings association, the mutual savings association's depositors or members.
(2) In the case of a stock savings association, the stock savings association's stockholders.

As added by P.L.42-1993, SEC.43.

IC 28-1-21.8-8
Conversion to stock savings banks

Sec. 8. With the approval of the department, a stock savings association may convert to a stock savings bank under this chapter.
As added by P.L.42-1993, SEC.43.

IC 28-1-21.8-9
Conversion procedures

Sec. 9. (a) The department shall prescribe procedures for stock savings bank conversions.

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

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

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

(3) Upon approval of the conversion plan by the board of directors of the savings association, the conversion plan and a certified copy of the resolution of the board of directors approving the conversion plan must be submitted to the department for approval.

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

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

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

As added by P.L.42-1993, SEC.43. Amended by P.L.27-2012, SEC.67.

IC 28-1-21.8-10

Approval or disapproval of conversion plans by department; hearings; solicitation of votes

Sec. 10. (a) The department may approve or disapprove the conversion plan filed under section 9 of this chapter.

(b) The department is not required to hold a hearing on the conversion plan.

(c) Solicitation of the votes of voting parties may occur before the savings association receives the department's approval of the conversion plan if the director of the department has reviewed the proxy solicitation material and has notified the savings association in writing that the department does not object to use of the material.

As added by P.L.42-1993, SEC.43.

IC 28-1-21.8-11

Conditions for approval of conversion plans

Sec. 11. The department may not approve the conversion plan unless the department finds, after appropriate investigation or examination, all of the following:

(1) That the resulting stock savings bank will operate in a safe, sound, and prudent manner.

(2) That the proposed stock savings bank conversion will not result in a stock savings bank that has inadequate capital, unsatisfactory management, or poor earnings prospects.

(3) That the management or other principals of the savings association are qualified by character and financial responsibility to control and operate in a legal and proper manner the proposed stock savings bank.

(4) That the interests of the depositors, creditors, and public generally will not be jeopardized by the proposed stock savings bank conversion.

As added by P.L.42-1993, SEC.43.

IC 28-1-21.8-12

Rights and obligations of converted stock savings banks

Sec. 12. At the effective time of the charter conversion, the resulting stock savings bank:

(1) possesses all of the rights, privileges, immunities, and powers of a stock savings bank;

(2) unless otherwise provided in this chapter, is subject to all of the statutes, rules, duties, restrictions, obligations, and liabilities of a stock savings bank;

(3) succeeds by operation of law to all rights and property of the converting savings association; and

(4) is subject to all debts, obligations, and liabilities of the converting savings association as if the stock savings bank had incurred the debts and liabilities.

As added by P.L.42-1993, SEC.43.

IC 28-1-21.8-13

Transitional period

Sec. 13. The department may authorize the resulting stock savings bank to do the following:

(1) Wind up any activities legally engaged in by the savings association at the effective time of the charter conversion not permitted to stock savings banks.

(2) Retain for a transitional period any assets legally held by the savings association at the effective time of the charter conversion that otherwise may not be held by stock savings banks.

The terms and conditions of the transitional period under subdivisions (1) and (2) are subject to the discretion of the department. However, the transitional period may not exceed ten (10) years after the effective time of the charter conversion.

As added by P.L.42-1993, SEC.43.

IC 28-1-21.8-14

Retention of branches

Sec. 14. Notwithstanding IC 28-6.1-12, a stock savings bank created by a stock savings bank conversion may retain all branches lawfully established.

As added by P.L.42-1993, SEC.43.

IC 28-1-21.8-15

Articles of conversion

Sec. 15. (a) To effect the stock savings bank conversion, the converting savings association must file with the secretary of state articles of conversion showing the approval of the director of the department.

(b) The converting savings association shall record copies of the articles of conversion with the county recorder of the county where the principal office of the stock savings bank is located.

(c) The articles of conversion constitute articles of incorporation and must set forth the elements required in IC 28-12-2-1.

As added by P.L.42-1993, SEC.43.

IC 28-1-21.8-16

Application of banking law

Sec. 16. (a) Except as provided in subsection (c), a stock savings bank formed under this chapter is governed by IC 28-6.1.

(b) For purposes of a stock savings bank formed under this chapter, references in IC 28-6.1 to formation and operation by a board means:

(1) formation by conversion under this chapter; and

(2) operation by a board of directors elected by shareholders under IC 28-13.

(c) IC 28-6.1-3 does not apply to a stock savings bank formed under this chapter.

As added by P.L.42-1993, SEC.43.

IC 28-1-21.8-17

Rules

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

As added by P.L.42-1993, SEC.43.

IC 28-1-21.9

Chapter 21.9. Charter Conversion of a Mutual Savings Bank to a Stock Savings Bank

IC 28-1-21.9-1

Charter conversion

Sec. 1. As used in this chapter, "charter conversion" means the conversion of a savings bank to a stock savings bank, including any of the following:

(1) A conversion in connection with the formation of a holding company.

(2) An acquisition involving an existing corporation.

(3) A merger with an existing financial institution.

As added by P.L.42-1993, SEC.44. Amended by P.L.262-1995, SEC.36.

IC 28-1-21.9-2

Conversion plan

Sec. 2. As used in this chapter, "conversion plan" refers to the plan of charter conversion of a savings bank to a stock savings bank required by this chapter.

As added by P.L.42-1993, SEC.44. Amended by P.L.262-1995, SEC.37.

IC 28-1-21.9-3

Effective time of the charter conversion

Sec. 3. As used in this chapter, "effective time of the charter conversion" means:

(1) the date that articles of conversion are filed with the secretary of state; or

(2) the date designated in the articles of conversion.

As added by P.L.42-1993, SEC.44. Amended by P.L.122-1994, SEC.86.

IC 28-1-21.9-4

Repealed

(Repealed by P.L.262-1995, SEC.91.)

IC 28-1-21.9-5

Repealed

(Repealed by P.L.27-2012, SEC.68.)

IC 28-1-21.9-5.1

Primary federal regulator

Sec. 5.1. As used in this chapter, "primary federal regulator" means the federal agency primarily responsible for the regulation of:

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

(2) savings association holding companies;

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

As added by P.L.27-2012, SEC.69.

IC 28-1-21.9-5.5
Savings bank

Sec. 5.5. As used in this chapter, "savings bank" has the meaning set forth in IC 28-6.1-2-6.

As added by P.L.262-1995, SEC.38.

IC 28-1-21.9-6
Stock savings bank

Sec. 6. As used in this chapter, "stock savings bank" means a savings bank that is:

(1) owned by holders of capital stock; and

(2) formed by conversion under this chapter.

As added by P.L.42-1993, SEC.44. Amended by P.L.262-1995, SEC.39.

IC 28-1-21.9-7
Voting parties

Sec. 7. As used in this chapter, "voting parties" means the:

(1) depositors; and

(2) borrowers;

of a savings bank.

As added by P.L.42-1993, SEC.44. Amended by P.L.262-1995, SEC.40.

IC 28-1-21.9-8
Conversion to stock savings banks

Sec. 8. With the approval of the department, a savings bank may convert its charter under this chapter.

As added by P.L.42-1993, SEC.44. Amended by P.L.262-1995, SEC.41.

IC 28-1-21.9-9
Conversion procedures

Sec. 9. (a) The department shall prescribe procedures for charter conversions under this chapter.

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

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

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

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

(4) The conversion plan shall be conditioned upon the approval

of not less than a majority of the total number of votes eligible to be cast at a regular or special meeting of the voting parties. In obtaining the approval of the conversion plan by the voting parties, the converting savings bank shall provide to the voting parties the information regarding the conversion plan that the department requires. In determining the information that must be provided, the department shall give due consideration to the requirements of the primary federal regulator's regulations relating to proxy statements governed by Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n).

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

As added by P.L.42-1993, SEC.44. Amended by P.L.262-1995, SEC.42; P.L.27-2012, SEC.70.

IC 28-1-21.9-9.5
Voting rights

Sec. 9.5. The voting parties of a savings bank have the voting rights set forth in IC 28-13-6-2 with respect to a charter conversion of the savings bank under this chapter.

As added by P.L.262-1995, SEC.43.

IC 28-1-21.9-10
Approval or disapproval of conversion plans by department; hearings; solicitation of votes

Sec. 10. (a) The department may approve or disapprove the conversion plan filed under section 9 of this chapter.

(b) The department is not required to hold a hearing on the conversion plan.

(c) Solicitation of the votes of voting parties may occur before the savings bank receives approval of the department, if the director of the department has reviewed the proxy solicitation material and has notified the savings bank in writing that the department does not object to use of the material.

As added by P.L.42-1993, SEC.44. Amended by P.L.262-1995, SEC.44.

IC 28-1-21.9-11
Conditions for approval of conversion plans

Sec. 11. The department may not approve the conversion plan unless the department finds, after appropriate investigation or examination, all of the following:

(1) That the resulting stock savings bank will operate in a safe, sound, and prudent manner.

(2) That the proposed charter conversion will not result in a stock savings bank that has inadequate capital, unsatisfactory management, or poor earnings prospects.

(3) That the management or other principals of the savings bank are qualified by character and financial responsibility to control

and operate in a legal and proper manner the proposed stock savings bank.

(4) That the interests of the depositors, the creditors, and the public generally will not be jeopardized by the proposed charter conversion.

As added by P.L.42-1993, SEC.44. Amended by P.L.262-1995, SEC.45.

IC 28-1-21.9-12

Rights and obligations of converted stock savings banks

Sec. 12. At the effective time of the charter conversion, the resulting stock savings bank:

(1) possesses all of the rights, privileges, immunities, and powers of a stock savings bank;

(2) unless otherwise provided in this chapter, is subject to all of the statutes, regulations, duties, restrictions, obligations, and liabilities of a stock savings bank;

(3) succeeds by operation of law to all rights and property of the converting savings bank; and

(4) is subject to all debts, obligations, and liabilities of the converting savings bank as if the stock savings bank had incurred the debts and liabilities.

As added by P.L.42-1993, SEC.44. Amended by P.L.262-1995, SEC.46.

IC 28-1-21.9-13

Transitional period

Sec. 13. The department may authorize the resulting stock savings bank to do the following:

(1) Wind up any activities legally engaged in by the savings bank at the effective time of the charter conversion not permitted to stock savings banks.

(2) Retain for a transitional period any assets legally held by the savings bank at the effective time of the charter conversion that otherwise may not be held by stock savings banks.

The terms and conditions of the transitional period under subdivisions (1) and (2) are subject to the discretion of the department. However, the transitional period may not exceed ten (10) years after the effective time of the charter conversion.

As added by P.L.42-1993, SEC.44. Amended by P.L.262-1995, SEC.47.

IC 28-1-21.9-14

Retention of branches

Sec. 14. Notwithstanding IC 28-6.1-12, a stock savings bank created by charter conversion may retain all branches lawfully established.

As added by P.L.42-1993, SEC.44.

IC 28-1-21.9-15

Articles of charter conversion

Sec. 15. (a) To effect the charter conversion, the converting savings bank must file with the secretary of state articles of charter conversion showing the approval of the director of the department.

(b) The converting savings bank shall record copies of the articles of charter conversion with the county recorder of the county where the principal office of the stock savings bank is located.

(c) The articles of charter conversion constitute articles of incorporation and must set forth the elements required in IC 28-12-2-1.

As added by P.L.42-1993, SEC.44. Amended by P.L.262-1995, SEC.48.

IC 28-1-21.9-16

Application of banking law

Sec. 16. (a) Except as provided in subsection (c), a stock savings bank formed under this chapter is governed by IC 28-6.1.

(b) For purposes of a stock savings bank formed under this chapter, a reference in IC 28-6.1 to formation and operation by a board means:

(1) formation by conversion under this chapter; and

(2) operation by a board of directors elected by shareholders under IC 28-13.

(c) IC 28-6.1-3 does not apply to a stock savings bank formed by conversion under this chapter.

As added by P.L.42-1993, SEC.44.

IC 28-1-21.9-17

Rules

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

As added by P.L.42-1993, SEC.44.

IC 28-1-21.10
Repealed

(Repealed by P.L.1-2006, SEC.588.)

IC 28-1-21.11
Repealed

(Repealed by P.L.1-2006, SEC.588.)

IC 28-1-21.12
Repealed

(Repealed by P.L.1-2006, SEC.588.)

IC 28-1-22

Chapter 22. Foreign Corporations

IC 28-1-22-1

Necessity of certificate of admission

Sec. 1. (a) Any bank, savings bank, trust company, corporate fiduciary, credit union, industrial loan and investment company, or savings association that:

(1) is organized under the laws of:

(A) any other state (as defined in IC 28-2-17-19);

(B) the United States; or

(C) any other country;

(2) is not domiciled in Indiana; and

(3) is referred to in this chapter as a corporation or foreign corporation;

shall, before transacting business in this state, obtain a certificate of admission to this state from the department, which must be filed with the secretary of state. A corporation may not do business in Indiana unless a certificate of admission is issued to the corporation by the department.

(b) The activities listed in IC 23-1-49-1(b) do not constitute transacting business within the meaning of subsection (a). For the purposes of this section, the list of activities set forth in IC 23-1-49-1(b) is not exhaustive.

(c) Isolated business transactions that are not regular, systematic, or continuing do not constitute the transaction of business under subsection (a).

(Formerly: Acts 1933, c.40, s.324.) As amended by P.L.263-1985, SEC.84; P.L.262-1995, SEC.49; P.L.171-1996, SEC.8; P.L.192-1997, SEC.5; P.L.213-2007, SEC.43; P.L.217-2007, SEC.41.

IC 28-1-22-2

Authorized business; equality of rights and privileges with domestic corporations

Sec. 2. (a) No foreign corporation shall be admitted for the purpose of transacting any kind of business in this state, the transaction of which by domestic corporation is not permitted by the laws of this state.

(b) A foreign corporation admitted to do business in this state shall have the same rights, privileges, and restrictions as domestic corporations of like character or charter, and to the same extent as if it had been organized under this article, to transact the business for which its certificate of admission is issued.

(Formerly: Acts 1933, c.40, s.325.) As amended by P.L.263-1985, SEC.85; P.L.171-1996, SEC.9.

IC 28-1-22-3

Restrictions on name

Sec. 3. A foreign corporation shall not use or assume a name

which could not be taken by a domestic corporation under the provisions of IC 28-12-3.
(Formerly: Acts 1933, c.40, s.326.) As amended by P.L.263-1985, SEC.86; P.L.14-1992, SEC.102; P.L.171-1996, SEC.10.

IC 28-1-22-4
Application for admission; fees and supporting documents

Sec. 4. (a) To be admitted to do business in Indiana, a foreign corporation must file an application for admission in the form prescribed by the director. The application must be accompanied by:

(1) the fees prescribed by the department; and

(2) a copy of its articles of incorporation or association.

(b) The application for admission filed by a foreign corporation must:

(1) be signed by:

(A) the president or a vice president of the foreign corporation; and

(B) the secretary or cashier of the foreign corporation;

(2) be verified under oath by the officers signing the application; and

(3) include a description of the nature of business that the foreign corporation intends to carry on in Indiana under its articles of incorporation or association.

(Formerly: Acts 1933, c.40, s.327.) As amended by P.L.171-1996, SEC.11; P.L.63-2001, SEC.9 and P.L.134-2001, SEC.10.

IC 28-1-22-5
Repealed

(Repealed by P.L.171-1996, SEC.44.)

IC 28-1-22-6
Repealed

(Repealed by P.L.171-1996, SEC.44.)

IC 28-1-22-7
Application for admission; filing with secretary of state; certificate of admission; issuance; contents

Sec. 7. Upon submission of a foreign corporation's application for admission, the department shall issue to the foreign corporation a certificate of admission, which shall be filed with the secretary of state. The secretary of state shall file one (1) copy of the certificate of admission issued by the department and shall issue to the corporation an original and a duplicate certificate of admission. The certificate of admission issued by the secretary of state must set forth the name of the corporation and the state or country where it was incorporated.
(Formerly: Acts 1933, c.40, s.330.) As amended by P.L.171-1996, SEC.12; P.L.63-2001, SEC.10 and P.L.134-2001, SEC.11.

IC 28-1-22-8

Effect of certificate of admission

Sec. 8. A foreign corporation that has been issued a certificate of admission by the secretary of state shall be admitted and shall have authority to transact the business set forth in the certificate.

(Formerly: Acts 1933, c.40, s.331.) As amended by P.L.263-1985, SEC.88; P.L.171-1996, SEC.13; P.L.11-1998, SEC.2.

IC 28-1-22-9

Repealed

(Repealed by P.L.11-1998, SEC.24.)

IC 28-1-22-10

Premature transaction of business; personal liability of officers and directors

Sec. 10. If a foreign corporation transacts business in this state before it has received the approval of the department, the officers and directors of the corporation shall be severally liable for the liabilities of the corporation that result from the corporation's transaction of business in Indiana.

(Formerly: Acts 1933, c.40, s.333.) As amended by P.L.171-1996, SEC.15; P.L.11-1998, SEC.3.

IC 28-1-22-11

Investigation

Sec. 11. The department shall have power to investigate all foreign corporations with respect to the character of business in which such corporations propose to engage in Indiana.

(Formerly: Acts 1933, c.40, s.334; Acts 1945, c.348, s.25.) As amended by P.L.171-1996, SEC.16.

IC 28-1-22-12

Affidavit stating location of principal office and name of agent for service of process

Sec. 12. A foreign corporation admitted to do business in this state shall keep on file with the secretary of state an affidavit setting forth the location of its principal office in this state, and the name of a person who serves as its agent or representative on whom legal process may be served.

(Formerly: Acts 1933, c.40, s.335.) As amended by P.L.171-1996, SEC.17.

IC 28-1-22-13

Repealed

(Repealed by P.L.171-1996, SEC.44.)

IC 28-1-22-14

Repealed

(Repealed by P.L.63-2001, SEC.30 and P.L.134-2001, SEC.32.)

IC 28-1-22-15

Change of business; amended certificate of admission

Sec. 15. A foreign corporation admitted to do business in this state may alter or enlarge the nature of the business which it is authorized to transact in this state under its articles of incorporation or association or by any amendments by obtaining an amended certificate of admission from the department.

(Formerly: Acts 1933, c.40, s.338.) As amended by P.L.171-1996, SEC.19.

IC 28-1-22-16

Application for amended certificate of admission

Sec. 16. A foreign corporation may obtain an amended certificate if it files with the department an application for an amended certificate of admission, setting forth the change in the nature of the business it intends to carry on in this state. The application shall be signed by the president or a vice president and by the secretary or cashier of the corporation.

(Formerly: Acts 1933, c.40, s.339.) As amended by P.L.171-1996, SEC.20.

IC 28-1-22-17

Repealed

(Repealed by P.L.171-1996, SEC.44.)

IC 28-1-22-18

Issuance of amended certificate of admission

Sec. 18. Upon submission of an application for an amended certificate of admission, the department shall issue an amended certificate of admission, which shall be filed with the secretary of state. The secretary of state shall file one (1) copy of the amended certificate of admission issued by the department and shall issue to the corporation an original and a duplicate amended certificate of admission.

(Formerly: Acts 1933, c.40, s.341.) As amended by P.L.171-1996, SEC.21; P.L.63-2001, SEC.11 and P.L.134-2001, SEC.12.

IC 28-1-22-19

Effect of amended certificate of admission

Sec. 19. A foreign corporation that has been issued an amended certificate of admission by the secretary of state shall have authority to transact in this state the business set forth in the certificate.

(Formerly: Acts 1933, c.40, s.342.) As amended by P.L.263-1985, SEC.92; P.L.171-1996, SEC.22; P.L.11-1998, SEC.4.

IC 28-1-22-20

Change of business before approval; personal liability of officers and directors

Sec. 20. If a foreign corporation changes the nature of the business it transacts in Indiana before the business receives the department's approval, the officers and directors of such corporation shall be

severally liable for the liabilities of the corporation that result from the corporation's transaction of that business in Indiana.
(Formerly: Acts 1933, c.40, s.343.) As amended by P.L.263-1985, SEC.93; P.L.14-1992, SEC.105; P.L.171-1996, SEC.23; P.L.11-1998, SEC.5.

IC 28-1-22-21
Statement of withdrawal
Sec. 21. A foreign corporation may surrender its certificate of admission by filing a statement of withdrawal with the department and the secretary of state.
(Formerly: Acts 1933, c.40, s.344.) As amended by P.L.171-1996, SEC.24.

IC 28-1-22-22
Form; actions not affected
Sec. 22. The statement of withdrawal of a foreign corporation shall be in the form prescribed by the department. The filing of the statement does not affect:
(1) any action by or against the corporation that is pending at the time of the filing; or
(2) any right of action in favor of or against the corporation existing at or before the time of the filing.
(Formerly: Acts 1933, c.40, s.345.) As amended by P.L.263-1985, SEC.94; P.L.14-1992, SEC.106; P.L.171-1996, SEC.25.

IC 28-1-22-23
Repealed
(Repealed by P.L.171-1996, SEC.44.)

IC 28-1-22-24
Revocation of certificate of admission
Sec. 24. The certificate of admission of any foreign corporation admitted to do business in this state may be revoked at any time by the department:
(1) upon the failure of the corporation for thirty (30) days to appoint and maintain an agent in this state upon whom service of legal process may be had;
(2) upon the failure of the corporation for thirty (30) days to keep on file in the office of the secretary of state duly authenticated copies of each instrument amending its articles of incorporation;
(3) upon the failure of the corporation for thirty (30) days to file for record in the office of a county recorder the certificate of admission or any amended certificate of admission as provided by this article;
(4) upon the failure, neglect, or refusal of the corporation for thirty (30) days to pay any fee required by the laws of this state; or
(5) for willful misrepresentation of any material matter in any

application, statement, affidavit, or other paper filed by such corporation pursuant to this article.

(Formerly: Acts 1933, c.40, s.347.) As amended by P.L.263-1985, SEC.95; P.L.171-1996, SEC.26.

IC 28-1-22-25
Duties of department upon revocation

Sec. 25. (a) A certificate of admission of a foreign corporation is revoked when the department:

(1) serves a certificate of revocation upon the corporation at its principal office in Indiana; and

(2) files a copy of the certificate of revocation with:

(A) the secretary of state; and

(B) the county recorder of the county in which the principal office of the corporation in Indiana is located.

(b) Upon the serving of a certificate of revocation by the department, the authority of the corporation to transact business in this state shall cease, and the corporation shall not transact any business in this state.

(Formerly: Acts 1933, c.40, s.348.) As amended by P.L.171-1996, SEC.27.

IC 28-1-22-26
Repealed

(Repealed by P.L.171-1996, SEC.44.)

IC 28-1-22-27
Repealed

(Repealed by P.L.171-1996, SEC.44.)

IC 28-1-22-28
Transaction of business without certificate; offenses; remedies

Sec. 28. (a) No foreign corporation transacting business in this state without procuring a certificate of admission, or, if such a certificate has been procured, after its certificate of admission has been withdrawn or revoked, shall maintain any suit, action or proceeding in any of the courts of this state upon any demand, whether arising out of contract or tort; and every such corporation so transacting business shall be liable in an amount not exceeding ten thousand dollars ($10,000), in an action by the attorney general in any county in which the business was transacted.

(b) If any foreign corporation shall transact business in this state without procuring a certificate of admission, or, if a certificate has been procured, after its certificate has been withdrawn or revoked, or shall transact any business not authorized by such certificate, such corporation shall not be entitled to maintain any suit or action at law or in equity upon any claim, legal or equitable, whether arising out of contract or tort, in any court in this state; and it shall be the duty of the attorney general, upon being advised that any foreign corporation is so transacting business in this state, to bring an action in the circuit

court of Marion County for an injunction to restrain it from transacting unauthorized business and for the annulment of its certificate of admission, if one has been procured.

(Formerly: Acts 1933, c.40, s.351.) As amended by Acts 1978, P.L.2, SEC.2812; P.L.171-1996, SEC.28.

IC 28-1-23

Chapter 23. Additional Provisions Pertaining to Financial Institutions

IC 28-1-23-1

Fees payable to secretary of state; fee on basis of capital stock of credit union

Sec. 1. The fees payable to the secretary of state by financial institutions which are organized or reorganized under the laws of this state and under the laws of any other state shall be the same as the fees prescribed in chapter 219 of the Acts of the general assembly of 1929, except that the fee imposed on the basis of the capital stock of any credit union shall not exceed the sum of one dollar ($1.00) for each original application and one dollar ($1.00) for each additional application for shares irrespective of the number of shares to be authorized by such application and issued thereunder.

(Formerly: Acts 1933, c.40, s.352.)

IC 28-1-23-2

Fees payable to secretary of state; fee on basis of capital stock of building and loan association or savings and loan association

Sec. 2. The fees payable to the secretary of state by financial institutions which are organized or reorganized under the laws of this state or under the laws of any other state shall be the same as the fees prescribed in IC 23-1-18, except that the fee imposed on the basis of the capital stock of any savings association shall be the sum of one dollar ($1) for each original application and one dollar ($1) for each additional application for shares, irrespective of the number of shares to be authorized by such application and issued thereunder.

(Formerly: Acts 1933, c.40, s.352a; Acts 1965, c.22, s.1.) As amended by P.L.263-1985, SEC.97; P.L.149-1986, SEC.63; P.L.79-1998, SEC.60.

IC 28-1-23-3

Repealed

(Repealed by P.L.11-1998, SEC.24.)

IC 28-1-23-4

Trust business of national banks; duty to furnish information concerning obligation secured by real estate; noncompliance

Sec. 4. (a) Any national bank located within this state may accept and execute trusts of any kind which may be committed or transferred to it, subject to the same restrictions as are imposed on state banks or trust companies under IC 28-1-11 through IC 28-1-20.

(b) Any financial institution acting as trustee, mortgagee, or in any capacity under any mortgage or stock agreement, wherein and by virtue of which notes, bonds, preferred stock or other obligations, secured by real estate, have been sold or rediscounted by such financial institution shall, upon demand of the owner of such real estate or upon demand of any holder of any such note, bond,

preferred stock or other obligation for information concerning such mortgage, note, bond, preferred stock or other obligation, immediately furnish all such information to the owner or holder of such bond, note, preferred stock or other obligation or to the owner of such mortgaged real estate.

(c) A person who fails to comply with this section commits a Class C infraction.

(Formerly: Acts 1933, c.40, s.354.) As amended by Acts 1978, P.L.2, SEC.2813.

IC 28-1-23-5

Execution of verified account, report, or other paper

Sec. 5. Wherever any provision of this article requires that there shall be filed any verified account, report, or other paper by any person, firm, limited liability company, or corporation, such account, report, or other paper shall be executed by the person or persons filing such account, report, or other paper or by the president or such other officer as may be designated by the board of directors of any corporation filing such account, report, or other paper, and the truth of the matters therein stated shall be sworn to under oath by such person or by such president or other officer before a notary public or other officer duly qualified to administer oaths.

(Formerly: Acts 1933, c.40, s.355.) As amended by P.L.263-1985, SEC.99; P.L.8-1993, SEC.444.

IC 28-1-23-6

Restrictions on incorporation and organization

Sec. 6. (a) Except as provided in subsection (b), a mutual savings bank or a mortgage guarantee company may not be incorporated or organized under Indiana law.

(b) A mutual savings bank may be organized with all rights and privileges under IC 28-6.1 only by a mutual bank conversion under IC 28-1-21.7.

(Formerly: Acts 1933, c.40, s.356; Acts 1937, c.33, s.41.) As amended by P.L.263-1985, SEC.100; P.L.147-1990, SEC.8; P.L.42-1993, SEC.45; P.L.79-1998, SEC.61.

IC 28-1-23-7

Violations

Sec. 7. A person who recklessly violates a provision of chapters 1 through 23 of this article for the violation of which a penalty is not otherwise provided commits a Class B misdemeanor.

(Formerly: Acts 1933, c.40, s.357.) As amended by Acts 1978, P.L.2, SEC.2814.

IC 28-1-23-8

Repealed

(Repealed by Acts 1978, P.L.2, SEC.2824.)

IC 28-1-23-9

Repealed

(Repealed by P.L.1-1989, SEC.75.)

IC 28-1-23-10
Repealed

(Repealed by P.L.42-1993, SEC.103.)

IC 28-1-23-11
Repealed

(Repealed by Acts 1978, P.L.2, SEC.2824.)

IC 28-1-23-12
Repealed

(Repealed by Acts 1978, P.L.2, SEC.2824.)

IC 28-1-23-13
Repealed

(Repealed by Acts 1978, P.L.2, SEC.2824.)

IC 28-1-23-14
Repealed

(Repealed by P.L.42-1993, SEC.103.)

IC 28-1-23-15
Repealed

(Repealed by Acts 1978, P.L.2, SEC.2824.)

IC 28-1-23-16
Withdrawal of deposits

Sec. 16. All persons, regardless of age, may become depositors in a depository financial institution (as defined in IC 28-1-1-6) and shall be subject to the same duties and liabilities respecting their deposits. Whenever a deposit is accepted by a depository financial institution 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 it is signed by the depositor, and constitutes a valid release and discharge to the depository financial institution 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.).

As added by P.L.81-2001, SEC.3.

IC 28-1-23.2

Chapter 23.2. Prize Linked Savings Programs

IC 28-1-23.2-1

"Director"

Sec. 1. As used in this chapter, "director" refers to the director of the department of financial institutions.

As added by P.L.135-2014, SEC.3.

IC 28-1-23.2-2

"Eligible depository financial institution"

Sec. 2. As used in this chapter, "eligible depository financial institution" means a credit union that is organized or reorganized under Indiana law with the express power to receive and accept deposits of money subject to withdrawal by any of the methods set forth in IC 28-1-23-16.

As added by P.L.135-2014, SEC.3.

IC 28-1-23.2-3

"Eligible individual"

Sec. 3. As used in this chapter, "eligible individual", with respect to a prize linked savings program, means an individual who:

(1) is at least eighteen (18) years of age;

(2) is a member of the eligible depository financial institution conducting the prize linked savings program; and

(3) maintains a qualified account with the eligible depository financial institution conducting the prize linked savings program.

As added by P.L.135-2014, SEC.3.

IC 28-1-23.2-4

"Qualified account"

Sec. 4. (a) As used in this chapter, "qualified account", for purposes of a prize linked savings program, means:

(1) a savings account;

(2) a time deposit; or

(3) a savings program;

that is offered by an eligible depository financial institution to an eligible individual.

(b) The term includes:

(1) an account described in subsection (a) that is a share account; and

(2) an account described in subsection (a) in which an eligible individual has an interest:

(A) individually; or

(B) jointly with another eligible individual.

As added by P.L.135-2014, SEC.3.

IC 28-1-23.2-5

"Qualified financial program"

Sec. 5. (a) As used in this chapter, "qualified financial program", for purposes of a prize linked savings program, means any savings, debt reduction, or financial education program or product that an eligible depository financial institution offers to eligible individuals for the purpose of:

(1) educating eligible individuals in the concepts of thrift;

(2) encouraging savings by eligible individuals; or

(3) providing eligible individuals the opportunity to use and control their own money in order to improve their economic and social condition.

(b) Subject to the approval of the director, and of the eligible depository financial institution's board of directors, the term includes the following:

(1) Programs or products that encourage or require eligible individuals to open one (1) or more qualified accounts or to increase deposits or contributions to one (1) or more qualified accounts.

(2) Programs or products that encourage or require eligible individuals to deposit or transfer money into one (1) or more qualified accounts on a recurring or automatic basis.

(3) Programs or products that encourage an eligible individual to:

(A) refinance or consolidate existing debt to obtain a lower interest rate;

(B) lower the eligible individual's total debt ratio or revolving debt ratio by paying off or reducing outstanding balances; or

(C) prepare a budget or a debt reduction plan.

(4) Programs that encourage eligible individuals to:

(A) attend financial education seminars or counseling sessions sponsored by the eligible financial institution and offered free of charge; or

(B) use free online financial education, budgeting, or debt reduction tools.

(5) Any other similar savings, debt reduction, or financial education program or product that an eligible depository financial institution offers to eligible individuals for any of the purposes set forth in subsection (a).

As added by P.L.135-2014, SEC.3.

IC 28-1-23.2-6
"Prize linked savings program"

Sec. 6. As used in this chapter, "prize linked savings program" means a contest:

(1) that is associated with one (1) or more qualified accounts or one (1) or more qualified financial programs offered by an eligible depository financial institution to eligible individuals;

(2) that is conducted by an eligible depository financial institution, alone or together with one (1) or more other businesses;

(3) that offers eligible individuals one (1) or more chances to win designated prizes; and

(4) in which:

(A) the sole consideration for a chance to win a designated prize is obtained by:

(i) depositing a minimum specified amount of money in a qualified account; or

(ii) participating in one (1) or more qualified financial programs; and

(B) each entry has an equal chance of being drawn.

As added by P.L.135-2014, SEC.3.

IC 28-1-23.2-7

Required conditions to offer and conduct a prize linked savings program

Sec. 7. (a) Subject to subsections (b) and (c) and section 8 of this chapter, and subject to any rules, policies, or guidance adopted by the director under section 9 of this chapter, an eligible depository financial institution may offer and conduct a prize linked savings program if the following conditions are met:

(1) The terms and conditions of the prize linked savings program must allow an eligible individual to obtain one (1) or more entries to win a specified prize. Subject to any limits that the eligible depository financial institution may place on the number of entries that an eligible individual is permitted to obtain for any given prize linked savings program, as set forth in the terms and conditions of the prize linked savings program, the eligible depository financial institution must allow an eligible individual to obtain an entry for a prize linked savings program only by doing either or both of the following:

(A) Depositing a minimum specified amount of money in a qualified account in accordance with the terms and conditions of the prize linked savings program.

(B) Participating in one (1) or more qualified financial programs in accordance with the terms and conditions of the prize linked savings program.

(2) Each entry in the prize linked savings program must have an equal chance of being drawn.

(3) The prize linked savings program must be approved by:

(A) the director; and

(B) the eligible depository financial institution's board of directors;

before it is offered or promoted to eligible individuals by the eligible depository financial institution.

(b) An eligible depository financial institution may not conduct a prize linked savings program if the prize linked savings program will:

(1) harm the eligible depository financial institution's ability to operate in a safe and sound manner; or

(2) mislead eligible individuals or the public.

(c) An eligible depository financial institution that conducts a

prize linked savings program under this chapter shall maintain books and records relating to the conduct of the prize linked savings program in the manner and for the length of time that the director may prescribe in rules, policies, or guidance adopted under section 9 of this chapter.
As added by P.L.135-2014, SEC.3.

IC 28-1-23.2-8
Statement describing the terms and conditions of prize linked savings programs

Sec. 8. (a) An eligible depository financial institution that offers a prize linked savings program under this chapter shall:

(1) post in any location where entries may be submitted; and
(2) disclose in any:
(A) printed materials; or
(B) electronic media;
promoting the prize linked savings program;

a statement describing the terms and conditions of the prize linked savings program.

(b) The statement required under subsection (a) must include language specifying the following:

(1) That, except for:
(A) making a deposit described in section 7(a)(1)(A) of this chapter; or
(B) participating in one (1) or more qualified financial programs, as described in section 7(a)(1)(B) of this chapter;
no other action, and no purchase or other consideration, is necessary for an entry into the prize linked savings program.
(2) That, except for:
(A) making a deposit described in section 7(a)(1)(A) of this chapter; or
(B) participating in one (1) or more qualified financial programs, as described in section 7(a)(1)(B) of this chapter;
taking any other action, or purchasing any goods or services, will not improve the odds of winning.
(3) That the odds of winning are determined based on the number of entries received.

As added by P.L.135-2014, SEC.3.

IC 28-1-23.2-9
Director actions

Sec. 9. The director may do any of the following:

(1) Prescribe the form or manner in which an eligible depository financial institution may seek approval from the department to offer a prize linked savings program to eligible individuals.
(2) Adopt rules, policies, or guidance concerning the conduct of prize linked savings programs in Indiana.
(3) Examine the conduct of an eligible depository financial institution's prize linked savings program.
(4) Issue cease and desist orders or otherwise exercise the

department's enforcement powers under IC 28-11-4 for a violation of this chapter.

As added by P.L.135-2014, SEC.3.

IC 28-1-23.5

Chapter 23.5. Electronic Activity by Financial Institutions

IC 28-1-23.5-1

Application of chapter

Sec. 1. This chapter applies to the following financial institutions:

(1) A bank operating under IC 28-1-11.

(2) A credit union operating under IC 28-7-1.

(3) A savings bank operating under IC 28-6.1.

(4) A savings association operating under IC 28-15.

As added by P.L.10-2006, SEC.32 and P.L.57-2006, SEC.32.

IC 28-1-23.5-2

"Electronic activity"

Sec. 2. As used in this chapter, "electronic activity" refers to:

(1) any activity or function that a financial institution performs through electronic means or facilities; or

(2) the provision or delivery of any product or service by a financial institution through the use of electronic technology.

As added by P.L.10-2006, SEC.32 and P.L.57-2006, SEC.32.

IC 28-1-23.5-3

Consistency with safety and soundness standards, consumer protection laws, and supervisory guidance

Sec. 3. An electronic activity performed by a financial institution must be consistent with the following:

(1) Standards used by the department to determine whether a financial institution is operating or will operate in a safe and sound condition.

(2) State and federal consumer protection laws and regulations.

(3) State or federal supervisory guidance considered necessary or appropriate by the director.

As added by P.L.10-2006, SEC.32 and P.L.57-2006, SEC.32.

IC 28-1-23.5-4

Electronic activities; statutory authorization; standards

Sec. 4. (a) The director may determine whether an electronic activity by a financial institution is permitted under:

(1) IC 28-1-11, with respect to a bank;

(2) IC 28-7-1, with respect to a credit union;

(3) IC 28-6.1, with respect to a savings bank;

(4) IC 28-15, with respect to a savings association; or

(5) any other state statute that applies to a financial institution described in subdivisions (1) through (4).

(b) The director may establish standards or conditions designed to ensure that the electronic activities of financial institutions are:

(1) transacted as intended; and

(2) conducted safely and soundly, in accordance with other applicable statutes, regulations, or supervisory policies.

As added by P.L.10-2006, SEC.32 and P.L.57-2006, SEC.32.

IC 28-1-23.5-5

Electronic activity authorized as part of financial institution's business

Sec. 5. (a) An electronic activity is authorized for a financial institution as part of the financial institution's business if the activity is described in:

(1) IC 28-1-11, with respect to a bank;

(2) IC 28-7-1, with respect to a credit union;

(3) IC 28-6.1, with respect to a savings bank;

(4) IC 28-15, with respect to a savings association; or

(5) any other state statute that applies to a financial institution described in subdivisions (1) through (4).

(b) In determining whether an electronic activity is authorized as part of a financial institution's business, the director shall consider the following:

(1) Whether the activity is functionally equivalent to, or a logical outgrowth of, a recognized activity of the type of financial institution under consideration.

(2) Whether the activity strengthens the financial institution by benefiting its customers or its business.

(3) Whether the activity involves risks similar in nature to those already assumed by the type of financial institution under consideration.

(4) Whether the activity may be conducted by:

(A) the same, or functionally equivalent type, of federally chartered financial institution; or

(B) the same, or functionally equivalent type, of financial institution that:

(i) is organized or reorganized under the laws of another state; and

(ii) does business in Indiana;

under the authority of applicable federal or state statutes, regulations, or supervisory policies.

As added by P.L.10-2006, SEC.32 and P.L.57-2006, SEC.32.

IC 28-1-23.5-6

Electronic activity incidental to financial institution's business

Sec. 6. (a) An electronic activity is authorized for a financial institution as incidental to the financial institution's business if the activity is convenient or useful to an activity that is:

(1) specifically authorized for the type of financial institution under consideration; or

(2) otherwise part of the business of the type of financial institution under consideration.

(b) In determining whether an electronic activity is authorized as incidental to a financial institution's business, the director may consider whether the activity:

(1) facilitates the production or delivery of the financial institution's products or services;

(2) enhances the financial institution's ability to sell or market

its products or services;

(3) improves the effectiveness or efficiency of the financial institution's operations; or

(4) enables the financial institution to:

(A) use capacity acquired for its operations as a financial institution; or

(B) otherwise avoid economic loss or waste.

As added by P.L.10-2006, SEC.32 and P.L.57-2006, SEC.32.

IC 28-1-23.5-7

Evaluation of potential risks; authorization to act

Sec. 7. (a) As used in this section, "potential risks", with respect to a proposed electronic activity by a financial institution, include the following:

(1) Legal risks.

(2) Transactional risks.

(3) Risk of the financial institution's noncompliance with applicable statutes, regulations, or supervisory policies.

(4) Risk of harm to the financial institution's reputation.

(b) A financial institution's board of directors and executive officers are responsible for ensuring that all potential risks are evaluated and taken into account before the financial institution undertakes any electronic activity. The board of directors and the executive officers may not delegate their responsibility under this subsection to other persons within the financial institution or to outside parties.

(c) After a financial institution's board of directors and executive officers have acted under subsection (b) to conduct an evaluation of the potential risks associated with an electronic activity, the financial institution may perform, provide, or deliver through electronic means or facilities any activity, function, product, or service that it is otherwise authorized to perform, provide, or deliver, subject to this chapter and any other applicable statutes, regulations, or supervisory policies.

As added by P.L.10-2006, SEC.32 and P.L.57-2006, SEC.32.

IC 28-1-23.5-8

Activities authorized for national banks and federal credit unions

Sec. 8. (a) A financial institution described in section 1(1), 1(3), or 1(4) of this chapter may perform, provide, or deliver through electronic means or facilities any activity, function, product, or service that a national bank is specifically authorized to perform, provide, or deliver under 12 CFR 7.5000 et seq.

(b) A financial institution described in section 1(2) of this chapter may perform, provide, or deliver through electronic means or facilities any activity, function, product, or service that a federal credit union is specifically authorized to perform, provide, or deliver under Part 721 of the National Credit Union Administration's regulations (12 CFR 721.1 et seq.).

As added by P.L.10-2006, SEC.32 and P.L.57-2006, SEC.32.

IC 28-1-23.5-9

Performing authorized or required activities through electronic means

Sec. 9. A financial institution may perform, provide, or deliver through electronic means or facilities any activity, function, product, or service that it is otherwise authorized or required to perform, provide, or deliver by nonelectronic means or facilities, subject to the following:

(1) The approval of the customer or member to or for whom the activity, function, product, or service is performed, provided, or delivered.

(2) The:

(A) safety and soundness requirements; and

(B) state or federal supervisory guidance;

that the director would apply if the activity were conducted by nonelectronic means or facilities.

As added by P.L.10-2006, SEC.32 and P.L.57-2006, SEC.32.

IC 28-1-24
Repealed

(Repealed by P.L.42-1993, SEC.103.)

IC 28-1-25

Chapter 25. Loans or Obligations Secured by the United States Government

IC 28-1-25-1

Exemption from limitations under state laws

Sec. 1. Whenever the United States, any federal reserve bank of the United States, or any department, bureau, board, or commission of the United States, including any corporation wholly owned directly or indirectly by the United States, shall secure or guarantee the payment of or make commitment or agreement to take over or purchase the full amount of any loans or obligations of any financial institution or of any investment type industrial loan and investment company, such loans or obligations shall not be subject to any limitations in the laws of this state based upon the nature, priority, amount, location, or form of security prescribing or limiting the period for which loans or advances of credit may be made, prescribing any ratio between the amount of any loan and the appraised value of security for such loan, or requiring periodical reduction of the principal of any loan.

(Formerly: Acts 1945, c.47, s.1.) As amended by P.L.263-1985, SEC.104.

IC 28-1-25-2

Application of limitations under state laws to unsecured portion of loans partially federally secured

Sec. 2. Whenever the United States, any federal reserve bank of the United States, or any department, bureau, board, or commission of the United States, including any corporation wholly owned directly or indirectly by the United States, shall secure or guarantee the payment of or make commitment or agreement to take over or purchase any portion of a loan or obligation of any financial institution or any investment type industrial loan and investment company, any law of this state prescribing the ratio between the amount of any loan or obligation and the appraised value of the security for such loan or obligation shall apply only to the portion of such loan or obligation which is not secured or guaranteed or upon which there is no commitment or agreement to take over or purchase.

(Formerly: Acts 1945, c.47, s.2.) As amended by P.L.263-1985, SEC.105.

IC 28-1-25-3

Rules

Sec. 3. To permit and encourage financial institutions and investment type industrial loan and investment companies of this state to make loans secured or guaranteed or upon which there is a commitment or agreement to take over or purchase in whole or part by the United States or an agency thereof, as described in section 1 of this chapter, on terms, provisions, and conditions equal to those applicable from time to time to national banking associations and to

federal savings and loan associations, as the case may be, the department of financial institutions is hereby authorized and empowered to supplement sections 1 and 2 of this chapter by making and promulgating rules with respect to the nature, priority, amount, location, or form of security for such loans prescribing or limiting the period for which such loans or advances for credit may be made, prescribing any ratio between the amount of such loans and the appraised value of security, and requiring periodical reduction of the principal of any loan which any such financial institution of this state may make. Such rules shall not restrict the provisions of sections 1 and 2 of this chapter.

(Formerly: Acts 1945, c.47, s.3.) As amended by P.L.263-1985, SEC.106.

IC 28-1-26

Chapter 26. Minors Under Servicemen's Act

IC 28-1-26-1

Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-26.5

Chapter 26.5. Misrepresentation of Age

IC 28-1-26.5-1

Estoppel by representation

Sec. 1. When, in case of any loan or sale made by any seller, creditor or secured party, the borrower, or any other person furnishing security on behalf of the borrower, shall, as an inducement to the seller, creditor or secured party to make the loan or sale, 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 seller, creditor or secured party and the seller, creditor or secured party is thereby deceived, and the loan or sale 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 or sale, shall afterwards be allowed, as against such seller, creditor or secured party, 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 1973, P.L.280, SEC.14.)

IC 28-1-27
Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-1-28
Repealed

(Repealed by Acts 1972, P.L.40, SEC.10.)
(Transferred to IC 28-1-29 by Acts 1972, P.L.10, SEC.6.)

IC 28-1-29

Chapter 29. Debt Management Companies

IC 28-1-29-0.5

Inapplicability; attorneys; depository financial institutions; third-party bill paying services

Sec. 0.5. (a) This chapter does not apply to:

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

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

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

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

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

As added by P.L.35-2010, SEC.118. Amended by P.L.216-2013, SEC.19.

IC 28-1-29-1

Definitions

Sec. 1. The following words, when used in this chapter, shall have the meaning ascribed to them unless the context clearly requires a different meaning:

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

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

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

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

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

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

(4) "Licensee" means any person to whom a license has been

issued pursuant to the provisions of this chapter.
(5) "Contract debtor" means a debtor who has entered into a written agreement with a licensee.
(6) "Debt" means an obligation arising out of personal, family, or household use.
(7) "Debtor" means an individual whose principal debts and obligations arise out of personal, family, or household use and not out of business purpose transactions.
(8) "Department" means the members of the department of financial institutions.
(9) "Indiana contract debtor" means a contract debtor whose principal residence is located in Indiana.
(10) "Affiliate" means a person that, directly or indirectly, through one (1) or more intermediaries:
(A) controls;
(B) is controlled by; or
(C) is under common control with;
a person subject to this chapter.
(11) "Fee" means the total amount of money charged to a contract debtor by a debt management company for the administration of a debt management plan.
(12) "Plan" means a written debt repayment program in which a debt management company furnishes debt management services to a contract debtor and that includes a schedule of payments to be made by or on behalf of the contract debtor and used to pay debts owed by the contract debtor.
(13) "Principal amount of the debt" means the total amount of a debt at the time the contract debtor enters into an agreement.
(14) "Agreement" means an agreement between a debt management company and a debtor for the performance of debt management services.
(15) "Trust account" means an account held by a licensee that is:
(A) established in a bank insured by the Federal Deposit Insurance Corporation;
(B) separate from other accounts held by the licensee;
(C) except as otherwise permitted under section 9(a) of this chapter, maintained specifically for the benefit of the licensee's Indiana contract debtors;
(D) designated as a trust account indicating that the money in the trust account is not the money of the licensee; and
(E) used to hold money of one (1) or more Indiana contract debtors for disbursement to creditors of the Indiana contract debtors.
(16) "Month" means a calendar month.
(17) "Day" means a calendar day.
(18) "Concessions" means assent to repayment of a debt on terms more favorable to a contract debtor than the terms of the contract between that debtor and a creditor.
(19) "Good faith" means honesty in fact and the observance of

reasonable standards of fair dealing.

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

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

(B) The control in any manner of the election of a majority of the directors of a related interest.

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

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

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

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

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

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

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

(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by P.L.14-1992, SEC.107; P.L.42-1993, SEC.46; P.L.196-1996, SEC.1; P.L.90-2008, SEC.27; P.L.35-2010, SEC.119; P.L.89-2011, SEC.36; P.L.216-2013, SEC.20.

IC 28-1-29-2

Administration of chapter

Sec. 2. The department shall adopt such rules and regulations as it deems advisable for the administration of this chapter, and to provide such forms and procedures as it determines to be necessary to carry out the provisions of such chapter.

(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by P.L.42-1993, SEC.47.

IC 28-1-29-3

License required; persons operating in Indiana; evidence of compliance; fees; violations; renewal; tax warrant list

Sec. 3. (a) No person shall operate a debt management company in Indiana without having obtained a license from the department.

For purposes of this section, a person is operating in Indiana if:

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

(2) the person:

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

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

(i) Mail.

(ii) Personal delivery.

(iii) Telephone.

(iv) Radio.

(v) Television.

(vi) The Internet or other electronic communications.

(vii) Any other means of communication.

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

(1) the time of application;

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

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

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

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

(2) credit histories; and

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

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

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

(e) If a person knowingly acts as a debt management company in violation of this chapter, any agreement the person has made under this chapter is void and the debtor under the agreement is not obligated to pay any fees. If the debtor has paid any amounts to the

person, the debtor, or the department on behalf of the debtor, may recover the payment from the person that violated this section.

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

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

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

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

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

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

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

(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by P.L.42-1993, SEC.48; P.L.172-1997, SEC.18; P.L.63-2001, SEC.12 and P.L.134-2001, SEC.13; P.L.10-2006, SEC.33 and P.L.57-2006, SEC.33; P.L.213-2007, SEC.44; P.L.217-2007, SEC.42; P.L.90-2008, SEC.28; P.L.35-2010, SEC.120; P.L.89-2011, SEC.37; P.L.172-2011, SEC.132; P.L.216-2013, SEC.21.

IC 28-1-29-3.1

Change in control of licensee; application to department; timeframe for department's decision; conditions for approval; duty of licensee to report transfer of securities; director's discretion to require new license

Sec. 3.1. (a) As used in this section, "control" means possession of the power directly or indirectly to:

(1) direct or cause the direction of the management or policies of a licensee, whether through the beneficial ownership of voting securities, by contract, or otherwise; or

(2) vote at least twenty-five percent (25%) of the voting securities of a licensee, whether the voting rights are derived through the beneficial ownership of voting securities, by

contract, or otherwise.

(b) An organization or an individual acting directly, indirectly, or through or in concert with one (1) or more other organizations or individuals may not acquire control of any licensee unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days after receipt of an application to issue a notice approving the proposed change in control. The application must contain the name and address of the organization, individual, or individuals who propose to acquire control and any other information required by the director.

(c) The period for approval under subsection (b) may be extended:

(1) in the discretion of the director for an additional thirty (30) days; and

(2) not more than two (2) additional times for not more than forty-five (45) days each time if:

(A) the director determines that the organization, individual, or individuals who propose to acquire control have not submitted substantial evidence of the qualifications described in subsection (d);

(B) the director determines that any material information submitted is substantially inaccurate; or

(C) the director has been unable to complete the investigation of the organization, individual, or individuals who propose to acquire control because of any delay caused by or the inadequate cooperation of the organization, individual, or individuals.

(d) The department shall issue a notice approving the application only after it is satisfied that both of the following apply:

(1) The organization, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the licensee in a legal and proper manner.

(2) The interests of the owners and creditors of the licensee and the interests of the public generally will not be jeopardized by the proposed change in control.

(e) The director may determine, in the director's discretion, that subsection (b) does not apply to a transaction if the director determines that the direct or beneficial ownership of the licensee will not change as a result of the transaction.

(f) The president or other chief executive officer of a licensee shall report to the director any transfer or sale of securities of the licensee that results in direct or indirect ownership by a holder or an affiliated group of holders of at least ten percent (10%) of the outstanding securities of the licensee. The report required by this subsection must be made not later than ten (10) days after the transfer of the securities on the books of the licensee.

(g) Depending on the circumstances of the transaction, the director may reserve the right to require the organization, individual, or individuals who propose to acquire control of a licensee to apply for

a new license under section 3 of this chapter, instead of acquiring control of the licensee under this section.

As added by P.L.89-2011, SEC.38. Amended by P.L.6-2012, SEC.193.

IC 28-1-29-4

Suspension or revocation of license; order to show cause; order of suspension or revocation; relinquishment of license; existing contracts; emergency order for revocation

Sec. 4. (a) The department may issue to a licensee an order to show cause why the licensee's license should not be revoked or suspended for a period determined by the department.

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

(1) include:

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

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

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

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

(A) a reasonable opportunity to be heard; and

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

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

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

(1) the licensee has repeatedly and willfully violated:

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

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

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

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

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

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

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

(1) the revocation or suspension;

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

suspension;

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

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

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

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

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

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

(h) If the director of the department has just cause to believe an emergency exists from which it is necessary to protect the interests of the public, the director may proceed with the revocation of a license through an emergency or another temporary order under IC 4-21.5-4.

(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by P.L.42-1993, SEC.49; P.L.176-1996, SEC.15; P.L.196-1996, SEC.2; P.L.80-1998, SEC.10; P.L.213-2007, SEC.45; P.L.217-2007, SEC.43; P.L.35-2010, SEC.121; P.L.27-2012, SEC.71.

IC 28-1-29-4.1

Failure to file renewal application or pay renewal fee; revocation or suspension of license

Sec. 4.1. (a) A license issued by the department under this chapter shall be revoked or suspended by the department if the licensee fails to:

(1) file any renewal application prescribed by the director; or

(2) pay any license renewal fee described under section 3 of this chapter;

within sixty (60) days after the date the renewal is due.

(b) A person whose license is revoked or suspended under this section may:

(1) pay all delinquent fees and apply for reinstatement of the license; or

(2) appeal the revocation or suspension to the department for an administrative review under IC 4-21.5-3.

Pending the decision resulting from a hearing under IC 4-21.5-3 concerning a license revocation or suspension, the license remains in force.

As added by P.L.176-1996, SEC.16. Amended by P.L.35-2010, SEC.122; P.L.89-2011, SEC.39.

IC 28-1-29-4.5
Collection agencies or process servers; licenses; restriction

Sec. 4.5. After August 31, 1981, the department may not issue a license to any person who is an employee of, owner of, or affiliated in any way with a collection agency or a process serving business. Any person who was granted a license before September 1, 1981, is not affected by the restriction imposed in this section.
As added by Acts 1981, P.L.256, SEC.1. Amended by P.L.42-1993, SEC.50.

IC 28-1-29-4.6
Repealed

(Repealed by P.L.196-1996, SEC.5.)

IC 28-1-29-5
License application; findings by the department; felonies; financial statements; denial; hearing

Sec. 5. (a) Every person doing business as a debt management company shall make application to the department for a license to engage in such business. Such application shall be in the form prescribed by the director and shall contain such information as the director may require.

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

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

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

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

(4) each of the applicant's:

(A) employees; or

(B) agents;

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

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

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

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

(2) have been convicted of a felony under Indiana law or the

laws of any other jurisdiction.

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

(1) balance sheet;

(2) statement of income or loss;

(3) statement of changes in shareholder equity; and

(4) statement of changes in financial position.

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

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

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

(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by P.L.42-1993, SEC.52; P.L.80-1998, SEC.11; P.L.10-2006, SEC.34 and P.L.57-2006, SEC.34; P.L.213-2007, SEC.46; P.L.217-2007, SEC.44; P.L.90-2008, SEC.29; P.L.35-2010, SEC.123; P.L.216-2013, SEC.22.

IC 28-1-29-5.5

Use of NMLSR in department's licensing system; reporting of information to NMLSR; confidentiality; director's authority to enter agreements; waiver of privilege; processing fee; electronic records

Sec. 5.5. (a) As used in this section, "Nationwide Mortgage Licensing System and Registry" or "NMLSR" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of creditors, mortgage loan originators, and other financial services entities and their employees and agents.

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

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

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

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

(c) Subject to the confidentiality provisions contained in IC 5-14-3 and this section, the director shall regularly report significant or recurring violations of this chapter to the NMLSR.

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

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

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

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

(1) Information stored in the NMLSR is subject to the confidentiality provisions of IC 5-14-3. A person may not:

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

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

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

(2) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential under state or federal law and that are:

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

(B) otherwise obtained by the NMLSR;

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

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

(A) to the director; or

(B) by the director;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

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

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

(A) obtain information;

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

(C) use information to initiate a civil action or proceeding;

if the information may be obtained from the director or the director's designee under any law.

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

(7) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, or other associations representing governmental agencies, as established by rule or order of the director.

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

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

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

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

(A) confidential supervisory information; or

(B) any information or material described in subdivision (6);

and that is inconsistent with subdivision (6) is superseded by this section.

(10) This section does not apply with respect to information or material that concerns the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a person described in section 5(b)(2), 5(b)(3), or 5(b)(4) of this chapter and that is included in the NMLSR for access by the public.

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

(A) require review of; and

(B) make available;

the audited financial statements of the NMLSR.

(12) Notwithstanding any other provision of law, any:

(A) application, renewal, or other form or document that:

(i) relates to licenses issued under this chapter; and

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

(B) document filed as an electronic record in a multistate automated repository established and operated for the licensing or registration of financial services entities and their employees; or

(C) electronic record filed through the NMLSR;

is considered a valid original document when reproduced in paper form by the department.

As added by P.L.137-2014, SEC.24.

IC 28-1-29-6

Surety bond; requirements; amount; renewal; termination; liability; notices

Sec. 6. (a) Each application for a license must be accompanied by proof that the applicant has executed a surety bond in accordance with this section.

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

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

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

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

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

(A) the state; and

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

(5) be in an amount equal to:

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

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

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

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

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

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

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

(2) the average of the highest daily balance of funds held in trust for Indiana residents for each month during the licensee's most

recently concluded fiscal year, not to exceed one hundred thousand dollars ($100,000).

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

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

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

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

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

(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by Acts 1981, P.L.256, SEC.3; P.L.42-1993, SEC.53; P.L.35-2010, SEC.124; P.L.216-2013, SEC.23.

IC 28-1-29-7
Repealed

(Repealed by P.L.35-2010, SEC.209.)

IC 28-1-29-7.5
Felonies; civil actions; enforcement actions; notice to department

Sec. 7.5. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any individuals described in section 5(b)(2), 5(b)(3), or 5(b)(4) of this chapter have been convicted of a felony under Indiana law or the laws of any other jurisdiction.

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

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

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

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

brought by or on behalf of a debtor who resides or resided in Indiana on:

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

(2) the date the civil action is filed;

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

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

As added by P.L.213-2007, SEC.47; P.L.217-2007, SEC.45. Amended by P.L.90-2008, SEC.30; P.L.35-2010, SEC.125; P.L.42-2011, SEC.62; P.L.216-2013, SEC.24.

IC 28-1-29-7.7

Budget analysis and plan; written statement to debtor; creditor's reduction of amount owed; disclosure of tax implications

Sec. 7.7. (a) A licensee may not furnish debt management services to a debtor unless:

(1) the licensee has prepared a budget analysis; and

(2) if the debtor is to make regular, periodic payments, the licensee:

(A) has prepared a plan for the debtor;

(B) has made a determination, based on the licensee's analysis of the information provided by the debtor and otherwise available to the licensee, that the plan is suitable for the debtor and the debtor will be able to meet the payment obligations under the plan; and

(C) believes that each creditor of the debtor listed as a participating creditor in the plan will accept payment of the debtor's debts as provided in the plan.

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

(1) provide the debtor with a copy of the budget analysis and plan required by subsection (a) in a form that identifies the licensee and that the debtor may keep whether or not the debtor enters into the agreement;

(2) inform the debtor of the availability, at the debtor's option, of assistance provided through a toll free communication system or in person, where reasonably available to residents in Indiana, regarding the budget analysis and plan required by subsection (a); and

(3) with respect to all creditors identified by the debtor or otherwise known by the licensee to be creditors of the debtor, provide the debtor with a list of:

(A) creditors that the licensee expects to participate in the plan and grant concessions;

(B) creditors that the licensee expects to participate in the

plan but not grant concessions; and

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

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

"IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

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

_____

(Name and business address of licensee)".

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

"IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

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

As added by P.L.35-2010, SEC.126. Amended by P.L.89-2011, SEC.40; P.L.27-2012, SEC.72; P.L.216-2013, SEC.25.

IC 28-1-29-8

Agreement between licensee and debtor; contents; delivery; notice to creditors; payments; cancellation; budget analysis; term of agreement; other business operations; other products and services; toll free communication system; good faith required

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 concessions the licensee reasonably believes each creditor will offer; and

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

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

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

(G) A statement that:

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

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

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

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

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

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

(c) An agreement must provide that:

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

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

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

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

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

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

(A) the identity of the creditor; and

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

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

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

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

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

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

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

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

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

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

(h) A licensee may not enter into an agreement with a contract debtor for a period longer than sixty (60) months.

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

(1) the operation of the other business; or

(2) the sale of other products and services;

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

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

(1) solicit sales of; and

(2) sell;

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

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

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

(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by Acts 1981, P.L.256, SEC.4; P.L.42-1993, SEC.54; P.L.196-1996, SEC.3; P.L.63-2001, SEC.13 and P.L.134-2001, SEC.14; P.L.213-2007, SEC.48; P.L.217-2007, SEC.46; P.L.3-2008, SEC.220; P.L.90-2008, SEC.31; P.L.1-2009, SEC.148; P.L.35-2010, SEC.127; P.L.89-2011, SEC.41; P.L.27-2012, SEC.73; P.L.216-2013, SEC.26.

IC 28-1-29-8.3

Fees and charges; plan, written agreement, and payment to creditor required; set up fee; monthly service fee; close-out fee; department approval for additional charges; fees not considered debt

Sec. 8.3. (a) Except as otherwise permitted by this section, a licensee may not:

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

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

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

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

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

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

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

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

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

(A) Not more than fifteen percent (15%) of the amount the licensee receives from the contract debtor for payment to the contract debtor's creditors for the applicable month. However, if the amount calculated under this clause is less than five dollars ($5) for a particular month, the licensee may charge a monthly service fee of five dollars ($5) for that

month.

(B) Seventy-five dollars ($75).

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

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

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

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

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

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

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

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

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

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

As added by P.L.35-2010, SEC.128. Amended by P.L.89-2011, SEC.42; P.L.6-2012, SEC.194; P.L.27-2012, SEC.74; P.L.216-2013, SEC.27.

IC 28-1-29-8.6
Repealed

(Repealed by P.L.216-2013, SEC.28.)

IC 28-1-29-8.8
Debtor's failure to make payment; cancellation of agreement; letter of continuation; return of money to contract debtor

Sec. 8.8. (a) If a contract debtor fails to make a payment to a licensee within ninety (90) days after the date a payment is due under an agreement, the agreement may be considered canceled by the licensee unless:

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

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

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

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

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

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

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

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

(c) If a licensee or a contract debtor terminates an agreement, the licensee shall immediately return to the contract debtor any money of the contract debtor held in trust for the benefit of the contract debtor. *As added by P.L.35-2010, SEC.130. Amended by P.L.216-2013, SEC.29.*

IC 28-1-29-9

Trust account; separate account for Indiana contract debtors required; commingling with funds of nonresidents with approval of director; requirements and restrictions; required balance; reconciliation procedures; embezzlement; relocating account; signatories; monthly accountings; completion or termination of contract

Sec. 9. (a) All money paid to a licensee by or on behalf of an Indiana contract debtor for distribution to creditors under a plan shall be held in trust in a separate account maintained specifically for the benefit of the licensee's Indiana contract debtors. However, as an alternative to maintaining a separate trust account specifically for the benefit of the licensee's Indiana contract debtors, a licensee may submit a request to the director for approval to maintain a trust account that holds both money paid to the licensee by or on behalf of Indiana contract debtors and money paid to the licensee by or on behalf of contract debtors who do not reside in Indiana. The request must include documentation of the licensee's account reconciliation

procedures sufficient to demonstrate to the director that the licensee will be able to:

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

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

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

(b) A licensee shall do the following:

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

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

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

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

(5) Promptly:

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

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

(c) A licensee may not commingle the licensee's own funds with money in the trust account established under this section for the benefit of the licensee's Indiana contract debtors.

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

(e) The licensee shall reconcile the trust account required under this section at least every thirty (30) days after receipt of the bank statement. The reconciliation must compare the cash balance in the trust account for all the licensee's Indiana contract debtors whose money is held in the account with the sum of the balances in each of those Indiana contract debtor's individual accounts. If the licensee or the licensee's designee has more than one (1) trust account under this section, each trust account must be individually reconciled. If the cash balance held in a trust account for the benefit of the licensee's Indiana contract debtors reflects a shortage when compared with the sum of the balances in each of those Indiana contract debtor's individual accounts, the licensee shall immediately provide written notice to the department of that fact and of any remedial action taken by the licensee. If the cash balance held in a trust account for the benefit of the licensee's Indiana contract debtors reflects a surplus when compared with the sum of the balances in each of those Indiana contract debtor's individual accounts, the licensee shall attempt to remedy the surplus and shall retain, for review by department examiners, documentation of the actions taken.

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

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

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

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

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

and

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

(j) At least once each month while an agreement between a licensee and a contract debtor is in effect, the licensee shall render to the contract debtor an accounting statement that includes the following:

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

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

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

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

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

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

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

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

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

(2) listing the name and address of:

(A) any creditors paid in full; and

(B) any creditors remaining unpaid.

(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by P.L.196-1996, SEC.4; P.L.213-2007, SEC.49; P.L.217-2007, SEC.47; P.L.35-2010, SEC.131; P.L.89-2011, SEC.43; P.L.6-2012, SEC.195; P.L.27-2012, SEC.75; P.L.216-2013, SEC.30.

IC 28-1-29-9.5

Prohibited acts; unauthorized practice of law; compensation prohibited

Sec. 9.5. (a) A licensee may not, directly or indirectly, do any of the following:

(1) Misappropriate or misapply money held in trust.

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

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

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

(B) before the termination of an agreement, properly

authorized by the agreement and this chapter, and for:

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

(ii) payment of a fee.

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

(5) Offer, pay, or give:

(A) a gift or bonus;

(B) a premium;

(C) a reward; or

(D) other compensation;

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

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

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

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

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

(10) Make a representation that:

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

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

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

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

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

(A) a nonprofit entity unless the licensee is organized and properly operating as a nonprofit entity under the law of the state in which the entity was formed; or

(B) a tax exempt entity unless the entity has received

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

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

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

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

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

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

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

(B) a postdated check or demand draft.

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

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

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

(A) to the department, upon proper demand;

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

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

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

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

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

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

As added by P.L.35-2010, SEC.132. Amended by P.L.216-2013, SEC.31.

IC 28-1-29-9.7

Advertising

Sec. 9.7. A licensee:

(1) may not use false, misleading, or deceptive advertising; and

(2) shall meet the following conditions in advertising:

(A) An advertisement may not include a statement that states or implies that no financial problem is too great for the

licensee to solve.

(B) An advertisement may not include a statement that states or implies that the licensee will use the licensee's own cash to pay the debtor's accounts.

(C) All advertisements must contain the statement "We do not lend money.".

(D) All advertisements must contain the true name and address of the licensee.

As added by P.L.35-2010, SEC.133.

IC 28-1-29-10
Repealed

(Repealed by P.L.35-2010, SEC.209.)

IC 28-1-29-10.5
Record keeping and retention; examinations and investigations; payment of costs; court order compelling compliance; confidentiality; department's investigatory and enforcement authority; cooperative regulatory agreements; examination of vendors

Sec. 10.5. (a) A licensee shall maintain in the licensee's business any books, accounts, and records that enable the department to determine whether the licensee is complying with this chapter. The books, accounts, and records shall be preserved for at least two (2) years after making the final entry of any agreement recorded in the books, accounts, and records. A licensee is subject to IC 28-1-2-30.5 with respect to any records maintained by the licensee.

(b) In administering this chapter and in order to determine whether this chapter is being complied with by a person engaging in acts subject to this chapter, the department may examine the records of a person and may make investigations of a person as necessary to determine compliance. Records subject to examination under this section include the following:

(1) Training, operating, and policy manuals.

(2) Minutes of:

(A) management meetings; and

(B) other meetings.

(3) Other records that the department determines are necessary to perform the department's investigation or examination.

(c) The department may also administer oaths or affirmations, subpoena witnesses, compel a witness's attendance, adduce evidence, and require the production of any matter that is relevant to the investigation. The department shall determine whether:

(1) the records maintained are sufficient; and

(2) the person has made the required information reasonably available.

(d) If the department:

(1) investigates; or

(2) examines the books and records of;

a person that is subject to this chapter, the person shall pay all

reasonably incurred costs of the investigation or examination in accordance with the fee schedule adopted by the department under IC 28-11-3-5. Any costs required to be paid under this subsection shall be paid not later than sixty (60) days after the person receives a notice from the department of the costs being assessed. The department may impose a fee, in an amount fixed by the department under IC 28-11-3-5, for each day that the assessed costs are not paid, beginning on the first day after the sixty (60) day period described in this subsection.

(e) The department shall be given free access to the records wherever located. If the person's records are located outside Indiana, at the discretion of the director, the records shall be made available to the department at a convenient location within Indiana, or the person shall pay the reasonable and necessary expenses for the department or the department's representative to examine the records where the records are maintained.

(f) If a person fails to:

(1) obey a subpoena without a lawful excuse; or

(2) give testimony;

the department may apply to a civil court for an order compelling compliance.

(g) The department shall not make public the name or identity of a person whose acts or conduct the department investigates under this section or the facts disclosed in the investigation. However, this subsection does not apply to disclosures of enforcement proceedings under this chapter.

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

(1) licensee; or

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

(A) without a license, when a license is required under this chapter; or

(B) otherwise in violation of chapter.

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

(i) The department may:

(1) enter into a cooperative arrangement with another federal or state agency having authority over debt management companies; and

(2) exchange with the agency information about a person subject to this chapter, including information obtained during an examination of the person.

(j) If a person doing business as a debt management company contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the person doing business as

a debt management company and be subject to the department's routine examination procedures, the person that provides the service to the person doing business as a debt management company shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any person doing business as a debt management company that receives services from the person refusing the examination to:

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

(2) otherwise cease conducting business with the person refusing the examination.

As added by P.L.35-2010, SEC.134. Amended by P.L.137-2014, SEC.25.

IC 28-1-29-11
Impounding books, records, and accounts

Sec. 11. Upon affidavit of any person, or other information that the licensee has failed to comply with the provisions of this chapter, and after a preliminary investigation indicates probable cause that a violation has occurred, the department shall have authority to impound such books, records, and accounts as it deems necessary.

(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by P.L.263-1985, SEC.108; P.L.42-1993, SEC.56.

IC 28-1-29-12
Repealed

(Repealed by P.L.35-2010, SEC.209.)

IC 28-1-29-13
Enforcement by the department; civil penalties; department's recovery of costs; factors for determining amount of civil penalty; violation a Class A misdemeanor

Sec. 13. (a) The department may enforce this chapter and rules adopted under this chapter by taking one (1) or more of the following actions:

(1) Order a debt management company or a director, employee, or other agent of a debt management company to cease and desist from any violations.

(2) Order a debt management company or a person that has caused a violation to correct the violation, including making restitution of money or property to a person aggrieved by a violation.

(3) Prosecute a civil action to:

(A) enforce an order;

(B) obtain restitution, an injunction, or other equitable relief; or

(C) accomplish both clauses (A) and (B).

(b) Subject to subsection (c), if the department determines, after notice and an opportunity to be heard, that a person has violated this chapter, the department may, in addition to or instead of all other remedies available under this section, impose upon the person a civil penalty not greater than ten thousand dollars ($10,000) per violation.

(c) If a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under subsection (a)(1) or (a)(2), the department may impose a civil penalty of not more than twenty thousand dollars ($20,000) for each violation.

(d) The department may maintain an action in any county to enforce this chapter.

(e) The department may recover the reasonable costs of enforcing this chapter under subsections (a) through (d), including attorney's fees.

(f) In determining the amount of a civil penalty to impose under subsection (b) or (c), the department shall consider:

(1) the seriousness of the violation;

(2) the good faith of the person who violated this chapter;

(3) any previous violations by the person who violated this chapter;

(4) the deleterious effect of the violation on the public;

(5) the net worth of the person who violated this chapter; and

(6) any other factor the department considers relevant to the determination of a civil penalty.

(g) In addition to the revocation provision of section 4 of this chapter, a person who violates section 3, 5, 6, 8, 8.3, 9, or 9.5 of this chapter commits a Class A misdemeanor, and the license of the licensee shall be revoked on the date of the conviction of an offense.

(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by Acts 1978, P.L.2, SEC.2815; P.L.42-1993, SEC.58; P.L.35-2010, SEC.135; P.L.89-2011, SEC.44.

IC 28-1-29-14

Review of department decisions; applicability of laws governing administrative orders and procedures; venue

Sec. 14. Any applicant for a license aggrieved by a decision of the department pursuant to this chapter may file a petition for review as prescribed in IC 4-21.5. Except as otherwise provided, IC 4-21.5 applies to and governs all agency action taken by the department under this chapter. All proceedings for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 shall be held in Marion County.

(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by P.L.7-1987, SEC.160; P.L.42-1993, SEC.59; P.L.35-2010, SEC.136.

IC 28-1-29-15

Providing materials and agreements electronically; consumer's consent required; disclosures through Internet web site; debtor's

right to request written copy

Sec. 15. (a) As used in this section, "consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.

(b) As used in this section, "federal act" means the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq., as amended).

(c) A licensee may satisfy the requirements of section 7.7, 8, or 9 of this chapter by means of the Internet or other electronic means if the licensee obtains a consumer's consent in the manner provided by Section 101(c)(1) of the federal act.

(d) The disclosures and materials required by section 7.7, 8, or 9 of this chapter shall be presented in a form that is capable of being accurately reproduced for later reference.

(e) With respect to disclosure by means of an Internet web site, the disclosure of the information required by section 7.7 of this chapter must appear on one (1) or more screens that:

(1) contain no other information; and

(2) the debtor must see before proceeding to assent to formation of an agreement.

(f) At the time of providing the materials and agreement required by sections 7.7, 8, and 9 of this chapter, a licensee shall inform the debtor that upon electronic, telephonic, or written request, the licensee shall:

(1) send the debtor a written copy of the materials; and

(2) comply with a request as provided in subsection (g).

(g) If a licensee is requested, after an agreement is completed or terminated, to send a written copy of the materials required by section 7.7, 8, or 9 of this chapter, the licensee shall send the materials at no charge to the debtor not later than three (3) business days after the request. However, the licensee is not required to comply with a request more than once per calendar month or if the licensee reasonably believes the request is made for purposes of harassment.

(h) A licensee that maintains an Internet web site shall disclose on the home page of the licensee's web site or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals the following:

(1) The licensee's name and all names under which the licensee does business.

(2) The licensee's principal business address, telephone number, and electronic mail address, if any.

(3) The names of the licensee's principal officers.

(i) A licensee may not terminate the licensee's agreement because a consumer who has consented to electronic communication in the manner provided by Section 101 of the federal act withdraws consent as provided in the federal act.

As added by P.L.35-2010, SEC.137.

IC 28-1-29-16

Disclosures and documents to be in English; translation required

if another language used

Sec. 16. Unless the department provides otherwise in a rule, the disclosures and documents required by this chapter must be in English. If a licensee communicates with a debtor primarily in a language other than English, the licensee shall furnish a translation of the disclosures and documents required by this chapter from the other language into English.

As added by P.L.35-2010, SEC.138.

IC 28-1-29-17

Soliciting or accepting contributions from debtors prohibited

Sec. 17. Unless a fee is specifically authorized under the chapter, a licensee may not solicit or accept a voluntary contribution from a contract debtor for any service provided to the contract debtor.

As added by P.L.35-2010, SEC.139.

IC 28-1-29-18

Delegation of duties; liability of licensee; violations by lead generators

Sec. 18. (a) If a licensee delegates any of the licensee's duties or obligations under an agreement or this chapter to another person, including an independent contractor or a lead generator, the licensee is liable for any conduct of the person which, if done by the licensee, would violate the agreement or this chapter.

(b) A lead generator or another person that:

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

(2) violates this chapter;

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

As added by P.L.35-2010, SEC.140. Amended by P.L.216-2013, SEC.32.

IC 28-1-30

Chapter 30. Charter Conversion of a Credit Union to a Mutual Savings Bank

IC 28-1-30-1

"Credit union" defined

Sec. 1. As used in this chapter, "credit union" has the meaning set forth in IC 28-7-1-0.5.

As added by P.L.62-1999, SEC.2.

IC 28-1-30-2

"Mutual bank" defined

Sec. 2. As used in this chapter, "mutual bank" means a mutual savings bank governed by IC 28-6.1.

As added by P.L.62-1999, SEC.2.

IC 28-1-30-3

"Mutual bank conversion" defined

Sec. 3. As used in this chapter, "mutual bank conversion" means the conversion of a credit union to a mutual bank.

As added by P.L.62-1999, SEC.2.

IC 28-1-30-4

"Voting parties" defined

Sec. 4. As used in this chapter, "voting parties" means a credit union's members.

As added by P.L.62-1999, SEC.2.

IC 28-1-30-5

Conversion procedures

Sec. 5. (a) A credit union may convert to a mutual bank with the approval of the department and, if required by law, the appropriate federal agency.

(b) The department shall prescribe procedures for mutual bank conversions. The procedures must require the following:

(1) The credit union must prepare and submit to the department a plan of mutual bank conversion that:

(A) provides the terms and conditions of the mutual bank conversion as required by the department;

(B) complies with any federal requirements for conversion; and

(C) provides for a two (2) year period after conversion that a director or employee of the credit union may not acquire stock in the resulting institution or a successor institution on terms other than those readily available to all members of the former credit union.

(2) The credit union must submit evidence with the conversion plan that is satisfactory to the department proving that:

(A) the credit union has applied for deposit insurance from the Federal Deposit Insurance Corporation or its successor in

interest; and

(B) upon conversion, the deposits in the resulting mutual bank will be insured by the Federal Deposit Insurance Corporation.

(3) The plan of mutual bank conversion is conditioned upon the approval of at least a majority of the total number of votes cast at a regular or special meeting of the membership.

(4) Notice of the meeting must be delivered in person to each member or mailed to each member not more than thirty (30) days but not less than fourteen (14) days before the date of the meeting.

(c) The notice of the meeting of the membership required under subsection (b)(4) must include the following:

(1) The date, time, and location of the meeting.

(2) A description of the matters to be voted upon at the meeting.

(3) A ballot that contains:

(A) two (2) voting options:

(i) a vote to approve the conversion; and

(ii) a vote to disapprove the conversion; and

(B) a notice that the member has the right to vote either by mail ballot or at the meeting.

(4) A disclosure that:

(A) the board of directors of the credit union has proposed that the credit union convert to a mutual savings bank charter;

(B) the conversion could shift voting rights from each member having one (1) vote to a certain number of shares qualifying for one (1) vote;

(C) subsequent to the conversion, management may solicit proxies and vote them as a block;

(D) a mutual savings bank can convert to a stock savings bank;

(E) upon conversion, the credit union will lose its federal tax exempt status;

(F) members may vote by mail ballot or in person at the meeting; and

(G) the complete application and proposal for the conversion are available for inspection at the credit union's offices during normal business hours.

(d) The board of directors of the converting credit union shall certify the results of the membership vote to the department within ten (10) days after the vote is taken.

(e) Upon the approval of a plan of mutual bank conversion by the board of directors of the credit union, the plan of mutual bank conversion and a certified copy of the resolution of the board of directors approving the plan of mutual bank conversion must be submitted to the department and, if required, the appropriate federal agency for approval.

(f) The credit union shall provide the department with additional relevant information concerning the plan of mutual bank conversion

as requested by the department.
As added by P.L.62-1999, SEC.2.

IC 28-1-30-6
Approval of conversion

Sec. 6. (a) The department may approve or disapprove the plan of mutual bank conversion filed under section 5 of this chapter.

(b) The department may not approve a plan of mutual bank conversion unless the department finds, after appropriate investigation or examination, but without the requirement of a public hearing, that:

(1) the resulting mutual bank will operate in a safe, sound, and prudent manner;

(2) the proposed mutual bank conversion will not result in a mutual bank that has inadequate capital, unsatisfactory management, or poor earnings prospects;

(3) the management or other principals of the credit union are qualified by character and financial responsibility to control and operate in a legal and proper manner the mutual bank proposed to be formed as a result of the mutual bank conversion; and

(4) the interests of the:

(A) members and creditors of the credit union;

(B) depositors and creditors of the mutual bank; and

(C) public generally;

will not be jeopardized by the proposed mutual bank conversion.

As added by P.L.62-1999, SEC.2.

IC 28-1-30-7
Resulting mutual bank

Sec. 7. Upon the conversion of a credit union, the resulting mutual bank:

(1) possesses all of the rights, privileges, immunities, and powers of a mutual bank;

(2) unless otherwise provided in this chapter, is subject to all of the duties, restrictions, obligations, and liabilities of a mutual bank;

(3) succeeds by operation of law to all rights and property of the converting credit union; and

(4) is subject to all debts, obligations, and liabilities of the converting credit union as if the mutual bank had incurred the debts and liabilities.

As added by P.L.62-1999, SEC.2.

IC 28-1-30-8
Transitional period

Sec. 8. (a) During a transitional period not to exceed ten (10) years from the effective date of the conversion, the department may authorize the resulting mutual bank to do the following:

(1) Wind up any activities legally engaged in by the credit union

at the time of mutual bank conversion but not permitted to mutual banks.

(2) Retain any assets legally held by the credit union at the time of the mutual bank conversion that may not be held by a mutual bank.

(3) Attain and maintain sixty percent (60%) of its assets in investments that qualify under 26 U.S.C. 7701(a)(19).

(b) The terms and conditions of any transitional period under this section are at the discretion of the department.

As added by P.L.62-1999, SEC.2.

IC 28-1-30-9

Retention of branch banks

Sec. 9. A mutual bank created by charter conversion may retain all branches lawfully established.

As added by P.L.62-1999, SEC.2.

IC 28-1-30-10

Articles of mutual bank conversion

Sec. 10. (a) The converting credit union shall file articles of mutual bank conversion, approved in writing by the director, with the secretary of state.

(b) The effective date of the mutual bank conversion is the date and time that the approved articles of mutual bank conversion are filed with the secretary of state, unless a later effective date is specified in the articles of mutual bank conversion.

(c) The converting credit union shall record a copy of the articles of mutual bank conversion with the county recorder of the county where the principal office of the mutual bank is located.

As added by P.L.62-1999, SEC.2.

IC 28-1-30-11

Applicability of statutes and rules

Sec. 11. Upon filing the articles of mutual bank conversion, the converted mutual bank, unless otherwise provided in this chapter, immediately is subject to all statutes and rules applicable to mutual banks.

As added by P.L.62-1999, SEC.2.

IC 28-1-30-12

Rules and policies

Sec. 12. The department may adopt rules under IC 4-22-2 or policies to implement this chapter.

As added by P.L.62-1999, SEC.2.

IC 28-1-31

Chapter 31. Conversion of an Out-of-State Financial Institution Charter Into a Commercial Bank

IC 28-1-31-1

"Charter conversion"

Sec. 1. As used in this chapter, "charter conversion" means the conversion of an out-of-state financial institution to a commercial bank.

As added by P.L.1-2006, SEC.490.

IC 28-1-31-2

"Commercial bank"

Sec. 2. As used in this chapter, "commercial bank" means a bank or trust company (as defined by IC 28-1-1-3(2)).

As added by P.L.1-2006, SEC.490.

IC 28-1-31-3

"Department"

Sec. 3. As used in this chapter, "department" means the department of financial institutions and, if applicable, the department's authorized delegate.

As added by P.L.1-2006, SEC.490.

IC 28-1-31-4

"Effective time of the charter conversion"

Sec. 4. As used in this chapter, "effective time of the charter conversion" means:

(1) the date on which articles of conversion are filed with the secretary of state; or

(2) the date designated in the articles of conversion.

As added by P.L.1-2006, SEC.490.

IC 28-1-31-5

"Out-of-state financial institution"

Sec. 5. As used in this chapter, "out-of-state financial institution" means a bank or savings bank organized under the laws of any other state or the United States that has a branch or branches in Indiana that were established under IC 28-2-17 or IC 28-2-18.

As added by P.L.1-2006, SEC.490.

IC 28-1-31-6

Financial institution may effect charter conversion

Sec. 6. An out-of-state financial institution may, upon approval of the department, effect a charter conversion.

As added by P.L.1-2006, SEC.490.

IC 28-1-31-7

Procedures for charter conversion

Sec. 7. The department shall prescribe procedures for charter

conversions. The procedures prescribed by the department must include the following:

(1) The out-of-state financial institution shall prepare and submit to the department a plan of charter conversion that provides the terms and conditions of the charter conversion as required by the department.

(2) The plan of charter conversion must be adopted by not less than a majority of the board of directors of the out-of-state financial institution.

(3) Upon approval of a plan of charter conversion by the board of directors of the out-of-state financial institution, the plan of charter conversion and a certified copy of the resolution of the board of directors approving the plan of charter conversion must be submitted to the department for approval.

(4) The plan of charter conversion must be conditioned upon the approval of not less than a majority of the total number of votes cast at a regular or special meeting of the shareholders.

(5) The out-of-state financial institutions shall provide to the department the additional relevant information requested by the department in connection with the plan of charter conversion.

As added by P.L.1-2006, SEC.490.

IC 28-1-31-8

Approval of plan of charter conversion

Sec. 8. (a) The department may approve or disapprove the plan of charter conversion filed under section 7 of this chapter.

(b) Solicitation of the votes of voting parties may occur before receipt of the approval of the department.

(c) The department may not approve the plan of charter conversion unless the department finds, after appropriate investigation or examination, and without the requirement of a public hearing, that the following requirements have been fulfilled:

(1) The resulting commercial bank will operate in a safe, sound, and prudent manner.

(2) The proposed charter conversion will not result in a commercial bank that has inadequate capital, unsatisfactory management, or poor earnings prospects.

(3) The management or other principals of the out-of-state financial institution are qualified by character and financial responsibility to control and operate in a legal and proper manner the commercial bank proposed to be formed as a result of the charter conversion.

(4) The interests of the depositors, the creditors, and the public generally will not be jeopardized by the proposed charter conversion.

As added by P.L.1-2006, SEC.490.

IC 28-1-31-9

Resulting commercial bank; rights, privileges, and duties

Sec. 9. Upon conversion of an out-of-state financial institution, the

resulting commercial bank:

(1) possesses all of the rights, privileges, immunities, and powers of a commercial bank;

(2) unless otherwise provided in this chapter, is subject to all of the duties, restrictions, obligations, and liabilities of a commercial bank; and

(3) succeeds by operation of law to all rights and property of the converting out-of-state financial institution and shall be subjected to all debts, obligations, and liabilities of the converting out-of-state financial institution as if the commercial bank had incurred the debts and liabilities.

As added by P.L.1-2006, SEC.490.

IC 28-1-31-10

Resulting commercial bank may wind up activities and retain assets

Sec. 10. The department may authorize the resulting commercial bank to do the following:

(1) Wind up any activities that are legally engaged in by the out-of-state financial institution at the time of charter conversion but that are not permitted to commercial banks.

(2) Retain any assets that are legally held by the out-of-state financial institution at the effective time of the charter conversion but that may not be held by commercial banks for a transitional period.

The terms and conditions of the transitional period under subdivisions (1) and (2) are at the discretion of the department. However, the transitional period may not exceed ten (10) years after the effective time of the charter conversion.

As added by P.L.1-2006, SEC.490.

IC 28-1-31-11

Retention of branches

Sec. 11. A commercial bank created by charter conversion may retain all branches lawfully established.

As added by P.L.1-2006, SEC.490.

IC 28-1-31-12

Filing articles of charter conversion

Sec. 12. In order to effect the charter conversion, the converting out-of-state financial institution shall file articles of charter conversion, bearing the approval of the director of the department, with the secretary of state. The converting out-of-state financial institution shall also file copies of the articles of charter conversion with the county recorder of the county where the principal office of the commercial bank is located.

As added by P.L.1-2006, SEC.490.

IC 28-1-31-13

Resulting commercial bank subject to statutes and rules

Sec. 13. Upon the effective time of charter conversion, the converted commercial bank shall, unless otherwise provided in this chapter, immediately become subject to all statutes and rules applicable to commercial banks.

As added by P.L.1-2006, SEC.490.

IC 28-1-32

Chapter 32. Conversion of a Mutual Savings Association Into a Credit Union

IC 28-1-32-1

"Conversion plan"

Sec. 1. As used in this chapter, "conversion plan" refers to a plan for the conversion of a mutual savings association into a credit union that is prepared under this chapter.

As added by P.L.1-2006, SEC.491.

IC 28-1-32-2

"Credit union"

Sec. 2. As used in this chapter, "credit union" has the meaning set forth in IC 28-7-1-0.5(3).

As added by P.L.1-2006, SEC.491.

IC 28-1-32-3

"Effective time of the conversion"

Sec. 3. As used in this chapter, "effective time of the conversion" means:

(1) the date on which articles of conversion are filed with the secretary of state; or

(2) the date designated in the articles of conversion as the effective time of the conversion.

As added by P.L.1-2006, SEC.491.

IC 28-1-32-4

"Mutual savings association"

Sec. 4. As used in this chapter, "mutual savings association" means a savings association (as defined in 12 U.S.C. 1813(b)) that:

(1) maintains its principal office in Indiana; and

(2) has a mutual form of ownership.

As added by P.L.1-2006, SEC.491.

IC 28-1-32-5

"Voting parties"

Sec. 5. As used in this chapter, "voting parties" means the depositors or members of a mutual savings association.

As added by P.L.1-2006, SEC.491.

IC 28-1-32-6

Voting party rights

Sec. 6. For purposes of this chapter, voting parties have the voting rights as provided in the applicable corporate governance documents of the converting mutual savings association.

As added by P.L.1-2006, SEC.491.

IC 28-1-32-7

Authorization to convert into credit union

Sec. 7. With the approval of the department, a mutual savings association may convert into a credit union under this chapter.
As added by P.L.1-2006, SEC.491.

IC 28-1-32-8
Conversion procedures

Sec. 8. (a) Except as provided in section 8.1 of this chapter for the conversion of a mutual savings association into a federally chartered credit union, the department shall prescribe procedures for the conversion of a mutual savings association into a credit union under this chapter.

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

(1) The savings association must prepare and submit to the department a conversion plan that provides the terms and conditions required by the department for the conversion of the mutual savings association into a credit union.

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

(3) Upon approval of the conversion plan by the board of directors of the savings association, the conversion plan and a certified copy of the resolution of the board of directors approving the conversion plan must be submitted to the department for approval.

(4) The conversion plan must be conditioned on the approval of not less than a majority of the total number of votes eligible to be cast at a regular or special meeting of the voting parties. The director of the department must approve the method used to notify the voting parties of the meeting held to consider the conversion plan. The director of the department may require the converting savings association to provide the voting parties with information regarding the conversion plan.

(5) The savings association must provide to the department additional relevant information requested by the department regarding the conversion plan.

As added by P.L.1-2006, SEC.491. Amended by P.L.213-2007, SEC.51; P.L.217-2007, SEC.49.

IC 28-1-32-8.1
Conversion to federally chartered credit union; requirements; date of charter conversion

Sec. 8.1. (a) A mutual savings association may convert into a federally chartered credit union by complying with the following requirements:

(1) The mutual savings association must prepare a conversion plan that provides the terms and conditions for the conversion of the mutual savings association into a federal credit union.

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

(3) Unless the articles of incorporation require a greater or lesser vote, the conversion plan must be approved by not less than a majority of the total number of votes eligible to be cast at a regular or special meeting of the voting parties.

(4) If the conversion plan is approved by the voting parties under subdivision (3), the mutual savings association shall, not later than ninety (90) days after the plan is approved under subdivision (3), take all necessary actions to effect the conversion.

(5) Not later than ten (10) days after receipt of the federal charter, the credit union resulting from the charter conversion shall:

(A) file a copy of the federal charter with the department; and

(B) notify the secretary of state that the conversion is complete.

(b) Notwithstanding section 3 of this chapter, the converted federal credit union ceases to be a savings association upon the issuance of the federal charter, unless the federal charter provides for a different effective date for the conversion.

As added by P.L.213-2007, SEC.52; P.L.217-2007, SEC.50.

IC 28-1-32-9

Department approval of conversion

Sec. 9. (a) The department may approve or disapprove a conversion plan filed under section 8 of this chapter.

(b) The department is not required to hold a hearing on the conversion plan.

(c) Solicitation of the votes of voting parties may occur before the savings association receives the department's approval of the conversion plan.

As added by P.L.1-2006, SEC.491.

IC 28-1-32-10

Requirements for approval

Sec. 10. The department may not approve a conversion plan unless the department finds, after appropriate investigation or examination, all of the following:

(1) The resulting credit union will operate in a safe, sound, and prudent manner.

(2) The proposed credit union conversion will not result in a credit union that has inadequate capital, unsatisfactory management, or poor earnings prospects.

(3) The management or other principals of the savings association are qualified by character and financial responsibility to control and operate the proposed credit union in a legal and proper manner.

(4) The interests of the depositors, creditors, and public generally will not be jeopardized by the proposed credit union conversion.

As added by P.L.1-2006, SEC.491.

IC 28-1-32-11
Rights, privileges, authorizations, and obligations

Sec. 11. At the effective time of the conversion of a mutual savings association into a credit union under this chapter, the resulting credit union:

(1) possesses all of the rights, privileges, immunities, and powers of a credit union;

(2) unless otherwise provided in this chapter, is subject to all of the statutes, rules, duties, restrictions, obligations, and liabilities of a credit union;

(3) succeeds by operation of law to all rights and property of the converting savings association;

(4) is subject to all debts, obligations, and liabilities of the converting savings association as if the credit union had incurred the debts, obligation, and liabilities; and

(5) may retain the borrowers and depositors of the converting savings association as members of the credit union.

As added by P.L.1-2006, SEC.491.

IC 28-1-32-12
Winding up activities

Sec. 12. The department may authorize the credit union resulting from a conversion under this chapter to do the following:

(1) Wind up any activities that the savings association was legally engaged in at the effective time of the conversion but that otherwise are not permitted to credit unions.

(2) Retain for a transitional period any assets that the savings association legally held at the effective time of the conversion but that otherwise may not be held by credit unions.

The terms and conditions of the winding up of activities under subdivision (1) and the retention of assets under subdivision (2) are subject to the discretion of the department. However, the transitional period during which activities may be carried out under subdivision (1) or assets may be retained under subdivision (2) may not exceed ten (10) years after the effective time of the conversion.

As added by P.L.1-2006, SEC.491.

IC 28-1-32-13
Branches

Sec. 13. A credit union resulting from a conversion under this chapter may retain all branches lawfully established.

As added by P.L.1-2006, SEC.491.

IC 28-1-32-14
Filing articles of conversion

Sec. 14. (a) A savings association converting into a credit union under this chapter shall file with the secretary of state the articles of conversion showing the approval of the director of the department.

(b) The converting savings association shall record copies of the articles of conversion with the county recorder of the county where the principal office of the credit union will be located.

(c) The articles of conversion constitute articles of incorporation of the resulting credit union and must set forth the elements required in IC 28-7-1-1(b).

As added by P.L.1-2006, SEC.491.

IC 28-1-32-15

Subject to credit union statutes and rules

Sec. 15. Upon the effective time of the conversion, the converted credit union is subject to all statutes and rules applicable to credit unions.

As added by P.L.1-2006, SEC.491.

IC 28-1-32-16

Rulemaking authority

Sec. 16. The department may adopt rules under IC 4-22-2 or policies to implement this chapter.

As added by P.L.1-2006, SEC.491.

IC 28-1-33

Chapter 33. Charter Conversion of a Mutual Savings Bank Into a Credit Union

IC 28-1-33-1

"Charter conversion"

Sec. 1. As used in this chapter, "charter conversion" means the conversion of a mutual savings bank into a credit union under this chapter.

As added by P.L.1-2006, SEC.492.

IC 28-1-33-2

"Conversion plan"

Sec. 2. As used in this chapter, "conversion plan" refers to a plan of charter conversion prepared under this chapter.

As added by P.L.1-2006, SEC.492.

IC 28-1-33-3

"Credit union"

Sec. 3. As used in this chapter, "credit union" has the meaning set forth in IC 28-7-1-0.5(3).

As added by P.L.1-2006, SEC.492.

IC 28-1-33-4

"Effective time of the charter conversion"

Sec. 4. As used in this chapter, "effective time of the charter conversion" means:

(1) the date on which articles of conversion are filed with the secretary of state; or

(2) the date designated in the articles of conversion as the effective time of the charter conversion.

As added by P.L.1-2006, SEC.492.

IC 28-1-33-5

"Mutual savings bank"

Sec. 5. As used in this chapter, "mutual savings bank" has the meaning set forth in IC 28-6.1-2-5.

As added by P.L.1-2006, SEC.492.

IC 28-1-33-6

"Voting parties"

Sec. 6. As used in this chapter, "voting parties" means the:

(1) depositors; and

(2) borrowers;

of a mutual savings bank.

As added by P.L.1-2006, SEC.492.

IC 28-1-33-7

Conversion authority

Sec. 7. With the approval of the department, a mutual savings

bank may convert its charter under this chapter.
As added by P.L.1-2006, SEC.492.

IC 28-1-33-8
Requirements and procedures

Sec. 8. (a) Except as provided in section 8.1 of this chapter for the conversion of a mutual savings bank into a federally chartered credit union, the department shall prescribe procedures for charter conversions under this chapter.

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

(1) The mutual savings bank must prepare and submit to the department a conversion plan that provides the terms and conditions required by the department for a charter conversion under this chapter.

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

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

(4) The conversion plan must be conditioned upon the approval of not less than a majority of the total number of votes eligible to be cast at a regular or special meeting of the voting parties. The director of the department must approve the method used to notify the voting parties of the meeting held to consider the conversion plan. The director of the department may require the converting mutual savings bank to provide the voting parties with information regarding the conversion plan.

(5) The mutual savings bank must provide to the department the additional relevant information requested by the department in connection with the conversion plan.

As added by P.L.1-2006, SEC.492. Amended by P.L.213-2007, SEC.53; P.L.217-2007, SEC.51.

IC 28-1-33-8.1
Conversion to federally chartered credit union; requirements; date of charter conversion

Sec. 8.1. (a) A mutual savings bank may convert into a federally chartered credit union by complying with the following requirements:

(1) The mutual savings bank must prepare a conversion plan that provides the terms and conditions for the conversion of the mutual savings bank into a federal credit union.

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

(3) Unless the articles of incorporation require a greater or lesser vote, the conversion plan must be approved by not less than a majority of the total number of votes eligible to be cast at a regular or special meeting of the voting parties.

(4) If the conversion plan is approved by the voting parties under subdivision (3), the mutual savings bank shall, not later than ninety (90) days after the plan is approved under subdivision (3), take all necessary actions to effect the charter conversion.

(5) Not later than ten (10) days after receipt of the federal charter, the credit union resulting from the charter conversion shall:

(A) file a copy of the federal charter with the department; and

(B) notify the secretary of state that the conversion is complete.

(b) Notwithstanding section 4 of this chapter, the converted federal credit union ceases to be a savings bank upon the issuance of the federal charter, unless the federal charter provides for a different effective date for the charter conversion.

As added by P.L.213-2007, SEC.54; P.L.217-2007, SEC.52.

IC 28-1-33-9

Voting party rights

Sec. 9. The voting parties of a mutual savings bank have the voting rights set forth in IC 28-13-6-2 with respect to a charter conversion of the mutual savings bank under this chapter.

As added by P.L.1-2006, SEC.492.

IC 28-1-33-10

Department approval

Sec. 10. (a) The department may approve or disapprove the conversion plan filed under section 8 of this chapter.

(b) The department is not required to hold a hearing on the conversion plan.

(c) Solicitation of the votes of voting parties may occur before the mutual savings bank receives approval of the department if the director of the department has reviewed the proxy solicitation material and has notified the mutual savings bank in writing that the department does not object to use of the material.

As added by P.L.1-2006, SEC.492.

IC 28-1-33-11

Requirements for approval

Sec. 11. The department may not approve the conversion plan unless the department finds, after appropriate investigation or examination, all of the following:

(1) The resulting credit union will operate in a safe, sound, and prudent manner.

(2) The proposed charter conversion will not result in a credit union that has inadequate capital, unsatisfactory management, or poor earnings prospects.

(3) The management or other principals of the mutual savings bank are qualified by character and financial responsibility to

control and operate the proposed credit union in a legal and proper manner.

(4) The interests of the depositors, the creditors, and the public generally will not be jeopardized by the proposed charter conversion.

(5) The proposed membership of the resulting credit union will comply with the membership requirements of IC 28-7-1-10.

As added by P.L.1-2006, SEC.492.

IC 28-1-33-12

Rights, privileges, obligations, and liabilities

Sec. 12. At the effective time of a charter conversion under this chapter, the resulting credit union:

(1) possesses all of the rights, privileges, immunities, and powers of a credit union;

(2) unless otherwise provided in this chapter, is subject to all of the statutes, regulations, duties, restrictions, obligations, and liabilities of a credit union;

(3) succeeds by operation of law to all rights and property of the converting mutual savings bank;

(4) is subject to all debts, obligations, and liabilities of the converting mutual savings bank as if the credit union had incurred the debts, obligations, and liabilities; and

(5) may retain the borrowers and depositors of the converting mutual savings bank as members of the credit union.

As added by P.L.1-2006, SEC.492.

IC 28-1-33-13

Winding up activities

Sec. 13. The department may authorize the credit union resulting from a charter conversion under this chapter to do the following:

(1) Wind up any activities that the mutual savings bank legally engaged in at the effective time of the charter conversion but that otherwise are not permitted to credit unions.

(2) Retain for a transitional period any assets that the mutual savings bank legally held at the effective time of the charter conversion that otherwise may not be held by credit unions.

The terms and conditions of the winding up of activities under subdivision (1) and the retention of assets under subdivision (2) are subject to the discretion of the department. However, the transitional period during which activities may be carried out under subdivision (1) or assets may be retained under subdivision (2) may not exceed ten (10) years after the effective time of the charter conversion.

As added by P.L.1-2006, SEC.492.

IC 28-1-33-14

Branches

Sec. 14. A credit union created by charter conversion may retain all branches lawfully established.

As added by P.L.1-2006, SEC.492.

IC 28-1-33-15
Filing articles of charter conversion

Sec. 15. (a) To effect a charter conversion, the converting mutual savings bank must file with the secretary of state articles of charter conversion showing the approval of the director of the department.

(b) The converting mutual savings bank shall record copies of the articles of charter conversion with the county recorder of the county where the principal office of the credit union will be located.

(c) The articles of charter conversion constitute articles of incorporation of the resulting credit union and must set forth the elements required in IC 28-7-1-1(b).

As added by P.L.1-2006, SEC.492.

IC 28-1-33-16
Subject to credit union statutes and rules

Sec. 16. Upon the effective time of a charter conversion, the converted credit union is subject to all statutes and rules applicable to credit unions.

As added by P.L.1-2006, SEC.492.

IC 28-1-33-17
Rulemaking authority

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

As added by P.L.1-2006, SEC.492.

IC 28-2

ARTICLE 2. BANKS

IC 28-2-1

Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-2-2

Chapter 2. Transactions During Nonbusiness Hours

IC 28-2-2-1

Acts done outside regular banking hours

Sec. 1. Nothing in any law of this state shall in any manner whatsoever affect the validity of or render void or voidable the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank or trust company in this state, because done or performed during any time other than regular banking hours; provided that nothing in this section shall be construed to compel any bank or trust company in this state, which by law or custom is entitled to close at noon on any business day or for the whole or any part of any legal holiday, to keep open for the transaction of business or to perform any of the acts or transactions enumerated in this section on any business day after such hour or on any legal holiday, except at its own option.

(Formerly: Acts 1957, c.45, s.1.) As amended by P.L.263-1985, SEC.117.

IC 28-2-3
Repealed

(Repealed by Acts 1971, P.L.394, SEC.31.)

IC 28-2-4
Chapter 4. Contributions

IC 28-2-4-1
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-2-5

Chapter 5. Disaster Funds–Low Cost Loans

IC 28-2-5-1

Proclamation of disaster area; meeting of board of public depository

Sec. 1. Within thirty (30) days after the governor has designated any area or areas of the state of Indiana as disaster areas by his proclamation, the board of public depository shall meet for the purpose of determination as to whether low cost loans are needed by the victims of the disaster.

(Formerly: Acts 1967, c.148, s.1.)

IC 28-2-5-2

Determination of need for low cost loans; interest rate

Sec. 2. If the board of public depository determines that low cost loans are needed for use of the victims of the disaster it shall, by rule or regulation, establish interest rates of not less than one per cent (1%) nor more than five per cent (5%) for terms of not less than six (6) months nor more than seventy-two (72) months' duration, unless the board in anticipation of the possibility of any such disaster, has, in the manner provided by law, already put into effect such rules and regulations in compliance with the provisions of this chapter.

(Formerly: Acts 1967, c.148, s.2.) As amended by Acts 1979, P.L.264, SEC.1.

IC 28-2-5-3

Deposit of matching state funds in disaster area bank

Sec. 3. The treasurer of state shall deposit in any bank in the general area of the disaster an amount of interest-free state money equal to the amount of the loan granted by the lending bank when the bank has provided the treasurer of state with a copy of the loan instrument showing the name of the borrower, amount of loan, rate of interest and terms of loan.

(Formerly: Acts 1967, c.148, s.3.)

IC 28-2-6

Chapter 6. Securities Held by Nominees

IC 28-2-6-1

Authority to register securities in name of nominee; liability

Sec. 1. Any bank, trust company, or corporate fiduciary incorporated under the laws of this state, and any national banking association incorporated under the laws of the United States and having its principal banking office in this state, may, when acting in any fiduciary capacity, whether as sole fiduciary or as co-fiduciary, cause any stocks, bonds, or other securities held by it in such fiduciary capacity to be registered and held in the name or names of any nominee or nominees of such bank, trust company or national banking association, Provided, however, that: (1) if such bank, trust company, corporate fiduciary, or national banking association be acting as a co-fiduciary, it shall secure the consent of its co-fiduciary or co-fiduciaries, who is or are hereby authorized to give such consent, to the registration and holding of such stocks, bonds, or other securities in the name of a nominee or nominees of such bank, trust company, corporate fiduciary, or national bank, and (2) the records of the fiduciary or fiduciaries shall at all times clearly show the ownership of such stocks, bonds, or other securities, and investments so registered shall at all times be in the possession and under the control of the fiduciary. Any bank, trust company, corporate fiduciary, or national banking association shall be liable in its individual capacity for any loss to the trust or estate resulting from any of the acts, or omissions to act, of such nominee or nominees in connection with the stocks, bonds, or other securities so held to the same extent as if such stocks, bonds, or other securities had been held in the name of such bank, trust company, corporate fiduciary, or national banking association as fiduciary.

(Formerly: Acts 1947, c.115, s.1.) As amended by P.L.262-1995, SEC.50.

IC 28-2-6-2

Application of chapter

Sec. 2. The provisions of this chapter shall be applicable to banks, trust companies, corporate fiduciaries, and national banking associations acting on or after August 20, 1947, under wills, trusts, agreements, court orders, and other instruments existing or made on or after August 20, 1947.

(Formerly: Acts 1947, c.115, s.2.) As amended by P.L.263-1985, SEC.118; P.L.262-1995, SEC.51.

IC 28-2-7

Chapter 7. Fiduciary Bonds

IC 28-2-7-1

General exemption from requirement for bond

Sec. 1. Any bank, trust company, or corporate fiduciary organized under the laws of the state of Indiana or of the United States of America and operating a bank, trust company, or corporate fiduciary which is located within the state of Indiana, which is acting on December 12, 1945, or which may act, after December 12, 1945, in a fiduciary capacity in any estate, trust, receivership, action, matter, or proceeding pending on or after December 12, 1945, in any court created by the Constitution or the laws of the state of Indiana, shall not, while so acting, except as provided in section 2 of this chapter, be required to file in said court any bond conditioned:

(1) for the full performance of its duties;

(2) to account for the funds or property which may come into its possession; or

(3) for any other purpose whatsoever.

(Formerly: Acts 1945, c.248, s.1.) As amended by P.L.263-1985, SEC.119; P.L.262-1995, SEC.52.

IC 28-2-7-2

Order for bond at initiation of proceedings; notice to show cause

Sec. 2. The court in which said estate, trust, receivership, action, matter, or proceeding is pending may, at the time it is filed or instituted, refuse to permit said fiduciary to take advantage and have the benefits of section 1 of this chapter or may, at any time during the pendency thereof, cause a written notice to be served upon said fiduciary to show cause why an order should not be entered, requiring it to file the bond or bonds which it would be or have been required to file but for the provisions of section 1 of this chapter, and it shall be stated in said notice the date upon which a hearing thereon shall be held.

(Formerly: Acts 1945, c.248, s.2.) As amended by P.L.263-1985, SEC.120.

IC 28-2-7-3

Order after hearing

Sec. 3. After said hearing shall have been held, the court shall enter an order either:

(1) permitting said fiduciary to continue to act as such, in accordance with the provisions of section 1 of this chapter; or

(2) requiring it to file, within the time fixed by the court, the bond or bonds it would be or have been required to file but for the provisions of section 1 of this chapter.

(Formerly: Acts 1945, c.248, s.3.) As amended by P.L.263-1985, SEC.121.

IC 28-2-7-4

Failure to file bond; vacating order appointing institution as fiduciary

Sec. 4. If any bond, which is ordered filed in accordance with the provisions of section 3 of this chapter, is not filed within the time so fixed by the court, the order appointing said fiduciary or permitting it to act as such in said estate, trust, receivership, action, matter, or proceeding shall be deemed to be vacated and set aside.

(Formerly: Acts 1945, c.248, s.4.) As amended by P.L.263-1985, SEC.122.

IC 28-2-8

Chapter 8. Penalties for Stop Payment of Checks

IC 28-2-8-1

Repealed

(Repealed by P.L.42-1993, SEC.103.)

IC 28-2-9
Repealed

(Repealed by Acts 1971, P.L.394, SEC.31.)

IC 28-2-10
Repealed

(Repealed by Acts 1971, P.L.394, SEC.31.)

IC 28-2-11
Repealed

(Repealed by Acts 1971, P.L.394, SEC.31.)

IC 28-2-12
Repealed

(Repealed by P.L.11-1998, SEC.24.)

IC 28-2-13

Chapter 13. Branch Banks

IC 28-2-13-1

Acquired bank

Sec. 1. As used in this chapter, "acquired bank" means:

(1) any nonsurviving bank in a merger or consolidation of banks; or

(2) any bank that:

(A) sells all or substantially all of its assets; and

(B) subsequently dissolves as a result of the transaction.

As added by P.L.265-1985, SEC.3. Amended by P.L.171-1996, SEC.29.

IC 28-2-13-2

Acquiring bank

Sec. 2. As used in this chapter, "acquiring bank" means the surviving bank in a merger of banks, the new corporation in a consolidation of banks, or the bank that purchases all, or substantially all, of the assets of another bank.

As added by P.L.265-1985, SEC.3.

IC 28-2-13-3

Affiliate

Sec. 3. As used in this chapter, "affiliate" means, as to a bank controlled by one (1) or more bank holding companies, another bank, savings bank, or savings association controlled by the same bank holding company or bank holding companies.

As added by P.L.265-1985, SEC.3. Amended by P.L.262-1995, SEC.53; P.L.171-1996, SEC.30; P.L.79-1998, SEC.62.

IC 28-2-13-4

Automated teller machine

Sec. 4. As used in this chapter, "automated teller machine" means unmanned electronic or mechanical equipment that performs routine banking transactions for the public.

As added by P.L.265-1985, SEC.3.

IC 28-2-13-5

Bank

Sec. 5. As used in this chapter, "bank" has the meaning set forth in IC 28-2-17-3.

As added by P.L.265-1985, SEC.3. Amended by P.L.33-1991, SEC.22; P.L.42-1993, SEC.60; P.L.171-1996, SEC.31.

IC 28-2-13-6

Bank holding company

Sec. 6. (a) As used in this chapter, "bank holding company" means any company that has or acquires control over:

(1) any bank; or

(2) any company that has or acquires control over any bank.

(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 bank;

(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 extension 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.3.

IC 28-2-13-7

Branch

Sec. 7. As used in this chapter, "branch" means any office, agency, mobile unit, messenger service, or other place of business at which deposits are received, checks paid, or money lent. However, the term does not include:

(1) the principal office of a bank;

(2) the principal office of an affiliate;

(3) a branch of an affiliate;

(4) an automated teller machine;

(5) a night depository;

(6) a temporary facility authorized in IC 28-2-13-22.5;

(7) a loan production office;

(8) a deposit production office; or

(9) other service delivery mechanisms not considered by the director to be a branch.

As added by P.L.265-1985, SEC.3. Amended by P.L.164-1988, SEC.4; P.L.14-1992, SEC.108; P.L.171-1996, SEC.32; P.L.35-2010, SEC.141.

IC 28-2-13-8

Branch by acquisition

Sec. 8. As used in this chapter, "branch by acquisition" means a

branch acquired by a bank as a result of a merger or consolidation of that bank with another bank or a purchase of all or substantially all of the assets of another bank.
As added by P.L.265-1985, SEC.3.

IC 28-2-13-9
Branch de novo

Sec. 9. As used in this chapter, "branch de novo" means a branch established by the opening of a new branch and includes a branch or branches acquired from another bank without acquiring substantially all of the assets of the other bank.
As added by P.L.265-1985, SEC.3. Amended by P.L.33-1991, SEC.23; P.L.171-1996, SEC.33.

IC 28-2-13-10
Company

Sec. 10. 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.3. Amended by P.L.8-1993, SEC.445.

IC 28-2-13-11
Repealed

(Repealed by P.L.33-1991, SEC.58.)

IC 28-2-13-12
Control

Sec. 12. 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.3.

IC 28-2-13-13
Department

Sec. 13. 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.3. Amended by P.L.33-1991, SEC.24.

IC 28-2-13-14
Repealed
(Repealed by P.L.33-1991, SEC.57.)

IC 28-2-13-15
Foreign bank
Sec. 15. As used in this chapter, "foreign bank" means a bank that has its principal office in a state other than Indiana or in the District of Columbia.
As added by P.L.265-1985, SEC.3.

IC 28-2-13-16
Indiana affiliate
Sec. 16. As used in this chapter, "Indiana affiliate" means, as to a bank controlled by one (1) or more bank holding companies, another Indiana bank controlled by the bank holding company or bank holding companies.
As added by P.L.265-1985, SEC.3.

IC 28-2-13-17
Indiana bank
Sec. 17. As used in this chapter, "Indiana bank" means a bank that has its principal office in Indiana.
As added by P.L.265-1985, SEC.3.

IC 28-2-13-17.5
Repealed
(Repealed by P.L.171-1996, SEC.44.)

IC 28-2-13-18
State bank
Sec. 18. As used in this chapter, "state bank" means a bank that has been organized or reorganized under Indiana law.
As added by P.L.265-1985, SEC.3.

IC 28-2-13-19
Branch de novo or branch by acquisition; establishment; statutory requirements
Sec. 19. (a) Subject to subsections (b) and (c), a state bank is entitled to establish one (1) or more branches de novo and one (1) or more branches by acquisition in any location or locations within Indiana.

(b) A state bank is entitled to establish a branch de novo under this section with the written approval of the department. The location of any branch established under this section may be changed at any time to a location within Indiana when the change of location is authorized by the board of directors of the state bank and approved by the department. A state bank desiring to establish one (1) or more branches de novo under this section must file a written application in the form prescribed by the director. The department may approve or

disapprove the application. Before the department approves the application, the state bank must demonstrate to the satisfaction of the department that the applicant state bank will have adequate capital, sound management, and adequate future earnings prospects after the establishment of the branch.

(c) The investigation of the department relative to any application as required by this subsection shall be conducted without a public hearing.

(d) A branch by acquisition may be established under this section only if done in compliance with applicable provisions of IC 28-1-7, IC 28-1-8, or IC 28-3-2.

As added by P.L.265-1985, SEC.3. Amended by P.L.279-1987, SEC.3; P.L.36-1987, SEC.9; P.L.33-1991, SEC.25; P.L.42-1993, SEC.61; P.L.122-1994, SEC.87; P.L.171-1996, SEC.34; P.L.192-1997, SEC.6.

IC 28-2-13-20
Repealed

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

IC 28-2-13-20.5
Branch; establishment through transaction with savings association

Sec. 20.5. Notwithstanding any other provision of this title, upon receipt of approval by the department and all required federal regulatory approvals, a state bank is entitled to establish a branch through a transaction with a savings association (as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)), if the transaction otherwise complies with this chapter.

As added by P.L.33-1991, SEC.26. Amended by P.L.42-1993, SEC.62; P.L.11-1998, SEC.6; P.L.35-2010, SEC.142.

IC 28-2-13-21
Repealed

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

IC 28-2-13-22
Automated teller machine

Sec. 22. (a) A state bank is entitled to open or establish an automated teller machine in any location within Indiana or as permitted by the laws of the state in which the automated teller machine is to be located.

(b) An automated teller machine may be owned or operated individually by any state bank or jointly on a cost sharing or fee basis.

As added by P.L.265-1985, SEC.3. Amended by P.L.42-1993, SEC.63; P.L.192-1997, SEC.7.

IC 28-2-13-22.5
Temporary facilities on college or university premises

Sec. 22.5. (a) A state bank is entitled to establish a temporary

facility on the premises of an accredited college or university in Indiana for the purpose of offering limited account services.

(b) The services that may be offered at a temporary facility established under this section include:

(1) the opening of accounts;

(2) the acceptance of deposits; and

(3) other services determined by the department.

(c) To establish a temporary facility under this section, a state bank is not required to submit an application to the department. However, before establishing a temporary facility under this section, a state bank must:

(1) obtain the written permission of the college or university for the establishment and operation of the facility on the premises of the college or university; and

(2) notify the department in writing of the intention of the state bank to establish the temporary facility.

(d) A written notice provided to the department under subsection (c)(2) must:

(1) be in the form; and

(2) contain the information;

prescribed by the department.

(e) A temporary facility operated by a state bank under this section:

(1) may be operated only:

(A) during registration periods of the college or university; and

(B) for an additional period that may not exceed seven (7) days during a calendar year; and

(2) must meet all other requirements of state law applying to state banks.

As added by P.L.262-1995, SEC.54.

IC 28-2-13-22.6

Intermittent facilities on school premises; services; notice to department; operation

Sec. 22.6. (a) As used in this chapter, "school" means:

(1) an elementary school (as defined in IC 20-18-2-4); or

(2) a secondary school (as defined in IC 20-18-2-18).

The term includes a public school (as defined in IC 20-18-2-15) or a nonpublic school (as defined in IC 20-18-2-12).

(b) A state bank is entitled to establish an intermittent facility on the premises of a school in Indiana for the purpose of offering limited account services as an educational tool for students.

(c) The services that may be offered at an intermittent facility established under this section include:

(1) the opening of accounts;

(2) the acceptance of deposits; and

(3) other services determined by the department.

(d) To establish an intermittent facility under this section, a state bank is not required to submit an application to the department.

However, before establishing an intermittent facility under this section, a state bank must:

(1) obtain the written permission of:

(A) the governing body of the school corporation, for a public school; or

(B) the equivalent authority for a nonpublic school;

for the establishment and operation of the facility on the premises of the school; and

(2) notify the department in writing of the intention of the state bank to establish the intermittent facility.

(e) A written notice provided to the department under subsection (d)(2) must:

(1) be in the form; and

(2) contain the information;

prescribed by the department.

(f) An intermittent facility operated by a state bank under this section:

(1) may be operated only during the school year; and

(2) must meet all other requirements of state law applying to state banks.

As added by P.L.90-2008, SEC.34.

IC 28-2-13-23

Failure to comply; Class A infraction; violation of chapter; injunctions, costs, and fees; powers of department

Sec. 23. A person who fails to comply with this chapter commits a Class A infraction. 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 bank may sue the bank to enjoin the conduct or for damages, together with the costs of suit, including reasonable attorney's fees. In addition to the powers of the department under IC 28-11-4, 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 acquired or branch established in violation of this chapter.

As added by P.L.265-1985, SEC.3. Amended by P.L.33-1991, SEC.27.

IC 28-2-13-24

Rules

Sec. 24. The department may adopt rules under IC 4-22-2 to implement this chapter.

As added by P.L.265-1985, SEC.3.

IC 28-2-13-25

Availability of deposited funds for customer withdrawal

Sec. 25. This chapter does not affect any federal or state statutory requirements for a bank to make deposited funds available for withdrawal to its customers within designated time periods.

As added by P.L.164-1988, SEC.5.

IC 28-2-13-26

Trust office; powers; prohibited actions

Sec. 26. (a) A bank, trust company, corporate fiduciary, or savings bank organized under the laws of Indiana or the laws of any other state or the United States may establish a trust office to exercise its powers as a fiduciary to conduct business in any location that is approved by the department. Before the department approves a trust office to exercise powers as a fiduciary under this subsection, it must determine to its satisfaction that the bank, trust company, corporate fiduciary, or savings bank will have adequate capital, sound management, and adequate future earnings prospects after the establishment of the trust office.

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

(1) receive deposits;

(2) pay checks; or

(3) lend money;

at the trust office.

As added by P.L.122-1994, SEC.88. Amended by P.L.262-1995, SEC.55; P.L.258-2003, SEC.7; P.L.27-2012, SEC.76.

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 or regulated as a federal savings association or federal savings bank under Section 5 of the Home Owners Loan Act (12 U.S.C. 1464);

(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; P.L.27-2012, SEC.77.

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.

IC 28-2-15
Repealed

(Repealed by P.L.279-1987, SEC.13.)

IC 28-2-16

Chapter 16. Foreign Bank Holding Companies

IC 28-2-16-1

"Acquire" defined

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.279-1987, SEC.9.

IC 28-2-16-2

"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, any state of the United States, or the District of Columbia; and

(2) 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 conversion under IC 28, incorporated under IC 28-12, or organized or reorganized under the laws of any other state of the United States.

(b) Except as provided in subsection (a)(2)(B), the term "bank" does not include:

(1) any institution that has been or is chartered or regulated as a federal savings association or federal savings bank under Section 5 of the Home Owners Loan Act (12 U.S.C. 1464);

(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, a credit union, or an industrial loan and investment company.

As added by P.L.279-1987, SEC.9. Amended by P.L.33-1991, SEC.38; P.L.42-1993, SEC.67; P.L.122-1994, SEC.92; P.L.79-1998, SEC.64; P.L.27-2012, SEC.78.

IC 28-2-16-3

"Bank holding company" defined

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 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 the predecessor company became a bank holding company.

As added by P.L.279-1987, SEC.9.

IC 28-2-16-4
"Bank subsidiary" defined

Sec. 4. As used in this chapter, "bank subsidiary" means a bank controlled by a bank holding company.

As added by P.L.279-1987, SEC.9.

IC 28-2-16-5
"Company" defined

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 that has been organized or reorganized under the laws of the United States, any state of the United States, or the District of Columbia. 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.279-1987, SEC.9. Amended by P.L.8-1993, SEC.447.

IC 28-2-16-6
"Control" defined

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.279-1987, SEC.9.

IC 28-2-16-7
"Department" defined

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.279-1987, SEC.9. Amended by P.L.33-1991, SEC.39.

IC 28-2-16-8
"Deposits" defined

Sec. 8. As used in this chapter, "deposits" has the meaning set forth in IC 28-2-14-8.

As added by P.L.279-1987, SEC.9. Amended by P.L.33-1991, SEC.40.

IC 28-2-16-9
"Foreign bank holding company" defined

Sec. 9. As used in this chapter, "foreign bank holding company" means a bank holding company that has its principal place of business in a state other than Indiana.

As added by P.L.279-1987, SEC.9.

IC 28-2-16-10
Repealed

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

IC 28-2-16-11
"Indiana bank" defined

Sec. 11. As used in this chapter, "Indiana bank" means a bank that has its principal office in Indiana.

As added by P.L.279-1987, SEC.9.

IC 28-2-16-12
"Indiana bank holding company" defined

Sec. 12. As used in this chapter, "Indiana bank holding company" means a bank holding company that has its principal place of business in Indiana.

As added by P.L.279-1987, SEC.9.

IC 28-2-16-13
"Indiana bank subsidiary" defined

Sec. 13. As used in this chapter, "Indiana bank subsidiary" means an Indiana bank that is controlled by a bank holding company.
As added by P.L.279-1987, SEC.9.

IC 28-2-16-14
"Principal place of business" defined

Sec. 14. For the purposes of this chapter, the "principal place of business" of a bank holding company is the state in which the total deposits of the bank subsidiaries of the bank holding company are the largest.
As added by P.L.279-1987, SEC.9.

IC 28-2-16-15
Acquisition of financial institutions

Sec. 15. Subject to the limitations of this chapter, a foreign bank holding company is entitled to acquire one (1) or more:

(1) Indiana banks;
(2) Indiana bank holding companies; or
(3) foreign bank holding companies that have acquired one (1) or more Indiana banks;

after approval by the department.
As added by P.L.279-1987, SEC.9. Amended by P.L.33-1991, SEC.41; P.L.42-1993, SEC.68.

IC 28-2-16-16
Repealed

(Repealed by P.L.171-1996, SEC.44.)

IC 28-2-16-17
Foreign bank holding company acquisition of Indiana bank or bank holding company; application; investigation; factors considered; findings; conditions and restrictions upon acquisition

Sec. 17. (a) If a foreign bank holding company desires to acquire an Indiana bank or Indiana bank holding company under this chapter, the foreign 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 the actions listed in this subsection within ten (10) business days after receiving the application. Within ten (10) business days after 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 accepting an application for processing under subsection (a)(1), the department shall conduct an investigation, to the extent the department considers necessary, into the condition of the applicant and the Indiana bank or Indiana bank holding company proposed to be acquired. The department may request 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 an employee of the department. If the department decides to hold a public hearing under this section, the department shall send written notice to 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 department shall also send written notice to the principal office of the Indiana bank proposed to be acquired or to the principal office of each Indiana bank subsidiary of the Indiana bank holding company proposed to be acquired at least twenty (20) days before the hearing and shall 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 Indiana bank; or

(2) an Indiana bank subsidiary of the Indiana 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 expenses, 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 its 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 Indiana bank or Indiana bank holding company proposed to be acquired.

(3) Whether the proposed merger or acquisition will result in an Indiana 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 Indiana bank or Indiana 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 Indiana bank or Indiana bank holding company proposed to be acquired.

(7) Whether the interest of the depositors and creditors of the Indiana bank or Indiana bank holding company proposed to be acquired 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 18 of this chapter, the finding required by section 19 of this chapter.

(f) The department shall make any acquisition by a foreign bank holding company subject to any conditions, restrictions, and requirements that:

(1) would apply to the acquisition by an Indiana bank holding company of a bank or bank holding company in the state where the foreign bank holding company has its principal place of business; and

(2) would not apply to the acquisition of a bank or bank holding company in that state by a bank holding company that controls only banks located in that state.

As added by P.L.279-1987, SEC.9. Amended by P.L.33-1991,

SEC.43; P.L.262-1995, SEC.59; P.L.171-1996, SEC.35.

IC 28-2-16-18

Exchange of stock of foreign bank holding company acquiring Indiana bank or bank holding company; request for hearing

Sec. 18. (a) At the time of the filing of an application with the department, 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 Indiana bank or Indiana bank holding company. 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 such evidence as the department considers necessary to the hearing.

(b) Any public hearing held under this section must commence not less than thirty (30) days and not more than sixty (60) days after the date on which the department accepts the application for processing under section 17 of this chapter. 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 public 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 17 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, the applicant shall provide written notice of the date, time, place, and purpose of the hearing to each Indiana bank and each Indiana subsidiary of a bank holding company that has an office in a county in which the Indiana bank proposed to be acquired or an Indiana bank subsidiary of the Indiana bank holding company proposed to be acquired has a principal office or branch. The Indiana bank or Indiana 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

expenses, 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.279-1987, SEC.9. Amended by P.L.262-1995, SEC.60; P.L.27-2007, SEC.30.

IC 28-2-16-19

Foreign bank holding company acquisition of Indiana bank or bank holding company; findings and orders

Sec. 19. If the department accepts an application for processing under section 17 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 18 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 Indiana bank or Indiana bank holding company proposed to be acquired are or are not fair and reasonable to the shareholders of the Indiana bank or Indiana bank holding company proposed to be acquired.

As added by P.L.279-1987, SEC.9.

IC 28-2-16-20

Qualification to acquire Indiana bank or bank holding company; divestiture upon ceasing to qualify

Sec. 20. (a) Except as expressly permitted by federal law, a bank holding company that is not:

(1) an Indiana bank holding company; or

(2) a foreign bank holding company;

may not acquire an Indiana bank or Indiana bank holding company.

(b) An Indiana bank holding company that ceases to be an Indiana bank holding company, as defined in section 12 of this chapter, or a foreign bank holding company that ceases to be a foreign bank holding company, as defined in section 9 of this chapter, shall within three (3) years divest itself of all Indiana banks and Indiana bank holding companies. However, a foreign bank holding company or Indiana bank holding company may not be required to divest itself of its Indiana banks or bank holding companies because of:

(1) its acquisition of institutions in another state, if the

acquisition has been consummated under Section 116 or 123 of the Garn-St. Germain Depository Institutions Act of 1982 (12 U.S.C. 1730a(m) or 12 U.S.C. 1823(f));

(2) its acquisition of securities or assets of a bank having banking offices in another state, if the acquisition has been consummated in the regular course of securing or collecting a debt previously contracted in good faith, and if the bank or bank holding company divests itself of the securities or assets acquired within three (3) years of the date of acquisition; or

(3) its acquisition of:

(A) a bank or company organized under the laws of the United States or of any state and operating under Section 25 or Section 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 601 through 604a or 12 U.S.C. 611 through 631); or

(B) a bank or bank holding company that was organized under the laws of a foreign country, that is principally engaged in business outside the United States, and that either has no banking office in the United States or has banking offices in the United States that are engaged only in business activities permissible for a bank or corporation operating under Section 25 or 25(a) of the Federal Reserve Act, as amended.

As added by P.L.279-1987, SEC.9. Amended by P.L.33-1991, SEC.44.

IC 28-2-16-21
Exemption from IC 28-1-2-23

Sec. 21. (a) An acquisition by a foreign bank holding company of control of an Indiana bank or Indiana 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 foreign bank holding company; and

(2) immediately merged with or consolidated into another bank owned by the acquiring foreign bank holding company;

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

As added by P.L.279-1987, SEC.9. Amended by P.L.262-1995, SEC.61.

IC 28-2-16-22
Injunctions

Sec. 22. 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.279-1987, SEC.9.

IC 28-2-16-23
Cooperation with other financial institutions' regulatory agencies

Sec. 23. The department may enter into cooperative agreements and pay for necessary services with other financial institutions' regulatory agencies to facilitate the regulation of banks, corporate fiduciaries, and bank holding companies doing business in this state. The department may accept reports of examinations and other records from those other agencies instead of conducting its own examinations of corporate fiduciaries with offices in other states or banks controlled by bank holding companies located in other states. The department may take any action jointly with other regulatory agencies having concurrent jurisdiction over banks, corporate fiduciaries, and bank holding companies doing business in this state or may take actions independently in order to carry out its responsibilities.
As added by P.L.279-1987, SEC.9. Amended by P.L.262-1995, SEC.62.

IC 28-2-16-24
Repealed

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

IC 28-2-16-25
Rules

Sec. 25. The department may adopt rules under IC 4-22-2 to implement this chapter.
As added by P.L.279-1987, SEC.9.

IC 28-2-17

Chapter 17. Interstate Bank Mergers

IC 28-2-17-1

Purpose of chapter

Sec. 1. It is the intent of this chapter to permit interstate branching by merger under Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (P.L. 103-328) in accordance with the provisions set forth in this chapter.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-2

Definitions

Sec. 2. The definitions set forth in sections 3 through 19 of this chapter apply throughout this chapter, unless a different meaning is required by the context.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-3

"Bank" defined

Sec. 3. (a) Except as provided in subsection (b), as used in this chapter, "bank" has the meaning set forth in 12 U.S.C. 1813(h).

(b) Except as provided in subsection (c), the term "bank" does not include any foreign bank (as defined in 12 U.S.C. 3101(7)).

(c) The term "bank" includes any foreign bank organized or reorganized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-4

"Bank holding company" defined

Sec. 4. As used in this chapter, "bank holding company" has the meaning set forth in 12 U.S.C. 1841(a)(1).

As added by P.L.171-1996, SEC.36.

IC 28-2-17-5

"Bank supervisory agency"

Sec. 5. As used in this chapter, "bank supervisory agency" means:

(1) any agency of another state with primary responsibility for organizing and supervising banks; and

(2) the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to these agencies.

As added by P.L.171-1996, SEC.36. Amended by P.L.27-2012, SEC.79.

IC 28-2-17-6

"Branch" defined

Sec. 6. As used in this chapter, "branch" has the meaning set forth

in IC 28-2-13-7.
As added by P.L.171-1996, SEC.36.

IC 28-2-17-7
"Control" defined

Sec. 7. As used in this chapter, "control" shall be construed consistently with the provisions of 12 U.S.C. 1841(a)(2).
As added by P.L.171-1996, SEC.36.

IC 28-2-17-8
"Department" defined

Sec. 8. As used in this chapter, "department" refers to the department of financial institutions.
As added by P.L.171-1996, SEC.36.

IC 28-2-17-9
"Director" defined

Sec. 9. As used in this chapter, "director" refers to the director of the department.
As added by P.L.171-1996, SEC.36.

IC 28-2-17-10
"Home state" defined

Sec. 10. As used in this chapter, "home state" means the following:

(1) With respect to a state bank, the state under the laws of which the bank is organized or reorganized.

(2) With respect to a national bank, the state in which the main office of the bank is located.

(3) With respect to a foreign bank, the state determined to be the home state of the foreign bank under 12 U.S.C. 3103(c).

As added by P.L.171-1996, SEC.36.

IC 28-2-17-11
"Home state regulator" defined

Sec. 11. As used in this chapter, "home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which the bank is organized or reorganized.
As added by P.L.171-1996, SEC.36.

IC 28-2-17-12
"Host state" defined

Sec. 12. As used in this chapter, "host state" means a state, other than the home state of a bank, in which the bank:

(1) maintains; or

(2) seeks to establish and maintain;

a branch.
As added by P.L.171-1996, SEC.36.

IC 28-2-17-13

"Indiana bank" defined

Sec. 13. As used in this chapter, "Indiana bank" means a bank whose home state is Indiana.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-14

"Indiana state bank" defined

Sec. 14. As used in this chapter, "Indiana state bank" means a bank organized or reorganized under the laws of Indiana.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-15

"Interstate merger transaction" defined

Sec. 15. As used in this chapter, "interstate merger transaction" means:

(1) the merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or

(2) the purchase of all the assets (including all of the branches) of a bank whose home state is different from the home state of the acquiring bank that results in the dissolution of the selling bank.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-16

"Out-of-state bank" defined

Sec. 16. As used in this chapter, "out-of-state bank" means a bank whose home state is a state other than Indiana.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-17

"Out-of-state state bank" defined

Sec. 17. As used in this chapter, "out-of-state state bank" means a bank organized or reorganized under the laws of any state other than Indiana.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-18

"Resulting bank" defined

Sec. 18. As used in this chapter, "resulting bank" means a bank that has resulted from an interstate merger transaction under this chapter.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-19

"State" defined

Sec. 19. As used in this chapter, "state" means any of the following:

(1) Any state of the United States.

(2) The District of Columbia.
(3) Puerto Rico.
(4) Guam.
(5) American Samoa.
(6) The Trust Territory of the Pacific Islands.
(7) The Virgin Islands.
(8) The Northern Mariana Islands.
(9) Any territory of the United States.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-20
Interstate merger transactions

Sec. 20. (a) With the prior written approval of the department, an Indiana state bank may establish, maintain, and operate one (1) or more branches in a state other than Indiana pursuant to an interstate merger transaction in which the Indiana state bank is the resulting bank.

(b) Not later than the date on which the required application for the interstate merger transaction is filed with the appropriate federal bank supervisory agency, the applicant Indiana state bank shall file an application with the department on a form prescribed by the director.

(c) An interstate merger transaction must be done in compliance with:

(1) IC 28-1-7;
(2) IC 28-1-8; or
(3) IC 28-3-2.

(d) An interstate merger transaction may be consummated only after the applicant has received the written approval of the department. The department has the authority to establish terms, conditions, and time frames by which the transaction may be consummated.

(e) A savings association or an industrial loan and investment company organized or reorganized under the laws of Indiana may engage in an interstate merger transaction to the same extent and under the same restrictions, conditions, and requirements as an Indiana state bank.

As added by P.L.171-1996, SEC.36. Amended by P.L.79-1998, SEC.65.

IC 28-2-17-20.1
Repealed

(Repealed by P.L.89-2011, SEC.78.)

IC 28-2-17-21
Authority to enter into transaction

Sec. 21. If the conditions and filing requirements of this chapter are met:

(1) one (1) or more Indiana banks may enter into an interstate merger transaction with one (1) or more out-of-state banks

under this chapter; and

(2) an out-of-state bank resulting from a transaction referred to in subdivision (1) may maintain and operate the branches in Indiana of an Indiana bank that participated in the transaction.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-22

Duties of resulting bank

Sec. 22. An out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving an Indiana state bank shall:

(1) notify the department of the proposed merger; and

(2) provide satisfactory evidence to the department of compliance with applicable requirements of IC 28-1-22.

As added by P.L.171-1996, SEC.36. Amended by P.L.11-1998, SEC.9.

IC 28-2-17-23

Authorized activities; acquisition of additional branches; investigation; provisions and fees

Sec. 23. (a) An out-of-state state bank that establishes and maintains one (1) or more branches in Indiana under this chapter may conduct at the branch or branches only those activities that are expressly authorized under the laws of Indiana for Indiana state banks.

(b) An Indiana state bank may conduct any activities at any branch located outside Indiana that are permissible for a bank organized or reorganized by the host state in which the branch is located. However, if Indiana law specifically prohibits an activity that is permitted by the host state, the department may by order waive the prohibition if the department determines that the involvement of out-of-state branches of Indiana state banks in the particular activities conducted in the host state would not threaten the safety or soundness of banks. This section does not authorize a bank located in Indiana to engage in an activity in Indiana that has been waived under this provision.

(c) An out-of-state bank that has acquired a branch in Indiana under this chapter may establish or acquire additional branches in Indiana to the same extent that any Indiana bank may establish or acquire a branch in Indiana under applicable federal and Indiana law.

(d) With the prior approval of the department, an Indiana state bank that has acquired a branch or branches in a state other than Indiana through an interstate merger transaction may establish or acquire additional branches in the host state to the same extent that a host state state bank may establish or acquire a branch in the host state under the applicable host state law and federal law. An Indiana state bank desiring to establish one (1) or more branches under this section must file a written application with the director. The application must be in the form and must contain the information prescribed by the director. The department may approve or

disapprove the application. Before the department approves the application, the bank must demonstrate to the satisfaction of the department that:

(1) the applicant state bank will have adequate capital, sound management, and adequate future earnings prospects after the establishment of the branch; and

(2) the establishment of the proposed branch will not violate the laws of the host state.

(e) The investigation of the department relative to any application as required by this section shall be conducted without a public hearing.

(f) The branch or branches of an out-of-state bank that are established and maintained in Indiana under this chapter shall be subject to the provisions and fees of IC 24-4.5 to the same extent as a bank located in Indiana.

As added by P.L.171-1996, SEC.36. Amended by P.L.192-1997, SEC.8.

IC 28-2-17-24

Examination of branch operations

Sec. 24. (a) To the extent consistent with subsection (b), the department may make the examinations of any branch established and maintained in Indiana pursuant to this chapter by an out-of-state state bank as the department may consider necessary to determine whether the branch is being operated in compliance with the laws of Indiana and in accordance with safe and sound banking practices. The provisions of IC 28-11-3 shall apply to such examinations.

(b) The department may enter into cooperative, coordinating, and information-sharing agreements with any organization enumerated in IC 28-11-3-3 with respect to the periodic examination or other supervision of:

(1) any branch in Indiana of an out-of-state state bank; or

(2) any branch of an Indiana state bank in any host state;

and the department may accept the organization's reports of examination and reports of investigation instead of conducting its own examinations or investigations.

(c) The department may enter into agreements with any financial institution supervisory agency that has concurrent jurisdiction over an Indiana state bank or an out-of-state state bank operating a branch in Indiana pursuant to this chapter to:

(1) engage the services of such agency's examiners at a reasonable rate of compensation; or

(2) provide the services of the department's examiners to such agency at a reasonable rate of compensation.

Any such agreement shall be entered into under IC 36-1-7.

(d) The department may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch established and maintained in Indiana of an out-of-state state bank or any branch established and maintained by an Indiana state bank in any host state. The department

may at any time take such actions independently if the department considers the actions to be necessary or appropriate to carry out its responsibilities under this chapter or to ensure compliance with the laws of Indiana. In the case of an out-of-state state bank, the department shall recognize:

(1) the exclusive authority of the home state regulator over corporate governance matters; and

(2) the primary responsibility of the home state regulator with respect to safety and soundness matters.

(e) Each out-of-state state bank that maintains one (1) or more branches in Indiana is subject to the provisions of IC 28-11-3-5. The fees may be shared with other financial institution supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies in accordance with agreements between those agencies and the department.

(f) For the purposes of this chapter, the provisions of IC 28-1-2-30 apply to the following:

(1) An out-of-state bank.

(2) An out-of-state savings association.

(3) An out-of-state industrial loan and investment company.

As added by P.L.171-1996, SEC.36. Amended by P.L.79-1998, SEC.66.

IC 28-2-17-25

Enforcement actions

Sec. 25. (a) If the department determines that a branch maintained by an out-of-state state bank in Indiana is being operated:

(1) in violation of any provision of Indiana law relating to activities of a bank; or

(2) in an unsafe and unsound manner;

the department may take all enforcement actions it would be empowered to take if the branch were an Indiana state bank, including but not limited to enforcement actions under IC 28-11-4.

(b) The department shall:

(1) promptly give notice to the home state regulator of each enforcement action taken under this section against an out-of-state state bank; and

(2) to the extent practicable, consult and cooperate with the home state regulator in pursuing and resolving the enforcement action.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-26

Rules

Sec. 26. The department may adopt policies or adopt rules under IC 4-22-2 it determines necessary or appropriate to implement this chapter.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-27

Notice of actions causing a change of control

Sec. 27. Each out-of-state state bank that establishes and maintains a branch in Indiana pursuant to this chapter, or the home state regulator of such bank, shall give at least thirty (30) days prior written notice, or shorter notice as is consistent with applicable state or federal law, to the department of any merger, consolidation, or other transaction that would cause a change of control with respect to the bank or any bank holding company that controls the bank, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended (12 U.S.C. 1817(j)) or the federal Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 et seq.) or any successor statutes to those statutes.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-28

Severability

Sec. 28. The provisions of this chapter are severable in the manner provided in IC 1-1-1-8(b). If:

(1) any provision of this chapter; or

(2) the application of any provision of this chapter;

is found by any court with jurisdiction in the United States to be invalid as to any bank, bank holding company, foreign bank, or other person or circumstances, or to be superseded by federal law, the remaining provisions of this chapter shall not be affected and shall continue to apply to any bank, bank holding company, foreign bank, or other person or circumstance.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-29

Waiver of concentration limitation

Sec. 29. (a) Pursuant to 12 U.S.C. 1831u(b)2(D), the statewide concentration limitation as provided for in 12 U.S.C. 1831u(b)2(B) may be waived by order of the department for a particular interstate merger transaction for good cause shown.

(b) When determining good cause for the purposes of this section, the department shall, at a minimum, consider the factors enumerated in IC 28-2-16-17(e).

As added by P.L.171-1996, SEC.36.

IC 28-2-18

Chapter 18. Interstate Bank Branching

IC 28-2-18-1

Purpose of chapter

Sec. 1. It is the intent of this chapter to permit interstate branching under Sections 102 and 103 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (P.L. 103-328) in accordance with the provisions set forth in this chapter.

As added by P.L.171-1996, SEC.37.

IC 28-2-18-2

Definitions

Sec. 2. The definitions set forth in sections 3 through 18 of this chapter apply throughout this chapter, unless a different meaning is required by the context.

As added by P.L.171-1996, SEC.37.

IC 28-2-18-3

"Acquisition of a branch" defined

Sec. 3. As used in this chapter, "acquisition of a branch" means the acquisition of a branch or branches located in a host state, without engaging in an interstate merger transaction (as defined in IC 28-2-17-15).

As added by P.L.171-1996, SEC.37.

IC 28-2-18-4

"Bank" defined

Sec. 4. (a) Except as provided in subsection (b), as used in this chapter, "bank" has the meaning set forth in 12 U.S.C. 1813(h).

(b) Except as provided in subsection (c), the term "bank" does not include any foreign bank (as defined in 12 U.S.C. 3101(7)).

(c) The term "bank" includes any foreign bank organized or reorganized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation.

As added by P.L.171-1996, SEC.37.

IC 28-2-18-5

"Bank holding company" defined

Sec. 5. As used in this chapter, "bank holding company" has the meaning set forth in 12 U.S.C. 1841(a)(1).

As added by P.L.171-1996, SEC.37.

IC 28-2-18-6

"Bank supervisory agency"

Sec. 6. As used in this chapter, "bank supervisory agency" means any of the following:

(1) Any agency of another state with primary responsibility for organizing and supervising banks.

(2) The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to these agencies.

As added by P.L.171-1996, SEC.37. Amended by P.L.27-2012, SEC.80.

IC 28-2-18-7
"Branch" defined

Sec. 7. As used in this chapter, "branch" has the meaning set forth in IC 28-2-13-7.

As added by P.L.171-1996, SEC.37.

IC 28-2-18-8
"Control" defined

Sec. 8. As used in this chapter, "control" shall be construed consistently with the provisions of 12 U.S.C. 1841(a)(2).

As added by P.L.171-1996, SEC.37.

IC 28-2-18-9
"Department" defined

Sec. 9. As used in this chapter, "department" refers to the department of financial institutions.

As added by P.L.171-1996, SEC.37.

IC 28-2-18-10
"De novo branch" defined

Sec. 10. As used in this chapter, "de novo branch" means a branch of a bank located in a host state that:

(1) is originally established by the bank as a branch; and

(2) does not become a branch of the bank as a result of:

(A) the acquisition of another bank or a branch of another bank; or

(B) the merger, consolidation, or conversion involving any such bank or branch.

As added by P.L.171-1996, SEC.37.

IC 28-2-18-11
"Director" defined

Sec. 11. As used in this chapter, "director" refers to the director of the department.

As added by P.L.171-1996, SEC.37.

IC 28-2-18-12
"Home state" defined

Sec. 12. As used in this chapter, "home state" means the following:

(1) With respect to a state bank, the state under the laws of which the bank is organized or reorganized.

(2) With respect to a national bank, the state in which the main office of the bank is located.

(3) With respect to a foreign bank, the state determined to be the home state of the foreign bank under 12 U.S.C. 3103(c).

As added by P.L.171-1996, SEC.37.

IC 28-2-18-13

"Home state regulator" defined

Sec. 13. As used in this chapter, "home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is organized or reorganized.

As added by P.L.171-1996, SEC.37.

IC 28-2-18-14

"Host state" defined

Sec. 14. As used in this chapter, "host state" means a state, other than the home state of a bank, in which the bank:

(1) maintains; or

(2) seeks to establish and maintain;

a branch.

As added by P.L.171-1996, SEC.37.

IC 28-2-18-15

"Indiana state bank" defined

Sec. 15. As used in this chapter, "Indiana state bank" means a bank organized or reorganized under the laws of Indiana.

As added by P.L.171-1996, SEC.37.

IC 28-2-18-16

"Out-of-state bank" defined

Sec. 16. As used in this chapter, "out-of-state bank" means a bank whose home state is a state other than Indiana.

As added by P.L.171-1996, SEC.37.

IC 28-2-18-17

"Out-of-state state bank" defined

Sec. 17. As used in this chapter, "out-of-state state bank" means a bank organized or reorganized under the laws of any state other than Indiana.

As added by P.L.171-1996, SEC.37.

IC 28-2-18-18

"State" defined

Sec. 18. As used in this chapter, "state" means any of the following:

(1) Any state of the United States.

(2) The District of Columbia.

(3) Puerto Rico.

(4) Guam.

(5) American Samoa.

(6) The Trust Territory of the Pacific Islands.

(7) The Virgin Islands.

(8) The Northern Mariana Islands.
(9) Any territory of the United States.
As added by P.L.171-1996, SEC.37.

IC 28-2-18-19
Establishment of de novo branch or acquisition of branch in another state; application; approval or disapproval by department

Sec. 19. (a) With the prior written approval of the department, any Indiana state bank may establish and maintain a de novo branch or acquire a branch in a state other than Indiana.

(b) An Indiana state bank that desires to:
(1) establish one (1) or more de novo branches; or
(2) acquire one (1) or more branches under this section;
must file a written application with the department. The application must be in the form and contain the information prescribed by the director.

(c) The department may approve or disapprove an application filed under this section. Before the department approves an application, the bank must demonstrate to the satisfaction of the department that:
(1) the applicant state bank will have adequate capital, sound management, and adequate future earnings prospects after the establishment of the branch; and
(2) the establishment of the proposed branch will not violate the laws of the host state.

(d) The investigation of the department relative to any application as required by this subsection shall be conducted without a public hearing.

(e) The location of any branch in another state established or acquired under this section may be changed at any time to a location within the state where the branch is located if the change of location:
(1) is authorized by the board of directors of the Indiana state bank; and
(2) approved by the department.

(f) A savings association or an industrial loan and investment company organized or reorganized under the laws of Indiana may establish and maintain a de novo branch or acquire a branch in a state other than Indiana to the same extent and under the same restrictions, conditions, and requirements as an Indiana state bank.
As added by P.L.171-1996, SEC.37. Amended by P.L.192-1997, SEC.9; P.L.79-1998, SEC.67.

IC 28-2-18-20
Powers of out-of-state bank; de novo branch

Sec. 20. An out-of-state bank that meets the requirements of this chapter may establish and maintain a de novo branch in Indiana.
As added by P.L.171-1996, SEC.37.

IC 28-2-18-21
Powers of out-of-state bank; acquisition of branch

Sec. 21. An out-of-state bank that meets the requirements of this

chapter may establish and maintain a branch in Indiana through the acquisition of a branch.
As added by P.L.171-1996, SEC.37.

IC 28-2-18-22
Notice of proposed transaction

Sec. 22. An out-of-state bank that desires to:

(1) establish and maintain a de novo branch; or

(2) acquire a branch in Indiana pursuant to this chapter;

shall provide written notice of the proposed transaction to the department not later than the date on which the bank applies to the responsible federal bank supervisory agency for approval to establish the branch.
As added by P.L.171-1996, SEC.37.

IC 28-2-18-23
Conditions of establishment

Sec. 23. A branch of an out-of-state bank may not be established in Indiana under this chapter unless the out-of-state bank:

(1) confirms in writing to the department that it will comply with all applicable laws of Indiana as long as it maintains a branch in Indiana; and

(2) provides satisfactory evidence to the department of compliance with the applicable requirements of IC 28-1-22.

As added by P.L.171-1996, SEC.37.

IC 28-2-18-24
Authorized activities; acquisition of additional branches; investigation; provisions and fees

Sec. 24. (a) An out-of-state state bank that establishes and maintains one (1) or more branches in Indiana under this chapter may conduct at the branch or branches only those activities that are expressly authorized under the laws of Indiana for Indiana state banks.

(b) An Indiana state bank may conduct any activities at any branch located outside Indiana that are permissible for a bank organized or reorganized by the host state in which the branch is located. However, if Indiana law specifically prohibits an activity that is permitted by the host state, the department may by order waive the prohibition if the department determines that the involvement of out-of-state branches of Indiana state banks in the particular activities conducted in the host state would not threaten the safety or soundness of banks. This section does not authorize a bank located in Indiana to engage in an activity in Indiana that has been waived under this provision.

(c) An out-of-state bank that has established or acquired a branch or branches in Indiana under this chapter may establish or acquire additional branches in Indiana to the same extent that any Indiana bank may establish or acquire a branch in Indiana under applicable federal and state law.

(d) The branch or branches of an out-of-state bank that are established and maintained in Indiana under this chapter shall be subject to the provisions and fees of IC 24-4.5 to the same extent as a bank located in Indiana.
As added by P.L.171-1996, SEC.37.

IC 28-2-18-25
Examination of branch operations

Sec. 25. (a) To the extent consistent with subsection (b), the department may make examinations of any branch established and maintained in Indiana pursuant to this chapter by an out-of-state state bank as the department may consider necessary to determine whether the branch is being operated in compliance with the laws of Indiana and in accordance with safe and sound banking practices. The provisions of IC 28-11-3 shall apply to the examinations.

(b) The department may enter into cooperative, coordinating, and information-sharing agreements with any organization enumerated in IC 28-11-3-3 with respect to the periodic examination or other supervision of:

(1) any branch in Indiana of an out-of-state state bank; or

(2) any branch of an Indiana state bank in any host state;

and the department may accept the organization's reports of examination and reports of investigation instead of conducting its own examinations or investigations.

(c) The department may enter into agreements with any financial institution supervisory agency that has concurrent jurisdiction over an Indiana state bank or an out-of-state state bank operating a branch in Indiana pursuant to this chapter to:

(1) engage the services of the agency's examiners at a reasonable rate of compensation; or

(2) provide the services of the department's examiners to the agency at a reasonable rate of compensation.

Any such agreement shall be entered into under IC 36-1-7.

(d) The department may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch established and maintained in Indiana by an out-of-state state bank or any branch established and maintained by an Indiana state bank in any host state. The department may at any time take the actions independently if the department considers the actions to be necessary or appropriate to carry out its responsibilities under this chapter or to ensure compliance with the laws of Indiana. In the case of an out-of-state state bank, the department shall recognize:

(1) the exclusive authority of the home state regulator over corporate governance matters; and

(2) the primary responsibility of the home state regulator with respect to safety and soundness matters.

(e) Each out-of-state state bank that maintains one (1) or more branches in Indiana is subject to the provisions of IC 28-11-3-5. The fees may be shared with other financial institution supervisory

agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies in accordance with agreements between those parties and the department.

(f) For the purposes of this chapter, the provisions of IC 28-1-2-30 apply to the following:

(1) An out-of-state bank.

(2) An out-of-state savings association.

(3) An out-of-state industrial loan and investment company.

As added by P.L.171-1996, SEC.37. Amended by P.L.79-1998, SEC.68.

IC 28-2-18-26

Enforcement actions

Sec. 26. (a) If the department determines that a branch maintained by an out-of-state state bank in Indiana is being operated:

(1) in violation of any provision of Indiana law relating to activities of a bank; or

(2) in an unsafe and unsound manner;

the department may take all enforcement actions it would be empowered to take if the branch were an Indiana state bank, including but not limited to enforcement actions under IC 28-11-4.

(b) The department shall:

(1) promptly give notice to the home state regulator of each enforcement action taken under this section against an out-of-state state bank; and

(2) to the extent practicable, consult and cooperate with the home state regulator in pursuing and resolving the enforcement action.

As added by P.L.171-1996, SEC.37.

IC 28-2-18-27

Rules

Sec. 27. The department may adopt policies or adopt rules under IC 4-22-2 it determines necessary or appropriate to implement this chapter.

As added by P.L.171-1996, SEC.37.

IC 28-2-18-28

Notice of actions causing a change of control

Sec. 28. Each out-of-state state bank that has established and maintains a branch in Indiana pursuant to this chapter, or the home state regulator of the bank, shall give at least thirty (30) days prior written notice, or shorter notice as is consistent with applicable state or federal law, to the department of any merger, consolidation, or other transaction that would cause a change of control with respect to the bank or any bank holding company that controls the bank, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended (12 U.S.C. 1817(j)) or the federal Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 et seq.) or any successor statutes to

those statutes.
As added by P.L.171-1996, SEC.37.

IC 28-2-18-29
Repealed
(Repealed by P.L.89-2011, SEC.78.)

IC 28-2-18-30
Severability
Sec. 30. (a) After May 30, 1997, the provisions of this chapter are severable in the manner provided in IC 1-1-1-8(b).
(b) If, after May 30, 1997:
(1) any provision of this chapter; or
(2) the application of a provision of this chapter;
is found by any court in the United States with jurisdiction to be invalid as to any bank, bank holding company, foreign bank, or another person or circumstances, or to be superseded by federal law, the remaining provisions of this chapter shall not be affected and shall continue to apply to any bank, bank holding company, foreign bank, or other person or circumstance.
As added by P.L.171-1996, SEC.37.

IC 28-3

ARTICLE 3. LIQUIDATION, REORGANIZATION, AND MERGER

IC 28-3-1

Chapter 1. Liquidation of Banks

IC 28-3-1-1

Petition; vote of shareholders; order and bond

Sec. 1. Whenever the directors of any bank organized under the laws of this state, shall desire to liquidate any such bank, they may file a petition with the department of financial institutions for authority so to do. After the filing of any such petition, the said department shall authorize the directors to call a special meeting of the stockholders of such bank, and if the owners of two-thirds (2/3) of the capital stock of such bank shall vote in favor of such liquidation, the directors shall thereupon so notify the department and said department shall thereupon enter an order directing the liquidation of said bank, and shall also provide that a bond be executed in such an amount and with such sureties as the department may approve, for the faithful discharge by the officers of such bank of their respective duties in the liquidation of said bank.
(Formerly: Acts 1943, c.39, s.1.)

IC 28-3-1-2

Sequence of payments; dissenting stockholders

Sec. 2. Upon the filing and approval of such bond, the officers of any such bank, shall without delay, proceed with the liquidation of its business by first paying all of its depositors in full, and when all of such depositors have been paid in full, the holders of the capital stock of such bank shall appoint a committee of not more than three (3) persons to completely liquidate and pay all of its other liabilities, and to distribute all the remaining assets of said bank, share and share alike, to the owners of its capital in proportion to the shares of its capital stock respectively owned by them and then outstanding: Provided, however, that the owners of shares of its capital stock who did not approve of such liquidation shall, if they so demand, be paid the full par value of their shares within six (6) months from the time of the filing of such petition and such shares shall be cancelled and said owners shall not be entitled to any further share in any distribution of the assets of said bank.
(Formerly: Acts 1943, c.39, s.2.)

IC 28-3-1-3

Surrender of certificate of incorporation

Sec. 3. When the affairs of said bank shall have been completely liquidated, its officers shall at once surrender its certificate of incorporation to the secretary of state who shall cancel same, and said certificate shall thereafter be void and of no legal effect.
(Formerly: Acts 1943, c.39, s.3.)

IC 28-3-1-4

Alternative method

Sec. 4. This chapter shall not be construed to repeal any other law providing for the liquidation of banks, but it shall be construed as providing an alternative method for the liquidation of banks.

(Formerly: Acts 1943, c.39, s.4.) As amended by P.L.263-1985, SEC.128.

IC 28-3-2

Chapter 2. Merger–State Banks and National Associations

IC 28-3-2-1

Authority to convert, merge, or consolidate

Sec. 1. (a) Subject to the applicable provisions of IC 28-2-13 or IC 28-2-17, any bank or trust company may convert into or merge or consolidate with a national banking association. Nothing contained in this chapter or in any other law of this state shall be construed to require the approval of any officer, department, or agency of this state as a condition to the right of any bank or trust company to convert into or merge or consolidate with a national banking association. Subject to the applicable provisions of IC 28-2-13 or IC 28-2-17, upon approval by the department of financial institutions any national banking association may convert into or merge or consolidate with a resulting bank or trust company (as defined in IC 28-1-1-3). Approval shall be granted if the department of financial institutions determines by examination of the converting, merging, or consolidating institutions, or otherwise, that the resulting bank or trust company meets the standards as to location, condition of assets, capital structure, and quality of management required of banks and trust companies by IC 28-11-5 or IC 28-2.

(b) A savings bank may merge, consolidate, or join together with a national banking association under section 10 of this chapter.

(Formerly: Acts 1953, c.69, s.1.) As amended by P.L.263-1983, SEC.3; P.L.36-1987, SEC.18; P.L.171-1996, SEC.38.

IC 28-3-2-2

Plan of conversion, merger, or consolidation; required approvals

Sec. 2. The plan of conversion, merger, or consolidation shall be approved by the board of directors of the bank or trust company and shall be approved by the board of directors of the national banking association. In cases where a national banking association proposes to convert into a resulting bank or trust company, it shall follow the procedure prescribed by the laws of the United States and shall be granted a charter under and pursuant to the provisions of IC 28-1 or IC 28-12 upon filing articles of incorporation on forms prescribed by the director of the department of financial institutions and approved by the holders of at least two-thirds (2/3) of each class of the capital stock of the national banking association and with the approval of the department of financial institutions, as provided in section 1 of this chapter. In cases where a national banking association proposes to merge or consolidate with a resulting bank or trust company, the plan of merger or consolidation shall be in accordance with and subject to, and shall have the effect provided in, IC 28-1 pertaining to the merger and consolidation of banks and trust companies except as otherwise expressly provided in this chapter, but the provisions of IC 28-1-7-21 shall not apply to the extent that the provisions thereof conflict with the laws of the United States pertaining to the rights of dissenting shareholders of any national banking association upon the

merger or consolidation of such association with a bank or trust company.
(Formerly: Acts 1953, c.69, s.2.) As amended by P.L.263-1985, SEC.129; P.L.14-1992, SEC.110; P.L.171-1996, SEC.39.

IC 28-3-2-3
Shareholders' meeting; completion of conversion, merger, or consolidation

Sec. 3. The board of directors of the bank or trust company and the board of directors of the national banking association shall each give notice of the time, place, and object of the shareholders' meeting, to act upon the plan of conversion, merger, or consolidation, to each of their respective shareholders of record, which notice may be waived specifically by any shareholder. The meeting of the shareholders of a bank or trust company shall be called in accordance with the provisions of IC 28-13, and the meeting of the shareholders of a national banking association shall be called in accordance with the provisions of the laws of the United States. The plan of conversion, merger, or consolidation shall be adopted provided the shareholders of at least two-thirds (2/3) of each class of the capital stock of the bank or trust company and the shareholders of at least two-thirds (2/3) of each class of the capital stock of the national banking association vote affirmatively in favor of such plan. The conversion of a bank or trust company into a national banking association shall be considered as completed upon the issuance of a national bank charter or other evidence of conversion by the comptroller of the currency. The conversion of a national banking association into a state bank shall be considered completed upon the acceptance of articles of incorporation by the department of financial institutions and the issuance of a certificate of incorporation by the secretary of state of the state of Indiana. The merger and consolidation of a bank or trust company with a national banking association shall be considered completed upon filing with the department of financial institutions a certificate of merger or consolidation executed by the comptroller of the currency. The merger and consolidation of a national banking association with a bank or trust company shall be considered completed upon the approval, by the department of financial institutions, of articles of merger or consolidation and the execution of a certificate of merger or consolidation by the secretary of state of the state of Indiana.
(Formerly: Acts 1953, c.69, s.3.) As amended by P.L.263-1985, SEC.130; P.L.171-1996, SEC.40.

IC 28-3-2-4
Termination of corporate status of state bank merged or consolidated with national banking association

Sec. 4. Whenever any bank or trust company shall have merged or consolidated with a national banking association, such bank or trust company shall thereupon cease to be a corporation under the laws of this state, except that for a term of three (3) years thereafter its

corporate existence shall be deemed to continue for the purpose of prosecuting or defending suits by or against it, and of enabling it to close its concerns, and to dispose of and convey its property.
(Formerly: Acts 1953, c.69, s.4.)

IC 28-3-2-5
Effect of conversion, merger, or consolidation on obligations of state bank

Sec. 5. The merger or consolidation of a bank or trust company with, or the conversion of a bank or trust company into a national banking association shall not release such bank or trust company from its obligation to pay and discharge all of the liabilities created by law or incurred by such bank or trust company before it was merged or consolidated with, or was converted into a national banking association, or to pay any and all taxes imposed under and by virtue of the laws of this state up to the date on which it was merged or consolidated with or was converted into such national banking association, in proportion to the time which has elapsed since the last preceding payment and assessment therefor, or to pay any and all assessments, penalties and forfeitures imposed or incurred under the laws of this state up to the date on which it is merged or consolidated with, or is converted into a national banking association.
(Formerly: Acts 1953, c.69, s.5.)

IC 28-3-2-6
Effect of conversion, merger, or consolidation on property, rights, privileges, powers, duties, and functions of state bank

Sec. 6. At the time when the merger or consolidation of a bank or trust company with or the conversion of a bank or trust company into a national banking association, or under such charter as may be issued thereafter, becomes effective, all of the property of such bank or trust company, including all of its rights, title and interest in and to any and all property of whatsoever kind, whether real, personal or mixed, and to things in action, and to every right, privilege, interest and asset of any value or benefit whatsoever, then existing, belonging or pertaining to it, or which would inure to it, shall, immediately, by act of law, and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of such national banking association, which shall have, hold and enjoy the same, in its own right, as fully and to the same extent as the same was possessed, held and enjoyed by such bank or trust company; and such national banking association shall be deemed to be a continuation of the entity and of the identity of such bank or trust company, and all of the rights, obligations and relations of such bank or trust company to or in respect to any person, estate, creditor, depositor, trustee or beneficiary of any trust, and in, or in respect to, any executorship or trusteeship, or in any other trust or fiduciary capacity, or appointment thereto, shall remain unimpaired, and such national banking association, at the time of the taking effect of such merger, consolidation or conversion, shall succeed to all of such rights,

obligations, relations, appointments, and trusts, and the duties and liabilities connected therewith, and shall execute and perform each and every such trust or relation in the same manner as though such national banking association had itself been appointed to and/or assumed such trust or relation, including the obligations and liabilities connected therewith.
(Formerly: Acts 1953, c.69, s.6.)

IC 28-3-2-7
Effect of conversion, merger, or consolidation on fiduciary relations of state bank

Sec. 7. If any bank or trust company is acting as the administrator, coadministrator, executor, coexecutor, trustee or cotrustee of or in respect to any estate or trust or guardian of any person or estate which is being administered under the laws of this state, or has been named or designated as such in any will or other writing theretofore executed, such relation, as well as any and all other similar fiduciary relations, and all rights, privileges, duties and obligations connected therewith shall remain unimpaired, and shall continue into and in such national banking association from and as of the time of the taking effect of such merger, consolidation or conversion, irrespective of the date when any such relation shall have been created or established, and irrespective of the date of any agreement relating thereto or of the date of the death of any testator or decedent whose estate is being so administered.
(Formerly: Acts 1953, c.69, s.7.)

IC 28-3-2-8
Effect of conversion, merger, or consolidation on letters of administration, letters testamentary, or trusteeship

Sec. 8. Nothing done in connection with the merger or consolidation of any bank or trust company with, or the conversion of any bank or trust company into a national banking association shall be deemed to be or to effect a renunciation or revocation of any letters of administration or letters testamentary, pertaining to such relation, or a removal or resignation from any such executorship or trusteeship or any other fiduciary relationship, nor to be of the same effect as if the executor or trustee or other fiduciary had died or had otherwise become incompetent to act.
(Formerly: Acts 1953, c.69, s.8.)

IC 28-3-2-9
Definitions

Sec. 9. As used in this chapter:

(1) the term "bank or trust company" means any bank or trust company organized under the provisions of any statute of this state; and

(2) the term "national banking association" means any national bank organized under the laws of the United States.

(Formerly: Acts 1953, c.69, s.9.) As amended by P.L.263-1985,

SEC.131; P.L.171-1996, SEC.41.

IC 28-3-2-10
Savings banks; request for order to merge, consolidate, or join with acquiring national banking association; requirements

Sec. 10. (a) A savings bank may request that the department order the savings bank to merge, consolidate, or otherwise join with an acquiring institution that is a national banking association.

(b) A savings bank may make a request under subsection (a) only if its board of trustees has, at a regular or special meeting called for that purpose, by a vote of at least two-thirds (2/3) of the then qualified and acting trustees, adopted a resolution stating that in the opinion of the board, the merger, consolidation, or other joining together is in the best interests of the depositors and other creditors of the savings bank.

(c) The department may order a merger, consolidation, or other joining requested under subsection (a) if it determines that:

(1) the depositors of the savings bank would not receive any liquidating dividend upon the dissolution of the savings bank; and

(2) the acquiring institution is willing to be the surviving corporation.

(d) The approval of the depositors of a savings bank is not required for a merger, consolidation, or joining together under this section.

(e) A savings bank and an acquiring institution may not merge, consolidate, or join together under this section if they are located in different counties.

(f) When two (2) or more institutions merge, consolidate, or join together under this section, the resulting institution may maintain as a branch office any principal or branch office of the institution or institutions with which it merged, consolidated, or joined together.

(g) To facilitate a merger, consolidation, or joining together under this section, the department may convert the charter, form of ownership, or operating powers of a savings bank into the charter, form of ownership, or operating powers of the acquiring institution.
As added by P.L.263-1983, SEC.4.

IC 28-3-3

Chapter 3. Correction of Notice of Liquidation

IC 28-3-3-1

Notice of voluntary liquidation to correct prior failure to give notice

Sec. 1. Any bank, trust company, savings association or other financial institution incorporated or organized under any law of this state and which has heretofore undertaken voluntary liquidation proceedings but failed to comply with the then existing law as to the giving of notice of such voluntary liquidation, may correct such error of omission by giving notice of such voluntary liquidation in the manner originally provided for such financial institution. Any notice so given shall contain in brief form a chronological history of the liquidation proceedings. Any notice so given shall also state in effect that any creditor, shareholder or other interested party failing to object in writing to the acts of the liquidating agent within sixty (60) days after the first publication of such notice shall be forever barred from thereafter asserting any claim against the financial institution, the liquidating agent, or his surety.

(Formerly: Acts 1941, c.157, s.1.) As amended by P.L.79-1998, SEC.69.

IC 28-3-3-2

Limitation of actions

Sec. 2. Any creditor, shareholder, or other interested person failing to object in writing within sixty (60) days after the first publication of any notice given pursuant to the provisions of section 1 of this chapter shall be forever barred from thereafter asserting any claim against the financial institution, the liquidating agent, or his surety.

(Formerly: Acts 1941, c.157, s.2.) As amended by P.L.263-1985, SEC.132.

IC 28-3-4

Chapter 4. Prior Reorganizations Valid

IC 28-3-4-1

Legalization of reorganizations

Sec. 1. Any and all reorganizations by financial institutions organized before March 10, 1941, under any statute of this state under and pursuant to the provisions of IC 28-1, including, but not by way of limitation, reorganizations under and pursuant to the provisions of IC 28-1-10 (repealed July 1, 1988) and reorganizations for the reopening of business and the resumption of banking operations under and pursuant to the provisions of IC 28-1-20-8 are hereby declared legal and valid for all purposes.

(Formerly: Acts 1941, c.166, s.1.) As amended by P.L.263-1985, SEC.133; P.L.3-1990, SEC.106.

IC 28-3-4-2

Amendment of articles as to corporate duration

Sec. 2. Any bank or trust company organized under any statute of this state may amend its articles of incorporation in the manner prescribed in IC 28-13-14. Any bank or trust company electing to amend its articles of incorporation in such manner may, among other things, provide that such bank or trust company may continue as a corporation, under its corporate name, for the period limited in its articles of incorporation as amended, or, if the period is not so limited therein, then perpetually.

(Formerly: Acts 1941, c.166, s.2.) As amended by P.L.263-1985, SEC.134; P.L.14-1992, SEC.111.

IC 28-4

ARTICLE 4. REPEALED

(Repealed by P.L.193-1997, SEC.5.)

IC 28-5

ARTICLE 5. INDUSTRIAL LOAN AND INVESTMENT COMPANIES

IC 28-5-1

Chapter 1. Industrial Loan and Investment Act

IC 28-5-1-1

Citation

Sec. 1. This chapter shall be known and may be cited as The Indiana Industrial Loan and Investment Act.

(Formerly: Acts 1935, c.181, s.1.) As amended by P.L.263-1985, SEC.148.

IC 28-5-1-2

Application of chapter

Sec. 2. This chapter shall be applicable to all corporations engaged or attempting to engage in business on or after June 7, 1937, as an industrial loan and investment company pursuant to the provisions of this chapter.

(Formerly: Acts 1935, c.181, s.2; Acts 1937, c.105, s.1.) As amended by P.L.263-1985, SEC.149.

IC 28-5-1-3

Definitions; department's powers

Sec. 3. As used in this chapter and unless a different meaning appears from the context:

(a) The term "capital and surplus" or "unimpaired capital and unimpaired surplus" has the meaning set forth in 12 CFR 32.2.

(b) The term "company" shall mean and include any corporation to which this chapter is applicable.

(c) The term "department" means the department of financial institutions of the state of Indiana.

(d) The department is hereby authorized to approve the issue of capital and investment notes and capital debentures by any company to create capital and surplus, but no such notes and debentures shall be authorized or approved by the department unless such notes and debentures shall, by their terms, provide that the debt, including all accrued and unpaid interest, evidenced thereby shall be subordinate, in order of priority on liquidation, to all of the obligations of the company to the holders of its installment and fully paid certificates of indebtedness or investment and creditors other than such creditors and holders who have expressly agreed otherwise and other than creditors who are such by reason of the ownership of such notes or debentures which the department is authorized to approve by this section.

(Formerly: Acts 1935, c.181, s.3; Acts 1937, c.105, s.2; Acts 1955, c.20, s.1; Acts 1971, P.L.399, SEC.1.) As amended by P.L.263-1985, SEC.150; P.L.213-2007, SEC.56; P.L.217-2007, SEC.54; P.L.3-2008, SEC.221.

IC 28-5-1-4

Definitions; certificate of authority; branches; automated teller machines

Sec. 4. (a) As used in this section:

"Automated teller facility" means electronic or mechanical equipment that performs routine transactions for the public at locations off premises of the principal office or branch office of a company that holds a certificate to engage in business under this chapter and that is authorized to issue, negotiate, and sell certificates of investment or indebtedness.

"Branch" means any office, agency, mobile unit, messenger service, or other place of business at which:

(1) deposits are received;

(2) negotiable or transferable instruments or orders, or similar instruments, are paid; or

(3) money is lent.

However, the term does not include the principal office of a company or an automated teller facility.

"Financial institution" has the same meaning as in IC 28-1-1-3.

(b) Any domestic corporation organized under the general corporation laws of Indiana may engage in business as an industrial loan and investment company subject to the limitations and restrictions set forth in this chapter. The department may issue a certificate authorizing a corporation to engage in business under this chapter after the department considers and investigates all the following:

(1) The financial standing and character of the incorporators, organizers, directors, principal shareholders, or controlling corporations.

(2) The character, qualifications, and experience of the officers and directors of the corporation.

(3) The future earnings prospects for the proposed corporation in the community in which the corporation will be located.

(4) The adequacy of the corporation's capital.

If the department determines any of the factors described in subdivisions (1) through (4) unfavorably, the department may not issue a certificate authorizing the corporation to engage in business under this chapter. Certificates issued under this section must state whether the corporation is authorized to accept deposits and, if not, must provide that the corporation may do business under this article only as restricted by section 21 of this chapter.

(c) Any company that is authorized to accept deposits and that holds a certificate to engage in business under this chapter is entitled to establish one (1) or more branches de novo and one (1) or more branches by acquisition in any location or locations within Indiana, at which any business of the company may be transacted to the same extent as at the principal office of the company.

(d) As a condition to the establishment and operation of a branch or branches under this section, the company must:

(1) obtain prior written approval of the department;

(2) operate each branch under the correct name of the company and its name must contain in addition the word "branch"; and

(3) demonstrate that the applicant company will have adequate capital, sound management, and adequate future earnings prospects after the establishment of the branch.

(e) The location of the principal office or any branch established under this section may be changed at any time when authorized by the board of directors of the company and approved by the department.

(f) Any company desiring to open or establish one (1) or more branches or change location of an existing branch or the principal office must file a written application therefor, in such form and containing such information as may be prescribed by the department. If the department determines that the requirements of subsection (d) have been satisfied, the department may in its discretion approve the application.

(g) A company is entitled to open or establish an automated teller facility in any location within Indiana or as permitted by the laws of the state in which the automated teller machine is to be located. An automated teller facility may be owned or operated individually by any company or jointly on a cost sharing or fee basis.

(h) A branch by acquisition may be established under this section only if done in compliance with applicable provisions of IC 28-1-7 or IC 28-1-8.

(i) A company that is authorized to accept deposits and that holds a certificate to engage in business under this chapter is entitled to establish one (1) or more branches de novo and one (1) or more branches by acquisition in any location outside Indiana. Any business of the company may be transacted at a branch established under this subsection to the same extent as at the principal office of the company, subject to IC 28-2-18-19.

(Formerly: Acts 1935, c.181, s.4; Acts 1951, c.79, s.1; Acts 1967, c.45, s.1; Acts 1971, P.L.400, SEC.1; Acts 1973, P.L.284, SEC.1.) As amended by P.L.141-1984, SEC.9; P.L.269-1985, SEC.1; P.L.270-1985, SEC.1; P.L.33-1991, SEC.46; P.L.171-1996, SEC.43; P.L.192-1997, SEC.11; P.L.141-2005, SEC.9; P.L.90-2008, SEC.36.

IC 28-5-1-5

Capital requirements

Sec. 5. The capital stock of any company engaged in business under the provisions of this chapter shall be not less than fifty thousand dollars ($50,000), which said capital stock shall be fully paid to the corporation in cash and shall not at any time thereafter be voluntarily reduced below the amount originally paid in. In the event the capital of any such company should for any reason become impaired, the right to issue certificates of indebtedness or investment as provided in this chapter shall forthwith be suspended until said capital stock has been restored to the amount originally paid in.

(Formerly: Acts 1935, c.181, s.5.) As amended by P.L.263-1985, SEC.151.

IC 28-5-1-6
Corporate powers

Sec. 6. (a) Every company may exercise all the powers conferred upon domestic corporations by IC 23-1 but only to the extent that those powers may be necessary, convenient, or expedient to accomplish the purposes for which it is organized. Subject to the restrictions and limitations contained in this chapter, every company may exercise the following powers:

(1) To issue, negotiate, and sell its secured or unsecured certificates of investment or indebtedness, subject to subdivision (16), upon terms and conditions, in any form, and payable at times that are not inconsistent with this chapter and, subject to subsection (c), bearing a rate of interest approved by the department.

(2) To make, purchase, discount, or otherwise acquire extensions of credit under IC 24-4.5.

(3) To lend money without security or upon the security of comakers, personal endorsement, or the mortgage of real or personal property or the mortgage or pledge of bailment leases or rentals due and to become due thereunder and other choses in action, and to contract for interest, discount, fees, charges, or other consideration fixed or permitted by any laws of Indiana concerning interest, discount, or usury.

(4) To discount, purchase, or otherwise acquire notes, bills of exchange, acceptances, bailment leases, and the property covered thereby or the rentals due or to become due thereunder or other choses in action and, subject to such restrictions the department imposes, to become owner or lessor of personal or real property acquired upon the request and for the use of a customer, and to incur additional obligations incident to becoming an owner or lessor of the property. The liability of a lessee under the lease does not constitute an obligation (as defined in section 8 of this chapter).

(5) To purchase or construct buildings and hold legal title to them, to be leased for public purposes to municipal corporations or other public authorities having resources sufficient to make payment of all rentals as they become due. Each lease agreement shall provide that upon expiration, the lessee shall become owner of the building.

(6) To invest in bonds, notes, or certificates which are:

(A) the direct or indirect obligations of the United States or of the state;

(B) obligations of mutual funds or financial institutions if the obligations represent a participation in a fund invested in, or are secured by, direct or indirect obligations of the United States owned by the mutual fund or financial institution;

(C) the direct obligations of a civil or school county, township, city, town, other taxing district, or municipality of Indiana;

(D) a special taxing district in Indiana;

(E) issued by or in the name of:
(i) the trustees of Indiana University;
(ii) the trustees of Purdue University;
(iii) the trustees of Ball State University;
(iv) the trustees of Indiana State University; or
(v) the Indiana finance authority;
(F) issued by or in the name of any municipality of Indiana and payable from the revenues to be derived from the operation of facilities for the production or distribution of water, electricity, gas, or from the operation of sewage works; or
(G) the obligations of any Indiana toll road commission, public library, or schoolhouse holding corporation first mortgage bonds;
which district, municipality, taxing unit, or corporation is not then in default in the payment of either principal or interest on any of its funded obligations and has not so defaulted for a period of more than six (6) months within the five (5) year period immediately preceding the purchase of the securities.
(7) To invest in bonds, notes, or debentures rated in one (1) of the first four (4) classifications established by one (1) or more standard rating services specified by the department that satisfy requirements of marketability prescribed periodically by the department that are the obligations of a person, a firm, a limited liability company, a corporation, a state, a territory, an insular possession of the United States, or a county, township, town, city, taxing district, or municipality thereof which is not then in default in the payment of either principal or interest on any of its funded obligations and has not so defaulted within the five (5) year period immediately preceding the purchase of the securities and other investment securities prescribed by the department by rule. As used in this section, the term "investment securities" means marketable obligations evidencing indebtedness of a person, firm, limited liability company, or corporation in the form of bonds, notes, or debentures commonly known as "investment securities" and the definition of the term "investment securities" prescribed by the department by rule. Except as is otherwise provided in this chapter or otherwise permitted by law, nothing contained in this subdivision authorizes the purchase by an industrial loan and investment company of shares of stock or other securities, unless the purchase is necessary to prevent loss under a debt previously contracted in good faith and stocks or other securities so purchased or acquired shall, within six (6) months from the time of its purchase, be sold or disposed of at public or private sale, unless otherwise ordered by the department.
(8) To invest in bonds or debentures issued under and by the authority of the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1429), or of the Home Owners' Loan Act (12 U.S.C. 1461 through 1468), or obligations issued by or for farm credit

banks, and banks for cooperatives under the Farm Credit Act of 1971 (12 U.S.C. 2001 through 2279aa-14).

(9) To invest in insured shares of an insured savings association organized under the laws of Indiana, and in insured shares of an insured federal savings association whose principal place of business is located in Indiana; and in certificates of indebtedness or investment of an industrial loan and investment company organized under the laws of Indiana. However, not more than twenty percent (20%) of the resources of the company may be invested in the insured shares of any such association nor more than ten percent (10%) of the company's capital and surplus in such certificates of industrial loan and investment companies.

(10) To make loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance by the federal housing administrator, and to obtain insurance from the administrator.

(11) To make loans secured by mortgage on real property or leasehold if:

(A) the mortgage is insured by the federal housing administrator; or

(B) the company makes a commitment to insure and to obtain insurance from the administrator, if the mortgage is not insured by the federal housing administrator.

(12) To purchase, invest in, and dispose of notes or bonds secured by mortgage or trust deed insured by the federal housing administrator or debentures issued by the federal housing administrator, or bonds or other securities insured by national mortgage associations.

(13) To discount, purchase, or otherwise acquire charge accounts, and drafts and bills of exchange evidencing charge accounts and to impose and collect monthly service charges and maintenance charges on charge accounts, drafts, or bills of exchange which are owned or acquired in amounts agreed upon between the company and the obligor, or obligors, on charge accounts, drafts, and bills of exchange.

(14) To purchase or otherwise acquire property, real or personal, tangible or intangible, in which the company has a security interest to secure a debt owing to the company contracted in good faith or the purchase or acquisition of which property is considered expedient to prevent loss from a debt owing to the company contracted in good faith, and for such purpose to engage in any lawful business considered necessary or expedient by the company to preserve, protect, or make saleable the property. Property thus purchased or acquired shall be sold and disposed of within two (2) years, or a longer period permitted by the department, after the purchase or acquisition.

(15) To act as trustee of a trust created in the United States and forming part of a stock bonus, pension, or profit sharing plan that is qualified for tax treatment under Section 401(d) of the Internal Revenue Code, and to act as trustee or custodian of an

individual retirement account within the meaning of Section 408 of the Internal Revenue Code, if the funds of that trust or account are only invested in certificates of investment or indebtedness of the company or in obligations or securities issued by that company. All funds held under this subdivision in a fiduciary capacity may be commingled by the company for appropriate investment purposes. However, individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under the authority of this subdivision.

(16) To do anything necessary and appropriate to obtain or maintain federal deposit insurance under the Federal Deposit Insurance Corporation Act (12 U.S.C. 1811 through 1833e) or insurance under any other federal or Indiana law providing insurance for certificates of investment or indebtedness issued by a company. A company that obtains and maintains federal deposit insurance is not required to obtain approval from the department concerning the rate of interest payable on, or the form, the terms, or the conditions of the certificates of investment or indebtedness, and the company may exercise all of the powers that are conferred upon institutions maintaining federal deposit insurance that are not in conflict with Indiana law.

(17) To become a member of a federal home loan bank and acquire, own, pledge, sell, assign, or otherwise dispose of shares of the capital stock of a federal home loan bank.

(18) To borrow money and procure advances from a federal home loan bank and to transfer, assign to, and pledge with the federal home loan bank any of the bonds, notes, contracts, mortgages, securities, or other property of the company held or acquired as security for the payment of the loans and advances.

(19) To possess and exercise all rights, powers, and privileges conferred upon and do and perform all acts and things required of members or shareholders of a federal home loan bank, or by the provisions of 12 U.S.C. 1421 through 1449.

(20) Subject to section 6.3 of this chapter, to exercise the rights and privileges (as defined in section 6.3(a) of this chapter) that are or may be granted to national banks domiciled in Indiana.

(b) No law of this state prescribing the nature, amount, or form of security or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made, applies to loans, advances of credit, or purchases made pursuant to subsection (a)(10), (a)(11), or (a)(12).

(c) If any national or state chartered bank or savings association is not limited by law with regard to the rate of interest payable on any type or category of checking account, savings account, or deposit, certificate of deposit, membership share, or other account, then industrial loan and investment companies are similarly not limited

with regard to the interest payable on certificates of investment or indebtedness.

(Formerly: Acts 1935, c.181, s.6; Acts 1937, c.105, s.3; Acts 1955, c.20, s.2; Acts 1969, c.129, s.1; Acts 1971, P.L.399, SEC.2; Acts 1973, P.L.284, SEC.2; Acts 1975, P.L.44, SEC.5.) As amended by Acts 1977, P.L.293, SEC.1; Acts 1979, P.L.265, SEC.1; Acts 1982, P.L.169, SEC.1; P.L.269-1983, SEC.1; P.L.141-1984, SEC.10; P.L.2-1987, SEC.42; P.L.20-1990, SEC.11; P.L.8-1991, SEC.28; P.L.42-1993, SEC.71; P.L.262-1995, SEC.64; P.L.194-1997, SEC.3; P.L.79-1998, SEC.70; P.L.215-1999, SEC.6; P.L.235-2005, SEC.204; P.L.2-2007, SEC.355; P.L.162-2007, SEC.39; P.L.213-2007, SEC.57; P.L.217-2007, SEC.55.

IC 28-5-1-6.3

Request to exercise rights and privileges granted to national banks; appeal

Sec. 6.3. (a) As used in this section, "rights and privileges" means the power:

(1) to:

(A) create;

(B) deliver;

(C) acquire; or

(D) sell;

a product, a service, or an investment that is available to or offered by; or

(2) to engage in mergers, consolidations, reorganizations, or other activities or to exercise other powers authorized for;

national banks domiciled in Indiana.

(b) An industrial loan and investment company that intends to exercise any rights and privileges that are:

(1) granted to national banks; but

(2) not authorized for industrial loan and investment companies under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

shall submit a letter to the department describing in detail the requested rights and privileges granted to national banks that the company intends to exercise. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter submitted by the company.

(c) The department shall promptly notify the requesting company of the department's receipt of the letter submitted under subsection (b). Except as provided in subsection (e), the company may exercise the requested rights and privileges sixty (60) days after the date on which the department receives the letter unless otherwise notified by the department.

(d) The department may deny the requested rights and privileges if the department finds that:

(1) national banks domiciled in Indiana do not possess the requested rights and privileges;

(2) the exercise of the requested rights and privileges by the

company would adversely affect the safety and soundness of the company;

(3) the exercise of the requested rights and privileges by the company would result in an unacceptable curtailment of consumer protection; or

(4) the failure of the department to approve the requested rights and privileges will not result in a competitive disadvantage to the company.

(e) The sixty (60) day period referred to in subsection (c) may be extended by the department based on a determination that the company's letter raised issues requiring additional information or additional time for analysis. If the sixty (60) day period is extended under this subsection, the company may exercise the requested rights and privileges only if the company receives prior written approval from the department. However:

(1) the department must:

(A) approve or deny the requested rights and privileges; or

(B) convene a hearing;

not later than sixty (60) days after the department receives the company's letter; and

(2) if a hearing is convened, the department must approve or deny the requested rights and privileges not later than sixty (60) days after the hearing is concluded.

(f) The exercise of rights and privileges by a company in compliance with and in the manner authorized by this section is not a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(g) If a company receives approval to exercise the requested rights and privileges granted to national banks domiciled in Indiana, the department shall determine by order whether all industrial loan and investment companies may exercise the same rights and privileges. In making the determination required by this subsection, the department must ensure that the exercise of the rights and privileges by all industrial loan and investment companies will not:

(1) adversely affect their safety and soundness; or

(2) unduly constrain Indiana consumer protection provisions.

(h) If the department denies the request of a company under this section to exercise any rights and privileges that are granted to national banks, the company may appeal the decision of the department to the circuit court with jurisdiction in the county in which the principal office of the company is located. In an appeal under this section, the court shall determine the matter de novo.

As added by P.L.194-1997, SEC.4. Amended by P.L.213-2007, SEC.58; P.L.217-2007, SEC.56; P.L.35-2010, SEC.143.

IC 28-5-1-6.5

Sale of annuity contracts

Sec. 6.5. (a) Notwithstanding any other provision of this title, an industrial loan and investment company may act as an insurance producer for the sale of any annuity contract issued by a life

insurance company (as defined in IC 27-1-2-3) authorized to do business in Indiana under IC 27-1.

(b) An industrial loan and investment company that acts as an insurance producer for the sale of an annuity contract:

(1) is subject to all requirements of IC 27 relating to the sale and solicitation of insurance, including licensing as an insurance producer under IC 27-1-15.6; and

(2) must comply with the disclosure requirements under IC 27-1-38.

(c) This section does not give power to, or otherwise affect the power of, an industrial loan and investment company to act as an insurance producer for the sale of life insurance other than an annuity contract.

As added by P.L.262-1995, SEC.65. Amended by P.L.132-2001, SEC.20; P.L.130-2002, SEC.6; P.L.178-2003, SEC.91.

IC 28-5-1-7
Repealed

(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 28-5-1-8
Limitation of total obligation of single borrower; exceptions; loans to officers, agents, and employees; violation; offense

Sec. 8. (a) Except as otherwise provided in subsections (c), (d), and (e), the total obligation of any person, firm, limited liability company, or corporation to any industrial loan and investment company shall at no time exceed fifteen percent (15%) of the amount of the capital and surplus of the company.

(b) The term "obligations" as used in this section means the direct liability of the maker or acceptor of paper discounted with or sold to any such company, and the liability of the indorser, drawer or guarantor who obtains a loan from, or discounts paper with or sells paper under the person's guaranty to any such company, and, in the case of obligations of a copartnership or association, includes only those obligations of the several members thereof directly related to the copartnership or association, and, in the case of obligations of a corporation, includes all obligations of all subsidiaries thereof in which such corporation owns or controls a majority interest.

(c) Subsection (a) does not apply to the following:

(1) Obligations arising out of the discount of commercial or business paper actually owned by the person, firm, limited liability company, or corporation negotiating such paper.

(2) Obligations of the United States or any instrumentality thereof or of this state, or of any municipal corporation or taxing district thereof, or obligations fully insured by the federal housing administrator as to principal; however, the department may, under such rules and regulations as it may prescribe, limit the total amount that may be invested by any industrial loan and investment company in any one (1) obligation or in any class of obligations described in subdivisions (1) and (2).

(3) Obligations arising out of the agreement to repurchase, or the guaranty or endorsement of, retail installment sales contracts by a retail seller or subsequent assignee. However, this subdivision does not apply in any case where such company purchasing such paper does not become the absolute owner, or in any case where installment payments are collected by a prior owner of the paper, or by a retail seller of the goods represented thereby.

(4) Obligations arising out of the agreement to repurchase, or the guaranty or indorsement of, title-retaining real estate installment sales contracts by a seller, or subsequent assignees; however, this subdivision does not apply in any case where such company purchasing such contracts does not become the absolute owner, or in any case where installment payments are collected by a prior owner of the contracts or by a seller of such contracts.

(5) Obligations of the borrower arising out of loans in which the borrower has no personal liability but which are secured by bailment leases or the rentals due and to become due thereunder; and the rights of the lessor in said leases and the property being leased thereunder, and which loans are to be repaid out of said rentals due and to become due under said leases; or obligations arising out of the guaranty, endorsement, or assignment of bailment leases or the rentals due and to become due thereunder by the lessor. However, this subdivision does not apply in any such case where such company does not have the right or does not actually collect the rentals due or to become due thereunder.

(d) Obligations to an industrial loan and investment company of any subsidiary or subsidiaries of the company engaged in business for the purpose provided in section 6(a)(15) of this chapter shall at no time exceed in the case of one (1) subsidiary ten percent (10%) of the capital and surplus of the company or, in the case of more than one (1) subsidiary, in the aggregate twenty percent (20%) of the capital and surplus of the company unless in either case the department shall approve a larger percentage.

(e) Obligations to an industrial loan and investment company of any subsidiary or subsidiaries of the company engaged in business for the purpose provided in section 6(a)(14) of this chapter shall at no time exceed in the aggregate thirty percent (30%) of the amount of the capital and surplus of the company or such larger sum as the department may approve.

(f) Except as otherwise provided in this subsection and in section 9 of this chapter, no loan shall be made, directly or indirectly, by any industrial loan and investment company, to any active executive officer, agent, or employee thereof. The board of directors or executive committee of any industrial loan and investment company may, by resolution, duly entered in the records of the proceedings of the board or committee, authorize loans to or extend lines of credit to:

(1) any active executive officer, agent, or employee of such industrial loan and investment company in any amount not

exceeding, at any one (1) time outstanding:

(A) ten thousand dollars ($10,000); plus

(B) ten thousand dollars ($10,000) which may be used for the sole purpose of educating the children of such active executive officer, agent, or employee as hereinafter provided; or

(2) directors not holding any office in such industrial loan and investment company, and not acting as an agent or employee thereof.

The board or committee may likewise authorize loans to or extend lines of credit to firms, limited liability companies, or corporations in which active executive officers, agents or employees or directors may be partners, members, or stockholders, but the total amount of the obligations of all such active executive officers, agents, or employees, and directors, or other firms, limited liability companies, or corporations in which such active executive officers, agents, employees, and directors are partners, members, or stockholders, shall not at any time exceed fifteen percent (15%) of the total resources of the industrial loan and investment company at the time any such loan or extension of credit is made. Loans and lines of credit permitted by this subsection shall be made only on authorization by a majority of all of the directors or members of the executive committee of such industrial loan and investment company, and by the affirmative vote of all directors or members of the executive committee present at the meeting, and such authorization may be general and need not be given for each loan or line of credit extended. However, such general authorization shall be voted upon at least annually. When a line of credit has been extended pursuant to this subsection to any such active executive officer, agent, or employee or to any such director, or to any firm, corporation, limited liability company, or partnership in which an active executive officer, agent, employee, or director may be a partner, member, or stockholder, any notes or other instruments evidencing an indebtedness to the industrial loan and investment company, and any renewals or extensions thereof, need not be authorized as otherwise required by this subsection if such loan, or any renewal or any extension thereof, is within the terms of the authorization of the line of credit theretofore extended by the directors or executive committee to such active executive officer, agent, or employee, or to such director, or to any firm, corporation, limited liability company, or partnership in which any active executive officer, agent, employee, or director may be a partner, member or stockholder. The department, under such general rules and regulations as it may prescribe, which shall apply to all industrial loan and investment companies alike, may require full collateral security for all loans of the types permitted by this subsection and, for the purpose of providing that such security may be adequate, may specify the types thereof that may be pledged. Subject to section 9 of this chapter, the limitations of this subsection shall not apply to a loan by an industrial loan and investment company to an active executive officer, agent, or employee thereof

made upon the security of real estate whereupon such active executive officer, agent, or employee maintains the person's actual residence. The term "actual residence" includes a two (2) family dwelling unit if one (1) of such units is occupied by the active executive officer, agent, or employee of the industrial loan and investment company.

(g) An officer or director of any industrial loan and investment company who knowingly violates subsection (f) commits a Level 4 felony.

(Formerly: Acts 1935, c.181, s.8; Acts 1937, c.105, s.4; Acts 1949, c.229, s.1; Acts 1955, c.20, s.3; Acts 1969, c.129, s.2; Acts 1971, P.L.399, SEC.3; Acts 1973, P.L.284, SEC.3.) As amended by Acts 1977, P.L.293, SEC.2; Acts 1979, P.L.265, SEC.2; P.L.8-1993, SEC.448; P.L.213-2007, SEC.59; P.L.217-2007, SEC.57; P.L.158-2013, SEC.300.

IC 28-5-1-9
Mortgage loans

Sec. 9. An industrial loan and investment company, hereinafter in this section sometimes called "company" may, subject to the requirements of this section, make or acquire a loan secured by a first lien upon real estate (including a leasehold) located in any state or the District of Columbia in an amount and for terms not to exceed (a) in the case of improved real estate, including farmland, (i) three-fourths (3/4) of the appraised value if the terms of the loan require substantially equal payments at successive intervals of not more than one (1) year each and if the terms of the loan are such as would require the payment of forty percent (40%) of the principal of and all interest on the loan within a period of ten (10) years or (ii) nine-tenths (9/10) of the appraised value if the terms of the loan require substantially equal payments at successive intervals of not more than one (1) year each and if the terms of the loan are such as would require the payment of all principal and interest on the loan within a period of thirty (30) years, except that the date of the initial payment of principal on a loan to a business borrower may be deferred for a period of not to exceed three (3) years from the date of the loan; or (b) in the case of unimproved real estate, one-half (1/2) the appraised value for a term not to exceed five (5) years or two-thirds (2/3) of the appraised value for a term not to exceed five (5) years if utilities, roads, or streets necessary for the development of such real estate have been completed. If the money borrowed on real estate is to be used for erecting improvements, and if the money is to be advanced as the work progresses, in such event, the appraised value for purposes of the loan shall be based upon the condition of the real estate when such improvements shall have been completed.

The department may by rule or regulation increase or decrease the fraction of the appraised value which may be loaned with real estate as security and may increase or decrease the terms for which such loans may be made if the department finds that it is in the interest of the economy of the state and in conformity with sound financial

practice.

In a case in which a loan subject to this section is made to finance construction of an improvement and such loan is combined with a permanent loan to continue after completion of construction, the term of the construction loan or that portion of the term not in excess of three (3) years, shall not be counted against the maximum term for the permanent loan permitted under this section but such combined construction loan and permanent loan shall be subject to all other requirements of this section.

For the purpose of this section, a "leasehold" shall mean the interest, which is security for a loan, of a lessee of real estate under a lease which on the date of the loan has an unexpired term extending at least five (5) years beyond the maturity of the loan, or contains a right of renewal, which may be exercised by the mortgagee, extending at least five (5) years beyond the maturity of the loan. The requirements for a loan subject to this section shall be: (i) the loan shall be evidenced by a bond, note, or other obligation and the lien securing such loan shall be obtained by a mortgage, deed of trust, or judgment; (ii) the lien shall be a first lien (except for a lien of taxes, assessments, or charges which are not yet due or which are payable without penalty) unless all prior liens are held by the company and the aggregate of all loans by the company secured by liens on the real estate satisfy all other requirements of this section pertaining to such loans; (iii) insurance against loss from fire on all buildings on the real estate which are included in the appraised value, issued by insurers acceptable to the company and authorized to do business where the real estate is located and in form and amount satisfactory to the company, shall be maintained during the term of the loan by or at the expense of the borrower, except that the company may at its own expense maintain such insurance covering only its interest as lender; and (iv) the borrower shall pay all expenses in connection with the loan for title insurance, searches and certificates, appraisal fees and fees for preparation and recording of documents.

The appraised value of the real estate offered for security shall be determined by one (1) or more competent persons who shall report such valuation in writing to such company. The written report so made shall be signed and in the event that such company makes such a loan, shall be kept on file by it subject to inspection by the department.

The foregoing limitations and restrictions shall not apply to real estate loans which are (1) mentioned in sections 6(a)(10), (11), and (12) of this chapter and the regulations issued thereunder insofar as said sections and regulations apply to loans on the security of real estate; and (2) made under 38 U.S.C. 1801 through 1825 and the regulations issued under that federal law, insofar as said federal law and regulations apply to loans on the security of real estate, and under such limitations and restrictions as the department may, by regulation, prescribe.

The limitations set forth in this section shall not apply to mortgages taken as additional security for loans otherwise authorized

by this chapter or as security for any loans which are in default or to second mortgages. Loans made to businesses where the company looks for repayment out of the operations of the borrower's business, relying primarily on the borrower's general credit standing and forecast of operations, with or without other security, but wishes to take a mortgage on the borrower's real estate as a precaution against contingencies, shall not be considered as real estate loans within the meaning of this section and, therefore, shall not be subject to the limitations of this section.

Any loan made upon the security of real estate which exceeds the maximum fraction of the appraised value of such real estate will not be in violation of this section so long as that portion of the loan in excess of the maximum fraction of the appraised value of the real estate is fully guaranteed or is fully secured by collateral consisting of a savings deposit, certificate of deposit, certificates of indebtedness or investment, assignment of rent, life insurance, or other collateral security to which the company has ready access and a first claim.

Subject to the limitations and restrictions of this section, any industrial loan and investment company, in addition to being permitted to make loans as provided by this section, may purchase, acquire, hold, and dispose of any loan, made to any other person, firm, limited liability company, or corporation and the notes and mortgages securing such loan. Before any such loan shall be purchased by any industrial loan and investment company the real estate securing such loan shall be appraised in the manner provided by this section for appraisement of the real estate offered as security for a loan to be made by such industrial loan and investment company.

Subject to the limitations of this section relating to the fraction of the appraised value which may be loaned on real estate as security, a company may make variable rate mortgage loans and rollover mortgage loans subject to the same limitations and rights provided state chartered banks and federally chartered banks under IC 28-1-13.5.

(Formerly: Acts 1935, c.181, s.9; Acts 1947, c.135, s.1; Acts 1955, c.20, s.4; Acts 1971, P.L.399, SEC.4; Acts 1973, P.L.284, SEC.4.) As amended by Acts 1979, P.L.265, SEC.3; Acts 1980, P.L.176, SEC.7; P.L.8-1993, SEC.449; P.L.176-1996, SEC.17.

IC 28-5-1-10

Time for existing companies to comply with loan limits

Sec. 10. Except as otherwise provided in this chapter, any such company which holds obligations of indebtedness in violation of the limitations prescribed in this chapter shall, by July 1, 1938, cause the amount of such obligations to conform to the limitations prescribed in this chapter. The department may, in its discretion, extend the time for effecting such conformity, in individual instances, if the interests of the creditors will be protected and served by such extension. Upon the failure of any such company to comply with such limitations, in accordance with the terms of this section or in accordance with any

order of the department with relation to such limitations, the department may declare that such company is conducting its business in an unauthorized or unsafe manner and proceed in accordance with IC 28-1-3.1-2.
(Formerly: Acts 1935, c.181, s.10.) As amended by P.L.263-1985, SEC.152.

IC 28-5-1-11
Acquisition or conveyance of real estate; purposes

Sec. 11. (a) Any such company shall have the power to purchase, hold and convey real estate for the following purposes and for no others:

(1) Such as shall be necessary for the convenient transaction of its business, but the cost or value of such real estate as carried on its books shall not exceed fifty percent (50%) of the amount of its capital and surplus, without the written consent of the department.

(2) Such as shall be conveyed to it in satisfaction of debts or obligations previously contracted in the course of its dealings, or in exchange for real estate so conveyed to it.

(3) Such as it shall purchase at sales under judgments or decrees of foreclosure on mortgages held by such company or shall acquire as additional security for obligations due such company.

(4) Such as shall have been sold under a title-retaining, installment, real estate sales contract, the term of which does not exceed twelve (12) years, where such contract is either purchased by it or taken as collateral security for a loan. However, the total cost of all real estate sold on title-retaining installment sales contracts as carried on the books of the company shall not at any one (1) time exceed five percent (5%) of the total resources of the company when such real estate title-retaining installment sales contracts were acquired without the written approval of the department.

(b) No such company shall hold the title or possession of any real estate purchased or otherwise acquired to secure any debts or obligations due to it, for a longer period than ten (10) years after such real estate is or has been purchased or otherwise acquired without the consent in writing of the department. However, any such company may sell any real estate so purchased or otherwise acquired by it under a title-retaining installment real estate sales contract, the term of which shall not exceed twelve (12) years, and hold title or possession thereof until the same is conveyed to the purchaser thereof under the terms and provisions of any such contract.

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

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

(2) Real estate that is the location of facilities supporting the operations of the company, such as parking facilities, data

processing centers, loan production offices, automated teller machines, night depositories, facilities necessary for the operations of a company subsidiary, or other facilities that are approved by the director.

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

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

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

(1) the board of directors of the company, by resolution:

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

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

(2) the director determines that:

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

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

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

(Formerly: Acts 1935, c.181, s.11; Acts 1947, c.135, s.2; Acts 1955, c.20, s.5; Acts 1972, P.L.198, SEC.1.) As amended by P.L.14-1992, SEC.112; P.L.213-2007, SEC.60; P.L.217-2007, SEC.58.

IC 28-5-1-12

Certificates of indebtedness or investment; form; payment; withdrawals

Sec. 12. Any certificates of indebtedness or investment issued by any such company pursuant to the provisions of this chapter may be issued as fully paid or to be paid for in installments by the purchaser. All of the terms and conditions upon which any such certificate of indebtedness or investment is issued shall be clearly stated therein and any such company may by contract provide that it shall not be required to pay on such certificates of indebtedness or investment any amount exceeding its net receipts of the previous calendar month, in which event such certificates must be redeemed in the order in which they are presented for redemption or as otherwise prescribed by special regulation of the department.

(a) Fully paid certificates shall be payable at a date certain not less than ninety (90) days subsequent to the date of issue thereof, except that the company may pay such certificates prior to the maturity date whenever its reserve balance equals or exceeds the amount provided in section 13 of this chapter. Such company may at any time redeem any of such certificates upon thirty (30) days notice in writing to the holder thereof prior to such redemption. If such certificate is not presented for payment by the holder thereof at maturity, such certificate shall be payable thereafter only upon at least thirty (30) days notice in writing given by the holder thereof to the company issuing the same, except that any such company may waive such notice whenever its reserve balance equals or exceeds the amount provided in section 13 of this chapter.

(b) Installment certificates shall be payable only after ninety (90) days notice in writing given by the holder of the certificate to the company issuing the same, except that any such company may waive the notice whenever its reserve balance equals or exceeds the amount provided in section 13 of this chapter. The company may at any time redeem any of the certificates upon thirty (30) days notice in writing to the holder of the certificate prior to such redemption.

(c) Subject to subsection (b), a company may permit the holder of any installment certificate of indebtedness or investment to make withdrawals from the certificate by negotiable or transferable instruments or orders, if the certificate is held by the type or category of holder permitted to hold a similar account with a financial institution controlled under 12 U.S.C. 3502.

(d) A company may require the owner of any installment certificate of indebtedness or investment which is subject to withdrawal by negotiable or transferable instruments or orders to maintain a minimum balance in that certificate of indebtedness or investment and may charge fees that are reasonable and competitive if the balance in the certificate of indebtedness or investment falls below a minimum required balance. Interest paid on certificates of investment or indebtedness subject to withdrawal by negotiable or transferable instruments or orders may not exceed the maximum rate allowable for those financial institutions whose interest rates are controlled under 12 U.S.C. 3502.

(Formerly: Acts 1935, c.181, s.12.) As amended by Acts 1980, P.L.177, SEC.1; Acts 1981, P.L.258, SEC.1; P.L.269-1983, SEC.2; P.L.269-1985, SEC.2.

IC 28-5-1-13

Certificates of indebtedness or investment; reserve balance

Sec. 13. Every company issuing any such certificates of indebtedness or investment shall at all times maintain a reserve balance equal to at least three percent (3%) of the total amount paid in on all of its outstanding certificates of indebtedness or investment, which said reserve balance shall consist of cash on hand or on demand deposit with a solvent and going bank or trust company. If at any time such reserve balance shall be reduced below the amount

herein prescribed, such company shall not issue any additional certificates of indebtedness or investment nor make any new loans or pay any dividends until such reserve balance shall have been fully restored to the amount herein prescribed. All of the officers and such of the directors as participate in violating any of the provisions of this section shall be jointly and severally liable to the holder or holders of any certificates of indebtedness or investment issued when such reserve balance is below the amount herein prescribed for any loss suffered or sustained by them accruing by reason of such violation. Any such company which maintains federal deposit insurance as authorized in section 6(a)(17) of this chapter and which maintains the reserves required by the Federal Reserve Act shall be considered to have complied fully with this section.
(Formerly: Acts 1935, c.181, s.13; Acts 1947, c.135, s.3; Acts 1955, c.20, s.6; Acts 1971, P.L.399, SEC.5.) As amended by P.L.269-1983, SEC.3.

IC 28-5-1-14
Surplus account; dividends

Sec. 14. Every such company shall on June 30 and December 31 of each year, and before the payment of any dividends on its outstanding stock, transfer to its surplus account a credit equal to five per cent (5%) of the net earnings of such company for the preceding six (6) months and shall accumulate such surplus account until the unimpaired amount thereof equals the amount of the capital stock of such company. No such company shall declare or pay dividends upon its stock in any form unless its capital is unimpaired and unless a surplus fund equal to twenty-five per cent (25%) of its capital has been accumulated and is maintained unimpaired. Thereafter any such company may annually or semiannually, but not more frequently declare and pay a dividend of so much of its net earnings as may be deemed expedient, but the rate of such dividend shall not exceed the rate of six per cent (6%) per annum upon the book value of its shares, as determined by the department, until the unimpaired surplus fund of the company is equal to the amount of its unimpaired capital stock.
(Formerly: Acts 1935, c.181, s.14.)

IC 28-5-1-15
Authority of department; examination of affiliates; examination of vendors

Sec. 15. (a) The department shall have charge of the organization, supervision, regulation, examination, and liquidation of all industrial loan and investment companies to which this chapter is applicable, to the same extent and in the same manner as is provided for financial institutions in IC 28-1 and IC 28-11, and for such purpose any company to which this chapter is applicable shall be deemed to be and shall be a financial institution within the meaning of the term as used in IC 28-1-2, IC 28-1-3.1, and IC 28-11. The department shall be subject to the same limitations with reference to the disclosure of information as is provided in IC 28-11-3-3.

(b) In conducting an examination of an industrial loan and investment company, the department shall include an examination of the affairs of all the industrial loan and investment company's affiliates necessary to disclose fully:

(1) the relations between the industrial loan and investment company and its affiliates; and

(2) the effect of the relations described in subdivision (1) upon the affairs of the industrial loan and investment company.

In conducting the examination of an affiliate of an industrial loan and investment company, the department has the same powers to examine the affiliate as the department has to examine the affairs of the industrial loan and investment company under this section.

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

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

(2) otherwise cease conducting business with the person.

(Formerly: Acts 1935, c.181, s.15.) As amended by P.L.263-1985, SEC.153; P.L.33-1991, SEC.47; P.L.213-2007, SEC.61; P.L.217-2007, SEC.59; P.L.35-2010, SEC.144.

IC 28-5-1-16

Records retention policy

Sec. 16. (a) The board of directors shall develop a records retention policy. In developing the policy, the board of directors shall consider:

(1) legal actions and administrative proceedings in which the production of company records is necessary or desirable;

(2) state and federal statutes of limitation applicable to legal actions and administrative proceedings; and

(3) the availability of information contained in the company records from other sources.

(b) Except for records that must be permanently retained, a company may dispose of a record that has been retained for the period required and in the manner required by the records retention policy. A company is not under a duty to produce the record in an action or proceeding after the disposal of the record.

(c) The department may require each such company to prepare and submit such reports of condition as are deemed necessary in any year,

and if the department so orders, any such company shall publish such statement of condition in the manner and form prescribed by the department.

(Formerly: Acts 1935, c.181, s.16.) As amended by P.L.263-1985, SEC.154; P.L.11-1998, SEC.10.

IC 28-5-1-17

Rules and regulations

Sec. 17. The department may by a majority vote of the members of the commission promulgate rules and regulations for any of the following purposes:

(1) Prescribing the methods and standards to be used in making the examinations and evaluating the assets and prescribing the forms of reports of any company to which this act is applicable.

(2) Defining what is a safe or an unsafe manner and a safe or unsafe condition for conducting and transacting business by any company to which this chapter is applicable.

(3) For the establishment of safe and sound methods for the transaction of business by any such company and for safeguarding the interests of creditors and shareholders thereof and, subject to section 6(a)(1) and (c) of this chapter, the rate of interest paid or to be paid, or service charges to be collected by any such company upon its certificates of investment or other evidences of indebtedness issued by it.

(4) For the administration and termination of the affairs of any such company which is in voluntary or involuntary liquidation or whose business and property have been taken possession of by the department pursuant to IC 28-1. And the department may take possession of the business and property of any such company in the same manner and reorganize or liquidate the same under the conditions with reference to other financial institutions as prescribed in IC 28-1.

(Formerly: Acts 1935, c.181, s.17; Acts 1937, c.105, s.5; Acts 1949, c.229, s.2.) As amended by Acts 1978, P.L.2, SEC.2817; Acts 1982, P.L.169, SEC.2.

IC 28-5-1-18

Fidelity coverage for officers and employees; bonds; reserve funds

Sec. 18. Every company shall make provision for adequate fidelity coverage for all officers and employees having access to money or bonds of the company. The amount and form of fidelity coverage must be approved by the board of directors of the company. Coverage may be provided:

(1) in the form of a blanket fidelity bond issued by a corporate surety authorized to transact business in Indiana; or

(2) through the establishment of a separate reserve fund within the company for that purpose.

(Formerly: Acts 1935, c.181, s.18.) As amended by P.L.276-1987, SEC.2.

IC 28-5-1-19
Exclusion from banking business; false advertising; desist orders

Sec. 19. A company may not engage in the banking or trust business, operate a savings bank, commercial bank or trust company, advertise or hold itself out to the public as a bank, savings bank or trust company, or use the word "bank" in connection with its name or business in any of its advertising or literature. A company may not accept deposits or "savings accounts" or advertise or hold itself out to the public as accepting deposits of money or "savings accounts", unless the company maintains federal deposit insurance, as authorized by section 6(a)(16) of this chapter. A company may not advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever, any statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action which is false, misleading, or calculated to deceive. If any company refers in any advertising matter to the rate of charge upon loans to be made by it, the department may require such company to state such rate of charge fully and clearly in such manner as it may deem necessary to prevent misunderstanding thereof by prospective borrowers. The department may order any company to desist from any conduct which it shall find to be a violation of this section.

(Formerly: Acts 1935, c.181, s.19.) As amended by P.L.269-1983, SEC.4; P.L.90-2008, SEC.37.

IC 28-5-1-20
Repealed

(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 28-5-1-21
Elimination of certificates of indebtedness or certificates of investment, deposits, or savings accounts

Sec. 21. Companies that do not have any certificates of indebtedness, certificates of investment, deposits, or savings accounts outstanding shall not be subject to the provisions of sections 5, 8 through 14, and 18 of this chapter. After February 27, 1951, no company engaged in business on February 27, 1951, under this chapter as permitted by this section, and no company authorized after February 27, 1951, to engage in business under this chapter, shall at any time thereafter be empowered and authorized to issue, negotiate, or sell, or shall issue, negotiate, or sell certificates of investment or indebtedness. These restrictions shall not limit the power of such corporations otherwise to borrow money commercially or to issue and sell their capital stock.

(Formerly: Acts 1935, c.181, s.20a; Acts 1951, c.79, s.2.) As amended by P.L.263-1985, SEC.155; P.L.176-1996, SEC.18.

IC 28-5-1-22
Violations

Sec. 22. A person who violates a provision of this chapter for which there is no other penalty provided commits a Class C infraction.
(Formerly: Acts 1935, c.181, s.21.) As amended by Acts 1978, P.L.2, SEC.2818.

IC 28-5-1-22.1
Prohibited transactions
Sec. 22.1. An industrial loan and investment company is prohibited from entering into any transaction that would be prohibited for a bank under IC 28-1-18.2.
As added by P.L.192-1997, SEC.12.

IC 28-5-1-23
Taxation
Sec. 23. All industrial loan and investment companies subject to the provisions of this chapter shall be taxed in the same manner as banks and trust companies are taxed under IC 6-5.5.
(Formerly: Acts 1935, c.181, s.21a; Acts 1969, c.129, s.3.) As amended by P.L.263-1985, SEC.156; P.L.347-1989(ss), SEC.22.

IC 28-5-1-24
Repealed
(Repealed by Acts 1978, P.L.2, SEC.2824.)

IC 28-5-1-25
Conversion into state bank, trust company, or savings association
Sec. 25. (a) Any industrial loan and investment company organized under this chapter may, upon approval of the department, convert into a state bank or trust company or a savings association.
(b) The department shall prescribe the procedure for conversion under this section. The department shall prescribe a procedure that includes the following conditions:
(1) The conversion must be proposed by the board of directors of the industrial loan and investment company in a resolution of conversion.
(2) The resolution of conversion must be adopted by an affirmative vote of at least two-thirds (2/3) of the shareholders of the industrial loan and investment company.
(3) The industrial loan and investment company must provide all relevant information requested by the department in connection with the conversion.
(c) Upon conversion, an industrial loan and investment company has all the rights, privileges, immunities, and powers, and is subject to all the duties, restrictions, penalties, and liabilities of a bank or trust company organized under IC 28-1 or a savings association organized under IC 28-4 (before its repeal) or under IC 28-15.
As added by P.L.164-1988, SEC.10. Amended by P.L.79-1998, SEC.71.

IC 28-5-1-26

Requirement to provide property tax information in certain transactions

Sec. 26. With respect to a residential real property financing or refinancing, an industrial loan and investment company shall comply with IC 6-1.1-12-43.

As added by P.L.64-2004, SEC.30.

IC 28-5-2

Chapter 2. Survivors–Payment

IC 28-5-2-1

Repealed

(Repealed by Acts 1976, P.L.123, SEC.3.)

IC 28-5-2-2

Payment after death of certificate holder

Sec. 2. If any certificate holder of any industrial loan and investment company shall die, leaving unpledged certificates in such company and no executor of his will or administrator of his estate has been appointed, such company, upon receiving a waiver from the inheritance tax administrator under IC 6-4.1, may, in its discretion, pay the value of such certificates to the widow, widower, or next of kin, or may apply the value of such certificates to the payment of funeral expenses or the expenses of the last sickness or other just debts of the decedent. As a condition of such payment, such company shall require proof by affidavit as to the parties in interest and shall also require the filing of proper waivers and the execution of a bond of indemnity with proper sureties from the parties interested, and a proper acquittance and receipt for such payment by the person to whom such payment is made shall fully release the company, and such company shall not thereafter be held liable to the decedent's executor or administrator thereafter appointed, or to any other person.
(Formerly: Acts 1953, c.61, s.2.) As amended by P.L.254-1997(ss), SEC.27.

IC 28-5-2-3

Laws applicable

Sec. 3. Payment of the certificates as provided in sections 1 and 2 of this chapter shall be subject to the provisions set forth in IC 28-5-1-12.
(Formerly: Acts 1953, c.61, s.3.) As amended by P.L.263-1985, SEC.157.

IC 28-5-3

Chapter 3. Minors

IC 28-5-3-1

Purchase of certificates of investment or indebtedness; no age restriction

Sec. 1. All persons, regardless of age, may become purchasers of instalment or fully paid certificates of investment or indebtedness issued by any industrial loan and investment company organized under the laws of this state. When any such certificate of investment or indebtedness is purchased by or in the name of a person under the age of eighteen (18) years any such certificate of investment or indebtedness or interest credited in respect thereto may be paid to, redeemed or withdrawn by such person by check, endorsement receipt or other written instrument, which check, endorsement receipt or other instrument in writing shall constitute a receipt or acquittance, if the same is signed by such person, and shall be a valid release and discharge to the industrial loan and investment company for all payments, redemptions or withdrawals so made to the same extent as if such person were eighteen (18) years of age.

(Formerly: Acts 1953, c.46, s.1; Acts 1973, P.L.280, SEC.9.)

IC 28-5-3-2

Loans; misrepresenting age; estoppel by representation

Sec. 2. When, in case of any loan made by any industrial loan and investment company organized under the laws of this state, the borrower or any other person furnishing security on behalf of the borrower, shall, as an inducement to such industrial loan and investment company to make the loan, represent to it, in writing, that he or she is eighteen (18) years of age or older or otherwise make any false statement or representation to any such industrial loan and investment company, and such company is 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 industrial loan and investment company, to take advantage of the fact that the person making the representation was under eighteen (18) years of age, but each person shall be estopped by such representation.

(Formerly: Acts 1953, c.46, s.2; Acts 1973, P.L.280, SEC.10.) As amended by P.L.134-2001, SEC.15.

IC 28-5-3-3

Law applicable

Sec. 3. Payment of certificates as provided in section 1 of this chapter shall be subject to the provisions set forth in IC 28-5-1-12.

(Formerly: Acts 1953, c.46, s.3.) As amended by P.L.263-1985, SEC.158.

IC 28-6

ARTICLE 6. REPEALED

(Repealed by P.L.42-1993, SEC.103.)

IC 28-6.1

ARTICLE 6.1. SAVINGS BANKS

IC 28-6.1-1

Chapter 1. General Provisions

IC 28-6.1-1-1

Application of article

Sec. 1. Except as provided in this article, this article applies to all savings banks.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-1-2

Applicability of corporate governance laws; references

Sec. 2. (a) This section applies only to a savings bank (whether in stock or mutual form of ownership) that was:

(1) formed as a result of conversion under IC 28-1-21.7, IC 28-1-21.8, or IC 28-1-21.9 after December 31, 1992;

(2) incorporated under IC 28-12; or

(3) formed as a result of conversion under IC 28-1-30.

(b) A savings bank described in subsection (a) is governed by IC 28-13 in addition to this article.

(c) A reference in this article to formation and operation by a board means formation by conversion and operation by an elected board of directors.

(d) As to a mutual savings bank, a reference in IC 28-13-5, IC 28-13-6, IC 28-1-7, IC 28-1-7.1, IC 28-1-8, or IC 28-1-9 to shareholders and shareholders' meetings means members and members' meetings.

(e) Notwithstanding subsection (d), in a proposed disposition described in IC 28-1-8-3(b), the rights and remedies for dissenting shareholders set forth in IC 28-1-7-21 do not apply.

As added by P.L.42-1993, SEC.72. Amended by P.L.122-1994, SEC.94; P.L.192-1997, SEC.13; P.L.62-1999, SEC.3; P.L.27-2012, SEC.81; P.L.13-2013, SEC.73.

IC 28-6.1-2
Chapter 2. Definitions

IC 28-6.1-2-1
Application of definitions
Sec. 1. The definitions in this chapter apply throughout this article.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-2-2
Board
Sec. 2. "Board" refers to either of the following:
(1) If the savings bank was organized, reorganized, or operating under IC 28-6 (before its repeal) before January 1, 1993, the term refers to the board of trustees of the savings bank.
(2) If the savings bank is not described by subdivision (1), the term refers to the board of directors of the savings bank.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-2-2.4
Repealed
(Repealed by P.L.27-2012, SEC.82.)

IC 28-6.1-2-2.5
Repealed
(Repealed by P.L.27-2012, SEC.83.)

IC 28-6.1-2-3
Department
Sec. 3. "Department" refers to the department of financial institutions established by IC 28-11-1-1.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-2-4
Member
Sec. 4. "Member" means a deposit account holder or borrower in a mutual savings bank formed as a result of a conversion under IC 28-1-21.7 after December 31, 1992.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-2-5
Mutual savings bank
Sec. 5. "Mutual savings bank" means a savings bank that is:
(1) governed by members; and
(2) formed as the result of a conversion under IC 28-1-21.7 after December 31, 1992.
As added by P.L.42-1993, SEC.72. Amended by P.L.262-1995, SEC.66.

IC 28-6.1-2-6
Savings bank

Sec. 6. "Savings bank" means any of the following:

(1) A financial institution organized, reorganized, or operating under IC 28-6 (before its repeal) before January 1, 1993.

(2) A financial institution formed as the result of a conversion under IC 28-1-21.7, IC 28-1-21.8, or IC 28-1-21.9.

(3) A stock savings bank incorporated under IC 28-12.

As added by P.L.42-1993, SEC.72. Amended by P.L.122-1994, SEC.95.

IC 28-6.1-2-7
Stock savings bank

Sec. 7. "Stock savings bank" means a savings bank that is owned by the holders of capital stock and that was:

(1) formed as the result of conversion under IC 28-1-21.8 or IC 28-1-21.9 after December 31, 1992; or

(2) incorporated under IC 28-12.

As added by P.L.42-1993, SEC.72. Amended by P.L.122-1994, SEC.96.

IC 28-6.1-2-8
Trustee

Sec. 8. "Trustee" refers to a member of the board of a savings bank organized, reorganized, or operating under IC 28-6 (before its repeal) before January 1, 1993.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-3

Chapter 3. The Board of Trustees of Savings Banks Organized, Reorganized, or Operating before January 1, 1993

IC 28-6.1-3-1

Application of chapter

Sec. 1. This chapter applies only to a savings bank organized, reorganized, or operating under IC 28-6 (before its repeal) before January 1, 1993.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-3-2

Court

Sec. 2. As used in this chapter, "court" refers to the circuit court of the county in which the savings bank is located.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-3-3

Number of trustees

Sec. 3. The board of trustees of the savings bank must have at least seven (7) but not more than twenty-one (21) trustees.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-3-4

Qualifications of trustees

Sec. 4. An individual must have the following qualifications to be a trustee:

(1) The individual must be a citizen of Indiana for at least five (5) years before becoming a trustee.

(2) The individual must have an equity in real estate:

(A) located in the county in which the savings bank is located; and

(B) worth at least five thousand dollars ($5,000), the value of which is determined by two (2) individuals designated by the court.

(3) The individual must in all respects be a suitable individual to be entrusted with the management of a savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-3-5

Vacancies; elections; qualifications of successors

Sec. 5. (a) A vacancy on the board of the savings bank is created if any of the following applies to a trustee:

(1) The trustee dies.

(2) The trustee resigns.

(3) The trustee is unable to discharge duties because of incapacity.

(4) The trustee moves from the county where the saving bank is located.

(5) The trustee becomes insolvent.

(6) The trustee fails for nine (9) successive months to attend the regular meetings of the board.

(b) The remaining trustees shall fill a vacancy created under subsection (a) by electing a successor by ballot.

(c) An election under subsection (b) may be held at a regular meeting of the board or at a special meeting of which the remaining trustees have been given notice.

(d) A successor is elected upon a majority vote of the remaining trustees.

(e) A successor must possess the qualifications set forth in section 4 of this chapter.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-3-6

Vacancies; judicial appointments

Sec. 6. (a) If the board fails to fill a vacancy under section 5 of this chapter for three (3) months after the vacancy is created, the court shall, subject to subsection (b), appoint an individual qualified under this chapter to fill the vacancy.

(b) The court shall fill the vacancy upon the written request of:

(1) any three (3) trustees; or

(2) at least two percent (2%) of the depositors in the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-3-7

Vacancies; successors' certificates of qualification and fitness

Sec. 7. (a) An individual elected or appointed to fill a vacancy shall obtain from the court a certificate of qualification and fitness before the individual may enter upon duties as a trustee.

(b) A certificate issued under subsection (a) shall be:

(1) recorded in the journal of the proceedings of the savings bank; and

(2) be filed with the department.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-3-8

Presidents; officers and agents

Sec. 8. (a) The trustees of the savings bank shall elect from among the trustees a president.

(b) The trustees may choose from among the trustees, or otherwise, other officers or agents the trustees consider necessary to conduct the business of the savings bank.

(c) The officers and agents hold their offices at the pleasure of the board and until their successors are chosen and qualified.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-3-9

Bylaws, rules, and regulations

Sec. 9. (a) Subject to Indiana law, the board of a savings bank may

from time to time make bylaws, rules, and regulations as the board considers proper for the following purposes:

(1) Election of officers.

(2) Prescribing the powers and duties of the officers.

(3) The manner of discharging the powers and duties of the officers.

(4) Appointment of committees.

(5) Prescribing the duties of committees.

(6) Generally for transacting the business of the corporation.

(b) The board shall send a copy of bylaws, rules, and regulations and any amendments to the bylaws, rules, or regulations to the auditor of state.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-3-10

Quorum

Sec. 10. (a) A quorum of the board of a savings bank consists of at least a majority of the trustees.

(b) Except as provided in subsection (c), the president or a vice president of the board must be present for a quorum to exist. Notwithstanding subsection (c), if the number of trustees is fifteen (15) or more, a quorum must consist of at least seven (7) trustees, with the president or a vice president present.

(c) The board may provide in the bylaws that the quorum consists of more than a majority of the trustees. If the bylaws provide for a quorum of nine (9) or more trustees, the bylaws may provide that a quorum exists without the presence of the president or a vice president of the board.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-3-11

Reducing number of trustees

Sec. 11. (a) The board of a savings bank may, by resolution incorporated in the bylaws of the savings bank, reduce the number of trustees to a number not less than the minimum number required by section 3 of this chapter.

(b) If the board adopts a resolution under subsection (a), the number of trustees may be reduced by not filling vacancies on the board as vacancies occur until the number of trustees reaches the number set in the resolution.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-3-12

Increasing number of trustees

Sec. 12. (a) Subject to section 3 of this chapter, the board of a savings bank may, by resolution incorporated in the bylaws of the savings bank, increase the number of trustees.

(b) The board may adopt a resolution under subsection (a) at any time.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-3-13
Meetings

Sec. 13. (a) The board shall hold regular meetings at least every three (3) months.

(b) The board may provide in the bylaws of the savings bank for:

(1) regular meetings more frequent than required by subsection (a); and

(2) the calling of special meetings.

(c) The board shall keep minutes of the proceedings of each meeting in a record provided for that purpose.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-3-14
Suspension of trustees

Sec. 14. (a) The auditor of state may at any time, by an order under the seal of the auditor of state, for due cause stated in the order, suspend a trustee from the board.

(b) Upon the application of two-thirds (2/3) of the trustees of a savings bank setting forth good reasons for the action in regard to a trustee, the auditor of state shall issue the order.

(c) Upon issuing an order under this section, the auditor of state shall send a copy of the order to each of the following:

(1) The savings bank. The order shall be entered in full in the minutes of the savings bank.

(2) To the suspended trustee. Upon request of the trustee, the auditor of state shall send the original order to the trustee.

(3) To the judge of the court.

(d) The judge of the court, after giving proper notice to the trustee and an opportunity for the trustee to be heard in the trustee's defense, may vacate or confirm the order. Confirmation of an order under this subsection operates to remove the trustee from office.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-4

Chapter 4. Board Members, Officers, and Employees

IC 28-6.1-4-1

Compensation

Sec. 1. A savings bank may pay its officers, board members, and employees reasonable compensation for services rendered that the board of the savings bank determines.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-4-2

Group insurance; retirement and pension plans

Sec. 2. A savings bank may purchase group insurance and provide retirement or pension plans for its officers and employees, with or without the officers' or employees' participation in the cost of the insurance or plans.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-4-3

Special service compensation

Sec. 3. (a) A savings bank that has accumulated a surplus of at least five percent (5%) upon its deposits may pay board members who render special personal service (beyond the ordinary duty of attending meetings and serving upon committees other than of examination) compensation determined by the board.

(b) A board member for whom special service compensation is under consideration by the board may not vote upon the question.

(c) If, after special compensation is paid to a board member under subsection (a), the savings bank's surplus becomes impaired so as to be less than five percent (5%) of its deposits, the special compensation to the board member shall cease until the surplus is again at least five percent (5%) of deposits.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-4-4

Repealed

(Repealed by P.L.122-1994, SEC.122.)

IC 28-6.1-4-4.1

Indemnification of directors; application to banks formed before January 1, 1993

Sec. 4.1. (a) The provisions concerning indemnification of directors set forth in IC 28-13-13 shall apply to savings banks formed before January 1, 1993.

(b) In the application of IC 28-13-13 to a savings bank formed before January 1, 1993, references in IC 28-13-13 to "directors" and "the board of directors" shall be treated as referring to the trustees and the board of trustees of the savings bank.

As added by P.L.122-1994, SEC.97.

IC 28-6.1-5

Chapter 5. Fidelity Coverage for Savings Banks

IC 28-6.1-5-1

Provision of coverage

Sec. 1. A savings bank shall make provision for adequate fidelity coverage for all officers and employees having access to money or bonds of the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-5-2

Approval of amount and form of coverage

Sec. 2. The amount and form of fidelity coverage must be approved by the board of the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-5-3

Form of coverage

Sec. 3. Fidelity coverage may be provided in either of the following ways:

(1) In the form of a blanket fidelity bond issued by a corporate surety authorized to transact business in Indiana.

(2) Through establishment of a separate reserve fund within the savings bank for that purpose.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-6

Chapter 6. General Powers of a Savings Bank

IC 28-6.1-6-1

Discounting, negotiating, selling, and guaranteeing evidences of debt

Sec. 1. A savings bank may discount, negotiate, sell, and guarantee promissory notes, bonds, drafts, acceptances, bills of exchange, and other evidences of debt.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-2

Buying and selling exchange, coin, and bullion

Sec. 2. A savings bank may buy and sell exchange, coin, and bullion.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-3

Loaning money

Sec. 3. A savings bank may loan money.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-4

Borrowing money

Sec. 4. A savings bank may borrow money and do the following:

(1) Issue notes, bonds, or debentures to evidence that borrowing.

(2) Mortgage, pledge, or hypothecate any of its assets to secure the repayment of that money.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-5

Receiving savings and demand deposits

Sec. 5. (a) A savings bank may receive savings deposits and, subject to subsection (b), demand deposits.

(b) If a savings bank accepts demand deposits, the savings bank shall establish and maintain the reserve balances prescribed by law applicable to banks and trust companies or by any general rules of the department, when the law, rules, and regulations apply to all banks and trust companies alike.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-6

Receiving deposits of securities and personal property

Sec. 6. A savings bank may receive deposits of securities or other personal property from any person or corporation, upon terms agreed upon by the parties.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-7

Contracting for and receiving highest rate of interest

Sec. 7. A savings bank may contract for and receive on loans and discounts the highest rate of interest allowed to be contracted for and received by individuals.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-8
Accepting drafts for future payment; issuing letters of credit
Sec. 8. A savings bank may accept for future payment drafts drawn upon the savings bank by its customers and may issue letters of credit with a specific expiration date authorizing the holders of the letters to draw drafts upon the savings bank or its correspondents at sight or on time.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-9
Exercising general banking powers; issuing money
Sec. 9. A savings bank may exercise all the powers incidental, proper, necessary, or usual in carrying on a general banking business, but it may not issue bills to circulate as money.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-10
Receiving deposits of state and federal public funds
Sec. 10. (a) A savings bank may receive deposits of state and federal public funds:
(1) on the same terms and conditions;
(2) with the same rights and privileges; and
(3) subject to the same duties and obligations;
as provided by law for banks of discount and deposit, trust companies, and other financial institutions.
(b) The power under subsection (a) includes the right to pledge securities or other assets for the repayment of the deposits if the pledge is permitted by applicable law or regulation.
As added by P.L.42-1993, SEC.72. Amended by P.L.35-2010, SEC.145.

IC 28-6.1-6-11
Acting as fiscal or transfer agent of government bodies
Sec. 11. A savings bank may act as a fiscal or transfer agent of the United States or of any state, municipality, body politic or corporate, and in that capacity receive and disburse money.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-12
Transferring, registering, and countersigning certificates of stock, bonds, and other evidences of indebtedness
Sec. 12. A savings bank may transfer, register, and countersign certificates of stock, bonds, or other evidence of indebtedness and authenticate and certify the bonds and certificates of indebtedness.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-13
Acting as agent to buy and sell transportation

Sec. 13. A savings bank may act as an agent to buy and sell domestic and foreign transportation.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-14
Soliciting and writing insurance; acting as insurance producer for life insurance or annuity; prohibitions; authority to purchase and hold life insurance

Sec. 14. (a) A savings bank may solicit and write insurance as an insurance producer or a broker for any insurance company authorized to do business in the state or states where the insurance producer or broker operates.

(b) A savings bank or its affiliate (as defined in IC 28-6.2-1-4) may act as an insurance producer for the sale of any life insurance policy or annuity contract issued by a life insurance company (as defined in IC 27-1-2-3) authorized to do business in the state or states where the insurance producer operates.

(c) A savings bank or its affiliate that acts as an insurance producer for the sale of a life insurance policy or an annuity contract under subsection (b):

(1) is subject to all requirements of IC 27 with respect to the insurance producer's activity in Indiana; and

(2) must comply with the disclosure requirements under IC 27-1-38.

(d) A savings bank or its affiliate may not condition:

(1) an extension of credit;

(2) a lease or sale of real or personal property;

(3) the performance of a service; or

(4) the amount charged for:

(A) extending credit;

(B) leasing or selling real or personal property; or

(C) performing services;

upon a person's purchase of a life insurance policy or an annuity contract from the savings bank or its affiliate.

(e) This section does not prohibit a savings bank or its affiliate from requiring that a person, as a condition to a transaction, obtain a life insurance policy from an insurance company acceptable to the savings bank or its affiliate.

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

(1) Life insurance purchased or held in connection with employee compensation or benefit plans approved by the savings bank's board.

(2) Life insurance purchased or held to recover the cost of providing preretirement or postretirement employee benefits approved by the savings bank's board.

(3) Life insurance on the lives of borrowers.
(4) Life insurance held as security for a loan.
(5) Life insurance that a national bank may purchase or hold under 12 U.S.C. 24 (Seventh).

As added by P.L.42-1993, SEC.72. Amended by P.L.262-1995, SEC.67; P.L.188-1997, SEC.8; P.L.63-2001, SEC.14 and P.L.134-2001, SEC.16; P.L.130-2002, SEC.7; P.L.178-2003, SEC.92; P.L.10-2006, SEC.36 and P.L.57-2006, SEC.36; P.L.27-2012, SEC.84.

IC 28-6.1-6-15
Acting as attorney

Sec. 15. A savings bank may act as an attorney in fact or agent of any foreign or domestic person or corporation for any lawful purpose.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-16
Receiving personal property for deposit

Sec. 16. (a) A savings bank may do the following:
(1) Receive upon deposit for safekeeping or in escrow, money, bonds, mortgages, jewelry, plate, stock, securities, valuable papers of any kind, and other personal property.
(2) Lease receptacles for safe deposits of personal property.

(b) The savings bank may prescribe terms and conditions not inconsistent with this section for the receiving or leasing authorized by subsection (a).

(c) A savings bank or any of the savings bank's assets are not liable for the value of any property received by the savings bank under the power conferred by this section or for damages for the loss, theft, or misappropriation of the property.

(d) A savings bank may procure and carry insurance for the benefit of the owners of property received by the savings bank under the power conferred by this section.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-17
Acting under court appointment

Sec. 17. A savings bank may act under court appointment as any of the following:
(1) Commissioner for the sale of real property.
(2) Guardian of the person or estate of an incapacitated person (as defined in IC 29-3-1-7.5), or in other instances where a guardian may be appointed.
(3) Trustee, receiver, conservator, or committee of the property or estate of a person or corporation in insolvency or bankruptcy proceedings.
(4) Depository of money paid into court, whether for the benefit of a person or corporation.
(5) In any other fiduciary capacity.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-18
Acting in probate

Sec. 18. (a) A savings bank may do any of the following:

(1) Act as the personal representative of the estate of a deceased individual.

(2) Act as the trustee under the last will and testament of a deceased individual.

(3) Act under court appointment as personal representative or trustee under a last will and testament, when the savings bank is the successor to a corporation appointed in the last will and testament.

(b) When an individual is appointed with a savings bank as receiver, guardian, commissioner, trustee, or personal representative, the individual's appointment may be under the limitation of powers and upon the terms and conditions of possession and control of the trust assets by the savings bank, or otherwise. If the individual is required to give bond or security, the bond or security shall be as:

(1) the individual and the savings bank agree; and

(2) approved by the court or judge making the appointment.

(c) When an individual who is appointed in a fiduciary capacity is required to give a bond or security for the faithful performance of duties, the savings bank may guarantee or become surety for the individual if:

(1) the savings bank takes possession and control of the assets involved; and

(2) approved by the court having jurisdiction of the fiduciary.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-19
Acting as guardian, trustee, or personal representative

Sec. 19. (a) A savings bank may act under court appointment as guardian, trustee, or personal representative on the application or consent of a person acting or entitled to act as such and in the place of that person.

(b) An appointment under subsection (a) may be made:

(1) upon notice required by law to the persons interested in the estate or fund; and

(2) with the consent of the principal beneficiaries or other persons interested in the estate or fund;

as the court making the appointment considers proper.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-20
Taking, accepting, and executing trusts

Sec. 20. A savings bank may do any of the following:

(1) Take, accept, and execute a legal trust, duties, and powers in regard to:

(A) the holding, management, sale, or disposition of property; and

(B) the rents and profits from that property;

that are granted or confided to the savings bank by any authority.

(2) Take, accept, and execute a trust and any powers that may be conferred upon the savings bank by any authority.

(3) Generally execute legal trusts of every description.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-21

Acting in fiduciary capacity

Sec. 21. (a) Except as otherwise provided in this article, a savings bank may act:

(1) in a fiduciary capacity permitted by this article; and

(2) as commissioner for the sale of real estate;

without bond or other security.

(b) When a savings bank is acting in a fiduciary capacity, the savings bank may administer oaths attested by the signature of the savings bank's secretary or cashier and the savings bank's seal in the same fashion as an individual acting in the same capacity may administer oaths.

(c) The court having jurisdiction of the fiduciary may require a bond or other security at any time. Upon failure of the savings bank to give a bond or security as required, the court may remove the savings bank and revoke the savings bank's appointment.

(d) A savings bank may not pledge or deposit any of its assets as a condition to the exercise of any of its powers as a fiduciary.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-22

Receiving fees, commissions, gifts, and things of value

Sec. 22. Except as otherwise provided by law, an officer, a trustee, an employee, an agent, or an attorney of a savings bank commits a Class A misdemeanor if the individual stipulates for, receives, or agrees to receive a fee, commission, gift, or thing of value from any person for the purpose of procuring or attempting to procure for any person:

(1) a loan from a savings bank; or

(2) the purchase or discount of any paper, note, draft, check, or bill of exchange by a savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-22.5

Profit or commission on sales or purchases; necessity of specific authorization; surcharge

Sec. 22.5. (a) Except for interest at the legal rate on a loan or advancement, a savings bank may not, directly or indirectly, receive a profit or commission from the sale to or purchase from an estate, a guardianship, or a trust of which the savings bank is the fiduciary unless the profit or commission is authorized by agreement with the creator of the trust or a court with jurisdiction over the estate, guardianship, or trust.

(b) A savings bank that receives a profit or commission in violation of subsection (a) shall be surcharged an amount equal to the profit or commission. In addition, a court with jurisdiction over the estate, guardianship, or trust may remove the savings bank as the fiduciary.
As added by P.L.192-2003, SEC.5.

IC 28-6.1-6-23
Requesting mergers, consolidations, and joinings

Sec. 23. Notwithstanding any other provision of this article, a savings bank may request under IC 28-1-7-25 or IC 28-3-2-10 that the department order its merger, consolidation, or other joining with a bank or trust company organized under IC 28-1 or with a national banking association.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-6-24
Request to exercise rights and privileges granted to national banks; appeal

Sec. 24. (a) As used in this section, "rights and privileges" means the power:

(1) to:
(A) create;
(B) deliver;
(C) acquire; or
(D) sell;
a product, a service, or an investment that is available to or offered by; or
(2) to engage in mergers, consolidations, reorganizations, or other activities or to exercise other powers authorized for;

national banks domiciled in Indiana.

(b) Subject to the conditions set forth in this section, a savings bank may exercise the rights and privileges that are or may be granted to national banks domiciled in Indiana.

(c) A savings bank that intends to exercise any rights and privileges that are:

(1) granted to national banks; but
(2) not authorized for a savings bank under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

shall submit a letter to the department describing in detail the requested rights and privileges granted to national banks that the savings bank intends to exercise. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter submitted by the company.

(d) The department shall promptly notify the requesting savings bank of the department's receipt of the letter submitted under subsection (c). Except as provided in subsection (f), the savings bank may exercise the requested rights and privileges sixty (60) days after the date on which the department receives the letter unless otherwise

notified by the department.

(e) The department may deny the requested rights and privileges if the department finds that:

(1) national banks domiciled in Indiana do not possess the requested rights and privileges;

(2) the exercise of the requested rights and privileges by the savings bank would adversely affect the safety and soundness of the savings bank;

(3) the exercise of the requested rights and privileges by the savings bank would result in an unacceptable curtailment of consumer protection; or

(4) the failure of the department to approve the requested rights and privileges will not result in a competitive disadvantage to the savings bank.

(f) The sixty (60) day period referred to in subsection (d) may be extended by the department based on a determination that the savings bank's letter raised issues requiring additional information or additional time for analysis. If the sixty (60) day period is extended under this subsection, the savings bank may exercise the requested rights and privileges only if the savings bank receives prior written approval from the department. However:

(1) the department must:

(A) approve or deny the requested rights and privileges; or

(B) convene a hearing;

not later than sixty (60) days after the department receives the savings bank's letter; and

(2) if a hearing is convened, the department must approve or deny the requested rights and privileges not later than sixty (60) days after the hearing is concluded.

(g) The exercise of rights and privileges by a savings bank in compliance with and in the manner authorized by this section is not a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(h) If a savings bank receives approval to exercise the requested rights and privileges granted to national banks domiciled in Indiana, the department shall determine by order whether all savings banks may exercise the same rights and privileges. In making the determination required by this subsection, the department must ensure that the exercise of the rights and privileges by all savings banks will not:

(1) adversely affect their safety and soundness; or

(2) unduly constrain Indiana consumer protection provisions.

(i) If the department denies the request of a savings bank under this section to exercise any rights and privileges that are granted to national banks, the savings bank may appeal the decision of the department to the circuit court with jurisdiction in the county in which the principal office of the savings bank is located. In an appeal under this section, the court shall determine the matter de novo.

As added by P.L.194-1997, SEC.5. Amended by P.L.213-2007, SEC.62; P.L.217-2007, SEC.60; P.L.35-2010, SEC.146.

IC 28-6.1-6-25

Requirement to provide property tax information in certain transactions

Sec. 25. With respect to a residential real property financing or refinancing, a savings bank shall comply with IC 6-1.1-12-43.

As added by P.L.64-2004, SEC.31.

IC 28-6.1-6-26

Authorization for savings banks to use fiduciary funds in conflict of interest transactions; conditions; notice; required consent

Sec. 26. (a) Unless otherwise provided in an agreement or a trust, a savings bank that holds funds or property as a fiduciary may use the funds or property to purchase from the savings bank or an affiliate of the savings bank a product, service, or security, including an insurance product or security that is underwritten by the savings bank, an affiliate of the savings bank, or a syndicate or selling group that includes the savings bank or an affiliate of the savings bank, if:

(1) the purchase price and any ongoing charges and costs are fair, reasonable, and substantially equivalent to the cost of similar products and services; and

(2) the purchase complies with IC 30-4-3.5.

The compensation for the product, service, or security received by the savings bank or an affiliate of the savings bank or a syndicate or selling group that includes the savings bank, or an affiliate of the savings bank, may be in addition to the compensation that the savings bank is otherwise entitled to from the fiduciary account.

(b) A savings bank that makes a purchase or sale described in subsection (a) shall disclose, at least annually, to each person entitled to receive statements of account activity from the savings bank any purchase or sale made by the savings bank during the year. The disclosure must be in writing or an electronic format and include the following:

(1) Any capacity in which the savings bank or an affiliate of the savings bank acts for:

(A) the issuer of the securities; or

(B) the provider of the products or services;

that is the subject of the purchase or sale.

(2) A statement that the savings bank or an affiliate of the savings bank has an interest in the subject of the purchase or sale, if applicable.

(3) The rate and method by which that compensation was determined.

(4) The name, telephone number, street address, and mailing address of an officer of the savings bank who may be contacted for further information.

(5) A notice that the savings bank's ability to make transactions described in subsection (a) ends upon receipt at any time of a notice of objection by a majority of the persons entitled to receive statements of account activity.

(c) The following apply to a purchase or sale under subsection (a):

(1) Except as provided in subdivisions (2) and (3), if the fiduciary relationship is a trust or an agency, the trustee or agent shall treat the purchase or sale under subsection (a) as if it were a conflict of interest transaction under IC 30-4-3-5 and shall give any notice and obtain any consent that may be required under IC 30-4-3-5, subject to the following:

(A) IC 30-2-14-16 applies to any notice required to be given by a trustee or an agent under this subdivision, subject to the following:

(i) If the fiduciary relationship is a revocable trust with one (1) or more living grantors, the trustee must give notice only to the living grantors, who shall be considered to have all income and principal interests in the trust at the time the notice is given. If a grantor is incapacitated, the trustee shall give notice to the grantor's court appointed guardian, the principal under a durable power of attorney, or a co-trustee of the revocable trust, unless the guardian, principal, or co-trustee is the savings bank that seeks the consent. If the representative of the incapacitated grantor is the savings bank that seeks the consent to a purchase or sale under subsection (a), the trustee shall obtain consent from the court.

(ii) If the fiduciary relationship is a revocable trust and the assets of the revocable trust are distributable to one (1) or more other trusts, notice shall be given to the trustees of the other trusts. However, if the savings bank that seeks the consent to a purchase or sale under subsection (a) is the trustee of another trust to which the assets of the revocable trust are distributable, the savings bank shall give notice to those beneficiaries of the other trust who are entitled to receive statements of account activity from the savings bank.

(iii) If the fiduciary relationship is an agency, the principal must consent to the purchase or sale under subsection (a) in writing in advance of the transaction. The principal shall be considered to have all income and principal interests in the account at the time the notice of the proposed transaction is given. If the principal is incapacitated, consent must be obtained from the principal's court appointed guardian, unless the guardian of the incapacitated principal is the savings bank that seeks the consent. If the guardian of the incapacitated principal is the savings bank that seeks the consent, consent to a purchase or sale under subsection (a) must be obtained from the court supervising the principal's guardianship.

(B) If the fiduciary relationship is a trust, the following apply with respect to any consent required to be obtained under IC 30-4-3-5(a)(2):

(i) Notwithstanding the requirement under IC 30-4-3-5(a)(2)(A) that all interested persons provide

written consent to the proposed action, and subject to subdivision (2), a trustee, for a proposed purchase or sale under subsection (a), need only obtain the written consent of a majority of the persons entitled to notice under IC 30-2-14-16, as modified by clause (A). However, the trustee must obtain the written consent of at least one (1) beneficiary who is receiving income under the trust at the time of the notice and at least one (1) individual who would receive a distribution of principal if the trust were terminated at the time notice is given.

(ii) Upon obtaining the written consents required under item (i), the trustee need not wait until the period to make written objections under IC 30-2-14-16 ends in order to take the proposed action.

(2) Any consent granted under subdivision (1)(B)(i) may be revoked by a writing signed by a majority of the persons entitled to notice under IC 30-2-14-16, as modified by subdivision (1)(A). However, the revocation must be signed by:

(A) at least one (1) beneficiary who is receiving income under the trust at the time the revocation is signed; and

(B) at least one (1) individual who would receive a distribution of principal if the trust were terminated at the time the revocation is signed.

(3) The notice and consent otherwise required under subdivision (1) are not required if the purchase or sale under subsection (a) is specifically authorized:

(A) in the document creating the fiduciary relationship; or

(B) under IC 30-4-3-7.

As added by P.L.202-2007, SEC.2; P.L.226-2007, SEC.6. Amended by P.L.3-2008, SEC.222.

IC 28-6.1-7

Chapter 7. Powers of a Savings Bank Subject to the Rules of the Department

IC 28-6.1-7-1

Application of rules

Sec. 1. (a) The powers of a savings bank set forth in this chapter are subject to the rules of the department.

(b) A rule adopted under this chapter may apply to one (1) or more savings banks or to one (1) or more localities in Indiana as the department determines.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-7-2

Making FHA loans, advances of credit, and purchases of obligations

Sec. 2. (a) A savings bank may make loans and advances of credit and purchases of obligations representing loans and advances of credit that are eligible for insurance by the federal housing administrator and to obtain such insurance.

(b) An Indiana law:

(1) prescribing the nature, amount, or form of security;

(2) requiring security upon which loans or advances of credit may be made;

(3) prescribing or limiting interest rates upon loans or advances of credit; or

(4) prescribing or limiting the period for which loans or advances of credit may be made;

does not apply to loans, advances of credit, or purchases made under this section.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-7-3

Making FHA loans secured by mortgages

Sec. 3. (a) A savings bank may make loans secured by mortgages on real property or leasehold, as the federal housing administrator insures or makes a commitment to insure, and to obtain such insurance.

(b) An Indiana law:

(1) prescribing the nature, amount, or form of security;

(2) requiring security upon which loans or advances of credit may be made;

(3) prescribing or limiting interest rates upon loans or advances of credit; or

(4) prescribing or limiting the period for which loans or advances of credit may be made;

does not apply to loans made under this section.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-7-4

Purchasing, investing in, and disposing of FHA and national mortgage association bonds, notes, and debentures

Sec. 4. (a) A savings bank may purchase, invest in, and dispose of any of the following:

(1) Notes or bonds secured by mortgage or trust deed insured by the federal housing administrator.

(2) Debentures issued by the federal housing administrator.

(3) Bonds or other securities issued by national mortgage associations.

(b) An Indiana law:

(1) prescribing the nature, amount, or form of security;

(2) requiring security upon which loans or advances of credit may be made;

(3) prescribing or limiting interest rates upon loans or advances of credit; or

(4) prescribing or limiting the period for which loans or advances of credit may be made;

does not apply to purchases, investments, or dispositions made under this section.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-7-5

Extending credit to state agencies

Sec. 5. (a) A savings bank may extend credit to any state agency, with the approval of the department, notwithstanding any other provisions or limitations of IC 28-1.

(b) An Indiana law:

(1) prescribing the nature, amount, or form of security;

(2) requiring security upon which loans or advances of credit may be made;

(3) prescribing or limiting interest rates upon loans or advances of credit; or

(4) prescribing or limiting the period for which loans or advances of credit may be made;

does not apply to loans or advances of credit made under this section.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-7-6

Purchasing, taking, holding, and disposing of incorporated joint stock land bank notes and mortgages

Sec. 6. (a) A savings bank may purchase, take, hold, and dispose of notes and mortgages securing the notes, made to any incorporated joint stock land bank if not less than ninety-nine percent (99%) of the stock of the joint stock land bank is owned by the savings bank at the time the notes or mortgages are acquired by the savings bank.

(b) Upon dissolution of the joint stock land bank, or at any stage in the process of the dissolution, a savings bank then owning not less than ninety-nine percent (99%) of the stock of the joint stock land bank may take, hold, and dispose of notes, mortgages, or other assets of the joint stock land bank of any nature, including real estate,

wherever located, that the joint stock land bank assigns, transfers, conveys, or otherwise makes over to the savings bank by way of final or partial distribution of the joint stock land bank's assets to the joint stock land bank's stockholders upon the dissolution or in connection with the process of the dissolution.

(c) An Indiana law:

(1) prescribing the nature, amount, location, or form of security;

(2) requiring security upon which loans or advances of credit may be made;

(3) prescribing or limiting interest rates upon loans or advances of credit;

(4) prescribing or limiting the period for which loans or advances of credit may be made;

(5) prescribing any ratio between the amount of a loan and the appraised value of the security for the loan; or

(6) requiring periodic reductions of the principal of a loan;

does not apply to loans, notes, mortgages, real estate, or other assets subject to this section.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-7-7

Owning and leasing property

Sec. 7. Subject to any restrictions the department may impose, a savings bank may:

(1) become the owner or lessor of personal or real property upon the request of and for the use of a customer; and

(2) incur additional obligations incident to becoming an owner or a lessor of the property.

As added by P.L.42-1993, SEC.72. Amended by P.L.11-1998, SEC.11.

IC 28-6.1-7-8

Purchasing and constructing buildings to be leased to public authorities

Sec. 8. (a) A savings bank may purchase or construct buildings and hold legal title to a building to be leased to a municipal corporation or other public authority, for public purposes, having resources sufficient to make payment of all rentals as the payments become due.

(b) A lease agreement shall provide that upon expiration, the lessee will become the owner of the building.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-7-9

Purchasing, holding, and conveying real property to be used as branch savings bank and rental property; resolution

Sec. 9. (a) Subject to the prior written approval of the department, a savings bank may purchase, hold, and convey real property that is:

(1) improved or to be improved by a single, freestanding building; and

(2) to be used, in part, as a branch of the savings bank and, in part, as rental property for one (1) lessee.

(b) If real estate described in subsection (a) is held by a savings bank for at least one (1) year without being used as described in subsection (a), the board of directors of the savings bank shall state, by resolution, definite plans for the use of the real estate. A resolution adopted under this subsection shall be made available for inspection by the department.

(c) Unless a written extension of time is given by the department under this subsection, the savings bank shall open the branch not later than three (3) years after the acquisition date of the real estate. The department may grant an extension of time for the savings bank to open the branch if:

(1) the board of directors of the savings bank, by resolution:

(A) reaffirms annually that the savings bank expects to use the real estate as described in subsection (a) in the future; and

(B) explains the reason why the real estate has not yet been used as described in subsection (a); and

(2) the director determines that:

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

(B) the savings bank is holding the real estate to use the real estate in the future for one (1) of the purposes set forth in subsection (a).

(d) If the savings bank:

(1) does not open a branch on the real estate within the period specified in subsection (c); or

(2) removes its branch from the real estate;

the savings bank shall divest itself of all interest in the real estate not more than ten (10) years after the acquisition date of the real estate, if a branch was not opened, or ten (10) years after the removal date of the branch office.

(e) Except with the written approval of the department, the sum invested in real property and buildings used for the convenient transaction of the savings bank's business as provided in this section may not exceed fifty percent (50%) of the surplus and retained earnings of the savings bank.

As added by P.L.42-1993, SEC.72. Amended by P.L.213-2007, SEC.63; P.L.217-2007, SEC.61.

IC 28-6.1-7-10
Repealed

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

IC 28-6.1-7-11
Equity investments in community development corporations and community based economic development; limits; exceptions to limits; exposure to liability

Sec. 11. (a) As used in this section, "community based economic

development" refers to activities that seek to address economic causes of poverty within specific geographic areas, revitalizing the economic and social base of low income communities through activities that include:

(1) affordable housing development;

(2) small business and micro-enterprise support;

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

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

(5) employment and training efforts;

(6) human resource development; and

(7) social service enterprises.

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

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

(2) whose principal purpose includes the provision of:

(A) housing;

(B) community based economic development projects; and

(C) social services;

that primarily benefit low income individuals and communities.

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

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

(1) a community development corporation;

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

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

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

(A) primarily benefits low and moderate income individuals;

(B) primarily benefits low and moderate income areas;

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

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

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

(1) five percent (5%) of the capital and surplus of the savings bank without the prior written approval of the director; and

(2) fifteen percent (15%) of the capital and surplus of the

savings bank under any circumstances.

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

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

(2) the savings bank is adequately capitalized.

(g) A savings bank shall not make any investment under this section if the investment would expose the savings bank to unlimited liability.

As added by P.L.42-1993, SEC.72. Amended by P.L.136-1994, SEC.5; P.L.2-1995, SEC.114; P.L.27-2012, SEC.85.

IC 28-6.1-7-12

Purchasing, holding, and conveying real estate necessary for transaction of business

Sec. 12. (a) A savings bank may purchase, hold, and convey real estate that is necessary for the convenient transaction of the business of the savings bank.

(b) For the purposes of this section, real estate purchased or held for the convenient transaction of the business of a savings bank includes the following:

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

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

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

(c) If real estate referred to in subsection (b)(3) is held by a savings bank for one (1) year without being used as a savings bank office or facility, the board of trustees of the savings bank shall state, by resolution, definite plans for the use of the real estate. A resolution adopted under this subsection shall be made available for inspection by the department.

(d) Real estate referred to in subsection (b)(3) may not be held by a savings bank for more than three (3) years without being used as a savings bank office or facility unless both of the following apply:

(1) The board of the savings bank, by resolution:

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

(B) explains the reason why the real estate has not yet been used as a savings bank office or facility.

(2) The director determines that both of the following apply:

(A) The continued holding of the real estate by the savings bank does not endanger the safety and soundness of the savings bank.

(B) The savings bank is holding the real estate to use in the future for one (1) of the purposes set forth in subsection (b)(1) and (b)(2).

(e) Real estate referred to in subsection (b)(3) may not be held by a savings bank for more than ten (10) years without being used as a savings bank office or facility unless the department consents in writing to the continued holding of the real estate by the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-7-13

Paying interest and expenses

Sec. 13. A savings bank may not pay:

(1) interest contracted for with a depositor; or

(2) other expenses incurred in operating the business of the savings bank;

except from current earnings or undivided profits without the approval of the department.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-8

Chapter 8. Investment and Loan Powers of Savings Banks

IC 28-6.1-8-1

Application of article

Sec. 1. A savings bank may invest the money in the savings bank only as provided in this article.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-8-2

Making, arranging, purchasing, and selling real estate loans and extensions of credit

Sec. 2. A savings bank may make, arrange, purchase, or sell loans or extensions of credit secured by liens on interests in real estate as provided in IC 28-1-13-7.1.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-8-3

Making FHA loans, advances of credit, and purchases of obligations

Sec. 3. (a) Subject to rules of the department, a savings bank may do the following:

(1) Make loans and advances of credit and purchases of obligations representing loans and advances of credit eligible for insurance by the federal housing administrator, and to obtain such insurance.

(2) Make loans secured by mortgages on real property or leasehold, as the federal housing administrator insures or makes a commitment to insure, and to obtain such insurance.

(3) To purchase, invest in, and dispose of notes or bonds secured by mortgage or trust deed insured by the federal housing administrator or debentures issued by the federal housing administrator, or bonds or other securities issued by national mortgage associations.

(b) An Indiana law:

(1) prescribing the nature, amount, or form of security;

(2) requiring security upon which loans or advances of credit may be made;

(3) prescribing or limiting interest rates upon loans, advances, or credit; or

(4) prescribing or limiting the period for which loans, advances, or credit may be made;

does not apply to loans, advances of credit, or purchases made under subsection (a).

(c) A rule adopted by the department under this section may apply to one (1) or more savings banks and to one (1) or more localities in Indiana as the department determines.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-8-4

Lending deposited money

Sec. 4. (a) A savings bank may do the following:

(1) Lend the money deposited in the savings bank upon:

(A) individual credit;

(B) the security of comakers or personal endorsement;

(C) the mortgage or pledge of personal property, either tangible or intangible; or

(D) the pledge of choses in action.

(2) Discount, purchase, or otherwise acquire retail installment sales contracts, notes, bills of exchange, or acceptance or other choses in action.

(b) The savings bank may contract for and receive on loans and discounts described in this subsection the highest rate of interest allowed by Indiana law to be contracted for and received by individuals.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-8-5

Investing in real estate

Sec. 5. A savings bank may invest in real estate subject to IC 28-6.1-7-12.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-8-6

Investing in dealings in exchange

Sec. 6. (a) Subject to subsection (b), a savings bank may invest in dealing in exchange by purchasing and selling sight or time drafts and acceptances payable out of Indiana.

(b) A draft or an acceptance may not:

(1) exceed ten thousand dollars ($10,000); or

(2) have to exceed one hundred twenty (120) days to run from the time of its purchase.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-8-7

Becoming Federal Reserve System member and exercising conferred powers

Sec. 7. A savings bank may do any of the following to become a member of the Federal Reserve System and exercise all powers, not in conflict with Indiana law, conferred on a member of the Federal Reserve Act:

(1) Purchase and hold, for the purpose of becoming a member of the Federal Reserve System, so much of the capital stock of a federal reserve bank to qualify the savings bank for membership under the Federal Reserve Act (12 U.S.C. 221 et seq.).

(2) Do any of the following regarding federal deposit insurance:

(A) Make a deposit with the Federal Deposit Insurance Corporation to qualify the savings bank for membership in any fund for insurance of deposits provided by 12 U.S.C.

1811 through 1833e.

(B) Purchase and hold the amount of the capital stock of the Federal Deposit Insurance Corporation that will qualify the savings bank for membership in a fund described in clause (A).

(C) Exercise all powers, not in conflict with Indiana law, conferred upon members of a fund described in clause (A) or stockholders of the Federal Deposit Insurance Corporation.

(D) Anything necessary or appropriate to acquire and maintain insurance of the savings bank's deposits in accordance with federal law.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-8-8

Exercising powers relating to federal home loan banks and corporations

Sec. 8. Subject to any limitations imposed by the department through policy, a savings bank may do any of the following:

(1) Invest the money deposited in the savings bank in the shares of the capital stock, bonds, debentures, notes, or other obligations of a federal home loan bank of the United States.

(2) Become a member of the federal home loan bank of this or an adjoining district.

(3) Borrow money from:

(A) a bank described in subdivision (2);

(B) the Federal Deposit Insurance Corporation; or

(C) any other corporation.

(4) Transfer, assign to, and pledge with a bank described in subdivision (2), the Federal Deposit Insurance Corporation, or other corporation, any of the bonds, notes, contracts, mortgages, securities, or other property of the savings bank held or acquired, as security for the payment of loans entered into under subdivision (3).

(5) Exercise all rights, powers, and privileges conferred upon, and to do all things and perform all acts required of, members or shareholders of a federal home loan bank by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449).

As added by P.L.42-1993, SEC.72. Amended by P.L.258-2003, SEC.8.

IC 28-6.1-8-9

Investing in and selling shares of open-end investment companies

Sec. 9. A savings bank may invest the money deposited in the savings bank in and sell shares of open-end investment companies, the portfolios of which consist solely of securities eligible for purchase and sale by national banking associations, on terms and conditions prescribed by federal law or regulation for national banking associations.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-8-10

Depositing funds; permissible institutions and accounts

Sec. 10. A savings bank may deposit its funds in:

(1) a federally chartered savings association; or

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

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

As added by P.L.42-1993, SEC.72. Amended by P.L.79-1998, SEC.72; P.L.89-2011, SEC.45.

IC 28-6.1-9

Chapter 9. Lending Limitations of Savings Banks

IC 28-6.1-9-1

"Capital and surplus" and "unimpaired capital and surplus" defined

Sec. 1. As used in this chapter, "capital and surplus" and "unimpaired capital and surplus" have the meaning set forth in 12 CFR 32.2.

As added by P.L.42-1993, SEC.72. Amended by P.L.176-1996, SEC.19; P.L.213-2007, SEC.64; P.L.217-2007, SEC.62.

IC 28-6.1-9-2

Loans and extensions of credit

Sec. 2. As used in this chapter, "loans and extensions of credit" includes all direct or indirect advances of funds to a person made on the basis of an obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person. To the extent specified by the department, the term includes a liability of a savings bank to advance funds to or on behalf of a person under a contractual commitment.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-9-3

Person

Sec. 3. As used in this chapter, "person" includes an individual, an association, a business trust, a corporation, an estate, a joint venture, a sole proprietorship, a partnership, a trust, a government, or an agency, an instrumentality, or a political subdivision of a government, or any similar entity.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-9-4

Repealed

(Repealed by P.L.176-1996, SEC.35.)

IC 28-6.1-9-5

Limits on total loans and extensions of credit to one borrower; loans and extensions not fully secured; loans and extensions fully secured; derivative transactions

Sec. 5. (a) The total loans and extensions of credit by a savings bank to a person outstanding at one (1) time and not fully secured, as determined in a manner consistent with subsection (b), by collateral having a market value at least equal to the amount of the loan or extension of credit may not exceed fifteen percent (15%) of the unimpaired capital and unimpaired surplus of the savings bank.

(b) The total loans and extensions of credit by a savings bank to a person outstanding at one (1) time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to

the amount of the funds outstanding may not exceed ten percent (10%) of the unimpaired capital and unimpaired surplus of the savings bank. The limitation in this subsection is separate from and in addition to the limitation contained in subsection (a).

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

As added by P.L.42-1993, SEC.72. Amended by P.L.27-2012, SEC.86.

IC 28-6.1-9-6

Exceptions to lending limitations

Sec. 6. The limitations contained in section 5 of this chapter are subject to the following exceptions:

(1) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating the loan or extension of credit with recourse are not subject to any limitation based on capital and surplus.

(2) The purchase of bankers' acceptances of the kind described in 12 U.S.C. 372 and issued by other banks are not subject to any limitation based on capital and surplus.

(3) Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples are subject to a limitation of thirty-five percent (35%) of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent (115%) of the outstanding amount of the loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure them.

(4) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or treasury bills of the United States or by other similar obligations fully guaranteed as to principal and interest by the United States are not subject to any limitation based on capital and surplus.

(5) Loans or extensions of credit to or secured by unconditional takeout commitment or guarantees of an agency, a board, a bureau, a commission, a department, or other establishment of the United States or corporation wholly owned directly or indirectly by the United States are not subject to any limitation based on capital and surplus.

(6) Loans or extensions of credit secured by a segregated deposit account in the lending bank are not subject to any limitation based on capital and surplus.

(7) Loans or extensions of credit to a financial institution or to a receiver, conservator, superintendent of banks, or other agent in charge of the business and property of the financial institution, when the loans or extensions of credit are approved

by the director, are not subject to any limitation based on capital and surplus.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-9-7

Loan limitations for commercial paper carrying full recourse endorsements or unconditional guarantees

Sec. 7. (a) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper that carries a full recourse endorsement or an unconditional guarantee by the person transferring the paper is subject to a maximum limitation equal to twenty-five percent (25%) of the capital and surplus, notwithstanding the collateral requirements in section 5(b) of this chapter.

(b) If the savings bank's files or the knowledge of the savings bank's officers of the financial condition of each maker of the consumer paper is reasonably adequate, and an officer of the savings bank designated for that purpose by the board of the savings bank certifies in writing that the savings bank is relying primarily upon the responsibility of each maker for payment of the loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each maker are the only applicable loan limitations.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-9-8

Special limits for obligations secured by livestock or dairy cattle

Sec. 8. (a) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent (115%) of the face amount of the note covered are subject to a maximum limitation equal to twenty-five percent (25%) of the capital and surplus, notwithstanding the collateral requirements of section 5(b) of this chapter.

(b) Loans and extensions of credit that arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller and that are secured by the cattle being sold, are subject to a limitation of twenty-five percent (25%) of the capital and surplus, notwithstanding the collateral requirements of section 5(b) of this chapter.

As added by P.L.42-1993, SEC.72. Amended by P.L.141-2005, SEC.10.

IC 28-6.1-9-9

Extensions of credit to officers, directors, trustees, and principal shareholders

Sec. 9. A savings bank may extend credit to an officer, a director,

a trustee, or a principal shareholder in accordance with the restrictions and provisions of Regulation O of the Board of Governors of the Federal Reserve System (12 CFR 215).
As added by P.L.42-1993, SEC.72.

IC 28-6.1-9-10
Loans or discounts on security and purchase or holding of bank's own capital stock

Sec. 10. (a) A stock savings bank may not:

(1) make a loan or discount on the security of the shares of its own capital stock; or

(2) be the purchaser or holder of shares of its own capital stock;

unless the security or purchase is necessary to prevent loss under a debt previously contracted in good faith.

(b) Stock that may be purchased or acquired under subsection (a) shall be sold or disposed of within six (6) months from the time of its purchase at public or private sale, unless otherwise ordered by the department.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-9-11
Conformity with lending limitations; sanctions

Sec. 11. (a) Except as otherwise provided in this article, a savings bank that holds obligations of indebtedness in violation of the limitations prescribed in this article shall take action to conform the amount of the obligations to the limitations prescribed by this article.

(b) If a savings bank fails to comply with the limitations of this article or an order of the department in relation to the limitations of this article, the department may find that the savings bank is conducting its business in an unauthorized or unsafe manner and proceed under IC 28-1-3.1-2.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-9-12
Exception to limitations for Student Loan Marketing Association loans and extensions of credit

Sec. 12. Loans or extensions of credit to the Student Loan Marketing Association are not subject to any limitation based on capital and surplus.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-9-13
Repealed

(Repealed by P.L.27-2012, SEC.87.)

IC 28-6.1-9-14
Application of federal regulations

Sec. 14. The department may apply the provisions of 12 CFR 32 in the application and administration of this chapter.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-9-15

Receiving fees, commissions, gifts, or things of value; violation

Sec. 15. Except as otherwise provided, an officer, a director, an owner, a partner, an employee, or an attorney of a savings bank who stipulates for, receives, or agrees to receive, a fee, commission, gift, or thing of value, from any person, for the purpose of procuring or attempting to procure for a person a loan from or the purchase or discount of a paper, note, draft, check, or bill of exchange by the savings bank commits a Class A misdemeanor.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-10

Chapter 10. Savings Banks Dealing in Investment Securities

IC 28-6.1-10-1

Application of limitations

Sec. 1. The limitations imposed by this chapter do not apply to the following:

(1) Direct or indirect obligations of the United States.

(2) Direct obligations of a United States territory or insular possession.

(3) Direct obligations of the state or a municipal corporation or taxing district in Indiana.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-10-2

Total equity capital

Sec. 2. As used in this section, "total equity capital" means unimpaired capital stock, unimpaired surplus, unimpaired retained earnings, subordinated debt that has been approved by state or federal regulatory agencies, and one hundred percent (100%) of loan reserves.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-10-3

Dealing requirements

Sec. 3. Except as otherwise provided in this article, a savings bank may deal in investment securities only by purchasing and selling securities without recourse, solely upon the order and for the account of customers.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-10-4

Dealings for bank's own account

Sec. 4. Except as otherwise provided in this article, a savings bank may not deal in investment securities for its own account.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-10-5

Underwriting or guaranteeing issues of securities

Sec. 5. A savings bank may not underwrite or guarantee all or a part of an issue of securities other than obligations issued or guaranteed by or on behalf of the state, a political subdivision of the state, or an agency or instrumentality of the state or of a political subdivision.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-10-6

Purchase and sale of investment securities for bank's own account under department rules; limitation on investment securities

Sec. 6. (a) Subject to subsection (b), a savings bank may purchase

for its own account and sell investment securities under limitations and restrictions the department prescribes by regulation, rule, policy, or guidance.

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

As added by P.L.42-1993, SEC.72. Amended by P.L.27-2012, SEC.88.

IC 28-6.1-10-7

Purchase and sale of government chartered small business investment company stock

Sec. 7. A savings bank may purchase for its own account and sell shares of stock in federal or state chartered small business investment companies that have received a permit or license to operate under the federal Small Business Investment Act, subject to the limitations and restrictions the department prescribes by rule.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-10-8

Purchase and sale of collateralized mortgage obligations

Sec. 8. (a) Subject to subsection (b), a savings bank may purchase for its own account and sell obligations, commonly known as collateralized mortgage obligations, that are eligible for purchase and sale by national banking associations.

(b) A savings bank may purchase for its own account and sell the obligations only to the extent that a national banking association can purchase and sell those obligations.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-10-8.5

Purchase of speculative securities or securities not rated by a generally recognized security rating service

Sec. 8.5. (a) A savings bank may not purchase for its own account any bond, note, or other evidence of indebtedness that is commonly designated as a security that is speculative in character or that has speculative characteristics. For the purposes of this subsection, a security is speculative or has speculative characteristics if at the time of purchase the security:

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

(2) is in default; or

(3) is otherwise considered speculative by the director.

(b) A savings bank may purchase for its own account a security that is not rated by a generally recognized security rating service if:

(1) the savings bank at the time of purchase obtains financial information that is adequate to document the investment quality of the security; and

(2) the security is not otherwise considered speculative by the

director.

As added by P.L.176-1996, SEC.20. Amended by P.L.89-2011, SEC.46.

IC 28-6.1-10-9

Purchase and sale of nonsubsidiary corporation stock

Sec. 9. (a) Except as otherwise provided by law, a savings bank may not purchase shares of stock of a corporation that is not a subsidiary of that savings bank unless the purchase is considered expedient to prevent loss from a debt previously contracted in good faith.

(b) A savings bank shall sell shares of stock:

(1) acquired under subsection (a); and

(2) that the savings bank would not otherwise have been permitted to buy;

not more than six (6) months after the date of acquisition unless the director grants an extension of time for the sale.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-10-10

Purchase and holding of banker's bank stock

Sec. 10. (a) As used in this section, "bank" has the meaning set forth in IC 28-2-14-2.

(b) As used in this section, "banker's bank" means a bank that satisfies both of the following:

(1) The stock of the bank is owned exclusively by:

(A) other banks; or

(B) a bank holding company, the stock of which is owned exclusively by other banks.

(2) The bank is engaged exclusively in providing services to other banks and to their officers, directors, and employees.

(c) Notwithstanding any other provision of this article, a savings bank may purchase for its own account shares of stock of a banker's bank insured by the Federal Deposit Insurance Corporation or a holding company that owns or controls a banker's bank insured by the Federal Deposit Insurance Corporation.

(d) A savings bank's holdings of the stock of an insured banker's bank or of a holding company that owns or controls an insured banker's bank may not exceed ten percent (10%) of the capital and surplus of the savings bank.

(e) A savings bank may not purchase the stock of an insured banker's bank or of a holding company that owns or controls an insured banker's bank if, after the purchase, the savings bank would own more than five percent (5%) of any class of voting securities of the banker's bank or holding company.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-10-11

Investments in casualty insurance companies

Sec. 11. (a) Notwithstanding any other provision of this article, a

savings bank may invest in a casualty insurance company organized solely for the purpose of insuring banks, trust companies, and bank holding companies and their officers and directors from and against liabilities, including those covered by bankers' blanket bonds and director and officer liability insurance and other public liability insurance.

(b) An investment under this section must take the form of:

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

(2) loans to such an association of banks.

(c) The total investment of a savings bank under this subsection may not exceed five percent (5%) of the capital and surplus of the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-10-12

Establishment and acquisition of subsidiaries

Sec. 12. A savings bank may establish or acquire a subsidiary that engages in either of the following:

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

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

As added by P.L.42-1993, SEC.72.

IC 28-6.1-10-13

Establishment of trading accounts

Sec. 13. A savings bank may establish a trading account for the purchase and resale of securities that are otherwise eligible for purchase or resale by the savings bank. The trading account must comply with the requirements established by policy or rule of the department.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-10-14

Definition of investment securities

Sec. 14. The department may define an investment security by department policy or by rule.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-10-15

Purchase records

Sec. 15. A savings bank that purchases a security for its own account shall maintain sufficient records of the security to allow the security to be properly identified by the department for examination purposes.

As added by P.L.176-1996, SEC.21.

IC 28-6.1-11

Chapter 11. Real Property Holdings by Savings Banks

IC 28-6.1-11-1

Application of chapter

Sec. 1. A savings bank may purchase and sell real property only as provided in this chapter.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-11-2

Purchase, holding, and conveyance of real property

Sec. 2. (a) A savings bank may purchase, hold, and convey real property as follows:

(1) As necessary for the convenient transaction of the savings bank's business as provided in IC 28-6.1-7-12.

(2) Real property mortgaged to the savings bank in good faith for money loaned, or upon which the savings bank purchased a mortgage.

(3) Real property purchased:

(A) at sales upon judgments, decrees, or mortgages obtained upon claims in favor of the savings bank; or

(B) to prevent loss upon claims held by the savings bank.

(4) Real property conveyed to the savings bank:

(A) in satisfaction of:

(i) debts constructed in the course of the bank's dealings; or

(ii) debts, notes, or mortgages purchased by or assigned to the savings bank; or

(B) in exchange for real property conveyed to the savings bank.

(b) Real property described in subsection (a)(2) and (a)(3) of this chapter shall be sold not more than ten (10) years after the real property has become vested in the savings bank if the sale will bring the amount due on account of the real property. If the real property cannot be sold for a sufficient sum for that purpose, the department may give further time the department considers necessary to sell the real property.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-11-3

Limitation on investments; investments in holding corporations

Sec. 3. (a) Except with the approval of the department, the sum invested in real property used for the convenient transaction of business may not exceed fifty percent (50%) of the unimpaired capital stock, surplus, and retained earnings of the savings bank.

(b) The investment may be made in the stock of a corporation organized to own and hold the real property occupied and used wholly or in part by the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-12

Chapter 12. Branches of Savings Banks

IC 28-6.1-12-1

Application of definitions

Sec. 1. Except as otherwise provided in this chapter, the definitions in IC 28-2-13 apply throughout this chapter.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-12-2

Bank

Sec. 2. (a) As used in this chapter, "bank" means a financial institution that is either of the following:

(1) A bank that:

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

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

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

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

(1) An institution that has been or is chartered or regulated as a federal savings association or federal savings bank under Section 5 of the Home Owners Loan Act (12 U.S.C. 1464).

(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.

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

As added by P.L.42-1993, SEC.72. Amended by P.L.79-1998, SEC.73; P.L.27-2012, SEC.89.

IC 28-6.1-12-3

Branches de novo and branches by acquisition

Sec. 3. (a) Subject to this section, a savings bank is entitled to establish one (1) or more branches de novo and one (1) or more branches by acquisition in any location or locations within Indiana.

(b) A branch de novo may not be established under this section without the written approval of the department. A savings bank desiring to establish one (1) or more branches de novo under this section must file a written application to do so in the form, and

containing the information, required by the director.

(c) The department may approve or disapprove the application. Before the department approves the application, the department shall determine to its satisfaction that the applicant savings bank will have adequate capital, sound management, and adequate future earnings prospects after the establishment of the branch. The investigation of the department relative to any application as required by this section shall be conducted without a public hearing.

(d) The location of a branch established under this section may be changed at any time to a location within Indiana when the change of location is authorized by the board of the savings bank and approved by the department.

(e) Except as provided in IC 28-6.1-6-23, a savings bank organized, reorganized, or operating under IC 28-6 (before its repeal) before January 1, 1993, may not establish a branch by acquisition.

(f) A savings bank created as a result of a conversion under IC 28-1-30 may retain all branches in existence on the date of conversion.

As added by P.L.42-1993, SEC.72. Amended by P.L.122-1994, SEC.98; P.L.192-1997, SEC.14; P.L.62-1999, SEC.4.

IC 28-6.1-12-4
Establishment of branches by acquisition

Sec. 4. A branch by acquisition under this chapter involving one (1) or more savings banks formed after December 31, 1992, may be established under section 3 of this chapter by complying with IC 28-1-7 or IC 28-1-8 as if the savings bank (were a bank as defined in IC 28-1-1-3).

As added by P.L.42-1993, SEC.72.

IC 28-6.1-12-5
Automated teller machines

Sec. 5. (a) A savings bank is entitled to open or establish an automated teller machine in any location within Indiana or as permitted by the laws of the state in which the automated teller machine is to be located.

(b) An automated teller machine may be owned or operated individually by a savings bank or jointly on a cost sharing or fee basis.

As added by P.L.42-1993, SEC.72. Amended by P.L.192-1997, SEC.15.

IC 28-6.1-12-6
Failure to comply with chapter

Sec. 6. A person who fails to comply with this chapter commits a Class A infraction.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-12-7
Actions against savings banks

Sec. 7. (a) A 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 a savings bank may sue the savings bank to enjoin the conduct or for damages, together with the costs of suit, including reasonable attorney's fees.

(b) 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 acquired or branch established in violation of this chapter.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-12-8

Rules

Sec. 8. The department may adopt rules under IC 4-22-2 to implement this chapter.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-13

Chapter 13. Statement of Condition

IC 28-6.1-13-1

Number of statements required

Sec. 1. The department may require every savings bank to prepare and submit to the department as many statements of condition as necessary in any year. The department may not require a savings bank to publish more than two (2) statements of condition under this chapter in any year.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-13-2

Designation of forms, notice, and dates

Sec. 2. The statements of condition shall be verified and shall be prepared and submitted according to the forms and under the notice and on the dates as the department designates.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-13-3

Contents of statements

Sec. 3. (a) The following items shall be shown in the statement of condition in detail and under appropriate headings, as of a day specified by the department in the department's notice:

(1) The resources and liabilities of the savings bank, and except as provided in subdivision (2), excluding from the resources and liabilities all property held in trust.

(2) The uninvested funds held in any fiduciary capacity. These uninvested funds shall be called "first lien trust funds".

(3) Other information required by rules of the department.

(b) The items enumerated in subsection (a)(2) shall be segregated from the statement of resources and liabilities of the savings bank under an appropriate title that will clearly designate the character and amount of the items.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-13-4

Publication of statements

Sec. 4. (a) A savings bank shall, when required by the department, publish the savings bank's statement of condition in the form in which the statement of condition is required by the department as prescribed in this chapter.

(b) The statement of condition shall be published in a newspaper printed and published in the city or town in which the savings bank has its principal office, if a newspaper is printed in that city or town. If a newspaper is not printed in that city or town, the savings bank shall publish the statement of condition in a newspaper printed and published in the city or town nearest to the city or town of the savings bank's principal office.

(c) A statement of condition shall be published at the expense of

the savings bank making the statement, and proof of publication shall be furnished the department in the form the department requires.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-13-5
Provision of examination copies and information to federal entities

Sec. 5. (a) This section applies only to a statement of condition of a savings bank that is or may become a member of the federal reserve bank system, or whose deposits are or may become insured by the Federal Deposit Insurance Corporation.

(b) The department may provide copies of an examination of a savings bank to any of the following:

(1) The federal reserve board.

(2) The federal reserve bank of which the savings bank is or may become a member.

(3) The Federal Deposit Insurance Corporation.

(4) An agency of the federal government similar to those described in subdivisions (1) through (3).

(5) Duly appointed examiners of an entity described in subdivisions (1) through (4).

(c) The department may disclose to examiners of an entity described in subsection (b)(1) through (b)(4) any information in reference to the condition of the affairs of a savings bank.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-13-6
Civil penalties

Sec. 6. (a) A savings bank that does any of the following is subject to a civil penalty of one hundred dollars ($100) for each day that elapses after the date fixed by the department for compliance with the terms of the department's notice concerning statements of condition:

(1) Fails to prepare and submit a statement of condition required by the department.

(2) Violates an order of the department with respect to a statement of condition.

(b) The penalty prescribed by this section may be recovered under IC 28-11-4.

(c) A penalty recovered under this section shall be paid into the state general fund.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-14

Chapter 14. Conversion of a Stock Savings Bank to a State Bank or to a Savings and Loan Association

IC 28-6.1-14-1

Application of chapter

Sec. 1. This chapter applies only to a stock savings bank formed as the result of a conversion under IC 28-1-21.8 or IC 28-1-21.9.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-14-2

Conversion; approval of department

Sec. 2. A stock savings bank may convert into a state bank or a savings association with the approval of the department.

As added by P.L.42-1993, SEC.72. Amended by P.L.79-1998, SEC.74.

IC 28-6.1-14-3

Conversion procedure

Sec. 3. The department shall prescribe the procedure for conversion under this chapter. The procedure must include the following:

(1) The board of the savings bank must propose a resolution of conversion.

(2) The resolution of conversion must be adopted by the affirmative vote of at least a majority of the shareholders of the savings bank.

(3) The savings bank must provide all relevant information relating to the conversion requested by the department.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-14-4

Articles of conversion

Sec. 4. (a) To effect the conversion, the converting savings bank must file articles of conversion showing the department's approval of the conversion with the following:

(1) The secretary of state.

(2) The county recorder of the county in which the principal office of the savings bank is located.

(b) The articles of conversion:

(1) must set forth the elements required by IC 28-12-2-1; and

(2) constitute the articles of incorporation of the new state bank or savings and loan association.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-14-5

Rights and obligations upon conversion

Sec. 5. Upon conversion, the new state bank or new savings association:

(1) has all the rights, privileges, immunities, and powers of a

bank organized under IC 28-1 or a savings association organized under IC 28-4 (before its repeal) or under IC 28-15;

(2) is subject to all the duties, restrictions, penalties, and liabilities of a bank organized under IC 28-1 or a savings association organized under IC 28-4 (before its repeal) or under IC 28-15; and

(3) is governed by IC 28-13.

As added by P.L.42-1993, SEC.72. Amended by P.L.79-1998, SEC.75.

IC 28-6.1-15

Chapter 15. Conversion of a Savings Bank to a Bank or Trust

IC 28-6.1-15-1

Application of chapter

Sec. 1. This chapter applies only to a savings bank organized, reorganized, or operating under IC 28-6 (before its repeal) before January 1, 1993.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-2

Effective date of conversion

Sec. 2. As used in this chapter, "effective date of conversion" refers to the date that the savings bank has complied with section 9 of this chapter.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-3

Conversion permitted

Sec. 3. A savings bank may convert into a state bank or trust company under this chapter.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-4

Resolutions of conversion

Sec. 4. (a) A conversion of a savings bank under this chapter must be proposed by the board of the savings bank by a resolution of conversion adopted by the affirmative vote of at least two-thirds (2/3) of the then qualified and acting trustees.

(b) The resolution of conversion must include the following information:

(1) The proposed articles of incorporation of the bank or trust company. The proposed articles of incorporation shall:

(A) insofar as applicable, conform with the provisions of IC 28-12-2; and

(B) set forth the following:

(i) The plan of conversion.

(ii) The manner in which the shares of the capital stock of the proposed bank or trust company will be subscribed for. The provisions of IC 28-12-11, IC 28-13-1, IC 28-13-2, and IC 28-13-3 are applicable with respect to the capital requirements and the par value and incidents of shares of capital stock of the proposed bank or trust company.

(2) The proposed capital stock and surplus.

(3) The proposed bylaws.

(4) Other information required by the department.

(c) The savings bank must submit to the department three (3) copies of the resolution of conversion, including the proposed articles of incorporation, certified by the president and attested by the secretary of the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-5
Terms and conditions of conversions; rights of depositors

Sec. 5. The terms and conditions of conversion and the rights of the depositors under the conversion are as follows:

(1) A depositor may subscribe to the capital stock of the bank or trust company:

(A) in an amount equal to part or all of the depositor's pro rata interest in the surplus of the savings bank;

(B) in an additional amount equal to part or all of the depositor's savings deposits in the savings bank; and

(C) in other additional amounts desired by the depositor.

(2) If the aggregate subscriptions received from depositors under subdivision (1) exceed the proposed capital of the bank or trust company:

(A) the proposed capital may be increased to the extent required to eliminate the oversubscription by amending the resolution of conversion and the proposed articles of incorporation of the bank or trust company; or

(B) the subscriptions of the depositors may be ratably reduced to the extent required to eliminate the oversubscription.

(3) If the aggregate subscriptions do not amount to a full subscription to the capital stock of the bank or trust company, the trustees may open the subscription list to the general public in order to eliminate the undersubscription.

(4) Upon conversion, all savings deposits in the savings bank, except those allocated to subscriptions by depositors under subdivision (1)(C):

(A) become savings deposits in the bank or trust company; and

(B) are subject to the withdrawal restrictions applicable to savings deposits in banks or trust companies organized under IC 28-1.

(5) The rights of depositors with respect to their pro rata interests in the surplus of the savings bank are as follows:

(A) Upon conversion, the amount of the depositors' pro rata interests in the surplus of the savings bank that have not been allocated to subscriptions by the depositors under subdivision (1)(A) shall, at the election of those depositors, be paid to the depositors in cash or credited to their savings deposits in the bank or trust company. The pro rata interests of depositors who fail to make an election with respect to the distribution of the interests before the effective date of conversion shall be credited to the savings deposits of the depositors in the bank or trust company.

(B) The value of each depositor's pro rata interest in the surplus of the savings bank shall be computed by multiplying the amount in the surplus, as of the date of the resolution of

conversion, by a percentage determined by dividing the total amount of savings deposits on the date of the resolution of conversion into the amount of each depositor's savings deposits on that date. Each interest shall be increased or decreased by applying the same percentage multiple to the amount of any increase or decrease in the surplus occurring within the period of time between the date of the resolution of conversion and the effective date of conversion. For purposes of this section, each depositor of the savings bank shall be considered a depositor as of the date of the resolution of conversion. Depositors of the savings bank who withdrew all of their deposits before the date of the resolution of conversion have no right or claim to any of the savings bank's surplus.

(C) Subscriptions, payments in cash, or savings deposit credits made under this section constitute satisfaction in full of each depositor's pro rata interest in the surplus of the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-6

Approval or disapproval of resolutions of conversion by department

Sec. 6. (a) The department shall approve or disapprove the resolution of conversion after first making examinations or investigations the department considers necessary to determine if the proposed conversion is fair and in the best interests of the depositors of the savings bank.

(b) IC 28-1-2-23 and IC 28-11-5 do not apply to a determination under subsection (a).

(c) If the department approves the resolution of conversion, the approval shall be evidenced in the manner prescribed in IC 28-12-5. The approval shall be indicated on the resolution.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-7

Notice to depositors; objections; judicial review

Sec. 7. (a) After the department has given approval to the resolution of conversion and has returned the resolution of conversion to the savings bank, the savings bank shall give notice of the proposed conversion, by mail, to each depositor of record as of the date of the resolution of conversion. Notice to a depositor shall be sent to the address of the depositor as shown by the records of the savings bank. Notice shall also be given by at least ten (10) consecutive days of publication in a newspaper of general circulation published in the county in which the savings bank is located.

(b) After notice has been given under this section, a copy of the resolution of conversion shall be submitted to the circuit court with jurisdiction in the county in which the savings bank is located.

(c) A depositor of the savings bank aggrieved by the proposed

conversion may, not more than twenty (20) days after submission of the resolution of conversion with the court file in the court a verified statement of objection to the proposed conversion. The matter shall be docketed upon the books of the court, and entitled "In the Matter of the Conversion of _____ Savings Bank to _____" (inserting the names of the savings bank and the successor bank or trust company). The nature of an objection to the conversion is limited to the unfairness of the proposed conversion relative to the rights and interests of the objecting depositor. Without filing pleadings, the savings bank shall be considered to deny the objections.

(d) After the twenty (20) day period for filing objections has expired, the court shall proceed as soon as possible to hear the evidence and determine the fairness of the proposed conversion relative to the individual rights and interests of all objecting depositors. The objecting depositors have the burden of proof.

(e) If the court finds that the proposed conversion is fair with respect to the rights and interests of the objecting depositors, the court shall enter an order:

(1) approving the conversion, subject only to the approval by the secretary of state of the articles of incorporation of the proposed bank or trust company; and

(2) assessing the costs of the proceeding against the objectors.

(f) If the court finds that the proposed conversion is not fair with respect to the rights and interests of the objecting depositors, the court shall enter an order:

(1) enjoining the conversion; and

(2) assessing the costs of the proceeding against the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-8

Approval of articles of incorporation by secretary of state

Sec. 8. (a) If the conversion is approved under section 7 of this chapter and if the capital stock of the bank or trust company has been fully subscribed, the trustees of the savings bank shall submit three (3) copies of the articles of incorporation of the bank or trust company with the department's approval indicated on the articles to the secretary of state.

(b) If the secretary of state finds that the articles of incorporation conform to law, the secretary of state shall, after all fees have been paid as required by law:

(1) indicate approval on the articles;

(2) keep one (1) copy of the articles for filing; and

(3) send the trustees a certificate of incorporation and two (2) copies of the articles of incorporation bearing the indicated approval of the secretary of state.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-9

Prerequisites to doing business

Sec. 9. (a) Except as is incidental to its conversion or to obtaining payment for shares of its capital stock, the bank or trust company may not exercise any new power, right, or authority conferred by its conversion, transact any business, or incur any indebtedness, until both of the following occur:

(1) One (1) of the copies of the articles of incorporation with the indicated approval of the secretary of state has been filed with the county recorder of the county in which the principal office of the bank or trust company is located.

(2) The amount of the capital stock of the bank or trust company has been fully paid in.

(b) If the bank or trust company violates this section, its officers and directors are severally liable for any debts or liabilities of the bank or trust company arising from the violation.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-10

Effect of conversions

Sec. 10. (a) On the effective date of conversion, the existence of the savings bank ceases and the existence of the bank or trust company begins.

(b) On the effective date of conversion, the following apply:

(1) All subscriptions to shares of the capital stock of the bank or trust company previously received are considered accepted by the bank or trust company, and the subscribers for those shares, or their assigns, are considered to be shareholders of the bank or trust company.

(2) All property, all debts due on whatever account, all choses in action, and every other interest of or belonging to the converted savings bank are considered transferred to and vested in the bank or trust company without further act or deed.

(3) The bank or trust company shall be responsible and liable for the liabilities and obligations of the converted savings bank. An existing claim, an action, or a proceeding pending by or against the converted savings bank may be prosecuted to judgment as if conversion had not taken place or the bank or trust company may be substituted in the savings bank's place.

(4) The new bank or trust company has all the rights, privileges, immunities, and powers and, except as provided in this chapter, is subject to all the duties, restrictions, penalties, and liabilities of a bank or trust company organized under IC 28-1.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-11

Continued service of boards

Sec. 11. The board of the savings bank shall serve as the board of directors of the bank or trust company until the first annual meeting of the shareholders.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-12
Conformation to limitations

Sec. 12. (a) Subject to subsection (b), a bank or trust company formed under this chapter shall, within three (3) years from its date of conversion, conform to the limitations prescribed by IC 28-1-13.

(b) The department may extend the time for the new bank or trust company to conform to the limitations prescribed by IC 28-1-13 if the interest of the depositors will be protected and served by an extension.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-13
Powers and duties of department

Sec. 13. This chapter does not limit the powers or duties of the department under IC 28-1.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-16

Chapter 16. Conversion of a Savings Bank to a Savings and Loan Association

IC 28-6.1-16-1

Application of chapter

Sec. 1. This chapter applies only to the following:

(1) A savings bank organized, reorganized, or operating under IC 28-6 (before its repeal) before July 1, 1993.

(2) A mutual savings bank.

(3) A stock savings bank.

As added by P.L.42-1993, SEC.72. Amended by P.L.122-1994, SEC.99.

IC 28-6.1-16-2

Department approval of conversion to savings association

Sec. 2. (a) With the approval of the department, a savings bank may convert into a savings association.

(b) Nothing in this title prohibits a savings bank organized under the laws of Indiana from converting to a savings association or a savings bank organized or reorganized under the laws of the United States. Conversion to a savings association or a savings bank organized under the laws of the United States does not require the approval of the department.

As added by P.L.42-1993, SEC.72. Amended by P.L.122-1994, SEC.100; P.L.262-1995, SEC.68; P.L.79-1998, SEC.76.

IC 28-6.1-16-3

Conversion procedure

Sec. 3. The department shall prescribe the procedure for conversion under this chapter. The procedure must include the following conditions:

(1) The conversion must be proposed by the board of the savings bank in a resolution of conversion.

(2) The resolution of conversion must be adopted by an affirmative vote of at least two-thirds (2/3) of the board members.

(3) The savings bank must provide all relevant information requested by the department in connection with the conversion.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-16-4

Rights and obligations upon conversion

Sec. 4. Upon conversion, the new savings association has all the rights, privileges, immunities, and powers and, except as provided in this chapter, is subject to all the duties, restrictions, penalties, and liabilities of a savings association organized under IC 28-4 (before its repeal) or under IC 28-15.

As added by P.L.42-1993, SEC.72. Amended by P.L.79-1998, SEC.77.

IC 28-6.1-17

Chapter 17. Department Seizure of Business and Property of a Savings Bank

IC 28-6.1-17-1

Grounds for seizure of business and property

Sec. 1. The department may take possession of the business and property of a savings bank if any of the following occur:

(1) The savings bank fails for thirty (30) days to pay any of its depositors as required by law.

(2) The department determines that the board or officers of the savings bank are mismanaging the savings bank's affairs.

(3) Any of the conditions described in IC 28-1-3.1-2 apply to the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-17-2

Law governing procedure and parties

Sec. 2. IC 28-1-3.1 governs the following:

(1) The authority and the procedures under which the department administers the liquidation of a savings bank under this chapter.

(2) The respective rights, powers, privileges, duties, and liabilities of the department, the savings bank, and all interested parties.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-18

Chapter 18. Liquidation and Dissolution of a Savings Bank Organized, Reorganized, or Operating Before January 1, 1993

IC 28-6.1-18-1

Application of chapter

Sec. 1. This chapter applies only to a savings bank organized, reorganized, or operating under IC 28-6 (before its repeal) before January 1, 1993.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-18-2

Dissolutions; determinations of boards

Sec. 2. A savings bank may dissolve itself under this chapter if the board of the savings bank determines it is in the best interest of the depositors and other creditors of the savings bank to dissolve the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-18-3

Resolutions of dissolution

Sec. 3. (a) To dissolve a savings bank, the board must adopt a resolution of dissolution at a regular meeting or a special meeting of the board called for that purpose.

(b) A resolution of dissolution must receive the affirmative vote of at least two-thirds (2/3) of the qualified and acting trustees. The resolution must state that the board of the savings bank considers it is in the best interests of the depositors and other creditors of the savings bank that the savings bank liquidate its affairs and dissolve.

(c) If a resolution is adopted under subsection (b), a statement shall be prepared and verified by the affidavit of the president and secretary of the savings bank setting forth the following:

(1) A copy of the following:

(A) The notice of the meeting of the board at which the resolution was adopted.

(B) The resolution.

(2) The number of the then qualified and acting trustees, including the name and address of each of the trustees.

(3) The number of trustees voting for and the number voting against the resolution.

(d) The statement must be filed with the department.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-18-4

Liquidation orders; employment of necessary personnel

Sec. 4. (a) If the department receives a statement under section 3 of this chapter, the department shall examine the business and affairs of the savings bank and may make additional investigation of the future prospects of the savings bank the department considers necessary.

(b) If the department finds from the examination that:

(1) the savings bank is solvent, or that the savings bank has sufficient assets with which to pay all of its depositors and all of its other liabilities; and

(2) it will be in the best interests of the depositors and other creditors of the savings bank that the savings bank's affairs be liquidated and that the savings bank be dissolved;

the department may enter a written order directing the liquidation and dissolution of the savings bank.

(c) As soon as practical after an order is issued under subsection (b), the department shall, by a separate order, appoint a special representative of the department to act during the course of the liquidation.

(d) During the course of the liquidation, the department may employ, fix the compensation of, remove, and discharge special representatives, assistants, accountants, agents, and attorneys as the department considers necessary.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-18-5

Civil actions; filing

Sec. 5. (a) Not later than five (5) days after entry of the order directing the liquidation of the savings bank, the department shall file a copy of the order with the circuit court clerk of the county in which the savings bank is located.

(b) Upon the filing of an order under subsection (a), the clerk shall:

(1) note the filing upon the records of the court; and

(2) enter the cause as a civil action upon the docket of the court under the name and style of "In the Matter of the Liquidation of _____" (inserting the name of the savings bank).

As added by P.L.42-1993, SEC.72.

IC 28-6.1-18-6

Jurisdiction of courts

Sec. 6. After the filing of the action under section 5 of this chapter, the court has jurisdiction to hear and determine all issues and matters relating to the liquidation of the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-18-7

Taking charge of business and assets by department; notice of departmental actions

Sec. 7. The department shall do the following:

(1) Immediately take charge of the business and assets of the savings bank.

(2) Give notice of:

(A) the department's orders directing the liquidation and dissolution of the savings bank; and

(B) the appointment of the department's special

representative;

by posting copies of the orders in a conspicuous place in the lobby of the savings bank and by one (1) publication of the notice in a newspaper of general circulation, printed in the English language and published in the county where the savings bank is located. The department shall also file a copy of its order appointing a special representative in the court in which the order was filed under section 5 of this chapter.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-18-8

Petitions opposing liquidation and dissolution

Sec. 8. (a) A depositor or other creditor of the savings bank who is aggrieved by the proceedings to liquidate and dissolve the savings bank may oppose the liquidation and dissolution by a petition filed in the court in which the liquidation action was filed under section 5 of this chapter. The petition must state the petitioner's objections to the liquidation.

(b) A petition filed under subsection (a) must be filed within ten (10) days after the publication of the order under section 7 of this chapter.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-18-9

Dismissal of liquidation and dissolution actions

Sec. 9. (a) If after hearing the matter, the court determines that it will not be in the best interest of the depositors and other creditors of the savings bank that the savings bank liquidate its affairs and dissolve, the court shall enter an order:

(1) directing the department to return the business and property of the savings bank to the board; and

(2) dismissing the action.

(b) If an order is issued under subsection (a):

(1) the savings bank shall continue to operate as though the proceedings had never begun; and

(2) all costs of the proceedings to the date of the entry of the order shall be paid by the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-18-10

Approval of liquidation and dissolution proceedings

Sec. 10. If after hearing the matter, the court determines that it will be in the best interests of the depositors and other creditors of the savings bank to liquidate its affairs and dissolve, the liquidation may proceed.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-18-11

Finality of judicial decisions

Sec. 11. The decision of the court under section 9 or 10 of this

chapter is final.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-18-12
Powers and restrictions of department

Sec. 12. (a) During the ten (10) day period after the publication required by section 7 of this chapter, the department may make orders regarding the deposits of the savings bank that the department considers in the best interests of all the depositors and creditors of the savings bank.

(b) Except as provided in this chapter, the department, insofar as is applicable and practical, has the same powers and is subject to the same restrictions as if the savings bank were insolvent.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-18-13
Completion of liquidation

Sec. 13. (a) When the costs and expenses of the liquidation have been fully paid and all the remaining debts and liabilities of the savings bank, including deposits and accrued interest or dividends, if any, have been paid in full, the remaining assets, if any, shall be paid to or distributed among the persons the court finds to be the owners of the assets.

(b) After the events described in subsection (a) have occurred, the liquidation is considered completed.
As added by P.L.42-1993, SEC.72.

IC 28-6.1-18-14
Statements of dissolution

Sec. 14. (a) Upon completion of the liquidation, the department shall prepare and file a statement of dissolution in the office of the recorder of the county in which the savings bank was located.

(b) The statement of dissolution shall contain the following:

(1) The name of the savings bank.
(2) The location of the savings bank.
(3) The date of the meeting of the board adopting the resolution of dissolution.
(4) A copy of the notice of the meeting of the board.
(5) A copy of the minutes of the meeting of the board containing the full text of the resolution of dissolution.
(6) The manner of the adoption of the resolution of dissolution and the vote by which the resolution was adopted.
(7) A copy of the notices published under this chapter.
(8) The names and addresses of the trustees and officers of the savings bank at the time of the adoption of the resolution.
(9) A copy of the order of the department directing the liquidation and dissolution of the savings bank.
(10) A brief summary setting forth, as of the date of the taking possession of the savings bank by the department of the following:

(A) The aggregate amount of general claims finally allowed against the savings bank.

(B) The aggregate amount of claims allowed as preferred, and the aggregate amount of all other claims against the savings bank.

(C) A statement of the aggregate payments made on each of the groups of claims and a reference to the following:

(i) The court records where the orders authorizing the payments are recorded.

(ii) The current reports where a report of the payments ordered is made.

(11) A brief summary setting forth the following:

(A) The disposition of the surplus assets (if any) remaining after payment of all costs and expenses of administration and liquidation.

(B) The payment of all liabilities, including deposits and accrued dividends or interest (if any).

(12) A copy of the final order of the court in the matter of the liquidation of the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-18-15

Termination of savings bank's existence

Sec. 15. When the statement required by section 14 of this chapter is recorded, the savings bank ceases to exist.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-19

Chapter 19. Disposition of Substantially All the Assets of a Savings Bank Organized Before July 1, 1993

IC 28-6.1-19-1

Application of chapter

Sec. 1. This chapter applies only to a savings bank organized, reorganized, or operating under IC 28-6 (before its repeal) before July 1, 1993.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-19-2

Disposition

Sec. 2. As used in this chapter, "disposition" includes a sale, a lease, an exchange, or other disposition.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-19-3

Disposition of property and assets

Sec. 3. A savings bank may, at any time if otherwise lawful, dispose of all or substantially all of its property and assets, including good will, upon terms and conditions and for consideration the savings bank considers beneficial.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-19-4

Resolutions of disposition

Sec. 4. (a) A disposition under this chapter must be approved by the board of the savings bank by the adoption of a resolution by the affirmative vote of at least two-thirds (2/3) of the then qualified and acting trustees.

(b) The resolution may be adopted at a regular meeting or a special meeting of the board called for that purpose.

(c) The resolution must contain the following:

(1) A description of the property to be disposed of.

(2) The terms and conditions of and the consideration for the proposed disposition.

(3) A statement to the effect that in the opinion of the board, the disposition will be in the best interests of the depositors and other creditors of the savings bank.

(d) Three (3) copies of the resolution, certified by the president and the secretary of the savings bank, must be filed with the department.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-19-5

Departmental approval

Sec. 5. (a) Upon receiving a notice under section 4 of this chapter, the department shall conduct investigations it considers necessary.

(b) If the department is satisfied that the proposed disposition is

fair and will be in the best interests of the depositors and other creditors of the savings bank, the department shall:

(1) indicate its approval on all copies of the resolution; and

(2) return two (2) of the copies to the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-19-6
Judicial approval

Sec. 6. (a) If the department approves the disposition under section 5 of this chapter, the two (2) copies of the resolution returned to the savings bank shall be submitted to the circuit court with jurisdiction in the county in which the savings bank is located.

(b) If, upon good cause shown by affidavit, the court is satisfied that the terms of the disposition are fair and in the best interests of the depositors and other creditors of the savings bank, the court shall:

(1) approve the disposition upon the terms and conditions set forth in the resolution; and

(2) indicate the approval on both copies of the resolution submitted to the court.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-19-7
Copies of dissolution resolutions

Sec. 7. If the court approves the disposition under section 6 of this chapter, one (1) copy of the resolution shall be filed in the office of the circuit court clerk and the other copy shall be retained by the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-19-8
Court approval prerequisite to dissolution

Sec. 8. The disposition may not take place until the court approves it.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-19-9
Notice of dispositions

Sec. 9. If the court approves the disposition, the savings bank shall give notice of the disposition not more than five (5) days after the approval as follows:

(1) By publishing notice of the disposition one (1) time in a newspaper of general circulation printed in the English language and published in the county in which the savings bank is located.

(2) By posting copies of the notice in three (3) separate public places in the county.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-19-10
Statements of objections

Sec. 10. (a) A person interested in the disposition (including a depositor or a creditor of the savings bank) aggrieved by the proposed disposition may file in the court a verified statement of objections to the proposed disposition.

(b) The statement must be filed not more than fifteen (15) days after the approval of the resolution by the court.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-19-11

Hearings on objections

Sec. 11. (a) If a statement is filed under section 10 of this chapter, the matter shall be docketed upon the books of the court, entitled "In the Matter of the Proposed Sale of Assets of _____" (inserting the name of the savings bank).

(b) The savings bank is considered to have denied all the allegations in the statement without filing any pleadings.

(c) After notice of the objections to the savings bank as required by the court, the court shall hear the evidence and determine the matter as soon as possible.

(d) The burden of proof is on the objector.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-19-12

Orders directing dispositions

Sec. 12. If the court finds that the disposition, as proposed in the resolution, is fair and will be in the best interests of the depositors and other creditors of the savings bank, the court shall enter an order directing the disposition, as set forth in the resolution, be carried out and assessing the costs of the proceeding against the objector.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-19-13

Orders enjoining dispositions

Sec. 13. If the court finds that the disposition proposed by the resolution is not fair or will not be in the best interests of the depositors or other creditors of the savings bank, the court shall enter an order enjoining the proposed disposition and assessing the costs of the proceeding against the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-19-14

Finality of judicial decisions

Sec. 14. A decision of the court under section 12 or 13 of this chapter is final.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-20

Chapter 20. Applicability of the Federal Reserve Act

IC 28-6.1-20-1

Applicability

Sec. 1. For purposes of this article, a savings bank that is not a member of the Federal Reserve System is subject to Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c or 371c-1) to the same extent and in the same manner as if the savings bank were a member of the Federal Reserve System.

As added by P.L.258-2003, SEC.9.

IC 28-6.1-20-2

Violations

Sec. 2. A violation of Section 23A or 23B of the Federal Reserve Act (12 U.S.C. 371c or 371c-1) by a savings bank or a subsidiary constitutes a violation of this chapter.

As added by P.L.258-2003, SEC.9.

IC 28-6.2

ARTICLE 6.2. MUTUAL SAVINGS BANK HOLDING COMPANIES

IC 28-6.2-1

Chapter 1. Definitions

IC 28-6.2-1-1

Application of chapter

Sec. 1. The definitions set forth in this chapter apply throughout this article.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-2

"Acquiree savings bank" defined

Sec. 2. "Acquiree savings bank" means any savings bank other than a resulting savings bank that:

(1) is acquired by a mutual holding company as part of, and concurrently with, a mutual holding company reorganization; and

(2) is in the mutual form immediately before the acquisition.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-3

"Acting in concert" defined

Sec. 3. (a) "Acting in concert" means:

(1) knowing participation in a joint activity or interdependent conscious parallel action towards a common goal, whether or not under an express agreement; or

(2) a combination of pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement, or other arrangement, whether written or otherwise.

(b) A person or company that acts in concert with another person or company is acting in concert with any person or company who is also acting in concert with that other party, except that:

(1) an employee stock benefit plan is not acting in concert with its trustee or a person who serves in a similar capacity solely for the purpose of determining whether stock held by the trustee and stock held by the plan will be aggregated; and

(2) no officer or director of a savings bank or savings bank affiliate is acting in concert with any other officer or director of the savings bank or affiliate by reason of the service of the officer or director in those capacities.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-4

"Affiliate" defined

Sec. 4. "Affiliate" means a person that, directly or indirectly, through one (1) or more intermediaries:

(1) controls;
(2) is controlled by; or
(3) is under common control with;
another person.
As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-5
"Associate" defined

Sec. 5. "Associate", when indicating a relationship between persons, means:

(1) any corporation or organization, other than the applicant or a majority-owned subsidiary of the applicant, of which the person:
(A) is an officer or a partner; or
(B) is directly or indirectly the beneficial owner of ten percent (10%) or more of any class of equity securities;
(2) any trust or other estate:
(A) in which the person has a substantial beneficial interest; or
(B) for which the person serves as trustee or in a similar fiduciary capacity;
however, the term does not apply to any employee stock benefit plan in which the person has a substantial beneficial interest or serves as a trustee or in a similar fiduciary capacity; and
(3) any relative or spouse of the natural person, or any relative of the spouse, who:
(A) has the same home as the person; or
(B) is a director or an officer of the applicant or of any of the applicant's parent organizations or subsidiaries.
As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-6
"Company" defined

Sec. 6. (a) "Company" means:

(1) any corporation, partnership, business trust, joint venture, association, or similar organization; or
(2) any other trust, unless by its terms it must terminate:
(A) within twenty-five (25) years; or
(B) not later than twenty-one (21) years and ten (10) months after the death of any individual living on the effective date of the trust.

(b) As used in subsection (a)(1), "similar organization" means a combination of parties with the potential for or practical likelihood of a continuing rather than temporary existence, in which the parties have knowingly and voluntarily associated for a common purpose in identifiable and binding relationships that govern the parties with respect to either:

(1) the transferability and voting rights concerning any stock or other indicia of participation in another entity; or
(2) the achievement of a common or shared objective, such as

to collectively manage or control another entity.
As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-7
"Control" defined

Sec. 7. (a) "Control" of a savings bank means:

(1) controlling, owning, or having the power to vote, directly or indirectly, or acting through one (1) or more persons, twenty-five percent (25%) or more of any class of voting securities of the savings bank; or

(2) in any manner controlling the election of a majority of the directors of the savings bank.

(b) "Control" of a savings bank also exists if the department determines, after notice and opportunity for hearing, that a person directly or indirectly exercises a controlling influence over the management or policies of the savings bank.
As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-8
"Default" defined

Sec. 8. As used in this chapter, "default" means any adjudication or other official determination of a court or other public authority under which a conservator, receiver, or other legal custodian is appointed for a mutual holding company or savings bank subsidiary of a mutual holding company.
As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-9
"Director" defined

Sec. 9. As used in this chapter, "director" refers to the director of the department of financial institutions.
As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-10
"FDIC" defined

Sec. 10. As used in this chapter, "FDIC" refers to the federal deposit insurance corporation.
As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-10.1
"Federal mutual holding company" defined

Sec. 10.1. "Federal mutual holding company" means a mutual savings bank holding company that:

(1) is organized or reorganized under the laws of the United States;

(2) is regulated by the Office of Thrift Supervision or its successor; and

(3) has control over a savings bank.
As added by P.L.90-2008, SEC.38.

IC 28-6.2-1-11
"Member" defined

Sec. 11. As used in this chapter, "member" means any depositor or borrower of a savings bank subsidiary of a mutual holding company that is entitled, under a statute or the articles of incorporation or bylaws of the mutual holding company, to vote on matters affecting the mutual holding company.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-12
"Mutual holding company"

Sec. 12. As used in this chapter, "mutual holding company" means a mutual savings bank holding company that:

(1) is:
  (A) organized under IC 28-6.2-2 or converted under IC 28-6.2-7-6; or
  (B) organized under the laws of any other state or the United States; and
(2) has control over:
  (A) any savings bank; or
  (B) any company that is or becomes a mutual holding company under this article.

As added by P.L.122-1994, SEC.101. Amended by P.L.27-2012, SEC.90.

IC 28-6.2-1-13
"Mutual savings bank" defined

Sec. 13. "Mutual savings bank" means a financial institution:

(1) defined in IC 28-6.1-2-5; or
(2) organized, reorganized, or operating before January 1, 1993, under IC 28-6 (before its repeal).

As added by P.L.122-1994, SEC.101. Amended by P.L.11-1998, SEC.12.

IC 28-6.2-1-14
"Parent" defined

Sec. 14. "Parent", when describing the relationship between two (2) companies, means the company that controls the other company, either directly or indirectly, through one (1) or more subsidiaries.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-15
"Person" defined

Sec. 15. "Person" means an individual or company.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-16
"Reorganization plan" defined

Sec. 16. "Reorganization plan" means a plan to reorganize into the mutual holding company.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-17
"Reorganizing savings bank" defined

Sec. 17. "Reorganizing savings bank" means a mutual savings bank that proposes to reorganize into a mutual holding company under this chapter.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-18
"Resulting savings bank" defined

Sec. 18. "Resulting savings bank" means a stock savings bank that is organized as a subsidiary of a reorganizing savings bank to receive a substantial part of the assets and liabilities, including all deposit accounts, of the reorganizing savings bank upon consummation of the reorganization.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-19
"Savings association" defined

Sec. 19. (a) As used in this chapter, "savings association" means a savings association (as defined in 12 U.S.C. 1813(3)(b)(1)) the deposits of which are insured by the FDIC.

(b) The term includes:

(1) a federal savings association;

(2) a federal savings bank; and

(3) a savings association organized and operating under the laws of the state in which it is organized.

As added by P.L.122-1994, SEC.101. Amended by P.L.79-1998, SEC.78.

IC 28-6.2-1-20
"Stock" defined

Sec. 20. (a) "Stock" means the units into which the proprietary interests of a savings bank are divided.

(b) The term includes:

(1) common or preferred stock;

(2) any other type of equity security;

(3) warrants or options to acquire common or preferred stock; and

(4) other securities that are convertible into common or preferred stock.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-21
"Stock benefit plan" defined

Sec. 21. "Stock benefit plan" means any defined benefit plan or defined contribution plan. The term includes:

(1) an employee stock ownership plan;

(2) a stock bonus plan;

(3) a profit-sharing plan; or

(4) any other plan of a mutual holding company or any of its subsidiaries or affiliates;

whether or not the plan, with its related trust, meets the qualifying requirements under section 401 of the Internal Revenue Code.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-22

"Stock issuance plan" defined

Sec. 22. "Stock issuance plan" means a plan submitted under IC 28-6.2-3 providing for the issuance of stock by a savings bank subsidiary of a mutual holding company.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-23

"Stock savings bank" defined

Sec. 23. "Stock savings bank" has the meaning set forth in IC 28-6.1-2-7.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-24

"Subsidiary" defined

Sec. 24. "Subsidiary" means a company controlled either directly or indirectly by another company.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-1-25

"Voting parties" defined

Sec. 25. As used in this chapter, "voting parties" means the:

(1) depositors; and

(2) borrowers;

of a mutual savings bank.

As added by P.L.11-1998, SEC.13.

IC 28-6.2-2

Chapter 2. Reorganizing as a Mutual Savings Bank Holding Company

IC 28-6.2-2-1

Procedures for reorganization

Sec. 1. A mutual savings bank may, upon application to and approval by the department, reorganize as a mutual holding company by:

(1) organizing one (1) or more subsidiary stock savings banks, the ownership of which shall be evidenced by shares of stock to be owned by the reorganizing parent savings bank and transferring a substantial portion of its assets and all of the insured deposits and part or all of its other liabilities to one (1) or more subsidiary savings banks; or

(2) organizing a first tier subsidiary stock savings bank and causing that subsidiary to organize a second tier subsidiary stock savings bank and transferring, by merger of the reorganizing savings bank with the second tier subsidiary, a substantial portion of its assets, all of its insured deposits and part or all of its other liabilities to the resulting savings bank at which time the first tier subsidiary stock savings bank becomes a mutual holding company.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-2-1.5

Reorganization as federal mutual holding company; approval of department and primary federal regulator; required transactions

Sec. 1.5. (a) As used in this section, "primary federal regulator" means the federal agency primarily responsible for the regulation of mutual holding companies (as defined in IC 28-6.2-1-12).

(b) A mutual savings bank may, upon application to and with the approval by the department and the primary federal regulator, reorganize as a federal mutual holding company by undertaking a transaction or series of transactions substantially similar to those set forth in section 1 of this chapter.

As added by P.L.90-2008, SEC.39. Amended by P.L.27-2012, SEC.91.

IC 28-6.2-2-2

Prerequisites to reorganization

Sec. 2. Before reorganizing into a mutual holding company, a reorganizing savings bank shall do the following:

(1) Obtain approval of a reorganization plan by a majority of the board of directors of the reorganizing savings bank.

(2) File the reorganization plan with the department.

(3) Obtain approval of a reorganization plan by an affirmative vote of a majority of the voting members of the reorganizing savings bank and any acquiree savings bank, at a regular or special meeting of the members.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-2-2.5
Voting rights of voting parties

Sec. 2.5. The voting parties of a reorganizing mutual savings bank have the voting rights set forth in IC 28-13-6-2 with respect to a reorganization of a mutual savings bank under this chapter.
As added by P.L.11-1998, SEC.14.

IC 28-6.2-2-3
Approval or disapproval of reorganization plan; conditional approval

Sec. 3. (a) Upon receipt of an application for a mutual holding company reorganization under this article, 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.

(b) A proposed reorganization plan must be approved or disapproved by the department within ninety (90) days of its acceptance by the department and, if approved, may be subject to any conditions the department determines necessary.
As added by P.L.122-1994, SEC.101.

IC 28-6.2-2-4
Grounds for disapproving reorganization plan application

Sec. 4. The department may disapprove an application for a mutual holding company reorganization plan if any of the following applies:

(1) The reorganization would result in unsafe or unsound practices, or an unsafe or unsound financial institution.
(2) The applicant has not demonstrated that the reorganization plan is fair to the members of the reorganizing savings bank.
(3) The reorganization plan does not protect the interests of the deposit account holders of the reorganizing savings bank.
(4) The financial or managerial resources of the reorganizing savings bank or any acquiree savings bank warrant disapproval.
(5) The mutual holding company or any savings bank subsidiary would have inadequate capital.
(6) A stock issuance proposed in connection with the mutual holding company reorganization plan fails to meet the standards established by the department.
(7) The reorganizing savings bank or any acquiree savings bank fails to furnish:
    (A) information required in the reorganization plan; or
    (B) any other information requested by the director regarding the proposed reorganization plan.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-2-5

Requirements for approval of reorganization plan application

Sec. 5. (a) The department may not approve an application for a mutual holding company reorganization unless the department finds, after an appropriate investigation or examination, that the following requirements have been satisfied:

(1) That the reorganizing savings bank and any acquiree savings bank will operate in a safe, sound, and prudent manner.

(2) That the proposed reorganization will not result in a reorganizing savings bank or any acquiree savings bank that has inadequate capital, unsatisfactory management, or poor earnings prospects.

(3) That the management or other principals of the mutual holding company are qualified by character and financial responsibility to control and operate in a legal and proper manner the mutual holding company that would result from the execution of the reorganization plan.

(4) That the interests of the depositors and creditors and of the public in general will not be jeopardized by the proposed reorganization of the savings bank into a mutual holding company.

(b) The department may conduct a public hearing to determine if the requirements of this section have been satisfied.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-2-6

Articles of reorganization; filing

Sec. 6. After a mutual holding company reorganization plan is approved by the department, the person applying for a mutual holding company reorganization must file articles of reorganization under IC 28-6.2-4, to effect the reorganization.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-2-7

Membership rights

Sec. 7. A mutual holding company that acquires a stock savings bank other than a resulting savings bank or an acquiree savings bank shall not confer any membership rights upon the depositors or borrowers of that savings bank, unless the savings bank is merged into a mutual savings bank from which the mutual holding company draws members, in which case the depositors of the stock savings bank shall receive the same membership rights as other depositors of the savings bank into which the stock savings bank is merged.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-2-8

Reorganization plan requirements

Sec. 8. Each reorganization plan must:

(1) contain a description of all significant terms of the proposed reorganization;

(2) include as an attachment and incorporate the following:

(A) Any proposed stock issuance plan.
(B) An opinion of counsel or a ruling from the federal Internal Revenue Service and the department of state revenue as to the federal and state tax treatment of the proposed reorganization.
(C) A copy of the proposed articles of reorganization and bylaws of the resulting savings bank.
(D) A description of the method of reorganization under this chapter.
(E) A statement that, upon consummation of the reorganization, certain assets and liabilities, including all deposit accounts of the reorganizing savings bank, shall be transferred to the resulting savings bank, which shall immediately become a savings bank subsidiary of the mutual holding company.
(F) A copy of any stock issuance plan that is proposed as part of the reorganization plan.
(G) A summary of the expenses to be incurred in connection with the reorganization.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-2-9
Transfer of assets, rights, obligations, and liabilities

Sec. 9. All assets, rights, obligations, and liabilities of a reorganizing savings bank that are not expressly retained by the mutual holding company shall be transferred to the resulting savings bank.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-2-10
Identical deposit accounts

Sec. 10. Each person who holds a deposit account in a reorganizing savings bank or any acquiree savings bank immediately before the reorganization shall receive, upon consummation of the reorganization, without payment, an identical deposit account in the resulting savings bank or the acquiree savings bank.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-2-11
Amendment or termination of reorganization plan

Sec. 11. A reorganization plan adopted by the boards of directors of the reorganizing savings bank and any acquiree savings bank may be:

(1) amended by those boards as a result of any regulator's comments:
(A) before any solicitation of proxies from the members to vote on the reorganization plan; and
(B) at any later time with the consent of the director; or
(2) terminated by either board:
(A) at any time before the meeting at which the members

vote on the reorganization plan; or

(B) at any later time;

with the consent of the department.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-3

Chapter 3. Issuance of Stock

IC 28-6.2-3-1

Written approval before issuance; criteria for approval

Sec. 1. (a) A savings bank subsidiary of a mutual holding company, including a resulting or an acquiree savings bank, may not, directly or indirectly, issue stock to persons other than its mutual holding company parent without the prior written approval of the department.

(b) The department shall approve a proposed stock issuance plan upon determining that all of the following criteria are met:

(1) The plan:

(A) would provide the savings bank, its mutual holding company, and any other savings bank subsidiaries of the mutual holding company with sufficient capital; and

(B) would not be detrimental to the savings bank, its mutual holding company, members of the mutual holding company, or the interest of depositors of the savings bank.

(2) The proposed price or price range, the classification, and any terms or conditions of the stock to be issued are reasonable.

(3) The plan is approved by the members of the mutual holding company or, if the plan is part of a reorganization plan, by members of the reorganizing savings bank, at a meeting of the members of the mutual holding company or the reorganizing savings bank.

(c) In determining whether the criteria set forth in subsection (b) are met, the department may consider the following factors:

(1) The size, capital position, and quality of management of the savings bank.

(2) The business objective of the savings bank.

(3) The dollar amount and number of shares to be issued under the plan.

(4) The market conditions that may affect the plan.

(5) The existence of a trading market in, or methods of later resale or repurchase of, the stock to be issued under the plan.

(6) Any benefits provided to the savings bank through employee or director incentives.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-3-2

Proposed price of stock

Sec. 2. Each application for approval of a proposed stock issuance plan must state and explain the proposed sales price or the price range if an exact price cannot be determined. The application must do the following:

(1) Support the reasonableness of the proposed price or price range by independent persons who are experienced in corporate valuations.

(2) Indicate the basis for determination of the income to be

derived from the proceeds of the stock sale, demonstrate the appropriateness of the earnings multiple used, and include all assumptions regarding future earnings growth, if the proposed price or price range is based upon a capitalization of the projected income of the savings bank after the issuance of the stock. If the proposed price or price range is based upon a comparison of the stock of the savings bank with the issued and outstanding stock of other stock savings banks or similar institutions, those institutions must be reasonably comparable to the savings bank in terms of size, asset composition, market area, competitive conditions, profit history, expected future earnings, and other stated relevant factors.

(3) State the amount of the discount and explain how that discount was determined, if the proposed price or price range includes any discount due to the minority status of the stock to be offered.

(4) State any additional information about the pricing that the department may request.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-3-3

Representations regarding price of stock

Sec. 3. No representations may be made in any manner in connection with the offer or sale of any stock issued under this chapter that:

(1) the price, price range, or any other pricing information related to a stock issuance has been approved by the department;

(2) the stock has been approved by the department; or

(3) the department has endorsed the accuracy or adequacy of any securities offering or sales documents disseminated in connection with the stock.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-3-4

Stock issuance plan requirements

Sec. 4. A stock issuance plan must do the following:

(1) Describe all significant terms of the proposed stock issuance and include:

(A) any proposed stock order form; and

(B) any agreement or other document defining or limiting the rights of stockholders.

(2) Provide that the aggregate outstanding voting common stock owned or controlled by persons other than the mutual holding company at the close of the issuance must be less than fifty percent (50%) of the total number of shares of outstanding voting common stock. This provision may be omitted if the issuance will be conducted by a savings bank that was in the stock form when acquired by its mutual holding company parent if the savings bank is not a resulting savings bank or an acquiree savings bank. Any stock that has no present or contingent voting

rights may be issued by a savings bank subsidiary of a mutual holding company to persons other than the savings bank's mutual holding company, consistent with applicable law.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-3-5

Purchase of stock through loaned funds

Sec. 5. A savings bank shall not offer or sell any stock to any person or corporation whose purchase would be financed by funds loaned to the person or corporation by the savings bank or any of its affiliates, unless that borrowing is approved by the department.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-3-6

Amendment or termination of stock issuance plan

Sec. 6. If proposed as part of a reorganization plan, a stock issuance plan may be amended or terminated in the same manner as the reorganization plan under IC 28-6.2-2-11.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-3-7

Noncompleted stock issuance plan; termination; extensions

Sec. 7. A stock issuance plan will be terminated if not completed within the time specified in the plan unless an extension is:

(1) requested in writing for good cause shown; and

(2) approved in writing by the department.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-3-8

Stock issuance plan; discretionary provisions

Sec. 8. A stock issuance plan may provide the following:

(1) The offering may be commenced concurrently with or after the mailing of any proxy statements to the members of the reorganizing savings bank and any acquiree savings bank if the stock issuance is part of a reorganization plan. The offering may be concluded before the required membership votes if the offer and sale of the stock is conditioned upon the approval of the reorganization plan and issuance plan by the members of the reorganizing savings bank and any acquiree savings bank.

(2) Any stock not sold in the offering may be sold in any other manner provided in the stock issuance plan that is approved by the department in writing.

(3) Instead of shares of stock, the savings bank may issue and sell units of securities consisting of stock and long-term warrants or other equity securities, in which event any reference to stock in this chapter applies to units of equity securities unless the context otherwise specifies or requires.

(4) Purchases of stock by persons or entities acting in concert, or by associates, may not exceed a limit established under the terms of the stock issuance plan.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-4

Chapter 4. Articles of Reorganization

IC 28-6.2-4-1

Required form and elements

Sec. 1. (a) The articles of reorganization of a mutual holding company must:

(1) be in a form approved by the director; and

(2) contain the elements set forth in IC 28-12-2-1.

(b) The director may establish and require a specific form for the articles of reorganization of a mutual holding company.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-4-2

Filing

Sec. 2. The articles of reorganization of a mutual holding company and any amendments to them must be filed with and approved by the department in the manner established in IC 28-12-5.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-4-3

Required provisions

Sec. 3. The articles of reorganization of a mutual holding company must provide the following:

(1) On the effective date of reorganization or acquisition:

(A) the owners of deposit accounts and borrowers in the resulting or acquiree savings bank become members of the mutual holding company; and

(B) the membership rights of the owners and borrowers in the mutual savings bank end and their membership rights in the mutual holding company begin.

(2) A person becomes a member of a mutual holding company by:

(A) owning a deposit account in a mutual savings bank that is a subsidiary of the mutual holding company; or

(B) borrowing from a mutual savings bank that is a subsidiary of the mutual holding company.

(3) A member of a mutual holding company has one (1) vote for each one hundred dollars ($100) or additional fraction of one hundred dollars ($100) of the combined withdrawal value of the member's deposit accounts in a subsidiary mutual savings bank of the mutual holding company. Each borrowing member is entitled to cast one (1) vote as a borrower.

(4) Members of a mutual holding company may vote in person or by proxy at any meeting. A proxy must be in writing and signed by the member or the member's authorized representative. Unless specified in the proxy, a proxy filed with the secretary shall continue in force until revoked by a written notice to the secretary or superseded by another proxy. Except as a proxy, a person may not cast more than fifty (50) votes at

any meeting of the members unless a greater number of votes is authorized by the articles of reorganization.

(5) A quorum of members at a regular or special meeting shall be comprised of any number of eligible members voting in person or by proxy.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-4-4
Effective date

Sec. 4. The effective date of the articles of reorganization and amendments to the articles of reorganization must be the date of recording in the office of the secretary of state, unless a delayed effective date is specified in the articles of reorganization.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-5

Chapter 5. Powers of a Mutual Holding Company

IC 28-6.2-5-1

Investment and acquisition powers; other powers

Sec. 1. A mutual holding company may do the following:

(1) Invest in or acquire control of:

(A) a bank, savings bank, or savings association; or

(B) the holding company of a bank, savings bank, or savings association.

(2) Acquire a mutual savings bank or mutual savings association by merger with an interim or existing subsidiary savings bank of the mutual holding company from which the mutual holding company has members.

(3) Acquire control of another mutual holding company by:

(A) merging with or into it; or

(B) merging it with or into a subsidiary interim holding company;

with the consent of the department and subject to conditions the department may prescribe, upon an affirmative vote of at least two-thirds (2/3) of the board of each entity.

(4) Acquire control of a savings bank holding company or savings association holding company in the stock form with the written approval of the department. An acquired holding company may be held as a subsidiary or merged into the mutual holding company.

(5) Invest in or acquire control of any corporation that is engaged exclusively in activities approved by the department.

(6) Invest in securities in which a savings bank may invest in under IC 28-6.1.

(7) Engage in activities in which a savings bank may engage in under IC 28-6.1.

(8) Furnish or perform management services for a subsidiary.

(9) Hold, manage, or liquidate assets owned or acquired from a subsidiary.

(10) Hold or manage property that the mutual holding company or a subsidiary uses.

(11) Engage in any activity that the federal reserve board permits a bank holding company to engage in under 12 CFR 225, subpart C, unless limited or prohibited by the department.

(12) Convert itself and any savings bank subsidiary into a mutual savings bank under a plan that:

(A) is approved by the department;

(B) provides that the converting mutual holding company ceases to engage in activities in which the converted savings bank may not engage; and

(C) provides that stock in a subsidiary savings bank that is not held by the converting mutual holding company is redeemed.

As added by P.L.122-1994, SEC.101. Amended by P.L.79-1998,

SEC.79.

IC 28-6.2-5-2
Pledging stock

Sec. 2. (a) A mutual holding company, to collateralize an obligation of its own or of any of its subsidiaries or affiliates, may pledge any stock that comprises a minority interest in any subsidiary or any stock that the mutual holding company holds in the following:

(1) A subsidiary savings bank, if the proceeds or other benefit of the obligation collateralized are received by the savings bank whose stock is pledged.

(2) A subsidiary savings bank that was in the stock form when acquired.

(3) Any nondepository subsidiary.

(b) A pledge of stock that is not described in subsection (a) may not be made without the prior written approval of the director.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-5-3
Pledging stock; notification; certification of transfer of proceeds

Sec. 3. Within ten (10) days after any pledge of stock, a mutual holding company shall:

(1) notify the director in writing regarding the terms of the transaction, including the amount of principal and interest, the repayment terms, the maturity date, the nature and amount of collateral, and the terms governing seizure of the collateral; and

(2) include in the notice a certification that the proceeds of the loan have been transferred to the subsidiary savings bank whose stock has been pledged under section 2(a) of this chapter.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-5-4
Notice of nonpayment

Sec. 4. A mutual holding company that fails to make any payment on a loan secured by the pledge of stock by the date on which the payment is due shall, on the first day after the payment is due and not made, provide written notice of nonpayment to the director.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-5-5
Repurchase of stock; written approval

Sec. 5. A subsidiary savings bank of a mutual holding company that has any stockholders other than the savings bank's mutual holding company may not repurchase any share of stock within three (3) years of the stock's date of issuance without the prior written approval of the director unless the repurchase:

(1) is part of a general repurchase made on a pro rata basis under an offer approved in writing by the director and made to all stockholders of the savings bank, except that the savings bank's mutual holding company may be excluded from the repurchase

with the department's approval; and

(2) is accomplished in the open market by a stock benefit plan of the savings bank in an amount reasonable and appropriate to fund the plan.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-5-6

Acquisition of additional shares of stock

Sec. 6. A mutual holding company may, at any time, and without prior approval of the department, acquire additional shares of the stock of a subsidiary savings bank.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-5-7

Permissive transfer of stock, assets, or liabilities

Sec. 7. With the written approval of the department, a mutual holding company may do the following:

(1) Directly or indirectly transfer any interest in stock that it holds in any subsidiary savings bank.

(2) Cause or permit the transfer of all or a substantial portion of the assets or liabilities of any subsidiary savings bank.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-5-8

Waiver of right to receive dividend; authorization

Sec. 8. Unless authorized by the director, a mutual holding company may not waive its right to receive any dividend declared by a subsidiary.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-6

Chapter 6. Reporting and Regulation of Mutual Holding Companies

IC 28-6.2-6-1

Annual reports

Sec. 1. Each mutual holding company shall furnish, in the manner and in the form prescribed by the director, an annual report for:

(1) the fiscal year in which it becomes a mutual holding company; and

(2) each fiscal year during which it remains a mutual holding company.

Additional information and reports shall be furnished as the director may require.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-6-2

Examination of mutual holding company; examination reports

Sec. 2. The department may examine any mutual holding company and each of its subsidiaries. The department may rely on examination reports made by the primary federal or state supervisor of a subsidiary financial institution of a mutual holding company.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-6-3

Applicability of provisions of IC 28-11 and IC 28-13

Sec. 3. The provisions of IC 28-11 and IC 28-13 apply to a mutual holding company as if the mutual holding company were a mutual savings bank.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-7

Chapter 7. Mutual Holding Company Conversion and Liquidation

IC 28-6.2-7-1

Conversion to stock form

Sec. 1. A mutual holding company may convert from mutual to stock form in accordance with a plan of conversion approved by the department under procedures substantially the same as for the conversion of a mutual savings bank contained in IC 28-1-21.9.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-7-2

Liquidation of mutual holding company; filing federal bankruptcy court petition

Sec. 2. (a) The department may file a petition with the federal bankruptcy court requesting the liquidation of a mutual holding company under 12 U.S.C. 1467(a)(o)(9) and Title 11, United States Code, upon:

(1) the default of the resulting savings bank, any acquiree savings bank, or any subsidiary savings bank of the mutual holding company that was in the mutual form when acquired;

(2) the default of the mutual holding company; or

(3) foreclosure on any pledge by the mutual holding company of subsidiary savings bank stock.

(b) Except as provided in subsection (a), the net proceeds of any liquidation of a mutual holding company shall be transferred to the members of the mutual holding company under the articles of reorganization of the mutual holding company.

(c) If:

(1) the FDIC incurs a loss from a default of any savings bank subsidiary of a mutual holding company; and

(2) that mutual holding company is liquidated under subsection (a);

the FDIC shall succeed to the membership interests of the depositors of the savings bank, to the extent of the FDIC's loss.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-7-3

Applicability of IC 28-11-3

Sec. 3. IC 28-11-3 applies to a mutual holding company in the same manner it applies to a savings bank.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-7-4

Solicitations of proxies

Sec. 4. Solicitations of proxies by any person in connection with any membership vote required under this chapter must be accompanied by proxy materials in a form appropriate to, and containing the information relevant to, the action that members are

being asked to approve.
As added by P.L.122-1994, SEC.101.

IC 28-6.2-7-5
Use of proxies

Sec. 5. Whenever a mutual savings bank or mutual holding company is required by this chapter to obtain membership approval for a transaction, the savings bank or mutual holding company may use any existing proxy conferring general authority to vote on any and all matters at any meeting of members if the member granting the proxy:

(1) has been furnished a proxy statement regarding the proposed transaction; and

(2) does not revoke the proxy before the vote at the meeting at which the transaction will be considered.

As added by P.L.122-1994, SEC.101.

IC 28-6.2-7-6
Plan of conversion

Sec. 6. A mutual holding company organized under the laws of the United States may convert to a mutual holding company organized under this article in accordance with a plan of conversion approved by the department that is substantially the same as a plan of a mutual bank conversion authorized in IC 28-1-21.7.
As added by P.L.122-1994, SEC.101.

IC 28-6.2-7-7
Adoption of rules to implement chapter

Sec. 7. The department may adopt rules under IC 4-22-2 or adopt policies necessary to implement this chapter.
As added by P.L.122-1994, SEC.101.

IC 28-7

ARTICLE 7. SPECIALIZED FINANCIAL INSTITUTIONS

IC 28-7-1

Chapter 1. Credit Unions

IC 28-7-1-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to section 9(9) of this chapter by P.L.14-1992 apply to expenditures made by credit unions after July 1, 1992, for buildings or other office space.

As added by P.L.220-2011, SEC.464.

IC 28-7-1-0.5

Definitions

Sec. 0.5. The following definitions apply throughout this chapter:

(1) "Automated teller machine" (ATM) means a piece of unmanned electronic or mechanical equipment that performs routine financial transactions for authorized individuals.

(2) "Branch office" means an office, agency, or other place of business at which deposits are received, share drafts are paid, or money is lent to members of a credit union. The term does not include:

(A) the principal office of a credit union;

(B) the principal office of a credit union affiliate;

(C) a branch office of a credit union affiliate;

(D) an automated teller machine; or

(E) a night depository.

(3) "Credit union" is a cooperative, nonprofit association, incorporated under this chapter, for the purposes of educating its members in the concepts of thrift and to encourage savings among its members. A credit union should provide a source of credit at a fair and reasonable rate of interest and provide an opportunity for its members to use and control their own money in order to improve their economic and social condition.

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

(5) "Surplus" means the credit balance of undivided earnings after losses. The term does not include statutory reserves.

(6) "Unimpaired shares" means paid in shares less any losses for which no reserve exists and for which there is no charge against undivided earnings.

(7) "Related credit union service organization" means, in reference to a credit union, a credit union service organization (as defined and formed under Part 712 of the regulations of the National Credit Union Administration, 12 CFR 712) in which the credit union has invested under section 9(a)(4) of this chapter.

(8) "Premises" means any office, branch office, suboffice,

service center, parking lot, real estate, or other facility where the credit union transacts or will transact business.

(9) "Furniture, fixtures, and equipment" means office furnishings, office machines, computer hardware, computer software, automated terminals, and heating and cooling equipment.

(10) "Fixed assets" means:

(A) premises; and

(B) furniture, fixtures, and equipment.

(11) "Audit period" means a twelve (12) month period designated by the board of directors of a credit union.

(12) "Community" means:

(A) a second class city;

(B) a third class city;

(C) a town;

(D) a county other than a county containing a consolidated city;

(E) a census tract;

(F) a township; or

(G) any other municipal corporation (as defined in IC 36-1-2-10).

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

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

(B) The control in any manner of the election of a majority of the directors of the related interest.

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

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

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

(14) "Executive officer" includes any of the following officers of a credit union:

(A) The chairman of the board of directors.

(B) The president.

(C) A vice president.

(D) The cashier.
(E) The secretary.
(F) The treasurer.

(15) "Immediate family", for purposes of sections 17.1 and 17.2 of this chapter, means the spouse of an individual, the individual's minor children, and any of the individual's children, including adults, residing in the individual's home.

(16) "Officer" means any individual who is not solely a director or committee member and participates or has the authority to participate in major policymaking functions of a credit union, regardless of whether:

(A) the individual has an official title;
(B) the individual's title designates the individual as an assistant; or
(C) the individual is serving without salary or other compensation.

(17) "Related interest", with respect to an individual, means:

(A) a partnership, a corporation, or another business organization that is controlled by the individual; or
(B) a political campaign committee:
(i) controlled by the individual; or
(ii) the funds or services of which benefit the individual.

(18) Except as provided in section 9(a)(4) of this chapter, "capital and surplus" means the sum of:

(A) undivided profits;
(B) reserve for contingencies;
(C) regular reserve; and
(D) allowance for loan and lease losses.

As added by Acts 1977, P.L.294, SEC.1. Amended by P.L.263-1995, SEC.1; P.L.188-1997, SEC.9; P.L.192-1997, SEC.16; P.L.11-1998, SEC.15; P.L.53-2002, SEC.1; P.L.141-2005, SEC.11; P.L.213-2007, SEC.65; P.L.217-2007, SEC.63; P.L.90-2008, SEC.40; P.L.35-2010, SEC.147; P.L.137-2014, SEC.26.

IC 28-7-1-1

Persons authorized to organize; application; articles of incorporation

Sec. 1. (a) Any seven (7) persons who are residents of Indiana, of legal age, and representing not less than five hundred (500) persons who belong to one (1) or more qualified groups (as defined in section 10 of this chapter) may apply to the department for permission to organize a credit union, by signing and acknowledging, in triplicate, articles of incorporation.

(b) Those persons desiring to organize a credit union under this chapter shall make application on forms prescribed by the director. The articles shall state:

(1) the name of the credit union;
(2) the address of the credit union's principal office;
(3) the purpose for which it is formed;
(4) qualification for membership in the credit union;

(5) the par value of the shares;
(6) the maximum number of directors;
(7) the name, address, and term of office of each member of the first board of directors;
(8) the name and address of each of the incorporators and the number of shares subscribed to by each; and
(9) any other provisions for the regulation of the affairs of the corporation.

(c) The application shall be signed by all incorporators before a notary public.

(d) The department shall make a careful investigation of:
(1) the character and management qualifications of the proposed directors and officers; and
(2) the economic feasibility of the proposed credit union service.

(e) The application shall be processed as follows:
(1) The applicant shall give notice of its application in accordance with IC 28-11-5.
(2) If exceptions to the application are filed with the department, a public hearing on the application may be scheduled and held in accordance with IC 28-11-5-7.
(3) If no exceptions to the application are filed, the department shall approve or deny the application within one hundred twenty (120) days.

(f) If the proposed credit union is approved, triplicate copies of the articles of incorporation shall be filed with the secretary of state. The secretary of state shall file one (1) copy of the articles and shall issue a certificate of incorporation to the incorporators. The certificate of incorporation, together with two (2) copies of the articles, shall be returned to the incorporators.

(g) The articles shall be filed with the recorder of the county in which the credit union is to be located.

(Formerly: Acts 1961, c.182, s.1; Acts 1974, P.L.130, SEC.1.) As amended by Acts 1977, P.L.294, SEC.2; P.L.270-1983, SEC.1; P.L.52-1985, SEC.6; P.L.14-1992, SEC.121; P.L.228-1993, SEC.1; P.L.42-1993, SEC.73; P.L.263-1995, SEC.2.

IC 28-7-1-2
Repealed

(Repealed by Acts 1977, P.L.294, SEC.14.)

IC 28-7-1-3
Bylaws; requirement to commence business; form

Sec. 3. A credit union may not commence business until it submits a completed set of bylaws to the department. The department shall have a form of bylaws prepared, consistent with this chapter, which shall be used by credit union incorporators. Bylaws shall be available to persons desiring to organize a credit union.

(Formerly: Acts 1961, c.182, s.3.) As amended by Acts 1977, P.L.294, SEC.3; P.L.263-1995, SEC.3.

IC 28-7-1-4
Bylaws; contents

Sec. 4. (a) The bylaws, as provided in section 3 of this chapter, with acknowledgment of their adoption by the incorporators or board of directors, must provide at least the following:

(1) That the board of directors shall annually establish a date for the annual meeting. The bylaws shall prescribe the manner of notifying the members of meetings, the manner of conducting the meetings, and the number of members constituting a quorum, which shall in no case be less than fifteen (15) members.

(2) The number of directors of the corporation, which shall not be less than five (5), all of whom shall be members.

(3) The powers and duties of the directors.

(4) The duties of the officers who are elected by the board of directors.

(5) The number of members of the supervisory committee, which shall not be less than three (3), together with their respective powers and duties.

(6) The terms under which shares may be issued, transferred, and withdrawn and loans may be made and repaid.

(7) Any other provisions consistent with this chapter.

(b) The bylaws must prescribe procedures which ensure that all credit union members have an opportunity to vote, either in person or by absentee ballot, at any meeting of the shareholders. A member may not vote by proxy. A member, other than a natural person, may vote through an agent designated for that purpose. An agent may not represent more than one (1) entity.

(c) This section does not prevent a credit union from having more restrictive provisions in its bylaws than are required by this chapter. *(Formerly: Acts 1961, c.182, s.4; Acts 1969, c.133, s.1.) As amended by Acts 1977, P.L.294, SEC.4; P.L.270-1983, SEC.2; P.L.52-1985, SEC.7; P.L.171-1986, SEC.1; P.L.263-1995, SEC.4.*

IC 28-7-1-5
Repealed

(Repealed by Acts 1977, P.L.294, SEC.14.)

IC 28-7-1-6
Repealed

(Repealed by Acts 1977, P.L.294, SEC.14.)

IC 28-7-1-7
Amendment of articles

Sec. 7. (a) A credit union may amend its articles of incorporation. An amendment shall be proposed by the board of directors by the adoption of a resolution setting forth the proposed amendment and directing that it be submitted to a vote of the shareholders upon approval by the department. If the resolution is to be proposed at the annual meeting, notice of the proposal shall be included in the notice

of the annual meeting. If the resolution is to be proposed at a special meeting, the special meeting shall be called by the resolution proposing the amendment, and notice of the meeting shall be given to each member of the credit union not less than five (5) days before the meeting. The notice must state the purpose of the meeting and contain the subject of the proposed amendment.

(b) The proposed amendment shall be adopted upon receiving the affirmative votes of at least three-fourths (3/4) of the shareholders present at the meeting.

(c) Upon the adoption of an amendment to the articles of incorporation, articles of amendment shall be executed and filed in the following manner:

(1) The articles of amendment shall be prepared and signed in triplicate by the president and secretary of the credit union. The department may approve them in the manner provided in IC 28-12-5.

(2) The amendment, if approved by the department, shall be filed with the secretary of state. The secretary of state shall keep one (1) copy of the articles in his office and shall issue a certificate of amendment to the credit union. The secretary of state shall return the certificate of amendment with a copy of the articles of amendment to the credit union and file the other copy of the articles with the department. A credit union shall not exercise any power, right, or authority conferred by an amendment until a copy of the articles has been filed with the recorder of the county in which the credit union is located.

(Formerly: Acts 1961, c.182, s.7.) As amended by Acts 1977, P.L.294, SEC.5; P.L.14-1992, SEC.122; P.L.263-1995, SEC.5.

IC 28-7-1-8

Unauthorized use of name "credit union"; violations

Sec. 8. (a) The use of any name or title that contains the words "credit union", or that means "credit union" in any language, is unlawful unless the name is used by:

(1) a corporation authorized to use the words "credit union" under Indiana or United States law; or

(2) the Indiana Credit Union League, Inc., and its affiliates.

(b) 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 credit union.

(c) A person, firm, limited liability company, or corporation that violates this section is subject to a penalty of five hundred dollars ($500) per day for each 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.

(Formerly: Acts 1961, c.182, s.8.) As amended by Acts 1978, P.L.2, SEC.2820; P.L.52-1985, SEC.8; P.L.263-1995, SEC.6; P.L.141-2005, SEC.12.

IC 28-7-1-9

Powers; maintenance of files; authority to purchase and hold life insurance

Sec. 9. (a) A credit union has the following powers:

(1) To issue shares of its capital stock to its members. No commission or compensation shall be paid for securing members or for the sale of shares.

(2) To make loans to officers, directors, or committee members under sections 17.1 and 17.2 of this chapter.

(3) To invest in any of the following:

(A) Bonds, notes, or certificates that are the direct or indirect obligations of the United States, or of the state, or the direct obligations of a county, township, city, town, or other taxing district or municipality or instrumentality of Indiana and that are not in default.

(B) Bonds or debentures issued by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449) or the Home Owners' Loan Act (12 U.S.C. 1461 through 1468).

(C) Obligations of national mortgage associations issued under the authority of the National Housing Act.

(D) Mortgages on real estate situated in Indiana which are fully insured under Title 2 of the National Housing Act (12 U.S.C. 1707 through 1715z).

(E) Obligations issued by farm credit banks and banks for cooperatives under the Farm Credit Act of 1971 (12 U.S.C. 2001 through 2279aa-14).

(F) Savings and loan associations, other credit unions that are insured under section 31.5 of this chapter, and certificates of indebtedness or investment of an industrial loan and investment company if the association or company is federally insured. Not more than twenty percent (20%) of the assets of a credit union may be invested in the shares or certificates of an association or company, nor more than forty percent (40%) in all such associations and companies.

(G) Corporate credit unions.

(H) Federal funds or similar types of daily funds transactions with other financial institutions.

(I) Shares or certificates of an open-end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 15 U.S.C. 80a-3 and 15 U.S.C. 80a-4 through 15 U.S.C. 80a-64), if all of the following conditions are met:

(i) The fund's assets consist of and are limited to securities in which a credit union may invest directly.

(ii) The credit union has an equitable and undivided interest in the underlying assets of the fund.

(iii) The credit union is not liable for acts or obligations of the fund.

(iv) The credit union's investment in any one (1) fund does

not exceed fifteen percent (15%) of the amount of the credit union's net worth.

(J) For a credit union that is well capitalized (as defined in Part 702 of the Rules and Regulations of the National Credit Union Administration, 12 CFR 702), investment securities, as may be defined by a statute or a policy or rule of the department and subject to the following:

(i) The department may prescribe, by policy or rule, limitations or restrictions on a credit union's investment in investment securities.

(ii) The total aggregate amount of investment securities purchased or held by a credit union may never exceed at any given time ten percent (10%) of the capital and surplus of the credit union. However, the limitations imposed by this item do not apply to investments in the direct or indirect obligations of the United States or in the direct obligations of a United States territory or insular possession, or in the direct obligations of the state or any municipal corporation or taxing district in Indiana.

(iii) A credit union may not purchase for its own account any bond, note, or other evidence of indebtedness that is commonly designated as a security that is speculative in character or that has speculative characteristics. For the purposes of this item, a security is speculative or has speculative characteristics if at the time of purchase the security is in default, is rated below the first four (4) rating classes by a generally recognized security rating service, or is otherwise considered speculative by the director.

(iv) A credit union may purchase for its own account a security that is not rated by a generally recognized security rating service if the credit union at the time of purchase obtains financial information that is adequate to document the investment quality of the security and if the security is not otherwise considered speculative by the director.

(v) A credit union that purchases a security for its own account shall maintain sufficient records of the security to allow the security to be properly identified by the department for examination purposes.

(vi) Except as otherwise authorized by this title, a credit union may not purchase any share of stock of a corporation. If a credit union possesses stock or another equity investment as a result of a loan default, the credit union shall dispose of the investment within a reasonable period that does not exceed one (1) year or a longer period if approved by the department.

(vii) Subject to items (i) through (iv), a credit union may purchase yankee dollar deposits, eurodollar deposits, banker's acceptances, deposit notes, bank notes with original weighted average maturities of less than five (5) years, and investments in obligations of, or issued by, any

state or political subdivision (including any agency, corporation, or instrumentality of a state or political subdivision).

(K) Collateralized obligations that are eligible for purchase and sale by federal credit unions. However, a credit union may purchase for its own account and sell the obligations only to the extent that a federal credit union can purchase and sell those obligations.

(4) With the prior approval of the department, and subject to the limitations of this subsection, a credit union may organize, invest in, or loan money to a credit union service organization (as defined in Part 712 of the regulations of the National Credit Union Administration, 12 CFR 712). A credit union may not loan or invest in a credit union service organization if the aggregate amount of all such loans or investments in a particular credit union service organization is greater than ten percent (10%) of the capital, surplus, and unimpaired shares of the credit union without the prior written approval of the department. A credit union may organize, invest in, or loan money to a credit union service organization described in this subdivision only if the following requirements are met:

(A) The credit union service organization is adequately capitalized or has a reasonable plan for adequate capitalization if the credit union service organization is to be formed or is newly formed.

(B) The credit union service organization is structured and operated as a separate legal entity from the credit union.

(C) The credit union obtains a written legal opinion that the credit union service organization is structured and operated in a manner that limits the credit union's potential liability for the debts and liabilities of the credit union service organization to not more than the loss of money invested in or loaned to the credit union service organization by the credit union.

(D) The credit union service organization agrees in writing to prepare financial statements and provide the financial statements to the credit union at least quarterly, and to the department upon request.

(E) The credit union service organization agrees in writing to obtain an audit of the credit union service organization from a certified public accountant at least annually and provide a copy of each audit report to the credit union, and to the department upon request. A wholly owned credit union service organization is not required to obtain a separate annual audit if the credit union service organization is included in the annual consolidated audit of the credit union that is the credit union service organization's parent.

(F) The credit union service organization operates in compliance with all applicable federal and state laws.

(5) To deposit its funds into:

(A) depository institutions that are federally insured; or

(B) state chartered credit unions that are privately insured by an insurer approved by the department.

(6) To purchase, hold, own, or convey real estate as may be conveyed to the credit union in satisfaction of debts previously contracted or in exchange for real estate conveyed to the credit union.

(7) To own, hold, or convey real estate as may be purchased by the credit union upon judgment in its favor or decrees of foreclosure upon mortgages.

(8) To issue shares of stock and upon the terms, conditions, limitations, and restrictions and with the relative rights as may be stated in the bylaws of the credit union, but no stock may have preference or priority over the other to share in the assets of the credit union upon liquidation or dissolution or for the payment of dividends except as to the amount of the dividends and the time for the payment of the dividends as provided in the bylaws.

(9) To charge the member's share account for the actual cost of a necessary locator service when the member has failed to keep the credit union informed about the member's current address. The charge shall be made only for amounts paid to a person or concern normally engaged in providing such service, and shall be made against the account or accounts of any one (1) member not more than once in any twelve (12) month period.

(10) To transfer to an accounts payable account, a dormant account, or a special account share accounts which have been inactive, except for dividend credits, for a period of at least two (2) years. The credit union shall not consider the payment of dividends on the transferred account.

(11) To invest in fixed assets with the funds of the credit union. An investment in fixed assets in excess of five percent (5%) of its assets is subject to the approval of the department. A credit union may rent excess space at the credit union's main office or branch as a source of income.

(12) To establish branch offices, upon approval of the department, provided that all books of account shall be maintained at the principal office.

(13) To pay an interest refund on loans proportionate to the interest paid during the dividend period by borrowers who are members at the end of the dividend period.

(14) To purchase life savings and loan protection insurance for the benefit of the credit union and its members, if:

(A) the coverage is placed with an insurance company licensed to do business in Indiana; and

(B) no officer, director, or employee of the credit union personally benefits, directly or indirectly, from the sale or purchase of the coverage.

(15) To sell and cash negotiable checks, travelers checks, and money orders for members.

(16) To purchase members' notes from any liquidating credit union, with written approval from the department, at prices agreed upon by the boards of directors of both the liquidating and the purchasing credit unions. However, the aggregate of the unpaid balances of all notes of liquidating credit unions purchased by any one (1) credit union shall not exceed ten percent (10%) of the purchasing credit union's capital and surplus unless special written authorization has been granted by the department.
(17) To exercise such incidental powers necessary or requisite to enable it to carry on effectively the business for which it is incorporated.
(18) To act as a custodian or trustee of any trust created or organized in the United States and forming part of a tax advantaged savings plan which qualifies or qualified for specific tax treatment under Section 223, 401(d), 408, 408A, or 530 of the Internal Revenue Code, if the funds of the trust are invested only in share accounts or insured certificates of the credit union.
(19) To issue shares or insured certificates to a trustee or custodian of a pension plan, profit sharing plan, or stock bonus plan which qualifies for specific tax treatment under Sections 401(d) or 408(a) of the Internal Revenue Code.
(20) To exercise any rights and privileges that are:
(A) granted to federal credit unions; but
(B) not authorized for credit unions under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;
if the credit union complies with section 9.2 of this chapter.
(21) To sell, pledge, or discount any of its assets. However, a credit union may not pledge any of its assets as security for the safekeeping and prompt payment of any money deposited, except that a credit union may, for the safekeeping and prompt payment of money deposited, give security as authorized by federal law.
(22) To purchase assets of another credit union and to assume the liabilities of the selling credit union.
(23) To act as a fiscal agent of the United States and to receive deposits from nonmember units of the federal, state, or county governments, from political subdivisions, and from other credit unions upon which the credit union may pay varying interest rates at varying maturities subject to terms, rates, and conditions that are established by the board of directors. However, the total amount of public funds received from units of state and county governments and political subdivisions that a credit union may have on deposit may not exceed twenty percent (20%) of the total assets of that credit union, excluding those public funds.
(24) To join the National Credit Union Administration Central Liquidity Facility.
(25) To participate in community investment initiatives under the administration of organizations:

(A) exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; and

(B) located or conducting activities in communities in which the credit union does business.

Participation may be in the form of either charitable contributions or participation loans. In either case, disbursement of funds through the administering organization is not required to be limited to members of the credit union. Total contributions or participation loans may not exceed one-tenth of one percent (0.1%) of total assets of the credit union. A recipient of a contribution or loan is not considered qualified for credit union membership. A contribution or participation loan made under this subdivision must be approved by the board of directors.

(26) To establish and operate an automated teller machine (ATM):

(A) at any location within Indiana; or

(B) as permitted by the laws of the state in which the automated teller machine is to be located.

(27) To demand and receive, for the faithful performance and discharge of services performed under the powers vested in the credit union by this article:

(A) reasonable compensation, or compensation as fixed by agreement of the parties;

(B) all advances necessarily paid out and expended in the discharge and performance of its duties; and

(C) unless otherwise agreed upon, interest at the legal rate on the advances referred to in clause (B).

(28) Subject to any restrictions the department may impose, to become the owner or lessor of personal property acquired upon the request and for the use of a member and to incur additional obligations as may be incident to becoming an owner or lessor of such property.

(b) A credit union shall maintain files containing credit and other information adequate to demonstrate evidence of prudent business judgment in exercising the investment powers granted under this chapter or by rule, order, or declaratory ruling of the department.

(c) Subject to any limitations or restrictions that the department or a federal regulator may impose by regulation, rule, policy, or guidance, a credit union may purchase and hold life insurance as follows:

(1) Life insurance purchased or held in connection with employee compensation or benefit plans approved by the credit union's board of directors.

(2) Life insurance purchased or held to recover the cost of providing preretirement or postretirement employee benefits approved by the credit union's board of directors.

(3) Life insurance on the lives of borrowers.

(4) Life insurance held as security for a loan.

(5) Life insurance that a federal credit union may purchase or hold under 12 CFR 701.19(c).

(Formerly: Acts 1961, c.182, s.9; Acts 1969, c.133, s.2; Acts 1974, P.L.130, SEC.2; Acts 1975, P.L.44, SEC.6.) As amended by Acts 1977, P.L.294, SEC.6; Acts 1979, P.L.267, SEC.1; Acts 1980, P.L.178, SEC.1; Acts 1982, P.L.170, SEC.1; P.L.270-1983, SEC.3; P.L.52-1985, SEC.9; P.L.2-1987, SEC.43; P.L.19-1987, SEC.45; P.L.8-1991, SEC.30; P.L.14-1992, SEC.123; P.L.228-1993, SEC.2; P.L.263-1995, SEC.7; P.L.188-1997, SEC.10; P.L.192-1997, SEC.17; P.L.11-1998, SEC.16; P.L.62-1999, SEC.5; P.L.63-2001, SEC.15, P.L.81-2001, SEC.4 and P.L.134-2001, SEC.17; P.L.258-2003, SEC.10; P.L.73-2004, SEC.36; P.L.141-2005, SEC.13; P.L.213-2007, SEC.66; P.L.217-2007, SEC.64; P.L.90-2008, SEC.41; P.L.35-2010, SEC.148; P.L.89-2011, SEC.47; P.L.6-2012, SEC.196; P.L.27-2012, SEC.92; P.L.137-2014, SEC.27.

IC 28-7-1-9.1
Sale of life insurance policy or annuity contract; prohibitions

Sec. 9.1. (a) A credit union or a related credit union service organization (as defined in section 0.5(7) of this chapter) that acts as an insurance producer for the sale of a life insurance policy or an annuity contract issued by a life insurance company (as defined in IC 27-1-2-3):

(1) is subject to the requirements of IC 27; and
(2) must comply with the disclosure requirements of IC 27-1-38.

(b) A credit union or credit union service organization may not condition:

(1) an extension of credit;
(2) a lease or sale of real or personal property;
(3) the performance of a service; or
(4) the amount charged for:
  (A) extending credit;
  (B) leasing or selling real or personal property; or
  (C) performing services;

upon a person's purchase of a life insurance policy or an annuity contract from the credit union or related credit union service organization.

(c) This section does not prohibit a credit union or a credit union service organization from requiring that a person, as a condition to a transaction, obtain a life insurance policy from an insurance company acceptable to the credit union or credit union service organization.

As added by P.L.188-1997, SEC.11. Amended by P.L.63-2001, SEC.16, P.L.81-2001, SEC.5 and P.L.134-2001, SEC.18; P.L.130-2002, SEC.8; P.L.178-2003, SEC.93.

IC 28-7-1-9.2
Request to exercise rights and privileges granted to federal credit unions; appeal

Sec. 9.2. (a) As used in this section, "rights and privileges" means the power:

(1) to:
  (A) create;
  (B) deliver;

(C) acquire; or
(D) sell;
a product, a service, or an investment that is available to or offered by; or
(2) to engage in mergers, consolidations, reorganizations, or other activities or to exercise other powers authorized for;
federal credit unions domiciled in Indiana.

(b) A credit union that intends to exercise any rights and privileges that are:
(1) granted to federal credit unions; but
(2) not authorized for credit unions under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;
shall submit a letter to the department describing in detail the requested rights and privileges granted to federal credit unions that the credit union intends to exercise. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter submitted by the credit union.

(c) The department shall promptly notify the requesting credit union of the department's receipt of the letter submitted under subsection (b). Except as provided in subsection (e), the credit union may exercise the requested rights and privileges sixty (60) days after the date on which the department receives the letter unless otherwise notified by the department.

(d) The department may deny the requested rights and privileges if the department finds that:
(1) federal credit unions domiciled in Indiana do not possess the requested rights and privileges;
(2) the exercise of the requested rights and privileges by the credit union would adversely affect the safety and soundness of the credit union;
(3) the exercise of the requested rights and privileges by the credit union would result in an unacceptable curtailment of consumer protection; or
(4) the failure of the department to approve the requested rights and privileges will not result in a competitive disadvantage to the credit union.

(e) The sixty (60) day period referred to in subsection (c) may be extended by the department based on a determination that the credit union's letter raised issues requiring additional information or additional time for analysis. If the sixty (60) day period is extended under this subsection, the credit union may exercise the requested rights and privileges only if the credit union receives prior written approval from the department. However:
(1) the department must:
(A) approve or deny the requested rights and privileges; or
(B) convene a hearing;
not later than sixty (60) days after the department receives the credit union's letter; and
(2) if a hearing is convened, the department must approve or

deny the requested rights and privileges not later than sixty (60) days after the hearing is concluded.

(f) The exercise of rights and privileges by a credit union in compliance with and in the manner authorized by this section is not a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(g) If a credit union receives approval to exercise the requested rights and privileges granted to federal credit unions domiciled in Indiana, the department shall determine by order whether all credit unions may exercise the same rights and privileges. In making the determination required by this subsection, the department must ensure that the exercise of the rights and privileges by all credit unions will not:

(1) adversely affect their safety and soundness; or

(2) unduly constrain Indiana consumer protection provisions.

(h) If the department denies the request of a credit union under this section to exercise any rights and privileges that are granted to federal credit unions, the credit union may appeal the decision of the department to the circuit court with jurisdiction in the county in which the principal office of the credit union is located. In an appeal under this section, the court shall determine the matter de novo.

As added by P.L.63-2001, SEC.17, P.L.81-2001, SEC.6 and P.L.134-2001, SEC.19. Amended by P.L.73-2004, SEC.37; P.L.213-2007, SEC.67; P.L.217-2007, SEC.65; P.L.35-2010, SEC.149.

IC 28-7-1-10

Membership; identification; qualified groups; membership cards

Sec. 10. (a) The membership of credit unions shall be clearly and specifically identified. The membership of a credit union shall be limited to one (1) or more qualified groups of persons, immediate family members of the persons in the qualified group or groups, and organizations of those persons. For purposes of this section, a qualified group consists of:

(1) persons having a common bond of occupation, trade, or professional association;

(2) members of a labor organization;

(3) members of a church;

(4) persons engaged in a common trade or profession within a well defined geographical location;

(5) employees of the credit union;

(6) persons who are members of a farm bureau cooperative, or other farm bureau organization, and who have subscribed to one (1) or more shares; or

(7) persons who reside or are employed within a community.

(b) A credit union may expand its membership with an additional qualified group or groups upon prior approval of the department.

(c) Membership cards must be kept on file and maintained in the credit union's main office for inspection by examiners and must contain at least the following information:

(1) Account number, name, address, date of birth, signature of member, and the date signed.

(2) A statement that the member is eligible for membership in the credit union by reason of employment, membership, affiliation, association, or other relationship with the organization, institution, corporation, or entity included in the credit union's field of membership.

(3) Date, signature, and title of person authorized to record approval by the board, membership officer, or executive committee.

(Formerly: Acts 1961, c.182, s.10; Acts 1974, P.L.130, SEC.3.) As amended by Acts 1982, P.L.170, SEC.2; P.L.271-1983, SEC.1; P.L.52-1985, SEC.10; P.L.14-1992, SEC.124; P.L.263-1995, SEC.8; P.L.53-2002, SEC.2; P.L.35-2010, SEC.150.

IC 28-7-1-10.1

Illegal members; purging of accounts; loans not affected

Sec. 10.1. The department shall consider a person, a firm, a corporation, or an organization to be an illegal member if the person, firm, corporation, or organization:

(1) became a member of a credit union; and

(2) did not qualify under section 10(a) of this chapter or the articles of incorporation of the credit union.

The membership of any illegal member, as determined by the department, shall be terminated and all accounts shall be purged from the active share accounts of the credit union within the period specified in writing by the department. However, a loan agreement between a terminated member and the credit union is unaffected by the termination and, if a loan involving an illegal member is secured by shares, the share account, to the extent encumbered by the loan, remains valid until unencumbered.

As added by P.L.35-2010, SEC.151.

IC 28-7-1-10.5

Repealed

(Repealed by P.L.89-2011, SEC.78.)

IC 28-7-1-10.6

Issuing shares in a revocable or irrevocable trust; conditions

Sec. 10.6. A credit union may issue shares in a revocable or irrevocable trust, subject to the following:

(1) If shares are issued in a revocable trust, at least one (1) of the settlors must be a member of the credit union in the settlor's own right.

(2) If shares are issued in an irrevocable trust, at least one (1):

(A) settlor; or

(B) beneficiary;

must be a member of the credit union in the settlor's or the beneficiary's own right.

(3) The name of each beneficiary must be listed for the trust,

whether the trust is revocable or irrevocable.
As added by P.L.89-2011, SEC.48.

IC 28-7-1-11
Quarterly call report of credit union's condition; civil penalty for failure to report; information in report

Sec. 11. Each credit union shall make a call report of its condition to the department, at least quarterly on forms and in accordance with guidelines approved by the director. Reports in addition to the regular reports may be required. A credit union that fails to comply with this section may be required by the department to pay a civil penalty of one hundred dollars ($100) for each day of noncompliance. Money paid under this section as determined by the department shall be deposited into the financial institutions fund established by IC 28-11-2-9. Except as specified in IC 28-11-3-3 concerning individual depositors, any information contained in call reports made by credit unions to the department must be made available to any person upon request.
(Formerly: Acts 1961, c.182, s.11.) As amended by Acts 1982, P.L.170, SEC.3; P.L.33-1991, SEC.54; P.L.228-1993, SEC.3; P.L.263-1995, SEC.9; P.L.141-2005, SEC.14; P.L.89-2011, SEC.49.

IC 28-7-1-12
Examinations of credit unions and affiliates; recognition of CPA audit; examination of vendors

Sec. 12. (a) Every credit union and every affiliate of a credit union shall be subject to examination by the department. A credit union shall be examined by the department as often as the department shall deem necessary. The department shall at all times be given free access to all of the books, papers, securities, and other sources of information, including audit reports and audit working papers for any such credit union. The director, the members of the department, and the supervisor in charge of the division shall have the power to subpoena documents and examine witnesses under oath pertaining to the business of the credit union. The department may accept an audit by a certified public accountant and govern its examination procedures and examination fees accordingly. At the close of each examination, a conference shall be conducted to disclose to the board of directors the findings of the examination.

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

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

(2) otherwise cease conducting business with the person.

(Formerly: Acts 1961, c.182, s.12.) As amended by P.L.263-1995, SEC.10; P.L.35-2010, SEC.153.

IC 28-7-1-13
Repealed

(Repealed by P.L.263-1995, SEC.31.)

IC 28-7-1-14
Fiscal year; membership meetings; voting rights

Sec. 14. A credit union fiscal year shall end at the close of business on the thirty-first day of December. Special meetings of the members of any credit union may be convened by order of the board of directors or the supervisory committee, or by a petition of at least ten per cent (10%) of the members. A member shall have one (1) vote. The members may decide on any matter concerning the credit union. The members may overrule the directors, and, by a three-fourths (3/4) vote of those present, may amend the bylaws if the notice of the meeting stated the proposed amendment.

(Formerly: Acts 1961, c.182, s.14.) As amended by P.L.263-1995, SEC.11.

IC 28-7-1-15
Selection of board of directors, supervisory committee, and credit committee; oath; term length; replacement of chief executive officer; qualification criteria

Sec. 15. (a) At the annual meeting, the members shall elect a board of directors and a supervisory committee.

(b) The bylaws:

(1) may provide for a credit committee; and

(2) if a credit committee is provided for, must state whether the credit committee is to be elected by the members or appointed by the board of directors.

(c) The credit committee must consist of not fewer than three (3) nor more than seven (7) members. A director may not be a member of either the credit committee or the supervisory committee.

(d) Each member of the board and each member of the credit committee or the supervisory committee shall take an oath. The length of the term of a member of the board or of the credit committee or the supervisory committee must be set forth in the bylaws.

(e) If a credit union replaces the chief executive officer of the credit union, the credit union shall give the department written notice of the replacement not later than thirty (30) days after replacing a person as the chief executive officer.

(f) Each individual elected or appointed to serve as a director, supervisory committee member, or credit committee member of a credit union, or as a member of any other committee that performs

significant ongoing functions relating to the ongoing operations of the credit union, shall meet all of the following criteria:

(1) The individual is a member of the credit union and in good standing according to reasonable criteria established by the credit union board.

(2) The individual is acceptable as a bonding risk by a bonding company licensed to do business in this state.

(3) The individual has not been removed as a director, officer, committee member, or employee of a financial institution by a federal regulator, a state regulator, or a court with jurisdiction.

(4) The department has not removed the individual as a director, officer, committee member, or employee of a credit union, financial institution, or other legal entity under the department's enforcement powers under any law of this state.

(5) The individual has not been convicted of a crime involving dishonesty or breach of trust.

(6) The individual is not habitually negligent in paying the individual's financial obligations as determined by criteria reasonably established by the credit union board.

(7) The individual has not been convicted by a court with jurisdiction of a violation, or found in violation by a court with jurisdiction or the department, of any law of this state enforced or administered by the department.

(g) If an individual no longer meets one (1) or more of the requirements of subsection (f) while serving as a director, supervisory committee member, or credit committee member of a credit union, or as a member of any other committee that performs significant ongoing functions relating to the ongoing operations of the credit union, the:

(1) individual immediately shall be removed from that office without further action of the members of the credit union board; and

(2) credit union shall appoint or elect a replacement to fill the vacancy in the manner described in the bylaws.

(Formerly: Acts 1961, c.182, s.15.) As amended by Acts 1977, P.L.294, SEC.7; P.L.270-1983, SEC.4; P.L.263-1995, SEC.12; P.L.35-2010, SEC.154.

IC 28-7-1-16

Board of directors; board officers; credit union officers; board meetings; executive committee; directors' duties; loan officers; delegation of duties; suspension or removal of officer; action by written consent

Sec. 16. (a) Not more than thirty (30) business days after the conclusion of the annual meeting, the board of directors shall elect from its own members:

(1) a chairperson;

(2) a vice chairperson or vice chairpersons;

(3) a secretary;

(4) a treasurer; and

(5) other officers determined necessary by the board of directors.

(b) The board may appoint officers of the credit union.

(c) The office of secretary and treasurer may be held by the same person. The board may appoint:

(1) an assistant secretary;

(2) an assistant treasurer; or

(3) both an assistant secretary and an assistant treasurer.

(d) The board of directors shall have the general management of the affairs, funds, and records of the credit union and shall meet at least monthly, in person or by any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting in accordance with this subsection is considered to be present in person at the meeting. Minutes of every meeting of the board of directors or executive committee shall be kept and maintained.

(e) The board may appoint an executive committee to exercise authority delegated to it by the board. The board retains ultimate responsibility for authority delegated to an executive committee.

(f) It is the duty of the directors to do the following:

(1) To determine:

(A) the maximum number of shares which may be held by a member; and

(B) the maximum amount which may be loaned to a member.

(2) To amend the bylaws, provided that the qualifications for membership in the credit union are principally defined in the articles of incorporation.

(3) To fill vacancies on the board and the credit committee until the next election.

(4) To set the compensation of members of the board, credit committee, or supervisory committee.

(5) To establish and annually review written lending and investment policies and other policies necessary for the prudent operation of the credit union.

(6) To approve an annual operating budget for the credit union.

(g) The board may appoint loan officers. Each loan officer shall furnish to the credit committee or to the board a record of each loan approved or denied at its next meeting. A loan officer, including the treasurer or assistant treasurer, shall not have authority to disburse funds of the credit union for any loan which has been approved by the loan officer.

(h) A credit union board is responsible for the performance of all of the duties listed in this subsection. The board may delegate the performance of the duties to the chief executive officer, who may further delegate one (1) or more of the following duties:

(1) Approving, disapproving, or otherwise acting on applications for membership.

(2) Determining the interest rates on loans and on deposits.

(3) Hiring employees other than the chief executive officer and fixing the employees' compensation.

(4) Making and selling investments according to investment policies adopted by the board.

(5) Designating one (1) or more depositories for funds.

(6) Establishing procedures to implement policies of the credit union board.

(7) Establishing internal controls as necessary.

(8) Determining the amount of a dividend after providing for any required reserves and declaring the dividend.

(i) The board of directors by a majority vote may suspend or remove any officer from the officer's duties as an officer.

(j) Unless specifically prohibited by the bylaws, if this chapter requires or allows a credit union board to take an action at a meeting, the board may take that action without a meeting if a consent in writing setting forth the action taken is signed by all of the directors entitled to vote on the matter. A written consent under this subsection must contain one (1) or more written approvals, each of which sets forth the action taken and bears the signature of one (1) or more directors. The directors shall deliver the directors' signed approvals to the secretary, and the secretary shall file the approvals in the corporate records of the credit union. An action taken by written consent under this subsection is effective on the date that all the directors have approved the consent unless the consent specifies a different effective date. A consent signed by all the directors has the same effect as a unanimous vote. The credit union may represent that the action was approved by a unanimous vote in any document filed with the department under this act.

(Formerly: Acts 1961, c.182, s.16; Acts 1969, c.133, s.3; Acts 1974, P.L.130, SEC.4.) As amended by Acts 1977, P.L.294, SEC.8; P.L.270-1983, SEC.5; P.L.228-1993, SEC.4; P.L.263-1995, SEC.13; P.L.62-1999, SEC.6; P.L.141-2005, SEC.15; P.L.35-2010, SEC.155.

IC 28-7-1-16.5

Conflicts of interest; disqualification; directors; committee members

Sec. 16.5. (a) This section governs the participation of board members in board actions.

(b) Unless a matter involves setting dividends, loan rates, or fees for services or other general policy applicable to all members of the credit union, a director, a committee member, an officer, or an employee of a credit union shall not in any manner, directly or indirectly, participate in the deliberation or board action on any matter that affects the director's, committee member's, officer's, or employee's pecuniary interest or the pecuniary interest of an entity other than the credit union in which the director, committee member, officer, or employee is interested.

(c) If one (1) or more directors are disqualified from participating in a matter before the credit union board under subsection (b), the remaining qualified directors present at the meeting, if together with the disqualified director constitutes a quorum, may by majority vote exercise all the powers of the board with respect to the matter under

consideration. If all of the directors are disqualified, the members of the credit union shall act on the matter.

(d) If one (1) or more committee members are disqualified from participating in a matter before the committee under subsection (b), the remaining qualified committee members, if together with the disqualified committee member constitutes a quorum, may by majority vote exercise all the powers of the committee with respect to the matter under consideration. If all the committee members are disqualified, the credit union board shall act on the matter.

As added by P.L.35-2010, SEC.156.

IC 28-7-1-17

Loans to members; application; terms and conditions; loans secured by real estate; participation loans; indemnifying or second mortgage on real estate

Sec. 17. (a) Every loan application shall be submitted on a form approved by the board of directors. When making an application, a member shall state the security offered. Loans may be dispersed upon written approval by a majority of the credit committee or a loan officer. If the credit committee or loan officer fails to approve an application for a loan, the applicant may appeal to the board of directors, providing such appeal is authorized by the bylaws.

(b) Loans to members may be made only under the following terms and conditions:

(1) All loans shall be evidenced by notes signed by the borrowing member.

(2) Except as otherwise provided in this section, the terms of any loan to a member with a maturity of more than six (6) months shall provide for principal and interest payments that will amortize the obligation in full within the terms of the loan contract. If the income of the borrowing member is seasonal, the terms of the loan contract may provide for seasonal amortization.

(3) Loans may be made upon the security of improved or unimproved real estate. Except as otherwise specified in this section, such loans must be secured by a first lien upon real estate prior to all other liens, except for taxes and assessments not delinquent, and may be made with repayment terms other than as provided in subdivision (2). The credit union loan folder for all real estate mortgage loans shall include the following:

(A) The loan application.

(B) The mortgage instrument.

(C) The note.

(D) The disclosure statement.

(E) The documentation of property insurance.

(F) For the real estate for which the loan is made, a written appraisal, which must be performed by a state licensed or certified appraiser designated by the board of directors if the amount of the loan is at least two hundred fifty thousand dollars ($250,000).

(G) The attorney's opinion of titles or a certificate of title insurance on the real estate upon which the mortgage loan is made.

(4) Loans made upon security of real estate are subject to the following restrictions:

(A) Real estate loans in which no principal amortization is required shall provide for the payment of interest at least annually and shall mature within five (5) years of the date of the loan unless extended and shall not exceed fifty percent (50%) of the fair cash value of the real estate used as security.

(B) Real estate loans on improved real estate, except for variable rate mortgage loans and rollover mortgage loans provided for in subdivision (5), shall require substantially equal payments at successive intervals of not more than one (1) year, shall mature within thirty (30) years, and shall not exceed one hundred percent (100%) of the fair cash value of the real estate used as security.

(C) Real estate loans on unimproved real estate may be made. The terms of the loan shall:

(i) require substantially equal payments of interest and principal at successive intervals of one (1) year or less;

(ii) mature within ten (10) years; and

(iii) not exceed eighty-five percent (85%) of the fair cash value of the real estate used as security.

(D) Loans primarily secured by a mortgage which constitutes a second lien on improved real estate may be made only if the aggregate amount of all loans on the real estate does not exceed one hundred percent (100%) of the fair cash value of the real estate after such loan is made. Repayment terms shall be in accordance with subdivision (2).

(E) Real estate loans may be made for the construction of improvements to real property. Funds borrowed may be advanced as work on the improvements progresses. Repayment terms must comply with subdivision (2).

(5) Subject to the limitations of subdivision (3), variable rate mortgage loans and rollover mortgage loans may be made under the same limitations and rights provided state chartered savings associations under IC 28-1-21.5 (before its repeal) or IC 28-15 or federal credit unions.

(6) As used in this subdivision, "originating lender" means the participating lender with which the member contracts. A credit union may participate with other state and federal depository financial institutions (as defined in IC 28-1-1-6) or credit union service organizations in making loans to credit union members and may sell a participating interest in any of its loans under written participation loan policies established by the board of directors. However, the credit union may not sell more than ninety percent (90%) of the principal of participating loans outstanding at the time of sale. A participating credit union that

is not the originating lender may participate only in loans made to the credit union's own members or to members of another participating state or federal credit union. A master participation agreement must be properly executed. The agreement must include provisions for identifying, either through documents incorporated by reference or directly in the agreement, the participation loan or loans before the sale of the loans.

(7) Notwithstanding subdivisions (1) through (6), a credit union may make any of the following:

(A) Any loan that may be made by a federal credit union. However, IC 24-4.5 applies to any loan that is:

(i) made under this clause; and

(ii) within the scope of IC 24-4.5.

Any provision of federal law that is in conflict with IC 24-4.5 does not apply to a loan made under this clause.

(B) Subject to subdivision (3), any alternative mortgage loan (as defined in IC 28-15-11-2) that may be made by a savings association (as defined in IC 28-15-1-11) under IC 28-15-11. A loan made under this clause by a credit union is subject to the same terms, conditions, exceptions, and limitations that apply to an alternative mortgage loan made by a savings association under IC 28-15-11.

(8) A credit union may make a loan under either:

(A) subdivisions (2) through (6); or

(B) subdivision (7);

but not both. A credit union shall make an initial determination as to whether to make a loan under subdivisions (2) through (6) or under subdivision (7). If the credit union determines that a loan or category of loans is to be made under subdivision (7), the written loan policies of the credit union must include that determination. A credit union may not combine the terms and conditions that apply to a loan made under subdivisions (2) through (6) with the terms and conditions that apply to a loan made under subdivision (7) to make a loan not expressly described and authorized either under subdivisions (2) through (6) or under subdivision (7).

(c) Nothing in this section prevents any credit union from taking an indemnifying or second mortgage on real estate as additional security.

(Formerly: Acts 1961, c.182, s.17; Acts 1969, c.133, s.4; Acts 1974, P.L.130, SEC.5.) As amended by Acts 1977, P.L.294, SEC.9; Acts 1979, P.L.267, SEC.2; Acts 1980, P.L.176, SEC.9; Acts 1982, P.L.170, SEC.4; P.L.270-1983, SEC.6; P.L.166-1988, SEC.1; P.L.260-1989, SEC.1; P.L.14-1992, SEC.125; P.L.228-1993, SEC.5; P.L.263-1995, SEC.14; P.L.192-1997, SEC.18; P.L.11-1998, SEC.17; P.L.79-1998, SEC.80; P.L.62-1999, SEC.7; P.L.53-2002, SEC.3; P.L.141-2005, SEC.16; P.L.213-2007, SEC.68; P.L.217-2007, SEC.66; P.L.35-2010, SEC.157; P.L.27-2012, SEC.93.

IC 28-7-1-17.1

Loans to directors and committee members; terms and conditions; lines of credit; application of federal regulation; delinquent loans

Sec. 17.1. (a) A credit union may make a loan to the credit union's individual directors and committee members under the following terms and conditions:

(1) The loan must comply with all requirements under this chapter that apply to loans made to other borrowers.

(2) The loan may not be on terms more favorable than those extended to other borrowers.

(3) The borrower may not:

(A) take part in the consideration of; or

(B) vote on;

the borrower's loan application.

(4) Except as provided in subsection (b), a credit union may not make a loan under this section to an individual, the individual's immediate family, or the individual's related interests if the amount of the loan, either by itself or when added to the amounts of all other loans made under this section to the individual, the individual's immediate family, or the individual's related interests, exceeds the greater of:

(A) five percent (5%) of the credit union's capital and surplus; or

(B) twenty-five thousand dollars ($25,000);

unless the loan is first approved by the credit union's board of directors.

(5) A credit union may not make a loan under this section to an individual, the individual's immediate family, or the individual's related interests if the amount of the loan, either by itself or when added to the amounts of all other loans made under this section to the individual, the individual's immediate family, or the individual's related interests, exceeds the lending limits set forth in IC 28-7-1-39.

(6) The total amount of all loans made under this section may not exceed the credit union's capital and surplus. However, the limit set forth in this subdivision does not apply to either of the following:

(A) A loan, in any amount, secured by a perfected security interest in bonds, notes, certificates of indebtedness, or treasury bills of the United States or in other obligations fully guaranteed as to principal and interest by the United States.

(B) A loan, in any amount, secured by a perfected security interest in a segregated deposit account in the lending credit union.

(b) Approval by the board of directors under subsection (a)(4) is not required for an extension of credit made under a line of credit approved under subsection (a)(4) if the extension of credit is made not later than fourteen (14) months after the line of credit was approved.

(c) The department may apply the provisions of 12 CFR 215 (Regulation O) in applying and administering this section.

(d) If a loan made to or cosigned, endorsed, or guaranteed by a director or a member of the supervisory, credit, or other committee is more than three (3) months delinquent, the individual:

(1) is automatically removed from the individual's position as director or committee member; and

(2) is ineligible to serve as a director or committee member for two (2) years.

The director may waive the application of this subsection if the director determines that it is in the best interests of the credit union. *As added by P.L.141-2005, SEC.17. Amended by P.L.90-2008, SEC.42; P.L.35-2010, SEC.158.*

IC 28-7-1-17.2

Loans to officers; terms and conditions; loans exempt from limits

Sec. 17.2. (a) A credit union may make a loan to the credit union's individual officers under the following terms and conditions:

(1) The loan must comply with all requirements under this chapter that apply to loans made to other borrowers.

(2) The loan may not be on terms more favorable than those extended to other borrowers unless the loan is made in connection with a benefit or compensation plan that:

(A) is widely available to employees of the credit union; and

(B) does not give preference to any officers of the credit union over other employees of the credit union.

(3) The loan must be promptly reported to the credit union's board of directors.

(4) A loan to the officer, the officer's immediate family, or the officer's related interests, either by itself or when added to the amounts of all other loans made under this section to the officer, the officer's immediate family, or the officer's related interests, for any purpose, may not exceed, at any given time, the greater of:

(A) two and one-half percent (2.5%) of the credit union's capital and unimpaired surplus; or

(B) twenty-five thousand dollars ($25,000);

but in no event more than one hundred thousand dollars ($100,000).

(b) The limits set forth in subsection (a)(4) do not apply to any of the following:

(1) An extension of credit made under a line of credit approved under this section if the extension of credit is made not later than fourteen (14) months after the line of credit was approved.

(2) A loan, in any amount, to finance the education of an officer's child.

(3) A loan, in any amount, to finance or refinance the purchase, construction, maintenance, or improvement of a residence of an officer, if:

(A) the loan is secured by a first lien on the residence and the

residence is owned, or will be owned after the loan is made, by the officer; and

(B) in the case of a refinancing, the loan includes only the amount used to repay the original loan, plus any closing costs and any additional amount used for any purpose described in this subdivision.

(4) A loan, in any amount, secured by a perfected security interest in bonds, notes, certificates of indebtedness, or treasury bills of the United States or in other obligations fully guaranteed as to principal and interest by the United States.

(5) A loan, in any amount, secured by a perfected security interest in a segregated deposit account in the lending credit union.

(c) A credit union may not make a loan under this section to an officer, the officer's immediate family, or the officer's related interests if the amount of the loan, either by itself or when added to the amounts of all other loans made under this section to the officer, the officer's immediate family, or the officer's related interests, exceeds the lending limits set forth in IC 28-7-1-39.

(d) The department may apply the provisions of 12 CFR 215 (Regulation O) in applying and administering this section.

As added by P.L.90-2008, SEC.43.

IC 28-7-1-17.3

Quarterly report of outstanding indebtedness of officers, directors, and committee members; retention; contents

Sec. 17.3. At least quarterly, the president or manager shall prepare and deliver to the board of directors a report listing the outstanding indebtedness of all officers, directors, and committee members. A report prepared under this subsection must be retained at the credit union for three (3) years and shall not be filed with the department unless specifically requested. A report required by this section must include:

(1) the amount of each indebtedness; and

(2) a description of the terms and conditions of each loan, including:

(A) the interest rate;

(B) the original amount and date of the loan;

(C) the maturity date;

(D) payment terms;

(E) security, if any; and

(F) any unusual term or condition of a particular extension of credit.

As added by P.L.90-2008, SEC.44.

IC 28-7-1-17.5

Signature limits

Sec. 17.5. The credit committee or loan officer may approve a line of credit, which shall establish a signature limit. Advances in excess of the signature limit shall be permitted if security is pledged to

guarantee that amount in excess of the signature limit. Advances may be granted to each member within the limits of such extension of credit. Where a line of credit has been approved, no additional loan application or statement of purpose is required, provided the aggregate unsecured obligation does not exceed the signature limit. *As added by Acts 1977, P.L.294, SEC.10. Amended by P.L.263-1995, SEC.15.*

IC 28-7-1-18
Duties of supervisory committee; professional outside audit

Sec. 18. (a) The supervisory committee shall cause the share and loan accounts of the members to be verified with the records of the treasurer at least each biennium.

(b) The supervisory committee shall supervise the acts of the board of directors, credit committee, and officers.

(c) By a majority vote, the supervisory committee may call a meeting of the shareholders to consider any violation of this chapter, or of the bylaws, or any practice of the credit union which, in the opinion of the committee is unsafe and unauthorized.

(d) The supervisory committee shall fill vacancies in its own number until the next annual meeting of the members.

(e) At the close of the audit period, the supervisory committee shall make or cause to be made a thorough audit of the credit union for each audit period and shall make a full report to the directors. The audit report shall be issued not later than one hundred twenty (120) days following the close of the audit period. Tapes, work papers, schedules, and evidence of verification of accounts shall be retained until the next examination by the department. A summary of the report shall be read at the annual meeting and shall be filed and preserved with the records of the credit union.

(f) A credit union with assets of at least five million dollars ($5,000,000) shall have an annual audit performed by an outside professional accounting firm. The department may require a professional outside audit to be performed upon any credit union if the department questions the safety and soundness of the credit union.

(g) Minutes of every meeting of the supervisory committee shall be kept and maintained.

(Formerly: Acts 1961, c.182, s.18.) As amended by Acts 1979, P.L.267, SEC.3; P.L.14-1992, SEC.126; P.L.228-1993, SEC.6; P.L.263-1995, SEC.16; P.L.192-1997, SEC.19; P.L.11-1998, SEC.18; P.L.35-2010, SEC.159; P.L.137-2014, SEC.28.

IC 28-7-1-19
Capital; lien on shares; transfer of shares; use of secondary capital by federal credit unions

Sec. 19. The capital of a credit union shall consist of the payments on shares which have been made to it by members. A credit union may attach a lien on the shares of any member with outstanding obligations to the credit union. A credit union may, upon the

resignation of a member, cancel the shares of such member, and apply the withdrawal value of such shares towards the liquidation of the member's obligations. Fully paid up shares of a credit union may be transferred to any qualified member upon such terms as the bylaws provide. If a federal credit union is authorized by the federal regulatory authority with jurisdiction or by federal law to use one (1) or more forms of secondary capital, the department may by rule, order, or declaratory ruling allow a credit union to use one (1) or more forms of secondary capital. The rule, order, or declaratory ruling must include disclosure requirements concerning the conditions for return of the secondary capital and the liquidation priority of the secondary capital.
(Formerly: Acts 1961, c.182, s.19; Acts 1969, c.133, s.5.) As amended by P.L.263-1995, SEC.17; P.L.35-2010, SEC.160.

IC 28-7-1-20
Repealed
(Repealed by Acts 1976, P.L.123, SEC.3.)

IC 28-7-1-20.1
Issuance of shares; joint tenancy; deposits, investments, and withdrawals by minors
Sec. 20.1. (a) Shares may be issued as the bylaws provide. The provisions of IC 28-1-20-6 apply to loans to any borrower and shall inure to the benefit of the credit union. Shares may be issued in a joint tenancy with right of survivorship, but no joint tenant shall be permitted to vote, obtain loans, or hold office, unless the tenant is a member.
(b) A credit union may issue shares to and receive deposits from a minor. The minor may withdraw the deposits or shares and any dividends or interest on the deposits or shares. A deposit, investment in a share, or withdrawal under this subsection by a minor is valid and enforceable. The minor is considered an adult with respect to the deposit, investment, or withdrawal.
As added by Acts 1977, P.L.294, SEC.11. Amended by P.L.263-1995, SEC.18; P.L.35-2010, SEC.161.

IC 28-7-1-21
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 28-7-1-22
Authority to borrow; limits; authority to receive public deposits and pledge securities
Sec. 22. (a) A credit union may borrow from any source. The total borrowing of a credit union may not at any time exceed fifty per cent (50%) of the unimpaired shares capital and surplus of the credit union.
(b) A credit union may receive deposits of state and federal public funds, including the right to pledge securities or other assets for the

repayment of the deposits if the pledge is permitted by applicable law or regulation.
(Formerly: Acts 1961, c.182, s.22.) As amended by P.L.263-1995, SEC.19; P.L.90-2008, SEC.45; P.L.35-2010, SEC.162.

IC 28-7-1-23
Loans to members; purposes; repayment plans; direct deposit

Sec. 23. (a) A credit union may make loans to its members for such purposes and upon such security as the bylaws provide, and as the credit committee or loan officer shall approve.

(b) A member may receive a loan for crops in installments.

(c) A borrower may repay the whole loan or any part of a loan on any day on which the credit union is open.

(d) A credit union may offer payroll deduction for:

(1) the repayment of loans; and

(2) deposits into the accounts of members.

(e) A credit union may offer direct deposit.
(Formerly: Acts 1961, c.182, s.23; Acts 1969, c.133, s.6; Acts 1974, P.L.130, SEC.6.) As amended by P.L.270-1983, SEC.7; P.L.263-1995, SEC.20.

IC 28-7-1-24
Entrance charges as reserve income; regular reserve requirements; undivided profits account; financial statements; allowances for loan and investment losses

Sec. 24. (a) All entrance charges shall, after payment of the organization expenses, be known as reserve income, and shall be added to the regular reserve of the credit union. At the close of the dividend period, there shall be set apart to the regular reserve ten percent (10%) of gross income until the regular reserve shall equal seven and one-half percent (7 1/2%) of the total of outstanding loans, then five percent (5%) of gross income until the regular reserve shall equal ten percent (10%) of the total of outstanding loans. Whenever the regular reserve falls below ten percent (10%) or seven and one-half percent (7 1/2%) of the total of outstanding loans, it shall be replenished by regular contributions to maintain the reserve goals of seven and one-half percent (7 1/2%) or ten percent (10%). The regular reserve shall be held to meet contingencies and shall not be distributed to the members except upon dissolution of the credit union.

(b) A credit union may have an undivided profits account. The undivided profits account may be transferred to the regular reserve.

(c) The department may, by rule, revise the formula prescribed by this section. A revised formula must be prudent and must reasonably be expected to protect the credit unions.

(d) Financial statements of credit unions must provide for full and fair disclosure of all assets, liabilities, and members' equity, including such allowance for loan loss accounts necessary to present fairly the financial position, and all income and expenses necessary to present fairly the results of operation for the period concerned.

(e) The maintenance of an allowance for loan losses and investment or other losses does not exempt a credit union from the requirement set forth in subsection (a) or regulation CU-2. The totals of the regular reserve, the allowance for loan losses account, and the allowance for investment losses shall be combined for determining the percentage of gross income to be transferred to the regular reserve.

(f) Loan losses of a credit union must be charged against the allowance for loan loss. Adjustments to the allowance for loan losses shall be made before the distribution of any dividend so that the allowance for loan loss represents the value of loans and anticipated losses resulting from:

(1) uncollectible loans, notes, and contracts receivable, including any uncollectible accrued interest receivable thereon;

(2) assets acquired in liquidation of loans; and

(3) loans purchased from other credit unions.

(g) Adjustments to the allowance for loan losses must be recorded in the expense account "provision for loan losses".

(h) If the balance of the allowance for loan losses is considered to be in excess of the amount needed to meet the full and fair disclosure requirements, the excess amount must be transferred to the regular reserve account or deducted from the provision for loan loss expense account.

(Formerly: Acts 1961, c.182, s.24; Acts 1969, c.133, s.7; Acts 1974, P.L.130, SEC.7.) As amended by Acts 1977, P.L.294, SEC.12; P.L.164-1988, SEC.13; P.L.8-1991, SEC.31; P.L.1-1992, SEC.156; P.L.14-1992, SEC.127; P.L.228-1993, SEC.7; P.L.263-1995, SEC.21; P.L.192-1997, SEC.20; P.L.35-2010, SEC.163.

IC 28-7-1-24.1

Alternative regular reserve formula for certain credit unions

Sec. 24.1. (a) Notwithstanding section 24(a) of this chapter as it applies to the regular reserve formula, a credit union that:

(1) has only share accounts that are insured by an agency of the federal government, the state, or an insuring entity that is approved by the department to insure credit union shares;

(2) has assets of five hundred thousand dollars ($500,000) or more; and

(3) has been in operation for more than four (4) years;

may maintain reserves in accordance with this section.

(b) For purposes of this section, "risk assets" means all assets except the following:

(1) Cash on hand.

(2) Deposits or shares in federally or state insured banks, savings and loan associations, and credit unions.

(3) Investments that are direct or indirect obligations of the United States government or its agencies.

(4) Loans to other credit unions.

(5) Student loans insured under the Higher Education Act (20 U.S.C. 1071 et seq.) or similar state insurance programs.

(6) Loans insured under the National Housing Act (12 U.S.C. 1703) by the Federal Housing Authority.
(7) Credit union mutual funds authorized by the Indiana Credit Union Act under IC 28-7-1-9(3)(I).
(8) Prepaid expenses.
(9) Accrued interest on nonrisk investments.
(10) Furniture and equipment.
(11) Land and buildings.
(12) Loans fully secured by a pledge of shares in the lending credit union, equal to and maintained to at least the amount of loan outstanding.
(13) Loans that are purchased from liquidating credit unions and guaranteed by an insuring agency of the federal government, the state, or an agency approved by the department to insure credit union share accounts.

(c) At the end of each accounting period, the gross income shall be determined. Based on the amount of gross income, ten percent (10%) of the gross income shall be set aside, as a regular reserve, until the reserve shall equal four percent (4%) of total risk assets, and then five percent (5%) of the gross income shall be set aside, until the reserve equals six percent (6%) of total risk assets.

(d) Except for the method of calculating the regular reserve formula, all other provisions of section 24 of this chapter pertaining to entrance fees and charges, requirements of a special reserve for delinquent loans, and waiver of such special reserve, apply to credit unions that have reserves that are calculated under this section.

As added by P.L.35-2010, SEC.164.

IC 28-7-1-25
Dividends

Sec. 25. Dividends may be declared by the board of directors, after making provision for the required reserves. The board of directors may declare separate dividend periods and rates for each type of share account.

(Formerly: Acts 1961, c.182, s.25; Acts 1969, c.133, s.8; Acts 1974, P.L.130, SEC.8.) As amended by Acts 1979, P.L.267, SEC.4; P.L.263-1995, SEC.22.

IC 28-7-1-26
Repealed

(Repealed by P.L.35-2010, SEC.209.)

IC 28-7-1-26.3
Termination of membership; termination or suspension of services to member; withdrawal from membership; notice

Sec. 26.3. (a) A credit union board may terminate the membership of, or terminate some or all services to, a member who does any of the following:
(1) Causes a loss to the credit union.
(2) Commits fraud or another misdeed against the credit union

or against a person on the premises of the credit union.

(b) Pending action by the credit union board at the credit union board's next regularly scheduled meeting, a credit union may immediately suspend any credit union services to a member who does any of the following:

(1) Causes a loss to the credit union.

(2) Commits fraud or another misdeed against:

(A) the credit union; or

(B) a person on the premises of the credit union.

(c) A member may withdraw from a credit union at any time. However, the credit union may require a notice of withdrawal from the withdrawing member as a condition of withdrawal.

(d) Unless the withdrawal of a member occurs on a maturity date or not later than seven (7) days after a maturity date, a credit union may require that a withdrawing member give sixty (60) days written notice of the member's intention to withdraw shares. A credit union may waive an applicable notice period for a specific member or account in writing.

(e) After a termination or withdrawal under this section, the former member has no rights in the credit union. However, the termination or withdrawal does not release the former member from any remaining liability to the credit union.

As added by P.L.35-2010, SEC.165.

IC 28-7-1-26.5

Refusal to make payment from account

Sec. 26.5. (a) A credit union may refuse to make a payment from an account to a person claiming an interest in the account if the credit union:

(1) is uncertain under the agreement governing the account of who is entitled to receive the payment; or

(2) has actual knowledge of a dispute between any account owners, beneficiaries with present vested rights in the account, or other persons concerning ownership of the money in the account, the proposed withdrawal, or any previous withdrawals from the account.

(b) If a credit union refuses to make a payment under subsection (a), the credit union:

(1) shall notify, in writing, the account owners, beneficiaries with present vested rights in the account, and other persons claiming an interest in the account of the basis for the credit union's refusal; and

(2) may refuse to make the payment until all interested parties consent in writing to the requested payment or a court with jurisdiction orders the credit union to make the payment.

(c) The credit union is not liable in damages as a result of an action taken under this section.

As added by P.L.35-2010, SEC.166.

IC 28-7-1-27

Repealed

(Repealed by Acts 1977, P.L.294, SEC.14.)

IC 28-7-1-27.1

Dissolution

Sec. 27.1. A credit union may liquidate its affairs and dissolve in the following manner:

(1) The board of directors of a credit union may vote to submit the question of dissolution to the shareholders.

(2) Upon the decision of the board of directors under subdivision (1), payments on shares, withdrawal of shares, and the granting of loans shall be immediately suspended, pending a vote by the shareholders on the question whether to dissolve.

(3) The chairperson of the credit union shall, within ten (10) days after the decision of the board under subdivision (1), notify the department in writing of the reasons for the proposed dissolution. The notice must include a certified statement of condition of the credit union.

(4) Upon receiving the notice of dissolution, the department shall conduct an examination of the credit union.

(5) At either an annual meeting or a special meeting, the question of dissolution shall be approved or disapproved by the shareholders. If approved, such approval shall be evidenced by the written consent of no fewer than two-thirds (2/3) of the shareholders. Upon approval by the shareholders, payments on shares, withdrawal of shares, and granting of loans shall cease. If two-thirds (2/3) of the vote cannot be obtained, the director may permit the voluntary dissolution of the credit union to become effective without the affirmative vote of its membership if the credit union field of membership has ceased or will cease to exist.

(6) If the department finds that the credit union is solvent or that it has sufficient assets with which to pay its shareholders and all liabilities, it may approve the dissolution of the credit union and shall notify the credit union in writing.

(7) Upon receipt by the credit union of notice that the resolution for dissolution has been approved by the department, each member and creditor shall be notified by the credit union in writing that such credit union is in the process of dissolution. Notification to members shall include a request that such members verify, by passbook or in writing, shareholdings in or loan obligations to the credit union. Notification to creditors shall include a request that such creditors present claims to the credit union within ninety (90) days.

(8) The credit union shall be responsible for conserving the assets of the credit union, expediting the liquidation, discharging all of the debts and liabilities of the credit union, and equitably distributing the assets to the shareholders at the completion of the liquidation. The board shall ensure that all persons handling or having access to the funds, books, or records of the credit

union are adequately covered by a surety bond to the satisfaction of the department.

(9) The board of directors shall forward to the department a certified statement of condition of the credit union within ten (10) days after the close of each month.

(10) Within thirty (30) days after the date of final distribution of the assets of the credit union to the shareholders, the board of directors shall furnish to the department:

(A) a summary showing how the credit union debts and liabilities were paid;

(B) an itemized list of all credit union assets and property distributed to the shareholders, the name of each shareholder, the number and amount of shares held by each at the time of distribution of assets, the amount distributed to each, and the date of distribution; and

(C) the name and address of the custodian appointed by the board of directors, who shall preserve the records of the credit union for five (5) years from the date of final distribution of the assets.

(11) The department shall file with the secretary of state triplicate copies of the resolution for dissolution bearing the approval of the department as prescribed in IC 28-12-5. The secretary of state shall endorse each copy of the resolution, file one (1) copy of the resolution, and issue and return a certificate of dissolution to the credit union together with two (2) copies of the resolution for dissolution.

(12) The credit union shall file with the county recorder of the county in which the articles of incorporation were recorded one (1) copy of the resolution for dissolution bearing the endorsement of the secretary of state. After this filing, the credit union shall be dissolved and its existence shall cease.

(13) The credit union shall continue in its corporate capacity for three (3) years from the date of the resolution adopted by the board as provided in subdivision (1), for the purpose of:

(A) discharging its debts and obligations;

(B) collecting and distributing its assets; and

(C) doing all other acts required in order to terminate its business;

but for no other purpose.

As added by Acts 1977, P.L.294, SEC.13. Amended by P.L.14-1992, SEC.128; P.L.263-1995, SEC.24.

IC 28-7-1-28

Change of place of business

Sec. 28. A credit union may, with department approval, change its place of business. The department may deny the change of location if the new situs is undesirable or would detrimentally affect the operation of the credit union.

(Formerly: Acts 1961, c.182, s.28.) As amended by P.L.263-1995, SEC.25.

IC 28-7-1-29

Conversion from state to federal charter; procedure

Sec. 29. Any credit union organized or reorganized under the laws of Indiana or the United States may convert from a state charter to a federal charter or from a federal charter to a state charter as follows:

(1) A federally chartered credit union may apply for a state charter by observing the following procedures:

(A) The board of directors shall pass a resolution that the federal charter be canceled when and if a state charter is applied for and issued to the credit union by the department of financial institutions.

(B) Written notice of the resolution shall be sent to each member at least thirty (30) days prior to the meeting in which the resolution is to be submitted to the members.

(C) An affirmative majority vote of the members present at the meeting shall be required to effect the conversion from federal to state charter, provided a quorum is present at the meeting.

(D) Certified copies of the minutes of the proceedings of the meeting of the members shall be filed with both the National Credit Union Administration and the department.

(E) Within thirty (30) days after receiving the certified copies of the minutes, an examination of the financial condition of the credit union shall be made by the department. The cost of the examination shall be paid by the credit union.

(F) Within thirty (30) days after the completion of the examination, the department shall report to the credit union the results of its examination and supply the National Credit Union Administration with a copy of the examination report.

(G) If it receives a satisfactory report of the examination, the credit union must within thirty (30) days file its amended articles of incorporation and amended bylaws pursuant to this chapter with the secretary of state, and copies of the amended articles and amended bylaws must be directed to the department and the National Credit Union Administration.

(H) Officers, directors, and committee members shall retain their respective offices for the unexpired terms existing prior to the conversion, subject to the provisions of this chapter.

(I) The newly chartered credit union shall have all of the rights and privileges in and to all of the assets of the prior existing credit union and shall assume and be responsible for all of the obligations imposed while operating under the federal charter.

(2) A state chartered credit union may be converted into a federally chartered credit union by complying with the following requirements:

(A) The board must adopt and approve by a majority of the directors a resolution of conversion. The proposition for such

conversion shall first be approved by a majority of the directors of the state credit union.

(B) The board must notify the membership either in person or by mail of the membership meeting at which the resolution of conversion will be acted upon. The notice must be mailed not more than thirty (30) and not less than seven (7) days before the meeting.

(C) The resolution must be approved by a majority of those voting, either in person or by absentee ballot, at the membership meeting called by the board.

(D) The results of the vote, verified by the affidavits of the chairperson or vice chairperson and the secretary, shall be filed with the department within ten (10) days after the vote is taken.

(E) If the proposition for conversion is approved, the credit union shall within ninety (90) days take the action necessary to make it a federal credit union. Within ten (10) days after receipt of the federal charter, the credit union shall file with the department a copy of the charter. Upon such filing, and after the credit union has notified the office of the secretary of state that the conversion is concluded, the credit union shall cease to be a state credit union.

(Formerly: Acts 1961, c.182, s.29.) As amended by P.L.263-1985, SEC.180; P.L.14-1992, SEC.129; P.L.263-1995, SEC.26.

IC 28-7-1-30
Repealed

(Repealed by P.L.263-1995, SEC.31.)

IC 28-7-1-31
Fidelity coverage for directors, officers, and employees; blanket fidelity bond or separate reserve fund required

Sec. 31. Every credit union shall make provisions for adequate fidelity coverage for directors, officers, and employees of the credit union. The amount and form of fidelity coverage must be approved by the board of directors of the credit union. Coverage may be provided:

(1) in the form of a blanket fidelity bond issued by a corporate surety authorized to transact business in Indiana; or

(2) through the establishment of a separate reserve fund within the credit union for that purpose.

(Formerly: Acts 1961, c.182, s.31.) As amended by P.L.276-1987, SEC.4; P.L.263-1995, SEC.27; P.L.35-2010, SEC.167.

IC 28-7-1-31.3
Credit union officials; discharge of duties; indemnification

Sec. 31.3. (a) As used in this section, "official" means an individual who is or who was a director, committee member, officer, or employee of a credit union.

(b) An official of a credit union shall discharge the duties of the

official's position in good faith and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging the official's duties, an official may rely upon:

(1) the opinion of legal counsel for the credit union;

(2) the report of an independent appraiser selected with reasonable care by:

(A) the board; or

(B) an officer of the credit union; or

(3) financial statements of the credit union:

(A) represented to the official to be correct by the:

(i) chief executive officer; or

(ii) officer of the credit union having charge of the credit union's records; or

(B) stated in a written report by an independent public or certified public accountant or firm of accountants fairly to reflect the financial condition of the credit union.

(c) As used in this section, "credit union" includes all other credit unions that become related to a credit union by a consolidation or merger and the resulting or continuing credit union.

(d) A credit union may indemnify a director, a committee member, an officer, an employee, or an agent to the extent and in the same manner that a corporation may indemnify a director, committee member, officer, employee, or agent under IC 28-13-13-2 through IC 28-13-13-13.

As added by P.L.35-2010, SEC.168.

IC 28-7-1-31.5

Insurance; examinations

Sec. 31.5. (a) Before transacting business in Indiana, a credit union shall insure its shares and other deposits with the National Credit Union Share Insurance Fund or a similar insurance company approved by the department.

(b) The department may examine any organization that insures the shares of a credit union that is subject to this chapter. The reasonable costs of an examination conducted under this subsection may be charged to the organization that is examined.

As added by P.L.270-1983, SEC.8. Amended by P.L.263-1995, SEC.28.

IC 28-7-1-32

Repealed

(Repealed by P.L.347-1989(ss), SEC.24.)

IC 28-7-1-33

Merger procedure

Sec. 33. (a) Any two (2) or more credit unions may, with the approval of the department, merge. This section authorizes the merger of a credit union organized under this chapter with a credit union organized under any other law.

(b) The board of directors of each credit union participating in the merger must by majority vote approve a joint agreement of merger.

(c) After the resolutions approving a joint agreement of merger have been adopted by the board of directors of each credit union, the credit unions shall submit the resolutions and joint agreement to the department for approval. The department may, in the department's discretion, approve or disapprove the resolution and joint agreement. In deciding whether to approve or disapprove the resolution and joint agreement under this section, the department shall consider the following factors:

(1) Whether the credit unions subject to the proposed transaction are operated in a safe, sound, and prudent manner.

(2) Whether the financial condition of any credit union subject to the proposed transaction will jeopardize the financial stability of any other credit unions subject to the proposed transaction.

(3) Whether the proposed transaction will result in a credit union that has inadequate capital, unsatisfactory management, or poor earnings prospects.

(4) Whether the proposed transaction, in the department's judgment and considering the available information under the prevailing circumstances, will result in an institution that is more favorable to the stakeholders than if the entities were to remain separate.

(5) Whether the management or other principals of the credit union that will result from the proposed transaction are qualified by character and financial responsibility to control and operate in a legal and proper manner the resulting credit union.

(6) Whether the credit unions subject to the proposed transaction furnish all the information the department requires in reaching the department's decision.

(d) If the joint agreement is approved by the department, any credit union whose existence will terminate as a result of the merger shall submit the joint agreement to a vote of its shareholders at the meeting directed by the resolution of the board of directors. A majority of the shareholders present at the meeting may approve the joint agreement. However, the department may permit the merger to become effective without the affirmative vote of the membership of a credit union if that credit union is in danger of insolvency or if the qualified group or groups associated with the credit union either have ceased or will soon cease to exist.

(e) After approval of the joint agreement by the shareholders of the merging credit unions, each credit union shall execute in triplicate articles of merger, on forms furnished by the department, which shall set forth the following:

(1) The time and place of the meeting of the board of directors at which the plan was approved.

(2) The vote by which the plan was approved by the board.

(3) A copy of the resolution or other action by which the plan was agreed upon.

(4) The time and place of the meeting of the members at which

the plan was approved.

(5) The vote by which the plan was approved by the members.

(f) The articles, joint agreement, and resolutions shall be delivered to the department for certification, which shall be evidenced in the manner prescribed in IC 28-12-5, and shall be presented to the secretary of state for recording. The secretary of state shall file one (1) copy of the articles of merger and shall issue a certificate of merger and two (2) copies of the articles of merger to the surviving credit union. The date on which the secretary of state issues the certificate of merger is the effective date of the merger.

(g) The articles of merger shall be filed with the county recorder of the county in which the principal office of the surviving credit union is located.

(Formerly: Acts 1974, P.L.130, SEC.9.) As amended by Acts 1979, P.L.267, SEC.5; Acts 1982, P.L.170, SEC.5; P.L.270-1983, SEC.9; P.L.52-1985, SEC.11; P.L.14-1992, SEC.130; P.L.263-1995, SEC.29; P.L.35-2010, SEC.169.

IC 28-7-1-34

Credit unions organized in other states

Sec. 34. (a) A credit union organized under the laws of another state may establish a branch office in Indiana if:

(1) the credit union files an application with the department;

(2) the branch office is necessary to serve members within the field of membership of the credit union;

(3) the field of membership of the credit union is consistent with the laws of Indiana;

(4) the law of the state in which the credit union was organized provides for the establishment of a branch office in that state by an Indiana credit union; and

(5) the department approves the application of the credit union.

(b) If the credit union that has established a branch office in Indiana is subsequently granted an expansion of its field of membership by its chartering state, the expanded field of membership must be approved by the department before the expanded field of membership can be served in Indiana. If an out-of-state credit union desires to establish a branch office in Indiana and that credit union's field of membership is an incorporated entity, the incorporated entity may not be admitted to do business in Indiana as a foreign corporation by the secretary of state's office until the department has approved the entry of the credit union to establish a branch office.

(c) The department shall provide to a credit union desiring to establish a branch office in Indiana an application, which must provide at least the following information:

(1) The credit union's financial condition.

(2) The credit union's field of membership and the number of members to be served in Indiana.

(3) The proposed location of any branch offices.

(4) A letter of approval from the supervisory agency in the state in which the credit union's principal office is located, including

a statement indicating whether such supervisory agency conducts periodic examinations of the credit union.

(5) A statement that the credit union, with respect to its operation in this state, will comply with all applicable state and federal laws, rules, and regulations, as determined by the director.

(d) The department shall approve or deny the application within one hundred twenty (120) days. The department may deny the application or suspend or revoke an application previously approved if it finds any of the following:

(1) That the credit union is insolvent or in imminent danger of insolvency.

(2) That the credit union does not have the approval of its supervisory agency.

(3) That the credit union fails to meet the requirements of subsection (e).

(4) A failure to comply with any written agreement or final order of the department or chartering supervisory agency that has regulatory authority over the credit union.

(5) That the credit union has been serving an expanded field of membership in Indiana before obtaining the approval of the department for the expansion in the field of membership.

(e) Any out-of-state credit union that has been approved to establish branch offices in this state shall, in addition to such other provisions of law applicable to credit unions, comply with the following:

(1) Designate a resident agent for the service of process in this state.

(2) Submit a copy of all reports required by its supervisory agency, unless otherwise required by the department to submit reports prescribed by the department.

(3) Submit a copy of every:

(A) regulatory examination report; and

(B) insurance examination report;

to the department.

(4) Conduct its lending activities in accordance with Indiana law.

(f) The department may examine such a branch office if it has reason to believe that the branch office is not operating in compliance with laws, rules, or regulations. The reasonable cost of any such examination authorized by this subsection shall be paid by the credit union.

(g) For purposes of this section, IC 28-1-2-30 applies to information obtained by or provided to the department concerning branch offices established under this section.

(h) The department may enter into cooperative, coordinating, and information sharing agreements with an organization listed in IC 28-11-3-3 with respect to the periodic examination or other supervision of a branch:

(1) in Indiana of an out-of-state credit union; or

(2) of an Indiana state credit union in a host state;

and the department may accept the organization's reports of examination and reports of investigation instead of conducting the department's own examinations or investigations.

(i) The department may enter into agreements with a financial institution supervisory agency that has concurrent jurisdiction over an Indiana state credit union or an out-of-state credit union operating a branch in Indiana under this chapter to:

(1) engage the services of the agency's examiners at a reasonable rate of compensation; or

(2) provide the services of the department's examiners to the agency at a reasonable rate of compensation.

An agreement under this subsection is subject to IC 36-1-7.

(j) The department may enter into joint examinations or joint enforcement actions with other credit union supervisory agencies having concurrent jurisdiction over a branch established and maintained in Indiana by an out-of-state credit union or a branch established and maintained by an Indiana state credit union in a host state. The department may take action independently if the department considers the action to be necessary or appropriate to carry out its responsibilities under this chapter or to ensure compliance with Indiana law.

(k) An out-of-state credit union that maintains at least one (1) branch in Indiana is subject to IC 28-11-3-5. Fees may be shared with other financial institution supervisory agencies or an organization affiliated with or representing at least one (1) credit union supervisory agency under agreements between those parties and the department.

As added by P.L.271-1983, SEC.2. Amended by P.L.166-1988, SEC.2; P.L.263-1995, SEC.30; P.L.192-1997, SEC.21; P.L.11-1998, SEC.19; P.L.213-2007, SEC.69; P.L.217-2007, SEC.67.

IC 28-7-1-35

Effect of amendments by Acts 1974, P.L.130

Sec. 35. (a) This section applies to a credit union organized under Acts 1933, c.40, s.296 through s.323.

(b) The amendments to this chapter made by Acts 1974, P.L.130 do not affect a credit union's rights existing on June 11, 1974.

As added by P.L.1-1989, SEC.58.

IC 28-7-1-36

ATM ownership

Sec. 36. An automated teller machine (ATM) may be owned or operated individually by any credit union or jointly on a cost sharing or fee basis.

As added by P.L.192-1997, SEC.22.

IC 28-7-1-37

Withdrawal of deposits

Sec. 37. All members, regardless of age, may become depositors

in a credit union and shall be subject to the same duties and liabilities respecting their deposits. Whenever a deposit is accepted by a credit union 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 it is signed by the depositor, and constitutes a valid release and discharge to the credit union 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.).

As added by P.L.81-2001, SEC.7.

IC 28-7-1-38

Requirement to provide property tax information in certain transactions

Sec. 38. With respect to a residential real property financing or refinancing, a credit union shall comply with IC 6-1.1-12-43.

As added by P.L.64-2004, SEC.32.

IC 28-7-1-39

Limits on loans to members; exceptions; commission of Class A misdemeanor by accepting compensation for procuring loan; deadline for compliance

Sec. 39. (a) As used in this section, "loans and extensions of credit" includes all direct or indirect advances of funds made to a member on the basis of:

(1) an obligation of the member to repay the funds; or

(2) a pledge of specific property by or on behalf of the member and from which the funds advanced are repayable.

The term includes any contractual liability of a credit union to advance funds to or on behalf of a member, to the extent specified by the department. The term also includes any credit exposure to a person arising from a derivative transaction (as defined in 12 U.S.C. 84(b)(3)) between the credit union and the person.

(b) As used in this section, "member" includes an individual, a sole proprietorship, a partnership, a joint venture, an association, a trust, an estate, a business trust, a limited liability company, a

corporation, a sovereign government, or an agency, instrumentality, or political subdivision of a sovereign government, or any similar entity or organization.

(c) Except as provided in subsection (e), the total loans and extensions of credit by a credit union to a member outstanding at any given time and not fully secured, as determined in a manner consistent with subsection (d), by collateral with a market value at least equal to the amount of the loan or extension of credit may not exceed fifteen percent (15%) of the capital and surplus of the credit union.

(d) Except as provided in subsection (e), the total loans and extensions of credit by a credit union to a member outstanding at any given time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of funds outstanding may not exceed ten percent (10%) of the capital and surplus of the credit union. The limitation in this subsection is separate from and in addition to the limitation set forth in subsection (c).

(e) The limitations set forth in subsections (c) and (d) are subject to the following exceptions:

(1) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the member negotiating it with recourse are not subject to any limitation based on capital and surplus.

(2) The purchase of bankers' acceptances of the kind described in 12 U.S.C. 372 and issued by a financial institution organized or reorganized under the laws of Indiana or any other state or the United States are not subject to any limitation based on capital and surplus.

(3) Loans or extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples are subject to a limitation of thirty-five percent (35%) of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent (115%) of the outstanding amount of the loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(4) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by any other obligation fully guaranteed as to principal and interest by the United States are not subject to any limitation based on capital and surplus.

(5) Loans or extensions of credit to or secured by unconditional takeout commitment or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States are not subject to any limitation based on capital and surplus.

(6) Loans or extensions of credit secured by a segregated deposit account in the lending credit union are not subject to any limitation based on capital and surplus.

(7) Loans or extensions of credit to any credit union, when the loans or extensions of credit are approved by the director of the department, are not subject to any limitation based on capital and surplus.

(f) Loans or extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper that carries a full recourse endorsement or unconditional guarantee by the member transferring the paper are subject under this section to a maximum limitation equal to twenty-five percent (25%) of the capital and surplus, notwithstanding the collateral requirements set forth in subsection (d).

(g) If the credit union's files or the knowledge of the credit union's officers of the financial condition of each maker of consumer paper described in subsection (f) is reasonably adequate, and an officer of the credit union designated for that purpose by the board of directors of the credit union certifies in writing that the credit union is relying primarily upon the responsibility of each maker for payment of the loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each maker shall be the sole applicable loan limitations.

(h) Loans or extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent (115%) of the face amount of the note covered are subject under this section, notwithstanding the collateral requirements set forth in subsection (d), to a maximum limitation equal to twenty-five percent (25%) of the capital and surplus.

(i) Loans or extensions of credit that arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller and that are secured by the cattle being sold, are subject under this section, notwithstanding the collateral requirements set forth in subsection (d), to a limitation of twenty-five percent (25%) of the capital and surplus.

(j) Except as otherwise provided, an officer, director, employee, or attorney of a credit union who stipulates for, receives, or consents or agrees to receive, any fee, commission, gift, or thing of value, from any person, for the purpose of procuring or endeavoring to procure for any member any loan from or the purchase or discount of any paper, note, draft, check, or bill of exchange by the credit union, commits a Class A misdemeanor.

(k) Except as otherwise provided in this chapter, any credit union that holds obligations of indebtedness in violation of the limitations prescribed in this section shall, not later than July 1, 2006, cause the amount of the obligations to conform to the limitations prescribed by

this chapter and by the provisions of this section. The department may, in its discretion, extend the time for effecting this conformity, in individual instances, if the interests of the depositors will be protected and served by an extension. Upon the failure of a credit union to comply with the limitations, in accordance with this section or in accordance with any order of the department concerning the limitations, the department may declare that the credit union is conducting its business in an unauthorized or unsafe manner and proceed in accordance with IC 28-1-3.1-2.

(l) The department may apply the provisions of 12 CFR 32 in the application and administration of this chapter.

As added by P.L.141-2005, SEC.18. Amended by P.L.1-2006, SEC.493; P.L.90-2008, SEC.46; P.L.27-2012, SEC.94.

IC 28-7-2
Repealed

(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 28-7-2.1
Repealed

(Repealed by P.L.258-1989, SEC.6.)

IC 28-7-2.5

Chapter 2.5. Conservatorship of Credit Unions

IC 28-7-2.5-1

Application of chapter

Sec. 1. This chapter applies to a credit union (as defined in IC 28-7-1-0.5(3)).

As added by P.L.10-2006, SEC.37 and P.L.57-2006, SEC.37.

IC 28-7-2.5-2

Application of definitions

Sec. 2. Except as otherwise provided, the definitions in IC 28-7-1 apply throughout this chapter.

As added by P.L.10-2006, SEC.37 and P.L.57-2006, SEC.37.

IC 28-7-2.5-3

Appointment of conservator; bond or security; eligible conservators

Sec. 3. (a) The department may appoint a conservator for a credit union if the department determines that:

(1) one (1) or more grounds for the appointment of a receiver under IC 28-1-3.1-2(a) exist with respect to the credit union; or

(2) the appointment of a conservator is necessary to conserve the assets of the credit union for the benefit of the members, depositors, and other creditors of the credit union.

(b) A conservator appointed under this section shall give any bond or security that the department considers appropriate.

(c) The department may appoint any of the following as a conservator under this section:

(1) A private insurance company authorized to insure deposits or share accounts in Indiana.

(2) The National Credit Union Administration or its successor.

(3) Any competent and disinterested person.

As added by P.L.10-2006, SEC.37 and P.L.57-2006, SEC.37.

IC 28-7-2.5-4

Reimbursement of department; administrative expenses

Sec. 4. (a) A conservator appointed by the department under this chapter shall reimburse the department for all amounts expended by the department in connection with the conservatorship. Amounts reimbursed to the department under this subsection shall be paid from the assets of the credit union as administrative expenses. Upon approval of the department, the conservator shall pay all other administrative expenses of the conservatorship from the assets of the credit union.

(b) Administrative expenses described in this section constitute a first charge against the assets of the credit union. The conservator shall pay the administrative expenses in full before any:

(1) final distribution of the credit union's assets; or

(2) payment of dividends to members, depositors, and other

creditors of the credit union.

As added by P.L.10-2006, SEC.37 and P.L.57-2006, SEC.37.

IC 28-7-2.5-5

Possession of books, records, and assets; conservation of assets; powers and obligations of conservator; rights of parties

Sec. 5. (a) Under the direction of the department, a conservator appointed under this chapter shall:

(1) take possession of the books, records, and assets of the credit union; and

(2) take any action necessary to conserve the assets of the credit union pending:

(A) a liquidation under IC 28-1-3.1; or

(B) other disposition of the credit union's business as provided by law.

(b) A conservator appointed under this chapter:

(1) has all the rights, powers, and privileges of a receiver appointed under IC 28-1-3.1, except the power to liquidate a credit union; and

(2) is subject to those obligations and liabilities to which a receiver is subject, to the extent the obligations and liabilities are consistent with this chapter.

(c) Throughout the time a conservator is in possession of a credit union under this chapter, the rights of all parties with respect to the credit union are the same as if a receiver had been appointed under IC 28-1-3.1.

As added by P.L.10-2006, SEC.37 and P.L.57-2006, SEC.37.

IC 28-7-2.5-6

Amounts available to members, depositors, and creditors; new shares, deposits, and assets; return of control to board

Sec. 6. (a) While a credit union is in conservatorship under this chapter, the department may require the conservator to set aside and make available for:

(1) withdrawal by members and depositors; or

(2) payment to other creditors;

on a pro rata basis, any amounts that, in the opinion of the department, may be safely and prudently used for the purposes described in subdivisions (1) through (2).

(b) The department may permit a conservator appointed under this chapter to receive new shares and deposits after the credit union is placed in conservatorship. Shares and deposits received by a conservator while a credit union is in conservatorship are not subject to any limitation with respect to payment or withdrawal. The conservator shall segregate any:

(1) shares or deposits; or

(2) new assets acquired on account of shares and deposits;

received after the credit union is placed in conservatorship from the shares, deposits, and assets held by the credit union at the time the credit union is placed in conservatorship.

(c) A conservator shall not use any shares, deposits, or assets received after the credit union is placed in conservatorship to:

(1) liquidate any indebtedness of the credit union existing at the time the credit union is placed in conservatorship; or

(2) pay any subsequent indebtedness incurred to liquidate any indebtedness of the credit union existing at the time the credit union is placed in conservatorship.

(d) Any shares or deposits received after a credit union is placed in conservatorship shall be:

(1) kept in cash;

(2) invested in direct obligations of the United States; or

(3) deposited in depository institutions designated by the department.

(e) If a credit union placed in conservatorship under this chapter is returned to the control of the credit union's board of directors, the protections provided under subsections (b), (c), and (d) (with respect to shares and deposits received while the credit union is in conservatorship) do not apply after fifteen (15) days after the date control of the credit union is returned to the board. Before returning control of the credit union to the credit union's board, the conservator shall publish a notice, in a form approved by the department, stating:

(1) the date on which the affairs of the credit union will be returned to the control of the credit union's board; and

(2) that the protections provided under subsections (b), (c), and (d) (with respect to shares and deposits received while the credit union is in conservatorship) do not apply after fifteen (15) days after the date identified under subdivision (1).

The conservator shall send, by United States mail, a copy of the notice to every person that purchased shares or deposited money in the credit union after the credit union is placed in conservatorship and before control of the credit union is returned to the credit union's board.

As added by P.L.10-2006, SEC.37 and P.L.57-2006, SEC.37.

IC 28-7-2.5-7

Loans in aid of operation or reorganization; security

Sec. 7. With the prior approval of the department, a conservator appointed under this chapter may borrow money as necessary or expedient to aid in the operation or reorganization of the credit union. Any loan obtained by the conservator under this section may be secured by the pledge or mortgage of, or through a lien upon or security interest in, the assets of the credit union.

As added by P.L.10-2006, SEC.37 and P.L.57-2006, SEC.37.

IC 28-7-2.5-8

Termination of conservatorship; appointment of receiver; liquidation

Sec. 8. (a) The department may:

(1) terminate a conservatorship ordered under this chapter; and

(2) permit the credit union subject to the conservatorship to

resume the transaction of the credit union's business, subject to any terms, conditions, restrictions, and limitations that the department may prescribe;

if the department is satisfied that a termination of the conservatorship may be done safely and is in the public interest.

(b) Subject to subsection (c), the department may:

(1) terminate a conservatorship ordered under this chapter; and

(2) apply for the appointment of a receiver for the credit union under IC 28-1-3.1;

if the department determines that the appointment of a receiver for the credit union is in the public interest.

(c) If the department determines that the liquidation of a credit union placed in conservatorship under this chapter is in the public interest, the department shall:

(1) terminate the conservatorship ordered under this chapter; and

(2) apply for the appointment of a receiver for the credit union under IC 28-1-3.1.

As added by P.L.10-2006, SEC.37 and P.L.57-2006, SEC.37.

IC 28-7-2.5-9

Adoption of rules

Sec. 9. The department may adopt rules under IC 4-22-2 to implement this chapter.

As added by P.L.10-2006, SEC.37 and P.L.57-2006, SEC.37.

IC 28-7-3
Repealed

(Repealed by Acts 1971, P.L.394, SEC.31.)

IC 28-7-4
Repealed

(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 28-7-5

Chapter 5. Pawnbrokers

IC 28-7-5-1

Citation

Sec. 1. This chapter shall be known as the Pawnbroking Law.

(Formerly: Acts 1935, c.195, s.1.) As amended by P.L.263-1985, SEC.182.

IC 28-7-5-2

Definitions

Sec. 2. In this chapter, unless the context otherwise requires:

"Director" refers to the director of the department.

"Pawn" means lending money on the deposit or pledge of personal property, or purchasing personal property on the condition of selling the property back again at a stipulated price, with the condition indicated verbally, in a written agreement, or in any other form indicating that the seller may repurchase the personal property sold. For purposes of this chapter, "personal property" does not include general intangibles, accounts (including deposit accounts), chattel paper, commercial tort claims, documents, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

"Pawnbroker" means any person, partnership, association, limited liability company, or corporation that engages in the pawn business.

"Pledge" means personal property deposited with a pawnbroker as security for a loan.

"Pledger" means the person who delivers personal property into the possession of a pawnbroker as security for a loan. However, if the person delivering the personal property into the possession of the pawnbroker discloses that the person is acting for another, "pledger" means the disclosed principal.

"Department" means the department of financial institutions.

"Person" means any individual, limited liability company, sole proprietorship, partnership, trust, joint venture, corporation, unincorporated organization, or other form of entity, however organized.

"Month" means a period extending from a given date in one (1) calendar month to the like date in the succeeding calendar month or, if there is no such like date, then to the last day of the succeeding calendar month. For purposes of this chapter, each month is considered to have thirty (30) days.

(Formerly: Acts 1935, c.195, s.2.) As amended by P.L.263-1985, SEC.183; P.L.14-1992, SEC.131; P.L.42-1993, SEC.74; P.L.258-2003, SEC.11; P.L.10-2006, SEC.38 and P.L.57-2006, SEC.38; P.L.90-2008, SEC.47; P.L.137-2014, SEC.29.

IC 28-7-5-3

Necessity of license; misleading representations; territorial application

Sec. 3. (a) Except as authorized by this chapter and unless a license is first obtained from the department, a person shall not engage in business as a pawnbroker, act as a pawnbroker, transact or solicit business as a pawnbroker, or use in any advertisement, signage, or electronic or printed material, or in the person's business name, a phrase or statement that includes "pawn", "pawnbroker", "pawn shop", "pawn loan", or any word or phrase that would reasonably lead another person to conclude that the person is a pawnbroker, is engaging in business as a pawnbroker, or is engaging in conduct that would mislead or confuse a person into believing that the person is a pawnbroker or is engaging in business as a pawnbroker.

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

(1) in Indiana; or

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

A pawnbroking transaction does not occur in Indiana if a consumer who is a resident of Indiana enters into the pawnbroking transaction at a pawnbroker's place of business in another state.

(Formerly: Acts 1935, c.195, s.3.) As amended by P.L.263-1985, SEC.184; P.L.14-1992, SEC.132; P.L.163-2001, SEC.1; P.L.90-2008, SEC.48; P.L.216-2013, SEC.33.

IC 28-7-5-4

Application; business locations; other business conducted; criminal history; evidence of compliance; criminal background checks

Sec. 4. (a) Application for a pawnbroker's license shall be submitted on a form prescribed by the director and must include all information required by the director. An application submitted under this section must identify the location or locations at which the applicant proposes to engage in business as a pawnbroker in Indiana. If any business, other than the business of acting as a pawnbroker under this chapter, will be conducted by the applicant or another person at any location identified under this subsection, the applicant shall indicate for each location at which another business will be conducted:

(1) the nature of the other business;

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

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

(4) the name and address of the business's resident agent in Indiana; and

(5) any other information the director may require.

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

chapter at the time of the application:

(1) is under indictment for a felony under the laws of Indiana or any other jurisdiction; or

(2) has been convicted of a felony under the laws of Indiana or any other jurisdiction.

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

(1) the time of application;

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

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

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

(1) criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation for any individual described in subsection (b);

(2) credit histories; and

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

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

(Formerly: Acts 1935, c.195, s.4.) As amended by P.L.14-1992, SEC.133; P.L.63-2001, SEC.18 and P.L.134-2001, SEC.20; P.L.10-2006, SEC.39 and P.L.57-2006, SEC.39; P.L.213-2007, SEC.70; P.L.217-2007, SEC.68; P.L.3-2008, SEC.223; P.L.90-2008, SEC.49; P.L.1-2009, SEC.149; P.L.35-2010, SEC.170; P.L.216-2013, SEC.34; P.L.137-2014, SEC.30.

IC 28-7-5-5

Initial and renewal applications; fees; financial statement; proof of bond and insurance; standards; tax warrant list

Sec. 5. (a) The initial application and any renewal application shall be accompanied by a fee fixed by the department under IC 28-11-3-5. The initial application and any renewal application must include a financial statement that:

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

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

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

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

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

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

in accordance with standards adopted by the director.

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

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

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

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

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

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

(Formerly: Acts 1935, c.195, s.5.) As amended by P.L.14-1992, SEC.134; P.L.42-1993, SEC.75; P.L.45-1995, SEC.23; P.L.80-1998, SEC.12; P.L.10-2006, SEC.40 and P.L.57-2006, SEC.40; P.L.172-2011, SEC.133; P.L.216-2013, SEC.35.

IC 28-7-5-5.5

Surety bond; requirements; amount; termination; liability; notices

Sec. 5.5. (a) Each person engaged in the business of pawnbroking in Indiana must be covered by a surety bond in accordance with this section. The initial application and any renewal application for licensure under this chapter must be accompanied by proof that the applicant has executed a bond in accordance with this section.

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

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

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

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

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

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

(A) the state; and

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

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

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

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

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

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

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

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

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

As added by P.L.216-2013, SEC.36.

IC 28-7-5-6
Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-7-5-7
Repealed

(Repealed by P.L.45-1995, SEC.33.)

IC 28-7-5-8
Issuance and duration of license; evidence of compliance; denial of application; person not qualifying for license; replacement of manager

Sec. 8. (a) Upon an applicant's filing of the application required by section 4 of this chapter and payment of the license fee, if the department finds the financial standing, competence, business experience, and character of:

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

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

similar function for the applicant; and

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

are such that the business will be operated honestly, fairly, and efficiently and that the convenience and needs of the public exist for the operation of the business in the community wherein the applicant proposes to operate, it shall issue and deliver a license to the applicant, which license shall authorize the applicant to engage in the business of pawnbroking.

(b) The director is entitled to request evidence of compliance with the requirements of this section by the licensee, including any affiliate or person described in subsection (a), at:

(1) the time of issuance of the license;

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

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

A license shall remain in effect until it is surrendered, revoked, or suspended. If the department denies the application, it shall notify the applicant of the denial. The department may hold a public hearing if the department considers the hearing necessary.

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

(d) If a licensee replaces a manager, the licensee shall give the department written notice of the replacement not later than thirty (30) days after engaging another person to serve as manager.

(Formerly: Acts 1935, c.195, s.8.) As amended by P.L.263-1985, SEC.186; P.L.14-1992, SEC.136; P.L.45-1995, SEC.24; P.L.80-1998, SEC.13; P.L.10-2006, SEC.41 and P.L.57-2006, SEC.41; P.L.90-2008, SEC.50; P.L.35-2010, SEC.171; P.L.89-2011, SEC.50.

IC 28-7-5-9

License not transferable or assignable; multiple business locations

Sec. 9. Except in a transaction approved under section 9.1 of this chapter, a license shall not be transferable or assignable. More than one (1) place of business may be maintained under the same license.

(Formerly: Acts 1935, c.195, s.9.) As amended by P.L.263-1985, SEC.187; P.L.14-1992, SEC.137; P.L.45-1995, SEC.25; P.L.89-2011, SEC.51.

IC 28-7-5-9.1

Change in control of licensee; application to department; timeframe for department's decision; conditions for approval; duty of licensee to report transfer of securities; director's discretion to require new license

Sec. 9.1. (a) As used in this section, "control" means possession of the power directly or indirectly to:

(1) direct or cause the direction of the management or policies

of a licensee, whether through the beneficial ownership of voting securities, by contract, or otherwise; or

(2) vote at least twenty-five percent (25%) of the voting securities of a licensee, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.

(b) An organization or an individual acting directly, indirectly, or through or in concert with one (1) or more other organizations or individuals may not acquire control of any licensee unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days after receipt of an application to issue a notice approving the proposed change in control. The application must contain the name and address of the organization, individual, or individuals who propose to acquire control and any other information required by the director.

(c) The period for approval under subsection (b) may be extended:

(1) in the discretion of the director for an additional thirty (30) days; and

(2) not more than two (2) additional times for not more than forty-five (45) days each time if:

(A) the director determines that the organization, individual, or individuals who propose to acquire control have not submitted substantial evidence of the qualifications described in subsection (d);

(B) the director determines that any material information submitted is substantially inaccurate; or

(C) the director has been unable to complete the investigation of the organization, individual, or individuals who propose to acquire control because of any delay caused by or the inadequate cooperation of the organization, individual, or individuals.

(d) The department shall issue a notice approving the application only after it is satisfied that both of the following apply:

(1) The organization, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the licensee in a legal and proper manner.

(2) The interests of the owners and creditors of the licensee and the interests of the public generally will not be jeopardized by the proposed change in control.

(e) The director may determine, in the director's discretion, that subsection (b) does not apply to a transaction if the director determines that the direct or beneficial ownership of the licensee will not change as a result of the transaction.

(f) The president or other chief executive officer of a licensee shall report to the director any transfer or sale of securities of the licensee that results in direct or indirect ownership by a holder or an affiliated group of holders of at least ten percent (10%) of the outstanding securities of the licensee. The report required by this subsection must

be made not later than ten (10) days after the transfer of the securities on the books of the licensee.

(g) Depending on the circumstances of the transaction, the director may reserve the right to require the organization, individual, or individuals who propose to acquire control of a licensee to apply for a new license under section 4 of this chapter, instead of acquiring control of the licensee under this section.

As added by P.L.89-2011, SEC.52. Amended by P.L.6-2012, SEC.197.

IC 28-7-5-10

Relocation or addition of business location; notice and request for approval

Sec. 10. Whenever a licensee:

(1) changes its place of business to another location; or

(2) adds one (1) or more business locations;

the licensee shall give written notice to the department. Not later than thirty (30) days before the relocation or addition of one (1) or more business locations under this section, the licensee shall request approval in a form prescribed by the director to add or change one (1) or more business locations.

(Formerly: Acts 1935, c.195, s.10.) As amended by P.L.14-1992, SEC.138; P.L.45-1995, SEC.26; P.L.10-2006, SEC.42 and P.L.57-2006, SEC.42.

IC 28-7-5-10.1

Ceasing business as a pawnbroker; requirements; appointment of liquidating agent; two month redemption period; partial payments by pledgers

Sec. 10.1. (a) A licensee that decides to cease engaging in business as a pawnbroker in Indiana shall do the following not later than thirty (30) days before closing the licensee's pawnbroking business:

(1) Notify the department of:

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

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

(2) Surrender the license to the department.

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

(A) Notice of:

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

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

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

(b) If:

(1) a licensee ceases engaging in business as a pawnbroker in

Indiana without complying with subsection (a); and

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

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

(c) If:

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

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

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

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

As added by P.L.213-2007, SEC.71; P.L.217-2007, SEC.69. Amended by P.L.90-2008, SEC.51; P.L.35-2010, SEC.172; P.L.216-2013, SEC.37.

IC 28-7-5-10.5

Other business conducted at pawnbrokering locations; notice to department

Sec. 10.5. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any of the following apply:

(1) Any business, other than the business of acting as a pawnbroker under this chapter, will be conducted by the licensee or another person at any location in Indiana in which the licensee conducts the business of acting as a pawnbroker under this chapter.

(2) Any information concerning other business conducted at the locations identified in the licensee's application under section 4(a) of this chapter changes.

(b) For each location described in subsection (a)(1) or (a)(2), the licensee shall provide to the department the information required under section 4(a) of this chapter with respect to that location:

(1) not later than fifteen (15) days after the other business

begins operating at the location; or

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

As added by P.L.10-2006, SEC.43 and P.L.57-2006, SEC.43.

IC 28-7-5-10.6

Felony convictions or pleas; notice to department

Sec. 10.6. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any individual described in section 8(a)(2) or 8(a)(3) of this chapter has been convicted of or pleaded guilty or nolo contendere to a felony under the laws of Indiana or any other jurisdiction.

(b) If this section applies, the licensee shall provide to the department the information required under section 4(b) of this chapter:

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

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

As added by P.L.213-2007, SEC.72; P.L.217-2007, SEC.70. Amended by P.L.90-2008, SEC.52; P.L.35-2010, SEC.173.

IC 28-7-5-11

License renewal; application; fees

Sec. 11. (a) To remain in force, a license must be renewed before June 1 of each year, beginning with the year following the date of issuance. A licensee may renew a license issued under this chapter by filing a renewal application prescribed by the director. The department shall prescribe the form of the renewal application. To be accepted for processing, a renewal application must be accompanied by:

(1) the license renewal fee fixed by the department under IC 28-11-3-5; and

(2) all other information and documents requested by the director.

(b) The department may fix a daily late fee under IC 28-11-3-5 for a:

(1) renewal application; or

(2) license renewal fee;

that is received by the department after June 1.

(Formerly: Acts 1935, c.195, s.11.) As amended by P.L.263-1985, SEC.188; P.L.14-1992, SEC.139; P.L.42-1993, SEC.76; P.L.45-1995, SEC.27; P.L.35-2010, SEC.174; P.L.89-2011, SEC.53.

IC 28-7-5-12
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 28-7-5-13
Suspension or revocation of license; order to show cause; order of suspension or revocation; surrender of license; existing obligations; emergency order for revocation

Sec. 13. (a) The department may issue to a licensee an order to show cause why the licensee's license should not be revoked or suspended for a period determined by the department.

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

(1) include:

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

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

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

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

(A) a reasonable opportunity to be heard; and

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

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

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

(1) the licensee has repeatedly and willfully violated:

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

(B) any other state or federal law, regulation, or rule applicable to the business of a pawnbroker;

(2) the licensee does not meet the licensing qualifications set forth in this chapter;

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

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

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

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

(1) the revocation or suspension;

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

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

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

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

(e) Any person holding a license to operate as a pawnbroker may surrender the license by complying with section 10.1 of this chapter. However, a surrender of a license under section 10.1 of this chapter does not affect the person's liability for acts previously committed and coming within the scope of this chapter.

(f) If the director determines it to be in the public interest, the director may pursue the revocation of a license of a licensee that has surrendered the license under section 10.1 of this chapter.

(g) If a person's license is revoked, suspended, or surrendered, the revocation, suspension, or surrender does not impair or affect any obligation owed by any person under any existing contract, pledge, or pawn ticket.

(h) If the director of the department has just cause to believe an emergency exists from which it is necessary to protect the interests of the public, the director may proceed with the revocation of a license through an emergency or another temporary order under IC 4-21.5-4.

(Formerly: Acts 1935, c.195, s.13.) As amended by P.L.263-1985, SEC.190; P.L.14-1992, SEC.140; P.L.45-1995, SEC.28; P.L.176-1996, SEC.22; P.L.80-1998, SEC.14; P.L.27-2012, SEC.95.

IC 28-7-5-13.1

Failure to file renewal form or pay renewal fee; revocation or suspension of license

Sec. 13.1. (a) A license issued by the department under this chapter may be revoked or suspended by the department if the licensee fails to:

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

(2) pay any license renewal fee described under section 11 of this chapter;

not later than sixty (60) days after the due date.

(b) A person whose license is revoked or suspended under this section may:

(1) pay all delinquent fees and apply for reinstatement of the person's license; or

(2) appeal the revocation or suspension to the department for an administrative review under IC 4-21.5-3.

Pending the decision resulting from a hearing under IC 4-21.5-3 concerning a license revocation or suspension, the license remains in force.

As added by P.L.176-1996, SEC.23. Amended by P.L.10-2006, SEC.44 and P.L.57-2006, SEC.44; P.L.89-2011, SEC.54.

IC 28-7-5-14
Repealed
(Repealed by P.L.27-2012, SEC.96.)

IC 28-7-5-15
Investigatory and enforcement authority; costs of investigation; voided loans
Sec. 15. (a) For the purpose of discovering violations of this chapter and securing information necessary for the enforcement of this chapter, the department may investigate:
(1) any licensee; or
(2) any person that it suspects to be operating without a license or in violation of this chapter.
The department has all investigatory and enforcement authority under IC 28-11 for financial institutions. If the department conducts an investigation under this section, the licensee or person investigated shall pay all reasonably incurred costs of the investigation in accordance with the fee schedule adopted under IC 28-11-3-5.
(b) If a person knowingly makes a pawn loan without the license required by section 3 of this chapter, the loan made in violation of this chapter is void and the debtor is not obligated to pay the principal amount of the loan, any finance charge on the loan, or any additional fee under section 28.5 of this chapter. The debtor, or the department on behalf of the debtor, may recover any amount paid to the person who knowingly violated section 3 of this chapter.
(Formerly: Acts 1935, c.195, s.15.) As amended by P.L.263-1985, SEC.191; P.L.14-1992, SEC.141; P.L.42-1993, SEC.77; P.L.172-1997, SEC.19; P.L.10-2006, SEC.45 and P.L.57-2006, SEC.45.

IC 28-7-5-15.1
Applicability of law governing administrative orders and procedures; venue
Sec. 15.1. Except as otherwise provided, IC 4-21.5 applies to and governs all agency action taken by the department under this chapter. A proceeding for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 must be held in Marion County.
As added by P.L.35-2010, SEC.175.

IC 28-7-5-16
Books, accounts, and records; examination and costs; bills of sale; purchase of precious metal; record of control; examination of vendors
Sec. 16. (a) The licensee shall keep and use in the licensee's business such books, accounts, and records as will enable the department to determine whether the licensee is complying with this chapter and with the rules adopted by the department under this chapter. Every licensee shall preserve such books, accounts, and records, including cards used in the card system for at least two (2) years after making the final entry on any loan recorded therein. The

books and records of the licensee shall be kept so that the pawnbroking business transacted in Indiana may be readily separated and distinguished from the business of the licensee transacted elsewhere and from any other business in which the licensee may be engaged. To determine whether the licensee is complying with this chapter and with rules adopted by the department under this chapter, the department may examine the books, accounts, and records required to be kept by the licensee under this subsection. If the department examines the books, accounts, and records of the licensee under this subsection, the licensee shall pay all reasonably incurred costs of the examination in accordance with the fee schedule adopted under IC 28-11-3-5. A fee established by the department under IC 28-11-3-5 may be charged for each day a fee under this subsection is delinquent.

(b) If a pawnbroker, in the conduct of the business, purchases an article from a seller, the purchase shall be evidenced by a bill of sale properly signed by the seller. All bills of sale must be in duplicate and must recite the following separate items:

(1) Date of bill of sale.

(2) Amount of consideration.

(3) Name of pawnbroker.

(4) Description of each article sold. However, if multiple articles of a similar nature that do not contain an identification or serial number (such as precious metals, gemstones, musical recordings, video recordings, books, or hand tools) are delivered together in one (1) transaction, the description of the articles is adequate if the description contains the quantity of the articles delivered and a physical description of the type of articles delivered, including any other unique identifying marks, numbers, names, letters, or special features.

(5) Signature of seller.

(6) Address of seller.

(7) Date of birth of the seller.

(8) The type of government issued identification used to verify the identity of the seller, together with the name of the governmental agency that issued the identification, and the identification number present on the government issued identification.

(c) The original copy of the bill of sale shall be retained by the pawnbroker. The second copy shall be delivered to the seller by the pawnbroker at the time of sale. The heading on all bill of sale forms must be in boldface type.

(d) If a pawnbroker, in the conduct of the business, purchases precious metal (as defined in IC 24-4-19-6) from a seller, the pawnbroker shall, for at least ten (10) calendar days after the date the pawnbroker purchases the precious metal, retain the precious metal:

(1) at the pawnbroker's permanent place of business where the pawnbroker purchased the precious metal; and

(2) separate from other precious metal.

(e) Each licensee shall maintain a record of control indicating the

number of accounts and dollar value of all outstanding pawnbroking receivables.

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

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

(2) otherwise cease conducting business with the person.

(Formerly: Acts 1935, c.195, s.16.) As amended by P.L.263-1985, SEC.192; P.L.14-1992, SEC.142; P.L.42-1993, SEC.78; P.L.80-1998, SEC.15; P.L.163-2001, SEC.2; P.L.10-2006, SEC.46 and P.L.57-2006, SEC.46; P.L.35-2010, SEC.176; P.L.27-2012, SEC.97; P.L.222-2013, SEC.7; P.L.137-2014, SEC.31.

IC 28-7-5-17
Report; late fee

Sec. 17. Each licensee shall file a report as requested by the director, but not more frequently than annually, giving any relevant information the department may reasonably require concerning the business and operations of each licensed place of business conducted by the licensee within the state. The report must be in the form prescribed by the director. The department may impose a fee established under IC 28-11-3-5 for each day the report is delinquent.
(Formerly: Acts 1935, c.195, s.17.) As amended by P.L.14-1992, SEC.143; P.L.45-1995, SEC.29; P.L.172-1997, SEC.20; P.L.90-2008, SEC.53.

IC 28-7-5-18
Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-7-5-19
Loan record requisites; data recording methods

Sec. 19. (a) Every pawnbroker shall keep a record in ink that must include the following:

(1) The name, date of birth, and address of the pledger, or where the pledge is made by a person acting as agent for a disclosed principal, the names, dates of birth, and addresses of principal and agent.

(2) The date of the transaction.

(3) The amount of the loan.

(4) The article or articles pledged, and a description of the

articles. However, if multiple articles of a similar nature that do not contain an identification or serial number (such as precious metals, gemstones, musical recordings, video recordings, books, or hand tools) are delivered together in one (1) transaction, the description of the articles is adequate if the description contains the quantity of the articles delivered and a physical description of the type of articles delivered, including any other unique identifying marks, numbers, names, letters, or special features.

(5) The serial number of the loan.

(6) The date on which each loan was paid in full, renewed, or unredeemed.

(7) An itemization of principal, interest, and additional fees collected.

(8) An itemization of fees authorized under IC 28-7-5-25.

(9) The total of all charges collected.

(10) The type of government issued identification used to verify the identity of the seller, together with the name of the governmental agency that issued the identification, and the identification number present on the government issued identification.

(b) Other methods of recording data, such as electronic or computerized methods, may be used provided written printouts or hard copies of the required data are readily available. The record keeping system of a licensee shall be made available in Indiana for examination. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available.

(Formerly: Acts 1935, c.195, s.19.) As amended by P.L.14-1992, SEC.144; P.L.42-1993, SEC.79; P.L.80-1998, SEC.16; P.L.163-2001, SEC.3.

IC 28-7-5-20

Signature, fingerprint, and identification of pledger

Sec. 20. The pawnbroker shall at the time of making a loan or purchase require the signature and right thumbprint of the pledger on all pawn tickets, bills of sale, or ledger cards retained by the licensee. If the person is unable to write, the person shall sign by mark. In such event, the pawnbroker shall record on the signature card such information as will enable the pawnbroker to identify the person in case of the loss of the ticket. If the person does not have a right thumb, any other existing finger may be used. However, a clear print must be obtained.

(Formerly: Acts 1935, c.195, s.20.) As amended by P.L.263-1985, SEC.193; P.L.14-1992, SEC.145; P.L.45-1995, SEC.30.

IC 28-7-5-21

Pawn ticket

Sec. 21. (a) The pawnbroker shall, at the time of making a loan, deliver to the pledger or the pledger's agent a memorandum or ticket on which shall be legibly written or printed the following

information:

(1) The name of the pledger.

(2) The name of the pawnbroker and the place where the pledge is made.

(3) The article or articles pledged, and a description of the articles. However, if multiple articles of a similar nature that do not contain an identification or serial number (such as precious metals, gemstones, musical recordings, video recordings, books, or hand tools) are delivered together in one (1) transaction, the description of the articles is adequate if the description contains the quantity of the articles delivered and a physical description of the type of articles delivered, including any other unique identifying marks, numbers, names, letters, or special features.

(4) The amount of the loan.

(5) The date of the transaction.

(6) The serial number of the loan.

(7) The sum of the interest as provided in section 28 of this chapter and the charge as provided in section 28.5 of this chapter stated as an annual percentage rate computed in accordance with regulations issued by the Federal Reserve Board under the Federal Consumer Credit Protection Act (as defined in IC 24-4.5-1-302).

(8) The amount of interest.

(9) The amount of charge and principal due at maturity.

(10) A copy of sections 28, 28.5, and 30 of this chapter.

(11) The date of birth of the pledger.

(12) The type of government issued identification used to verify the identity of the pledger, together with the name of the governmental agency that issued the identification, and the identification number present on the government issued identification.

(13) The last date on which the pledged article or articles may be redeemed before the article or articles may be sold if the loan is not redeemed, renewed, or extended. The language setting forth the information described in this subdivision must be in 14 point boldface type.

(14) A statement that:

(A) notifies the pledger that the pawnbroking transaction is regulated by the department; and

(B) includes a toll free telephone number for the department.

(b) A pawnbroker may insert in such ticket any other terms and conditions not inconsistent with this chapter. However, nothing appearing on a pawn ticket shall relieve the pawnbroker of the obligations to exercise reasonable care in the safekeeping of articles pledged with the pawnbroker.

(Formerly: Acts 1935, c.195, s.21.) As amended by P.L.263-1985, SEC.194; P.L.14-1992, SEC.146; P.L.45-1995, SEC.31; P.L.80-1998, SEC.17; P.L.163-2001, SEC.4; P.L.10-2006, SEC.47 and P.L.57-2006, SEC.47; P.L.213-2007, SEC.73; P.L.217-2007, SEC.71.

IC 28-7-5-21.5
Required disclosure of information

Sec. 21.5. A pawnbroker is required to disclose to a debtor in a pawn transaction the information required by the Federal Reserve Board under the Federal Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., and its implementing regulations.

As added by P.L.172-1997, SEC.21. Amended by P.L.80-1998, SEC.18.

IC 28-7-5-22
Presumptive right of ticket holder to redeem; compliance with local ordinance or law concerning pledge retention

Sec. 22. (a) The holder of a ticket described in section 21 of this chapter shall be presumed to be the person entitled to redeem the pledge, and, except as provided in subsection (b), the pawnbroker shall deliver the pledge to the person presenting the ticket, upon payment of principal, interest and charge.

(b) If a local ordinance or other law requires the retention of the pledge for a specific period of time, the pawnbroker shall comply with the local ordinance or other law if the retention period does not exceed ten (10) days.

(Formerly: Acts 1935, c.195, s.22.) As amended by P.L.14-1992, SEC.147; P.L.35-2010, SEC.177.

IC 28-7-5-23
Redemption by mail; compliance with local ordinance or law concerning pledge retention

Sec. 23. (a) Except as provided in subsection (b), when a ticket, instead of being presented in person, is sent to the pawnbroker by mail, accompanied with a money order for the total amount due and a reasonable fee for shipping and handling, the pawnbroker may securely pack and forward the pledge to the pledger in accordance with the remitter's instructions. If the remittance is insufficient to cover the amount due, the pawnbroker shall either notify the remitter of the amount of the deficiency or send the pledge subject to the payment of shipping charges by the consignee. The pawnbroker's liability for the pledge shall cease upon delivery of the pledge to the carrier or his agent.

(b) If a local ordinance or other law requires the retention of the pledge for a specific period, the pawnbroker shall comply with the local ordinance or other law if the retention period does not exceed ten (10) days.

(Formerly: Acts 1935, c.195, s.23.) As amended by P.L.14-1992, SEC.148; P.L.35-2010, SEC.178.

IC 28-7-5-24
Partial payment before maturity

Sec. 24. Upon presentation of the pawn ticket prior to maturity and the payment of accrued interest and charge and the tender of not less than one dollar ($1.00) of the principal balance, the pawnbroker

shall accept the same, showing due credit of principal payment on pawn ticket, together with the amount of unpaid principal balance, or issue a new ticket for the reduced amount. Future interest charges and charge shall be computed on the unpaid principal balance.
(Formerly: Acts 1935, c.195, s.24.)

IC 28-7-5-25
Loss, destruction, or theft of pawn ticket

Sec. 25. If a ticket is lost, destroyed, or stolen, the pledger shall so notify the pawnbroker in writing. Before delivering the collateral or issuing a new ticket, the pawnbroker shall require the pledger to make affidavit of the alleged loss, destruction, or theft of the ticket. Upon receipt of such affidavit, the pawnbroker shall permit the pledger either to redeem the loan or to receive a new ticket upon the payment of accrued interest and charges, and the pawnbroker shall incur no liability for so doing, unless the pawnbroker had previously received written notice of any adverse claim. The pawnbroker may collect a fee of three dollars ($3) for reissuing the pawn ticket or affecting the affidavit along with the current lawful charge for notary fee.
(Formerly: Acts 1935, c.195, s.25.) As amended by P.L.14-1992, SEC.149.

IC 28-7-5-26
Alteration of pawn ticket; effect

Sec. 26. The alteration of a ticket shall not excuse the pawnbroker who issued it from liability to deliver the pledge according to the terms of the ticket as originally issued, but shall relieve the pawnbroker of any other liability to the pledger or holder of the ticket.
(Formerly: Acts 1935, c.195, s.25a.) As amended by P.L.14-1992, SEC.150.

IC 28-7-5-27
Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-7-5-28
Rate of interest; calculation for partial month; minimum term; reduction in advance; penalty for excessive or unauthorized interest or charges

Sec. 28. (a) The maximum rate of interest charged by pawnbrokers shall be the same as the maximum loan finance charge for supervised lenders under IC 24-4.5-3-508(2). For purposes of this subsection:

(1) the term of a loan commences on the date on which the loan is made;
(2) differences in lengths of months are disregarded; and
(3) each day is counted as one-thirtieth (1/30) of a month.

The minimum term of a loan made by a pawnbroker is one (1) month. However, on loans paid in full within the first month, the pawnbroker

may charge one (1) month's interest.

(b) Interest shall not be deducted in advance, neither shall the pawnbroker induce or permit any borrower to split up or divide any loan or loans for the purpose of evading any provisions of this chapter.

(c) If a pawnbroker charges or receives interest in excess of that provided in this section, or makes any charges not authorized by this chapter, the pawnbroker shall forfeit principal and interest and return the pledge upon demand of the pledger and surrender of the pawn ticket without the principal or interest. If such excessive or unauthorized charges have been paid by the pledger, the pledger may recover the same, including the principal if paid, in a civil action against the pawnbroker.

(Formerly: Acts 1935, c.195, s.27; Acts 1969, c.287, s.1; Acts 1971, P.L.402, SEC.1.) As amended by Acts 1981, P.L.259, SEC.1; P.L.272-1983, SEC.1; P.L.14-1992, SEC.151; P.L.42-1993, SEC.80; P.L.258-2003, SEC.12.

IC 28-7-5-28.5

Additional charge; servicing fee

Sec. 28.5. (a) Except as provided in subsection (b), in addition to the loan finance charge authorized by section 28 of this chapter, a pawnbroker may charge, contract for, and receive a fee not to exceed one-fifth (1/5) of the principal amount of the loan per month or any fractional part of a month for servicing the pledge that may include investigating the title, storing, providing security, appraisal, handling, making daily reports to local law enforcement officers, and for other expenses and costs associated with servicing the pledge. The fee for each month after the second month of the loan transaction is limited to one-thirtieth (1/30) of the monthly fee for each day the loan is outstanding. Such a charge when made and collected is not interest and is not a rate under IC 35-45-7-1.

(b) If a loan is renewed or extended, the monthly fee authorized by subsection (a) accrues at a rate of one-thirtieth (1/30) of the monthly fee each day:

(1) beginning upon the expiration of two (2) months after the original date of the loan; and

(2) continuing through and including the day a pledger redeems the pledge.

As added by P.L.14-1992, SEC.152. Amended by P.L.42-1993, SEC.81; P.L.63-2001, SEC.19; P.L.134-2001, SEC.21; and P.L.163-2001, SEC.5; P.L.258-2003, SEC.13.

IC 28-7-5-29

Liability for loss to pledger; due care

Sec. 29. A pawnbroker shall be liable for the loss of a pledge resulting from the pawnbroker's failure to exercise reasonable care in regard to it, but the pawnbroker shall not be liable for the loss of a pledge which could not have been avoided by the exercise of reasonable care. The burden of proof to establish due care shall be

upon the pawnbroker.
(Formerly: Acts 1935, c.195, s.28.) As amended by P.L.14-1992, SEC.153.

IC 28-7-5-29.5
Waiver of rights not permitted

Sec. 29.5. A debtor may not waive or agree to forego any rights or benefits under this chapter.
As added by P.L.172-1997, SEC.22.

IC 28-7-5-30
Two month redemption period; public access prohibited; unredeemed property subject to sale

Sec. 30. (a) Subject to subsections (b) and (c), upon the expiration of two (2) months from the maturity of the loan, a pawned article becomes the property of the pawnbroker and is subject to sale.

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

(1) the term of the loan; and

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

to repay the loan and redeem the pawned article.

(c) During the term of the loan and the two (2) month period described in subsection (a), the pawnbroker may not allow the public to have access to the pawned article.
(Formerly: Acts 1935, c.195, s.29.) As amended by P.L.271-1985, SEC.1; P.L.14-1992, SEC.154; P.L.80-1998, SEC.19; P.L.163-2001, SEC.6; P.L.258-2003, SEC.14; P.L.10-2006, SEC.48 and P.L.57-2006, SEC.48; P.L.213-2007, SEC.74; P.L.217-2007, SEC.72; P.L.27-2012, SEC.98; P.L.216-2013, SEC.38.

IC 28-7-5-31
Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-7-5-32
Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-7-5-33
Lien

Sec. 33. A pawnbroker has a first lien on all pledges for the amount of his loan, interest, and charges except:

(1) when the property that constitutes the pledge is stolen (IC 35-43-4-2) or converted (IC 35-43-4-3) property; or

(2) where a prior lien exists under another statute.

(Formerly: Acts 1935, c.195, s.32.) As amended by P.L.272-1983, SEC.2.

IC 28-7-5-34
Delivery of pledge; necessity of surrender of pawn ticket

Sec. 34. A pawnbroker shall not be required to deliver a pledge except upon surrender of the ticket, unless the ticket be impounded or its negotiation enjoined by a court.
(Formerly: Acts 1935, c.195, s.33.) As amended by P.L.263-1985, SEC.195; P.L.14-1992, SEC.155.

IC 28-7-5-35
Conflicting claims; sale of pledge subject to adjudication
Sec. 35. If more than one (1) person shall claim the right to redeem a pledge, the pawnbroker shall incur no liability for refusing to deliver the pledge until the respective rights of the claimants shall have been adjudicated. If no action be brought against the pawnbroker by either party within the period for which the pawnbroker is required under section 30 of this chapter to hold the pledge, or within one (1) month after notice of an adverse claim, the pawnbroker may proceed to sell the pledge subject to adjudication of the parties' rights.
(Formerly: Acts 1935, c.195, s.34.) As amended by P.L.263-1985, SEC.196; P.L.14-1992, SEC.156; P.L.258-2003, SEC.15.

IC 28-7-5-36
Unlawful transactions
Sec. 36. (a) No pawnbroker shall:
(1) receive any pledge or make a purchase from a person under eighteen (18) years of age; or
(2) receive any pledge or make a purchase of property that the pawnbroker believes or should have reason to believe is stolen property acquired as a result of a crime.
(b) No pawnbroker shall purchase personal property or any other thing of value agreeing to sell the same back to the seller at a price other than the original purchase price, at a total charge, rate of interest, discount, or other remuneration in excess of the rate chargeable under sections 28 and 28.5 of this chapter.
(c) If a pawnbroker purchases personal property or any other thing of value agreeing to sell the same back to the seller at a price other than the original purchase price, section 30 of this chapter applies.
(Formerly: Acts 1935, c.195, s.35; Acts 1973, P.L.264, SEC.4.) As amended by P.L.17-1985, SEC.22; P.L.14-1992, SEC.157; P.L.42-1993, SEC.82; P.L.45-1995, SEC.32.

IC 28-7-5-37
Violations
Sec. 37. A person who violates this chapter commits a Class A misdemeanor.
(Formerly: Acts 1935, c.195, s.36.) As amended by Acts 1978, P.L.2, SEC.2821; P.L.14-1992, SEC.158; P.L.42-1993, SEC.83.

IC 28-7-5-37.5
Compliance with money laundering laws; investigation and enforcement by the department

Sec. 37.5. (a) A licensee shall comply with all state and federal money laundering statutes and regulations, including the following as they become applicable to licensees under this chapter:

(1) The Bank Secrecy Act (31 U.S.C. 5311 et seq.).

(2) The USA Patriot Act of 2001 (P.L. 107-56).

(3) Any regulations, policies, or reporting requirements established by the Financial Crimes Enforcement Network of the United States Department of the Treasury.

(4) Any other state or federal money laundering statutes or regulations that apply to a licensee.

(b) The department shall do the following:

(1) To the extent authorized or required by state law, investigate potential violations of, and enforce compliance with, state money laundering statutes or regulations.

(2) Investigate potential violations of federal money laundering statutes or regulations and, to the extent authorized or required by federal law:

(A) enforce compliance with the federal statutes or regulations; or

(B) refer suspected violations of the federal statutes or regulations to the appropriate federal regulatory agencies.

As added by P.L.10-2006, SEC.49 and P.L.57-2006, SEC.49.

IC 28-7-5-38

Violations; civil action; injunctive relief; civil penalties

Sec. 38. The department may bring a civil action, including an action for injunctive relief, on the department's own behalf or on behalf of a pledger, against a person, a business, or a licensee for violating this chapter. If a court finds that the defendant has violated this chapter, the court may assess a civil penalty not to exceed five thousand dollars ($5,000) per violation.

As added by P.L.42-1993, SEC.84. Amended by P.L.10-2006, SEC.50 and P.L.57-2006, SEC.50.

IC 28-7-5-38.1

Violations; civil penalty

Sec. 38.1. If the department determines, after notice and opportunity to be heard, that a person has violated this chapter, the department may, in addition to or instead of all other remedies available under this chapter, impose on the person a civil penalty that does not exceed ten thousand dollars ($10,000) per violation.

As added by P.L.90-2008, SEC.54. Amended by P.L.35-2010, SEC.179.

IC 28-7-5-39

Confidentiality of records; exceptions; safeguarding of personal records; release of information to supervisory agencies

Sec. 39. (a) Records and information generated by licensees in the course of their business are confidential under IC 5-14-3-4.

(b) A law enforcement or prosecutorial official may obtain or

receive records and information described in subsection (a) relating to pawnbroking transactions for use in the official law enforcement purpose of investigating crime.

(c) Law enforcement officials may disclose the name and address of the pawnbroker to an adverse claimant in the case of a dispute over ownership of property in possession of the pawnbroker.

(d) A person licensed or required to be licensed under this chapter is subject to IC 28-1-2-30.5 with respect to any records maintained by the person.

(e) The director may provide for the release of information under this chapter to representatives of state, federal, or foreign:

(1) financial institution; or

(2) money services business;

supervisory agencies.

As added by P.L.163-2001, SEC.7. Amended by P.L.90-2008, SEC.55.

IC 28-7-6
Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 28-8

ARTICLE 8. FINANCIAL SERVICES

IC 28-8-1

Chapter 1. Bank Service Corporations

IC 28-8-1-1

Definitions

Sec. 1. For the purposes of this chapter:

(a) "Department" shall mean the department of financial institutions for the state of Indiana.

(b) "Bank services" shall mean check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank or trust company.

(c) "Bank service corporation" shall mean a corporation organized to perform bank services for two or more banks or trust companies, each of which owns a portion of the capital stock of such corporation.

(d) "Invest" shall include any advance of funds to a bank service corporation, whether by the purchase of stock, the making of a loan or loans, or otherwise; provided, however, payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment shall not be deemed an investment.

(Formerly: Acts 1963, c.359, s.1.) As amended by P.L.263-1985, SEC.201.

IC 28-8-1-1.5

Investment in corporation by bank or trust company authorized

Sec. 1.5. Notwithstanding any limitation or prohibition otherwise imposed by any provision of the laws of this state, any bank or trust company may invest in a bank service corporation upon the same terms and conditions as are provided by Section 709 of the Garn-St. Germain Depository Institutions Act of 1982 (Public Law 97-320; 96 Stat. 1469) for federally insured banks, and any such bank service corporation may perform the same functions, subject to the same limitations and restrictions, as are prescribed by the Garn-St. Germain Depository Institutions Act of 1982.

As added by P.L.267-1983, SEC.2.

IC 28-8-1-2

Authority of two or more banks and trust companies to invest

Sec. 2. Any two (2) or more banks or trust companies may invest in a bank service corporation an amount not to exceed ten percent (10%) of the capital and surplus of each of them as defined in IC 28-1-1.

(Formerly: Acts 1963, c.359, s.2.) As amended by P.L.263-1985, SEC.202; P.L.213-2007, SEC.75; P.L.217-2007, SEC.73.

IC 28-8-1-3
Continuation with single bank or trust company as sole stockholders

Sec. 3. In the event the stock of a bank service corporation is held by two (2) banks or trust companies, one (1) of the banks or trust companies ceases to use the services of the bank service corporation and ceases to hold stock in such corporation thereby leaving the other bank or trust company the sole stockholder in such corporation, the bank service corporation may continue to function as such and the remaining bank may continue to hold stock in such corporation.
(Formerly: Acts 1963, c.359, s.3.)

IC 28-8-1-4
Application of competitive nonmember bank or trust company for service; duties

Sec. 4. Whenever any bank or trust company requests bank service from a bank service corporation which supplies the same type of bank service to other banks or trust companies and the applying bank or trust company is competitive with any bank or trust company which holds stock in the bank service corporation, such corporation must agree to render such services, and either

(a) issue stock to the applying bank or trust company and furnish bank services to such applying bank or trust company on the same basis as to other banks or trust companies holding stock in the bank service corporation, or

(b) furnish bank services to the applying bank or trust company at rates no higher than necessary to reflect fairly the cost of such services including the reasonable cost of the capital provided to such corporation by its stockholders, at the option of the banking service corporation, unless comparable services at a competitive overall cost are available to the applying bank or trust company from another source, or unless the furnishing of the services sought by the applying bank or trust company would be beyond the practical capacity of the bank service corporation.

In any action or proceeding to enforce the duty imposed by this section, or for damages for the breach thereof, the burden shall be upon the bank service corporation to prove the availability of bank services from another source.
(Formerly: Acts 1963, c.359, s.4.)

IC 28-8-1-5
Regulation and examination

Sec. 5. No bank or trust company subject to examination by the department may cause to be performed, by contract or otherwise, any bank services for itself, either on or off its premises, until such time as assurances are furnished to the department by the bank or trust company and the bank service corporation performing such bank services that the performance thereof will be subject to regulation and examination by the department to the same extent as if such bank services were being performed by the bank or trust company on its

own premises.
(Formerly: Acts 1963, c.359, s.5.)

IC 28-8-2
Repealed

(Repealed by P.L.265-1985, SEC.7.)

IC 28-8-3
Repealed

(Repealed by P.L.42-1993, SEC.103.)

IC 28-8-4

Chapter 4. Money Transmitters

IC 28-8-4-1

Applicability

Sec. 1. This chapter does not apply to the following:

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

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

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

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

As added by P.L.42-1993, SEC.85. Amended by P.L.172-1997, SEC.23; P.L.79-1998, SEC.81; P.L.258-2003, SEC.16; P.L.10-2006, SEC.51 and P.L.57-2006, SEC.51; P.L.89-2011, SEC.55; P.L.216-2013, SEC.39.

IC 28-8-4-2

Applicant

Sec. 2. As used in this chapter, "applicant" means a person filing an application for a license under this chapter.

As added by P.L.42-1993, SEC.85.

IC 28-8-4-3

Authorized delegation

Sec. 3. As used in this chapter, "authorized delegate" means an entity designated by a licensee to:

(1) sell or issue payment instruments; or

(2) engage in the business of transmitting money on behalf of the licensee.

As added by P.L.42-1993, SEC.85.

IC 28-8-4-3.5

Closed system stored value card

Sec. 3.5. As used in this chapter, "closed system stored value card" refers to a stored value card the use of which is limited to one (1) or more specified merchants or locations.

As added by P.L.10-2006, SEC.52 and P.L.57-2006, SEC.52.

IC 28-8-4-4

Control

Sec. 4. As used in this chapter, "control" means:

(1) ownership; or

(2) the power to vote at least twenty-five percent (25%);

of the outstanding voting securities of a licensee or controlling person.

As added by P.L.42-1993, SEC.85.

IC 28-8-4-5
Controlling person

Sec. 5. As used in this chapter, "controlling person" means a person in control of a licensee.
As added by P.L.42-1993, SEC.85.

IC 28-8-4-6
Department

Sec. 6. As used in this chapter, "department" means the members of the department of financial institutions.
As added by P.L.42-1993, SEC.85.

IC 28-8-4-7
Director

Sec. 7. As used in this chapter, "director" has the meaning set forth in IC 28-11-2-1.
As added by P.L.42-1993, SEC.85.

IC 28-8-4-8
Executive officer

Sec. 8. As used in this chapter, "executive officer" means a person who is or performs the duties of the licensee's:

(1) president;
(2) chief executive officer;
(3) treasurer; or
(4) chief financial officer.

As added by P.L.42-1993, SEC.85.

IC 28-8-4-8.5
Individual

Sec. 8.5. As used in this chapter, "individual" means a natural person.
As added by P.L.216-2013, SEC.40.

IC 28-8-4-9
Key shareholder

Sec. 9. As used in this chapter, "key shareholder" means:

(1) a person who owns; or
(2) a group of persons acting as a unit that own;

at least twenty-five percent (25%) of a class of an applicant's stock.
As added by P.L.42-1993, SEC.85.

IC 28-8-4-10
Licensed activities

Sec. 10. As used in this chapter, "licensed activities" means money transmission activities:

(1) that a licensee engages in:
    (A) from a place of business in Indiana; or

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

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

As added by P.L.42-1993, SEC.85. Amended by P.L.216-2013, SEC.41.

IC 28-8-4-11
Licensee

Sec. 11. As used in this chapter, "licensee" means a person licensed under this chapter.

As added by P.L.42-1993, SEC.85.

IC 28-8-4-12
Material litigation

Sec. 12. As used in this chapter, "material litigation" means litigation that under generally accepted accounting principles is considered significant to the financial health of a business and would be required to be referenced in a corporation's or business's annual audited financial statements, report to shareholders, or a similar document.

As added by P.L.42-1993, SEC.85.

IC 28-8-4-13
Money transmission

Sec. 13. (a) As used in this chapter, "money transmission" means an activity that:

(1) involves:

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

(B) engaging in the business of:

(i) receiving money for transmission from; or

(ii) transmitting money to;

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

(2) is performed:

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

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

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

As added by P.L.42-1993, SEC.85. Amended by P.L.89-2011, SEC.56; P.L.216-2013, SEC.42.

IC 28-8-4-13.8
Organization

Sec. 13.8. As used in this chapter, "organization" means a corporation, a government or governmental subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated

organization, or any other entity, however organized.
As added by P.L.216-2013, SEC.43.

IC 28-8-4-14
Outstanding payment instrument

Sec. 14. As used in this chapter, "outstanding payment instrument" means a payment instrument issued by the licensee that:

(1) has been sold in the United States;
(2) has been sold:
(A) by the licensee; or
(B) by an authorized delegate of the licensee and has been reported to the licensee as having been sold; and
(3) has not been paid by or on behalf of the licensee.

As added by P.L.42-1993, SEC.85.

IC 28-8-4-15
Payment instrument

Sec. 15. (a) As used in this chapter, "payment instrument" means:

(1) a check;
(2) a draft;
(3) a money order;
(4) a traveler's check;
(5) a stored value card, other than a closed system stored value card; or
(6) an instrument or written order for the transmission or payment of money;

sold or issued to one (1) or more persons, whether such instrument is negotiable.

(b) As used in this chapter, "payment instrument" does not include:

(1) a credit card voucher;
(2) a letter of credit;
(3) an instrument that is redeemable by the issuer in goods or services; or
(4) a closed system stored value card.

As added by P.L.42-1993, SEC.85. Amended by P.L.10-2006, SEC.53 and P.L.57-2006, SEC.53.

IC 28-8-4-16
Permissible investments

Sec. 16. As used in this chapter, "permissible investments" means:

(1) cash;
(2) certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;
(3) bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers' acceptances, that are eligible for purchase by member banks of the Federal Reserve system;
(4) an investment bearing a rating of one (1) of the three (3) highest grades as defined by a nationally recognized

organization that rates such securities;

(5) investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United States, or any obligations of any state, municipality, or any political subdivision thereof;

(6) shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of such securities;

(7) a demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;

(8) receivables that are due to a licensee from the licensee's authorized delegates under a contract described in section 49 of this chapter, which are not past due or doubtful of collection; or

(9) an investment that is approved by the director.

As added by P.L.42-1993, SEC.85.

IC 28-8-4-17
Person

Sec. 17. As used in this chapter, "person" means an individual or an organization.

As added by P.L.42-1993, SEC.85. Amended by P.L.216-2013, SEC.44.

IC 28-8-4-18
Repealed

(Repealed by P.L.216-2013, SEC.45.)

IC 28-8-4-19
The state

Sec. 19. As used in this chapter, "the state" means Indiana.

As added by P.L.42-1993, SEC.85.

IC 28-8-4-19.5
Stored value card

Sec. 19.5. As used in this chapter, "stored value card" means a card or device that:

(1) may be used by a holder to:

(A) perform financial transactions; or

(B) obtain, purchase, or receive money, goods, or services;

in an amount or having a value that does not exceed the dollar value of the card; and

(2) has a magnetic stripe or computer chip that enables dollar values to be electronically added to or deducted from the dollar value of the card.

As added by P.L.10-2006, SEC.54 and P.L.57-2006, SEC.54.

IC 28-8-4-20

License required; application; felonies; evidence of compliance; criminal background checks; tax warrant list

Sec. 20. (a) A person may not engage in the business of money transmission:

(1) from a place of business in Indiana; or

(2) with a consumer who is a resident of Indiana and who enters into the transaction in Indiana;

without a license required by this chapter.

(b) An application for a license must be:

(1) submitted on a form prescribed by the director and must include the information required by the director; and

(2) accompanied by a nonrefundable application fee as fixed by the department under IC 28-11-3-5.

(c) An application submitted under this section must indicate whether any individuals described in section 35(b)(2) or 35(b)(3) of this chapter have been convicted of a felony under the laws of Indiana or any other jurisdiction.

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

(1) the time of application;

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

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

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

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

(2) credit histories; and

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

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

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

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

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

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

As added by P.L.42-1993, SEC.85. Amended by P.L.63-2001, SEC.20 and P.L.134-2001, SEC.22; P.L.10-2006, SEC.55 and P.L.57-2006, SEC.55; P.L.90-2008, SEC.56; P.L.35-2010, SEC.180; P.L.172-2011, SEC.134; P.L.216-2013, SEC.46.

IC 28-8-4-20.5

Use of NMLSR in department's licensing system; reporting of information to NMLSR; confidentiality; director's authority to enter agreements; waiver of privilege; processing fee; electronic records

Sec. 20.5. (a) As used in this section, "Nationwide Mortgage Licensing System and Registry" or "NMLSR" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of creditors, mortgage loan originators, and other financial services entities and their employees and agents.

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

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

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

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

(c) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and section 47 of this chapter, the director shall regularly report significant or recurring violations of this chapter to the NMLSR.

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

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

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

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

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

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

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

(C) initiate any civil action based on information obtained

from the NMLSR if the person could not have initiated the action based on information otherwise available to the person under any other state law.

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

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

(B) otherwise obtained by the NMLSR;

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

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

(A) to the director; or

(B) by the director;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

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

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

(A) obtain information;

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

(C) use information to initiate a civil action or proceeding;

if the information may be obtained from the director or the director's designee under any law.

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

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

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

(A) disclosure under any federal or state law governing the

disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

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

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

(A) confidential supervisory information; or

(B) any information or material described in subdivision (6);

and that is inconsistent with subdivision (6) is superseded by this section.

(10) This section does not apply with respect to information or material that concerns the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a person described in section 35(b)(2) or 35(b)(3) of this chapter and that is included in the NMLSR for access by the public.

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

(A) require review of; and

(B) make available;

the audited financial statements of the NMLSR.

(12) Notwithstanding any other provision of law, any:

(A) application, renewal, or other form or document that:

(i) relates to licenses issued under this chapter; and

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

(B) document filed as an electronic record in a multistate automated repository established and operated for the licensing or registration of financial services entities and their employees; or

(C) electronic record filed through the NMLSR;

is considered a valid original document when reproduced in paper form by the department.

As added by P.L.216-2013, SEC.47.

IC 28-8-4-21

Form of license applications; surety bond; fee

Sec. 21. (a) An application for a license under this chapter must be:

(1) in writing;

(2) under oath; and

(3) in a form prescribed by the director.

(b) An application for a license must be accompanied by the following:

(1) A surety bond as required by section 27 of this chapter. If requested, the director may permit corporations that are directly

or indirectly commonly controlled to engage in activities under this chapter pursuant to a single surety bond filed under section 27 of this chapter.

(2) A nonrefundable license fee as fixed by the department under IC 28-11-3-5.

As added by P.L.42-1993, SEC.85. Amended by P.L.216-2013, SEC.48.

IC 28-8-4-22
Repealed

(Repealed by P.L.90-2008, SEC.80.)

IC 28-8-4-23
Repealed

(Repealed by P.L.90-2008, SEC.80.)

IC 28-8-4-24
Contents of license applications

Sec. 24. An application for licensure under this chapter must contain the following:

(1) The name of the applicant.

(2) The applicant's principal address.

(3) A fictitious or trade name, if any, used by the applicant in the conduct of its business.

(4) The location of the applicant's business records.

(5) The history of the applicant's:

(A) material litigation; and

(B) criminal convictions for felonies involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

(6) A description of:

(A) the activities conducted by the applicant;

(B) the applicant's history of operations; and

(C) the business activities in which the applicant seeks to be engaged in Indiana.

(7) A list identifying the applicant's proposed authorized delegates in Indiana.

(8) A sample authorized delegate contract, if applicable.

(9) A sample form of payment instrument, if applicable.

(10) The location or locations at which the applicant and its authorized delegates propose to conduct the licensed activities in Indiana. If any business, other than the business of money transmission under this chapter, will be conducted by the applicant or another person at any location identified under this subdivision, the applicant shall indicate for each location at which another business will be conducted:

(A) the nature of the other business;

(B) the name under which the other business operates;

(C) the address of the principal office of the other business;

(D) the name and address of the business's resident agent in

Indiana; and

(E) any other information that the director may require.

However, the applicant is not required to submit the information required by this subdivision if the location at which the other business will be conducted is the place of business of an authorized delegate that is not under common control with the applicant.

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

(12) Documents revealing that the applicant has a net worth of at least six hundred thousand dollars ($600,000), calculated in accordance with generally accepted accounting principles.

As added by P.L.42-1993, SEC.85. Amended by P.L.10-2006, SEC.56 and P.L.57-2006, SEC.56; P.L.213-2007, SEC.76; P.L.217-2007, SEC.74; P.L.216-2013, SEC.49.

IC 28-8-4-25

Applicants not organized as sole proprietorship; contents of applications

Sec. 25. In addition to the items listed in section 24 of this chapter, if an applicant for licensure under this chapter is not organized as a sole proprietorship, the applicant must provide the following items and information relating to the applicant's organizational structure:

(1) State of incorporation or organization.

(2) Date of incorporation or organization.

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

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

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

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

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

(5) The:

(A) name;

(B) business address;

(C) residence address; and

(D) employment history;

for each individual described in section 35(b)(2) or 35(b)(3) of this chapter.

(6) The:

(A) history of material litigation; and

(B) history of criminal convictions for felonies involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction;

for each individual described in section 35(b)(2) or 35(b)(3) of this chapter.

(7) Except as provided in subdivision (8), copies of the applicant's audited financial statements for the current year and, if available, for the preceding two (2) years, including a:

(A) balance sheet;

(B) statement of income or loss;

(C) statement of changes in shareholder equity; and

(D) statement of changes in financial position.

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

(8) If the applicant is a wholly owned subsidiary of:

(A) a corporation or other organization publicly traded in the United States, financial statements for the current year or the parent corporation's or parent organization's Form 10K reports filed with the United States Securities and Exchange Commission for the preceding three (3) years may be submitted with the applicant's unaudited financial statements; or

(B) a corporation or other organization publicly traded outside the United States, similar documentation filed with the parent corporation's or parent organization's non-United States regulator may be submitted with the applicant's unaudited financial statements.

(9) Copies of filings, if any, made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, not more than one (1) year before the date of filing of the application.

As added by P.L.42-1993, SEC.85. Amended by P.L.213-2007, SEC.77; P.L.217-2007, SEC.75; P.L.3-2008, SEC.224; P.L.90-2008, SEC.57; P.L.1-2009, SEC.150; P.L.89-2011, SEC.57; P.L.216-2013, SEC.50.

IC 28-8-4-26
Repealed

(Repealed by P.L.90-2008, SEC.80.)

IC 28-8-4-27
Surety bond; requirements; amount; termination; liability; notices

Sec. 27. (a) An application for licensure under this chapter must be accompanied by a surety bond in accordance with this section.

(b) The surety bond required under subsection (a) must:

(1) be in the amount of three hundred thousand dollars ($300,000);

(2) be in a form acceptable to the director;

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

(4) remain in effect during the five (5) years after the licensee

ceases offering money transmission services in Indiana;

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

(A) the state;

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

(C) entities that do business in Indiana when they agree to receive money transmission services from the licensee;

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

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

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

(d) If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the licensee for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in the amount needed to restore the amount of the surety bond to three hundred thousand dollars ($300,000).

(e) If for any reason a surety terminates a bond issued under this section, the licensee shall immediately notify the department and file a new surety bond in the amount of three hundred thousand dollars ($300,000).

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

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

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

As added by P.L.42-1993, SEC.85. Amended by P.L.73-2004, SEC.38; P.L.216-2013, SEC.51.

IC 28-8-4-28
Repealed

(Repealed by P.L.216-2013, SEC.52.)

IC 28-8-4-29
Repealed

(Repealed by P.L.216-2013, SEC.53.)

IC 28-8-4-30
Repealed
(Repealed by P.L.216-2013, SEC.54.)

IC 28-8-4-31
Repealed
(Repealed by P.L.216-2013, SEC.55.)

IC 28-8-4-32
Repealed
(Repealed by P.L.216-2013, SEC.56.)

IC 28-8-4-33
Conduct of business; insurance; permissible investments; good standing

Sec. 33. (a) A license granted under this chapter permits a licensee to conduct business:

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

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

(b) Each licensee shall maintain a policy of insurance issued by an insurer authorized to do business in Indiana that insures the applicant against loss by a criminal act or act of dishonesty. The principal sum of the policy shall be equivalent to the amount of the surety bond required under section 27 of this chapter.

(c) A licensee must at all times possess permissible investments with an aggregate market value calculated in accordance with generally accepted accounting principles of not less than the aggregate face amount of all outstanding payment instruments issued or sold by the licensee or an authorized delegate of the licensee in the United States.

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

As added by P.L.42-1993, SEC.85. Amended by P.L.73-2004, SEC.39; P.L.216-2013, SEC.57.

IC 28-8-4-34
Commonly controlled corporations or organizations

Sec. 34. The director may permit corporations or other organizations that are directly or indirectly commonly controlled to engage in activities under this chapter, pursuant to a surety bond required under section 27 of this chapter.

As added by P.L.42-1993, SEC.85. Amended by P.L.216-2013, SEC.58.

IC 28-8-4-35
Investigations by director; issuance of licenses; controlling persons; denial of applications

Sec. 35. (a) The director shall begin an investigation after an

application for licensure under this chapter is complete.

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

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

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

(3) if known, each controlling person.

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

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

(1) the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community; and

(2) the applicant has fulfilled the requirements imposed by this chapter.

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

(f) If the director finds that:

(1) an applicant does not satisfy the requirements in subsection (d); or

(2) an application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license;

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

As added by P.L.42-1993, SEC.85. Amended by P.L.10-2006, SEC.57 and P.L.57-2006, SEC.57; P.L.90-2008, SEC.58; P.L.216-2013, SEC.59.

IC 28-8-4-36

Contesting denial of license applications

Sec. 36. (a) An applicant that is denied a license under section 35(f) of this chapter may, not more than thirty (30) days after receipt of written notice of the denial, contest the denial by serving a response on the director.

(b) The serving of a response on the director automatically stays the denial of the license until a final ruling in the hearing is announced.

(c) The director shall set a date for a hearing not less than sixty (60) days after service of the response. A later date may be set with the denied applicant's consent.

As added by P.L.42-1993, SEC.85.

IC 28-8-4-37
License renewal fees

Sec. 37. The department shall fix an annual fee for renewal of a license under IC 28-11-3-5. The annual fee shall be paid on or before December 31 of each year.

As added by P.L.42-1993, SEC.85. Amended by P.L.213-2007, SEC.80; P.L.217-2007, SEC.78; P.L.216-2013, SEC.60.

IC 28-8-4-38
License renewal; annual requirements; financial statements; fee; noncompliance; license suspension; late fee; waiver for good cause

Sec. 38. (a) A licensee may renew a license by complying with the following:

(1) Filing with the director or the director's designee the annual renewal in the form that is prescribed by the director and sent by the director to each licensee not later than December 31 of each year. The renewal must include the following, which, except for the financial statements described in clause (A), must be filed not later than December 31:

(A) Either:

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

(ii) if the licensee is a wholly owned subsidiary, the parent corporation's or parent organization's most recent consolidated audited annual financial statements or the parent corporation's or parent organization's most recent Form 10K report filed with the Securities and Exchange Commission, along with the licensee's unaudited annual financial statements.

The audited financial statements required to be submitted under this clause must be prepared by an independent certified public accountant authorized to do business in the United States in accordance with AICPA Statements on Standards for Accounting and Review Services (SSARS) and must be filed with the director or the director's designee not later than one hundred twenty (120) days after the close of the calendar or fiscal year covered by the statements.

(B) The number of payment instruments sold by the licensee in Indiana, the dollar amount of those instruments, and the dollar amount of outstanding payment instruments sold by the licensee calculated from the most recent quarter for which data is available before the date of the filing of the renewal application, but in no event more than one hundred twenty (120) days before the renewal date.

(C) Material changes to the information submitted by the licensee on its original application or as part of a renewal that have not been reported previously to the director on any

other report or renewal required to be filed under this chapter.

(D) A list of the licensee's permissible investments.

(E) A list of the locations within Indiana at which business regulated by this chapter will be conducted by either the licensee or its authorized delegate, including information concerning any business, other than the business of money transmission under this chapter, that will be conducted at each identified location, as required under section 24(10) of this chapter.

(2) Paying the annual renewal fee described under section 37 of this chapter.

(b) A licensee that:

(1) does not:

(A) file:

(i) a renewal; or

(ii) any financial statements required by subsection (a)(1)(A);

by the renewal filing deadline set by the director; or

(B) pay the renewal fee by December 31 of each year; and

(2) has not been granted an extension of time by the department to meet the requirements described in subdivision (1);

shall be notified by the department, in writing, that a hearing will be scheduled at which the licensee will be required to show cause why its license should not be suspended pending compliance with these requirements. If after the hearing the license is not suspended, the department shall require a daily late fee beginning with the date the renewal, the financial statements, or the annual renewal fee is required by this chapter, in an amount fixed by the department under IC 28-11-3-5.

(c) The director may, for good cause shown, waive any requirement of this section.

As added by P.L.42-1993, SEC.85. Amended by P.L.10-2006, SEC.58 and P.L.57-2006, SEC.58; P.L.1-2007, SEC.188; P.L.213-2007, SEC.81; P.L.217-2007, SEC.79; P.L.216-2013, SEC.61; P.L.137-2014, SEC.32.

IC 28-8-4-39

Written reports following bankruptcies or reorganizations, license revocations or suspensions, and felony indictments and convictions

Sec. 39. A licensee shall file a written report with the director not later than fifteen (15) days after the occurrence of one (1) or more of the following events:

(1) The filing for bankruptcy or reorganization by the licensee.

(2) The institution of revocation or suspension proceedings against the licensee by a state or governmental authority with regard to the licensee's money transmission activities.

(3) A felony indictment of the licensee or of a key officer or director of the licensee related to money transmission activities.

(4) A felony conviction of the licensee or a key officer or

director of the licensee related to money transmission activities. The written report must give details concerning the event.
As added by P.L.42-1993, SEC.85.

IC 28-8-4-40
Repealed
(Repealed by P.L.89-2011, SEC.78.)

IC 28-8-4-40.1
License not transferable or assignable
Sec. 40.1. Except in a transaction approved under section 40.2 of this chapter, a license is not transferable or assignable.
As added by P.L.89-2011, SEC.58.

IC 28-8-4-40.2
Change in control of licensee; application to department; timeframe for department's decision; conditions for approval; duty of licensee to report transfer of securities; director's discretion to require new license
Sec. 40.2. (a) As used in this section, "control" means possession of the power directly or indirectly to:
(1) direct or cause the direction of the management or policies of a licensee, whether through the beneficial ownership of voting securities, by contract, or otherwise; or
(2) vote at least twenty-five percent (25%) of the voting securities of a licensee, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.
(b) An organization or an individual acting directly, indirectly, or through or in concert with one (1) or more other organizations or individuals may not acquire control of any licensee unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days after receipt of an application to issue a notice approving the proposed change in control. The application must contain the name and address of the organization, individual, or individuals who propose to acquire control and any other information required by the director.
(c) The period for approval under subsection (b) may be extended:
(1) in the discretion of the director for an additional thirty (30) days; and
(2) not more than two (2) additional times for not more than forty-five (45) days each time if:
(A) the director determines that the organization, individual, or individuals who propose to acquire control have not submitted substantial evidence of the qualifications described in subsection (d);
(B) the director determines that any material information submitted is substantially inaccurate; or
(C) the director has been unable to complete the investigation

of the organization, individual, or individuals who propose to acquire control because of any delay caused by or the inadequate cooperation of the organization, individual, or individuals.

(d) The department shall issue a notice approving the application only after it is satisfied that both of the following apply:

(1) The organization, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the licensee in a legal and proper manner.

(2) The interests of the owners and creditors of the licensee and the interests of the public generally will not be jeopardized by the proposed change in control.

(e) The director may determine, in the director's discretion, that subsection (b) does not apply to a transaction if the director determines that the direct or beneficial ownership of the licensee will not change as a result of the transaction.

(f) The president or other chief executive officer of a licensee shall report to the director any transfer or sale of securities of the licensee that results in direct or indirect ownership by a holder or an affiliated group of holders of at least ten percent (10%) of the outstanding securities of the licensee. The report required by this subsection must be made not later than ten (10) days after the transfer of the securities on the books of the licensee.

(g) Depending on the circumstances of the transaction, the director may reserve the right to require the organization, individual, or individuals who propose to acquire control of a licensee to apply for a new license under section 20 of this chapter, instead of acquiring control of the licensee under this section.

As added by P.L.89-2011, SEC.59. Amended by P.L.6-2012, SEC.198.

IC 28-8-4-40.5

Other business at money transmission locations; notice to department

Sec. 40.5. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any of the following apply:

(1) Any business, other than the business of money transmission under this chapter, will be conducted by the licensee or another person, other than an authorized delegate that is not under common control with the applicant, at any location in Indiana in which the licensee conducts the business of money transmission under this chapter.

(2) Any information concerning other business conducted at the locations identified in the licensee's application under section 24(10) of this chapter changes.

(b) For each location described in subsection (a)(1) or (a)(2), the licensee shall provide to the department the information required under section 24(10) of this chapter with respect to that location:

(1) not later than fifteen (15) days after the other business begins operating at the location; or

(2) if the licensee's next application for a renewal license under section 38 of this chapter is due before the date described in subdivision (1), in the licensee's next application for a renewal license under section 38 of this chapter.

As added by P.L.10-2006, SEC.59 and P.L.57-2006, SEC.59. Amended by P.L.213-2007, SEC.82; P.L.217-2007, SEC.80.

IC 28-8-4-40.6

Felony convictions; notice to department

Sec. 40.6. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, the licensee, or any individual described in section 35(b)(2) or 35(b)(3) of this chapter, has been convicted of a felony under the laws of Indiana or any other jurisdiction.

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

(1) not later than thirty (30) days after the licensee or individual described in section 35(b)(2) or 35(b)(3) of this chapter has been convicted of the felony; or

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

As added by P.L.213-2007, SEC.83; P.L.217-2007, SEC.81. Amended by P.L.90-2008, SEC.59; P.L.35-2010, SEC.182; P.L.216-2013, SEC.62.

IC 28-8-4-41

Onsite examination by director; notice required; fees; department's investigatory and enforcement authority; examination of vendors

Sec. 41. (a) The director may conduct an annual onsite examination of a licensee or an authorized delegate of a licensee.

(b) If the director determines that a reasonable belief exists that a person is operating without a valid license or in violation of this chapter, the director has the authority to investigate and examine the records of that person. The person examined must pay the reasonably incurred costs of the examination.

(c) Except as provided in section 42(a)(2) of this chapter, the director must give the licensee forty-five (45) days written notice before conducting an onsite examination.

(d) If the director determines, based on the licensee's financial statements and past history of operations in Indiana, that an onsite examination is unnecessary, the director may waive the onsite examination.

(e) If the director concludes that an onsite examination of a licensee is necessary, the licensee shall pay all reasonably incurred costs of such examination in accordance with the fee schedule

adopted under IC 28-11-3-5. A fee established by the department under IC 28-11-3-5 may be charged for each day a fee under this section is delinquent.

(f) An onsite examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states. In lieu of an onsite examination, a director may accept the examination report of an agency of another state, or a report prepared by an independent accounting firm. A report accepted under this subsection shall be considered, for all purposes, to be an official report of the director.

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

(1) licensee; or

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

(A) without a license, when a license is required under this chapter; or

(B) otherwise in violation of this chapter.

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

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

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

(2) otherwise cease conducting business with the person.

As added by P.L.42-1993, SEC.85. Amended by P.L.10-2006, SEC.60 and P.L.57-2006, SEC.60; P.L.35-2010, SEC.183; P.L.27-2012, SEC.99; P.L.137-2014, SEC.33.

IC 28-8-4-42

Suspected violations; request for additional financial data; onsite examinations without notice; fees

Sec. 42. (a) If the director has a reasonable basis to believe that a licensee or an authorized delegate of a licensee is in violation of this chapter, the director may:

(1) request financial data from the licensee in addition to that required under section 38(a)(1) of this chapter; or

(2) conduct an in-state, onsite examination of an authorized delegate's operation or a licensee's location without prior notice to the authorized delegate or licensee.

(b) All reasonable costs of an examination incurred under subsection (a)(2) shall be paid by the:

(1) authorized delegate whose operation is examined; or

(2) the licensee whose location is examined;

in accordance with the fee schedule adopted under IC 28-11-3-5. A fee established by the department under IC 28-11-3-5 may be charged for each day a fee under this section is delinquent.

As added by P.L.42-1993, SEC.85. Amended by P.L.27-2012, SEC.100.

IC 28-8-4-43

Making, keeping, and preserving records

Sec. 43. A licensee shall make, keep, and preserve the following for three (3) years:

(1) A record or records of payment instruments sold.

(2) A general ledger containing all asset, liability, capital income, and expense accounts for which a general ledger shall be posted at least monthly.

(3) Settlement sheets, if received from authorized delegates.

(4) Bank statements and bank reconciliation records.

(5) Records of outstanding payment instruments.

(6) Records of each payment instrument paid within the three (3) years.

(7) A list of the names and addresses of all of the licensee's authorized delegates, as well as a copy of each authorized delegate's contract.

As added by P.L.42-1993, SEC.85.

IC 28-8-4-44

Maintenance and availability of records

Sec. 44. (a) The records maintained under section 43 of this chapter shall be:

(1) maintained in conformity with generally accepted accounting principles and practices in a manner that will enable the director to determine whether the licensee is complying with the provisions of this chapter; and

(2) made reasonably available to the director.

(b) The director shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available.

As added by P.L.42-1993, SEC.85.

IC 28-8-4-45

Maintenance of records at foreign locations

Sec. 45. Records maintained under section 43 of this chapter may be maintained at a location that is outside Indiana if the records are made accessible to the director after the director has given fifteen

(15) days written notice.
As added by P.L.42-1993, SEC.85.

IC 28-8-4-45.5
Duty to safeguard personal records

Sec. 45.5. The following persons are subject to IC 28-1-2-30.5 with respect to any records maintained by the person:

(1) A person licensed or required to be licensed under this chapter.

(2) An authorized delegate of a person described in subdivision (1).

As added by P.L.90-2008, SEC.60.

IC 28-8-4-46
Compliance with money laundering laws; investigation and enforcement by department

Sec. 46. (a) The licensee or an authorized delegate shall comply with all state and federal money laundering statutes and regulations, including the following:

(1) The Bank Secrecy Act (31 U.S.C. 5311 et seq.).

(2) The USA Patriot Act of 2001 (P.L. 107-56).

(3) Any regulations, policies, or reporting requirements established by the Financial Crimes Enforcement Network of the United States Department of the Treasury.

(4) Any other state or federal money laundering statutes or regulations that apply to a licensee or an authorized delegate.

(b) The department shall do the following:

(1) To the extent authorized or required by state law, investigate potential violations of, and enforce compliance with, state money laundering statutes or regulations.

(2) Investigate potential violations of federal money laundering statutes or regulations and, to the extent authorized or required by federal law:

(A) enforce compliance with the federal statutes or regulations; or

(B) refer suspected violations of the federal statutes or regulations to the appropriate federal regulatory agencies.

As added by P.L.42-1993, SEC.85. Amended by P.L.10-2006, SEC.61 and P.L.57-2006, SEC.61.

IC 28-8-4-47
Confidentiality of information; exceptions

Sec. 47. (a) Notwithstanding any other provision of law, all information or reports obtained by the director from an applicant, a licensee, or an authorized delegate, whether obtained through reports, applications, examination, audits, investigation, or otherwise, including:

(1) all information contained in or related to:

(A) examination;

(B) investigation;

(C) operation; or
(D) condition;
reports prepared by, on behalf of, or for the use of the director; or
(2) financial statements, balance sheets, or authorized delegate information;
are confidential and may not be disclosed or distributed outside the department by the director or any officer or employee of the department, except as provided in subsection (b).

(b) The director may provide for the release of information to representatives of:
(1) financial institution and money services business supervisory agencies;
(2) law enforcement agencies; or
(3) prosecutorial agencies or offices;
of a state (as defined in IC 28-2-17-19), the United States, or a foreign country. An agency or office that receives information from the director under this subsection shall maintain the confidentiality of the information as described in IC 28-1-2-30.

(c) Nothing in this section shall prohibit the director from releasing to the public a list of persons licensed under this chapter or from releasing aggregated financial data on such licensees.

As added by P.L.42-1993, SEC.85. Amended by P.L.258-2003, SEC.17; P.L.213-2007, SEC.84; P.L.217-2007, SEC.82; P.L.90-2008, SEC.61.

IC 28-8-4-48

Suspension or revocation of license; order to show cause; order of suspension or revocation; relinquishment of license; existing obligations; emergency order for revocation

Sec. 48. (a) The director may issue to a licensee an order to show cause why the licensee's license should not be revoked or suspended for a period determined by the department.

(b) An order issued under subsection (a) must:
(1) include:
(A) a statement of the place, date, and time for a meeting with the department, which date may not be less than ten (10) days from the date of the order;
(B) a description of the action contemplated by the department; and
(C) a statement of the facts or conduct supporting the issuance of the order; and
(2) be accompanied by a notice stating that the licensee is entitled to:
(A) a reasonable opportunity to be heard; and
(B) show the licensee's compliance with all lawful requirements for retention of the license;
at the meeting described in subdivision (1)(A).

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

that:

(1) the licensee has repeatedly and willfully violated:

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

(B) any other state or federal law, regulation, or rule applicable to the business of money transmission;

(2) the licensee does not meet the licensing qualifications set forth in this chapter;

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

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

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

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

(1) the revocation or suspension;

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

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

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

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

(e) Any person holding a license to engage in the business of money transmission may relinquish the license by notifying the department in writing of the relinquishment. However, a relinquishment under this subsection does not affect the person's liability for acts previously committed and coming within the scope of this chapter.

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

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

(h) If the director of the department has just cause to believe an emergency exists from which it is necessary to protect the interests of the public, the director may proceed with the revocation of a license through an emergency or another temporary order under IC 4-21.5-4.

As added by P.L.42-1993, SEC.85. Amended by P.L.80-1998, SEC.20; P.L.27-2012, SEC.101.

IC 28-8-4-48.1

Failure to file renewal form or pay renewal fee; revocation or suspension of license

Sec. 48.1. (a) A license issued by the department under this chapter may be revoked or suspended by the department if the person fails to:

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

(2) pay any license renewal fee described under section 37 of this chapter;

not later than sixty (60) days after the due date.

(b) A person whose license is revoked or suspended under this section may:

(1) pay all delinquent fees and apply for a reinstatement of the person's license; or

(2) appeal the revocation or suspension to the department for an administrative review under IC 4-21.5-3.

Pending the decision resulting from a hearing under IC 4-21.5-3 concerning license revocation or suspension, a license remains in force.

As added by P.L.176-1996, SEC.24. Amended by P.L.89-2011, SEC.60.

IC 28-8-4-49

Authorized delegates; written contract required; contents; exemption from licensing requirements; resignation, discharge or termination; notice to department

Sec. 49. (a) Licensees desiring to conduct licensed activities through authorized delegates shall authorize each delegate to operate pursuant to an express written contract, which shall provide for the following:

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

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

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

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

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

(b) Subject to sections 50 and 51 of this chapter, an authorized

delegate of a licensee or of a person exempt from licensure under section 1 of this chapter is exempt from the licensing requirements of this chapter if the authorized delegate acts within the scope of the written contract executed under subsection (a) between the authorized delegate and the licensee or exempt person.

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

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

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

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

As added by P.L.42-1993, SEC.85. Amended by P.L.27-2012, SEC.102; P.L.216-2013, SEC.63.

IC 28-8-4-50

Compliance by authorized delegates

Sec. 50. (a) An authorized delegate may not make any fraudulent or false statement or misrepresentation to a licensee or to the director.

(b) An authorized delegate must comply with the following:

(1) All money transmission or sale or issuance of payment instrument activities conducted by an authorized delegate shall be strictly in accordance with the licensee's written procedures provided to the authorized delegate.

(2) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate. The failure of an authorized delegate to remit all money owing to a licensee within the time presented shall result in liability of the authorized delegate to the licensee for three (3) times the licensee's actual damages.

(3) All funds, less fees, received by an authorized delegate of a licensee from the sale or delivery of a payment instrument issued by a licensee or received by an authorized delegate for transmission shall, from the time the funds are received by the authorized delegate until the funds or an equivalent amount are remitted by the authorized delegate to the licensee, constitute trust funds owned by and belonging to the licensee. If an authorized delegate commingles any of the funds with any other funds or property owned or controlled by the authorized delegate, all commingled proceeds and other property shall be impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

(4) An authorized delegate shall report to the licensee the theft or loss of payment instruments not more than twenty-four (24) hours after the time the authorized delegate knew or should have

known of the theft or loss.
As added by P.L.42-1993, SEC.85.

IC 28-8-4-51
Suspension and barring of authorized delegates

Sec. 51. (a) If, after notice and a hearing, the director finds that an authorized delegate of a licensee or a director, an officer, an employee, or a controlling person of the authorized delegate:

(1) has violated any provision of this chapter or order issued under this chapter;

(2) has engaged or participated in any unsafe or unsound act with respect to the business of:

(A) selling or issuing payment instruments of the licensee; or

(B) money transmission;

(3) has made or caused to be made in an application or report filed with the director or in any proceeding before the director, any statement that was at the time and in the circumstances under which it was made, false or misleading with respect to any material fact; or

(4) has omitted to state in an application or report filed with the director a material fact that is required to be stated therein;

the director may issue an order suspending or barring such authorized delegate from becoming or continuing to be an authorized delegate of a licensee during the period for which such order is in effect.

(b) Upon issuance of an order under subsection (a), the licensee shall terminate the licensee's relationship with the authorized delegate according to the terms of the order.

(c) Any authorized delegate to whom an order is issued under this section may apply to the director to modify or rescind the order. The director shall not grant such application unless the director finds that it is in the public interest to do so and that it is reasonable to believe that the person will, if and when the person is permitted to resume being an authorized delegate of a licensee, comply with all applicable provisions of this chapter and of any regulation and order issued under this chapter.

(d) The right of an authorized delegate to whom an order is issued under this section to petition for judicial review of an order shall not be affected by the failure of the authorized delegate to apply to the director to modify or rescind the order.
As added by P.L.42-1993, SEC.85.

IC 28-8-4-52
Applicability of law governing administrative orders and procedures; venue

Sec. 52. Except as otherwise provided, IC 4-21.5 applies to and governs all agency action taken by the department under this chapter. A proceeding for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 must be held in Marion County.
As added by P.L.42-1993, SEC.85. Amended by P.L.35-2010, SEC.184.

IC 28-8-4-53
Civil penalties

Sec. 53. (a) If the department determines, after notice and an opportunity to be heard, that a person has violated this chapter, the department may, in addition to or instead of all other remedies available under this chapter, impose upon the person a civil penalty not greater than ten thousand dollars ($10,000) per violation.

(b) A penalty collected under this section shall be deposited into the financial institutions fund established by IC 28-11-2-9.

As added by P.L.42-1993, SEC.85. Amended by P.L.89-2011, SEC.61.

IC 28-8-4-54
Claims against licensees and authorized delegates

Sec. 54. A claim against a licensee or its authorized delegate may be brought by:

(1) the claimant filing suit against the surety bond provided for in section 27 of this chapter; or

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

As added by P.L.42-1993, SEC.85. Amended by P.L.216-2013, SEC.64.

IC 28-8-4-55
Compromise, settlement, and collection of civil penalties

Sec. 55. The director, in the exercise of reasonable judgment, is authorized to compromise, settle, and collect civil penalties from a person for a violation of:

(1) a provision of this chapter; or

(2) an order issued or promulgated pursuant to this chapter.

As added by P.L.42-1993, SEC.85.

IC 28-8-4-56
Injunctions

Sec. 56. If it appears to the director that a person has committed or is about to commit a violation of a provision of this chapter or an order of the director, the director may apply to a court having jurisdiction for:

(1) an order enjoining such person from violating or continuing to violate this chapter or such other order as the nature of the case may require; or

(2) injunctive or such other relief as the nature of the case may require.

As added by P.L.42-1993, SEC.85.

IC 28-8-4-57
Consent orders

Sec. 57. (a) The director may enter into a consent order with a person to resolve a matter arising under this chapter.

(b) A consent order must comply with the following provisions:

(1) Be signed by the person to whom it is issued or an authorized representative.

(2) Indicate agreement to the terms contained within the consent.

(c) A consent order need not:

(1) constitute an admission by a person that a provision of this chapter or an order promulgated or issued thereunder has been violated; or

(2) constitute a finding by the director that such person has violated a provision of this chapter or an order promulgated or issued thereunder.

(d) Notwithstanding the issuance of a consent order, the director may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order, unless the consent order by its terms expressly precludes the director from doing so.

As added by P.L.42-1993, SEC.85.

IC 28-8-4-58
Violations

Sec. 58. (a) A person who knowingly or intentionally violates a provision of this chapter for which a penalty is not specifically provided commits a Class A misdemeanor.

(b) A person who knowingly or intentionally makes a material, false statement in a document filed or required to be filed under this chapter, with the intent to deceive the recipient of the document, commits a Level 5 felony.

(c) A person who knowingly or intentionally fails to file a document required to be filed under this chapter commits a Level 5 felony.

As added by P.L.42-1993, SEC.85. Amended by P.L.158-2013, SEC.301.

IC 28-8-4-59
Rules and regulations

Sec. 59. (a) Rules and regulations promulgated by the director pursuant to authority conferred by this chapter will be pursuant to IC 4-22-2.

(b) At the time the director files a notice of proposed adoption, amendment, or repeal of a rule for public comment under this chapter, a copy of the notice will be sent by first class mail postage prepaid to all then current licensees and applicants for licenses under this chapter.

As added by P.L.42-1993, SEC.85.

IC 28-8-4-60
Jurisdiction

Sec. 60. A licensee, an authorized delegate, or a person who knowingly engages in business activities that are regulated under this chapter, with or without filing an application, is considered to have

consented to the jurisdiction of the courts of Indiana for all actions arising under this chapter.
As added by P.L.42-1993, SEC.85.

IC 28-8-4-61
Administration of chapter

Sec. 61. The division of consumer credit shall have charge of the administration of this chapter.
As added by P.L.42-1993, SEC.85.

IC 28-8-5

Chapter 5. Cashing Checks

IC 28-8-5-1

Application of chapter

Sec. 1. (a) This chapter does not apply to a financial institution organized under IC 28 or federal law.

(b) This chapter does not apply to a person principally engaged in the bona fide retail sale of goods or services if:

(1) the person, either incidental to or independent of a retail sale of goods or services, from time to time cashes checks; and

(2) the consideration (as defined in section 3 of this chapter) charged for cashing checks does not exceed five dollars ($5).

As added by P.L.42-1993, SEC.86. Amended by P.L.122-1994, SEC.104; P.L.213-2007, SEC.85; P.L.217-2007, SEC.83; P.L.89-2011, SEC.62.

IC 28-8-5-2

Check or checks

Sec. 2. As used in this chapter, "check" or "checks" includes a check, draft, money order, or personal money order.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-2.5

Check cashing transaction

Sec. 2.5. As used in this chapter, "check cashing transaction" means a transaction under this chapter in which there is no written or implied agreement to hold the check for more than three (3) business days.

As added by P.L.80-1998, SEC.21.

IC 28-8-5-3

Consideration

Sec. 3. As used in this chapter, "consideration" includes a premium charged for the sale of goods or services in excess of the cash price of the sale of such goods or services.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-4

Department

Sec. 4. As used in this chapter, "department" means the members of the department of financial institutions.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-5

Repealed

(Repealed by P.L.89-2011, SEC.78.)

IC 28-8-5-6

Licensed casher of checks

Sec. 6. As used in this chapter, "licensed casher of checks" means a person licensed by the department to engage in business pursuant to the provisions of this chapter.
As added by P.L.42-1993, SEC.86.

IC 28-8-5-7
Licensee
Sec. 7. As used in this chapter, "licensee" means a licensed casher of checks.
As added by P.L.42-1993, SEC.86.

IC 28-8-5-8
Location
Sec. 8. As used in this chapter, "location" means a fixed or ambulatory place of business approved by the department.
As added by P.L.42-1993, SEC.86.

IC 28-8-5-9
Person
Sec. 9. As used in this chapter, "person" means any individual, sole proprietorship, partnership, trust, joint venture, limited liability company, corporation, unincorporated organization, or other form of entity, however organized.
As added by P.L.42-1993, SEC.86. Amended by P.L.90-2008, SEC.62.

IC 28-8-5-10
Resolutions for administration of chapter
Sec. 10. The department may make regulations and establish policies and guidelines by resolution for the administration of this chapter.
As added by P.L.42-1993, SEC.86.

IC 28-8-5-11
License required; application; other business at check cashing locations; tax warrant list; application fee
Sec. 11. (a) A person shall not engage in the business of cashing checks for consideration without first obtaining a license.
(b) Each application for a license shall be in writing in such form as the director may prescribe and shall include all of the following:
(1) The following information pertaining to the applicant:
(A) Name.
(B) Residence address.
(C) Business address.
(2) The following information pertaining to any individual described in section 12(b)(1) of this chapter:
(A) Name.
(B) Residence address.
(C) Business address.
(D) Whether the person:

(i) is, at the time of the application, under indictment for a felony under the laws of Indiana or any other jurisdiction; or

(ii) has been convicted of a felony under the laws of Indiana or any other jurisdiction.

(3) The address where the applicant's office or offices will be located. If any business, other than the business of cashing checks under this chapter, will be conducted by the applicant or another person at any of the locations identified under this subdivision, the applicant shall indicate for each location at which another business will be conducted:

(A) the nature of the other business;

(B) the name under which the other business operates;

(C) the address of the principal office of the other business;

(D) the name and address of the business's resident agent in Indiana; and

(E) any other information that the director may require.

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

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

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

(5) Such other data, financial statements, and pertinent information as the director may require.

(c) The application shall be filed with a nonrefundable fee fixed by the department under IC 28-11-3-5.

As added by P.L.42-1993, SEC.86. Amended by P.L.122-1994, SEC.105; P.L.10-2006, SEC.62 and P.L.57-2006, SEC.62; P.L.213-2007, SEC.86; P.L.217-2007, SEC.84; P.L.90-2008, SEC.63; P.L.35-2010, SEC.185; P.L.172-2011, SEC.135; P.L.137-2014, SEC.34.

IC 28-8-5-12

Issuance and refusal of licenses; evidence of compliance; criminal background checks

Sec. 12. (a) The department shall determine the financial responsibility, business experience, character, and general fitness of the applicant before issuing the license.

(b) The department may refuse to issue a license for any of the following reasons:

(1) Any of the following has been convicted of a felony under the laws of Indiana or any other jurisdiction:

(A) An executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant.

(B) Any person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the

outstanding shares of any class of equity security of the applicant.

(2) The application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(c) The director of the department may request evidence of compliance with this section by the licensee at:

(1) the time of application;

(2) the time of renewal of the licensee's license; or

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

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

(1) criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation for any individual described in subsection (b)(1);

(2) credit histories; and

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

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

As added by P.L.42-1993, SEC.86. Amended by P.L.80-1998, SEC.22; P.L.63-2001, SEC.21 and P.L.134-2001, SEC.23; P.L.10-2006, SEC.63 and P.L.57-2006, SEC.63; P.L.213-2007, SEC.87; P.L.217-2007, SEC.85; P.L.90-2008, SEC.64; P.L.35-2010, SEC.186.

IC 28-8-5-13

Licenses not transferable or assignable

Sec. 13. Except in a transaction approved under section 13.1 of this chapter, a license is not transferable or assignable.

As added by P.L.42-1993, SEC.86. Amended by P.L.89-2011, SEC.63.

IC 28-8-5-13.1

Change in control of licensee; application to department; timeframe for department's decision; conditions for approval; duty of licensee to report transfer of securities; director's discretion to require new license

Sec. 13.1. (a) As used in this section, "control" means possession of the power directly or indirectly to:

(1) direct or cause the direction of the management or policies of a licensee, whether through the beneficial ownership of voting securities, by contract, or otherwise; or

(2) vote at least twenty-five percent (25%) of the voting securities of a licensee, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.

(b) An organization or an individual acting directly, indirectly, or through or in concert with one (1) or more other organizations or individuals may not acquire control of any licensee unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days after receipt of an application to issue a notice approving the proposed change in control. The application must contain the name and address of the organization, individual, or individuals who propose to acquire control and any other information required by the director.

(c) The period for approval under subsection (b) may be extended:

(1) in the discretion of the director for an additional thirty (30) days; and

(2) not more than two (2) additional times for not more than forty-five (45) days each time if:

(A) the director determines that the organization, individual, or individuals who propose to acquire control have not submitted substantial evidence of the qualifications described in subsection (d);

(B) the director determines that any material information submitted is substantially inaccurate; or

(C) the director has been unable to complete the investigation of the organization, individual, or individuals who propose to acquire control because of any delay caused by or the inadequate cooperation of the organization, individual, or individuals.

(d) The department shall issue a notice approving the application only after it is satisfied that both of the following apply:

(1) The organization, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the licensee in a legal and proper manner.

(2) The interests of the owners and creditors of the licensee and the interests of the public generally will not be jeopardized by the proposed change in control.

(e) The director may determine, in the director's discretion, that subsection (b) does not apply to a transaction if the director determines that the direct or beneficial ownership of the licensee will not change as a result of the transaction.

(f) The president or other chief executive officer of a licensee shall report to the director any transfer or sale of securities of the licensee that results in direct or indirect ownership by a holder or an affiliated group of holders of at least ten percent (10%) of the outstanding

securities of the licensee. The report required by this subsection must be made not later than ten (10) days after the transfer of the securities on the books of the licensee.

(g) Depending on the circumstances of the transaction, the director may reserve the right to require the organization, individual, or individuals who propose to acquire control of a licensee to apply for a new license under section 11 of this chapter, instead of acquiring control of the licensee under this section.

As added by P.L.89-2011, SEC.64. Amended by P.L.6-2012, SEC.199.

IC 28-8-5-14

Expiration of licenses

Sec. 14. A license issued pursuant to this chapter expires on August 1 of the year following the date of issuance unless earlier suspended, relinquished, or revoked.

As added by P.L.42-1993, SEC.86. Amended by P.L.27-2012, SEC.103; P.L.137-2014, SEC.35.

IC 28-8-5-15

Renewal of licenses

Sec. 15. (a) To remain in force, a license must be renewed not later than August 1 of each year, beginning with the year following the date of issuance, as set forth in section 14 of this chapter. A licensee may renew a license issued under this chapter by filing a renewal application as prescribed by the director of the department. The department shall prescribe a form for the renewal application. To be accepted for processing, a renewal application must be accompanied by:

(1) the license renewal fee described in subsection (b); and

(2) all information and documents requested by the director of the department.

(b) A licensee that seeks to renew a license issued under this chapter shall pay to the department before August 1 of each year a fee fixed by the department under IC 28-11-3-5 as a renewal fee. The department may fix a daily late fee under IC 28-11-3-5 for a:

(1) renewal license application; or

(2) renewal fee;

that is received by the department after August 1.

As added by P.L.42-1993, SEC.86. Amended by P.L.35-2010, SEC.187; P.L.89-2011, SEC.65; P.L.137-2014, SEC.36.

IC 28-8-5-16

Check cashing requirements

Sec. 16. (a) A licensee must do the following:

(1) Conspicuously display at each place of business a notice to the public stating the maximum charges for cashing checks.

(2) Make payment to a customer for whom a check is being cashed upon presentment of the check.

(3) Endorse the name in which the licensee is licensed on all

checks before depositing them in a financial institution.

(4) Cash a check made payable only to a natural person as payee unless the licensee has previously obtained appropriate documentation from a payee clearly indicating the authority of the natural person or persons cashing the check on behalf of the payee.

(b) If a licensee engages in a check cashing transaction in which the amount on the check is at least three thousand dollars ($3,000) or in which the sum of the amounts on two (2) or more checks from the same customer on the same day total at least three thousand dollars ($3,000), the licensee must obtain:

(1) the thumbprint of the customer or a photograph of both the customer and the check;

(2) the full name of the customer;

(3) the residence address of the customer; and

(4) the identification of the customer by:

(i) Social Security number;

(ii) driver's license number;

(iii) passport number; or

(iv) other traceable record.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-17

Check cashing fee limitations

Sec. 17. (a) Except as otherwise provided in this chapter, a licensee may not charge check cashing fees in excess of:

(1) the greater of ten dollars ($10) or ten percent (10%) of the face amount of a check, in the case of a personal check; or

(2) the greater of five dollars ($5) or five percent (5%) of the face amount of a check, in the case of all other checks.

(b) Except as provided in this chapter, a licensee or the licensee's agent may not accept multiple checks from a:

(1) person;

(2) person's spouse; or

(3) person's agent;

drawn on the person's account with the intent that the licensee may collect multiple or increased fees for cashing the checks.

As added by P.L.42-1993, SEC.86. Amended by P.L.80-1998, SEC.23; P.L.213-2007, SEC.88; P.L.217-2007, SEC.86.

IC 28-8-5-18

Record keeping; duty to safeguard personal records

Sec. 18. (a) A licensee shall keep its books, accounts, and records satisfactory to the department for each transaction for at least three (3) years from the transaction date.

(b) A licensee shall keep its books, accounts, and records separate from those of any other type of business and in a manner that reflects the order of the licensee's transactions.

(c) A person licensed or required to be licensed under this chapter is subject to IC 28-1-2-30.5 with respect to any records maintained

by the person.
As added by P.L.42-1993, SEC.86. Amended by P.L.90-2008, SEC.65.

IC 28-8-5-18.3
Other business at check cashing locations; notice to department

Sec. 18.3. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any of the following apply:

(1) Any business, other than the business of cashing checks under this chapter, will be conducted by the licensee or another person at any location in Indiana in which the licensee conducts the business of cashing checks under this chapter.

(2) Any information concerning other business conducted at the locations identified in the licensee's application under section 11(b)(3) of this chapter changes.

(b) For each location described in subsection (a)(1) or (a)(2), the licensee shall provide to the department the information required under section 11(b)(3) of this chapter with respect to that location:

(1) not later than fifteen (15) days after the other business begins operating at the location; or

(2) if the licensee's next application for a renewal license under section 15 of this chapter is due before the date described in subdivision (1), in the licensee's next application for a renewal license under section 15 of this chapter.

As added by P.L.10-2006, SEC.64 and P.L.57-2006, SEC.64.

IC 28-8-5-18.4
Felony convictions or pleas; notice to department

Sec. 18.4. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, the licensee, or any individual described in section 11(b)(2) of this chapter, has been convicted of or pleaded guilty or nolo contendere to a felony under the laws of Indiana or any other jurisdiction.

(b) If this section applies, the licensee shall provide to the department the information required under section 11(b)(2)(D) of this chapter:

(1) not later than thirty (30) days after the licensee or individual described in section 11(b)(2) of this chapter has been convicted of or pleaded guilty or nolo contendere to the felony; or

(2) if the licensee's next license renewal fee under section 15 of this chapter is due before the date described in subdivision (1), along with the licensee's next license renewal fee under section 15 of this chapter.

As added by P.L.213-2007, SEC.89; P.L.217-2007, SEC.87. Amended by P.L.35-2010, SEC.188.

IC 28-8-5-18.5
Checks drawn on valid accounts and deposited with intent to draw funds

Sec. 18.5. The check in a check cashing transaction, to the best of the licensee's knowledge, must be drawn on a valid, open, and active account and must be deposited by the licensee into a financial institution with the intent to draw the funds of that check.
As added by P.L.80-1998, SEC.24.

IC 28-8-5-19
Examination of books, accounts, and records; fees; department's investigatory and enforcement authority; examination of vendors

Sec. 19. (a) The department may examine the books, accounts, and records of a licensee and may make investigations to determine compliance.

(b) If the department examines the books, accounts, and records of a licensee, the licensee shall pay all reasonably incurred costs of the examination in accordance with the fee schedule adopted under IC 28-11-3-5. A fee established by the department under IC 28-11-3-5 may be charged for each day a fee under this section is delinquent.

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

(1) licensee; or
(2) person that the department suspects to be operating:
(A) without a license, when a license is required under this chapter; or
(B) otherwise in violation of chapter.

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

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

(1) discontinue receiving one (1) or more services from the person; or
(2) otherwise cease conducting business with the person.

As added by P.L.42-1993, SEC.86. Amended by P.L.10-2006, SEC.65 and P.L.57-2006, SEC.65; P.L.35-2010, SEC.189; P.L.27-2012, SEC.104; P.L.137-2014, SEC.37.

IC 28-8-5-20
Investigation procedures

Sec. 20. In making investigations concerning the compliance of a licensee the department may:

(1) administer oaths;
(2) subpoena witnesses; and
(3) require the production of:
(i) books, documents, or other tangible items; and
(ii) information pertaining to the identity of and location of persons having knowledge of facts concerning compliance with this chapter.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-21
Examination of records located outside Indiana

Sec. 21. If the licensee's records are located outside Indiana, the licensee shall either make them available to the department at a convenient location within Indiana or pay the reasonable and necessary expenses for the department or its representative to examine them at the place where they are maintained.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-21.1
Applicability of law governing administrative orders and procedures; venue

Sec. 21.1. Except as otherwise provided, IC 4-21.5 applies to and governs all agency action taken by the department under this chapter. A proceeding for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 must be held in Marion County.

As added by P.L.35-2010, SEC.190.

IC 28-8-5-22
Suspension or revocation of license; order to show cause; order of suspension or revocation; relinquishment of license; existing obligations; emergency order for revocation

Sec. 22. (a) The department may issue to a licensee an order to show cause why the licensee's license should not be revoked or suspended for a period determined by the department.

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

(1) include:
(A) a statement of the place, date, and time for a meeting with the department, which date may not be less than ten (10) days from the date of the order;
(B) a description of the action contemplated by the department; and
(C) a statement of the facts or conduct supporting the issuance of the order; and
(2) be accompanied by a notice stating that the licensee is entitled to:
(A) a reasonable opportunity to be heard; and

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

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

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

(1) the licensee has repeatedly and willfully violated:

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

(B) any other state or federal law, regulation, or rule applicable to the business of cashing checks for consideration;

(2) the licensee does not meet the licensing qualifications set forth in this chapter;

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

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

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

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

(1) the revocation or suspension;

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

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

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

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

(e) Any person holding a license to engage in the business of cashing checks for consideration may relinquish the license by notifying the department in writing of the relinquishment. However, a relinquishment under this subsection does not affect the person's liability for acts previously committed and coming within the scope of this chapter.

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

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

(h) If the director of the department has just cause to believe an emergency exists from which it is necessary to protect the interests

of the public, the director may proceed with the revocation of a license through an emergency or another temporary order under IC 4-21.5-4.
As added by P.L.42-1993, SEC.86. Amended by P.L.176-1996, SEC.25; P.L.80-1998, SEC.25; P.L.27-2012, SEC.105.

IC 28-8-5-22.5
Failure to file renewal form or pay renewal fee; revocation or suspension of license

Sec. 22.5. (a) A license issued by the department under this chapter may be revoked or suspended by the department if the person fails to:

(1) file any renewal applications prescribed by the director; or
(2) pay any license renewal fee described under section 15 of this chapter;

not later than sixty (60) days after the date the renewal is due.

(b) A person whose license is revoked or suspended under this section may:

(1) pay all delinquent fees and apply for reinstatement of the person's license; or
(2) appeal the revocation to the department for an administrative review under IC 4-21.5-3.

Pending the decision resulting from a hearing under IC 4-21.5-3 concerning license revocation or suspension, a license remains in force.
As added by P.L.176-1996, SEC.26. Amended by P.L.35-2010, SEC.191; P.L.89-2011, SEC.66.

IC 28-8-5-23
Investigations; void check cashing transactions

Sec. 23. (a) If the department determines that a reasonable belief exists that a person is operating without a valid license or in violation of this chapter, the department may investigate the person.

(b) If a person knowingly acts as a casher of checks without the license required by section 12 of this chapter, the check cashing transaction is void and the customer is not required to pay any check cashing fees to the person. If the customer has paid any check cashing fees to the person, the customer, or the department on behalf of the customer, is entitled to recover the payment from the person.
As added by P.L.42-1993, SEC.86. Amended by P.L.172-1997, SEC.24.

IC 28-8-5-24
Civil penalties; civil action by department

Sec. 24. (a) If the department determines, after notice and an opportunity to be heard, that a person has violated this chapter, the department may, in addition to or instead of all other remedies available under this chapter, impose upon the person a civil penalty not greater than ten thousand dollars ($10,000) per violation.

(b) In addition to or instead of imposing a civil penalty under

subsection (a), the department may bring a civil action against a person for violating this chapter.

(c) If the court finds that the defendant is guilty of violating this chapter, the court may assess a civil penalty not to exceed five thousand dollars ($5,000) per violation.

(d) Civil penalties collected under this section shall be deposited into the financial institutions fund established by IC 28-11-2-9.

As added by P.L.42-1993, SEC.86. Amended by P.L.89-2011, SEC.67.

IC 28-8-5-24.5

Compliance with money laundering laws; investigation and enforcement by department

Sec. 24.5. (a) A licensee shall comply with all state and federal money laundering statutes and regulations, including the following:

(1) The Bank Secrecy Act (31 U.S.C. 5311 et seq.).

(2) The USA Patriot Act of 2001 (P.L. 107-56).

(3) Any regulations, policies, or reporting requirements established by the Financial Crimes Enforcement Network of the United States Department of the Treasury.

(4) Any other state or federal money laundering statutes or regulations that apply to a licensee.

(b) The department shall do the following:

(1) To the extent authorized or required by state law, investigate potential violations of, and enforce compliance with, state money laundering statutes or regulations.

(2) Investigate potential violations of federal money laundering statutes or regulations and, to the extent authorized or required by federal law:

(A) enforce compliance with the federal statutes or regulations; or

(B) refer suspected violations of the federal statutes or regulations to the appropriate federal regulatory agencies.

As added by P.L.10-2006, SEC.66 and P.L.57-2006, SEC.66.

IC 28-8-5-25

Violations

Sec. 25. A licensee who violates the provisions of this chapter commits a Class A misdemeanor.

As added by P.L.42-1993, SEC.86.

IC 28-9

ARTICLE 9. DEPOSITORY FINANCIAL INSTITUTIONS ADVERSE CLAIMS ACT

IC 28-9-1

Chapter 1. Applicability

IC 28-9-1-1

Application of article

Sec. 1. This article does not apply to income withholding under IC 31-16-15.

As added by P.L.258-1989, SEC.2. Amended by P.L.1-1997, SEC.117.

IC 28-9-2
Chapter 2. Definitions

IC 28-9-2-1
Application of definitions
Sec. 1. The definitions in this chapter apply throughout this article.
As added by P.L.258-1989, SEC.2.

IC 28-9-2-2
"Adverse claim"
Sec. 2. "Adverse claim" includes the following:
(1) A claim to a deposit account that is adverse to the rights or interest of any depositor of the deposit account.
(2) A claim to a deposit account that is made in the name of a person other than a person who is named as a depositor of the deposit account.
(3) A claim of authority by a corporate officer or agent to manage, draw on, or control a deposit account, if that claim of authority:
(A) is contrary to the authority indicated in the records of the depository financial institution; or
(B) conflicts with a claim of authority asserted by another person.
(4) The claim of a money judgment creditor against a person who is or may be a depositor.
As added by P.L.258-1989, SEC.2.

IC 28-9-2-3
"Adverse claimant"
Sec. 3. "Adverse claimant" means a person asserting an adverse claim.
As added by P.L.258-1989, SEC.2.

IC 28-9-2-4
"Depositor"
Sec. 4. "Depositor" means a person who, according to records maintained by the depository financial institution, has an interest in a deposit account, either individually or jointly with another person.
As added by P.L.258-1989, SEC.2.

IC 28-9-2-5
"Deposit account"
Sec. 5. "Deposit account" means an account made by a depositor, either individually or jointly with another person, with a depository financial institution. The term includes the following accounts:
(1) Share.
(2) Share draft.
(3) Share certificate.
(4) Draft.
(5) Certificate of deposit.

(6) Savings.
(7) Passbook.
(8) Checking.
(9) Money market.
(10) Transaction.
(11) Time deposit.
(12) Savings deposit.
(13) Accounts similar to those listed in subdivisions (1) through (12).

As added by P.L.258-1989, SEC.2.

IC 28-9-2-6
"Depository financial institution"

Sec. 6. "Depository financial institution" means a financial institution that is organized or reorganized under Indiana law, the law of another state, or United States law. The term includes:

(1) a commercial bank;
(2) a trust company;
(3) a credit union;
(4) a savings bank;
(5) a savings association;
(6) a bank of discount and deposit;
(7) an industrial loan and investment company; or
(8) a similar financial institution to those listed in subdivisions (1) through (7);

if that financial institution has the financial institution's principal place of business or a branch in Indiana.

As added by P.L.258-1989, SEC.2. Amended by P.L.42-1993, SEC.87; P.L.79-1998, SEC.82.

IC 28-9-2-7
"Person"

Sec. 7. "Person" has the meaning set forth in IC 3-5-2-36.

As added by P.L.258-1989, SEC.2.

IC 28-9-2-8
"Working day"

Sec. 8. "Working day" means that part of any day on which a depository financial institution is open to the public for carrying on substantially all of its functions.

As added by P.L.258-1989, SEC.2.

IC 28-9-3

Chapter 3. Notice of Adverse Claims

IC 28-9-3-1

Duty of depository financial institution upon notice of adverse claim

Sec. 1. Except upon the conditions specified in sections 3 and 4 of this chapter, notice to a depository financial institution of an adverse claim does not require the depository financial institution to:

(1) recognize the adverse claim in any manner; or

(2) place a hold on, or otherwise restrict withdrawal of funds from, a deposit account.

As added by P.L.258-1989, SEC.2.

IC 28-9-3-2

Honoring order or instructions of depositor; liability

Sec. 2. Except as provided in sections 3 and 4 of this chapter, and notwithstanding IC 34-25-3-3 or any other rule or doctrine of law that:

(1) would cause a depository financial institution to be accountable to an adverse claimant for any portion of any deposit account; or

(2) would create or impose in favor of an adverse claimant a lien, charge, encumbrance, or other right with respect to a deposit account;

a depository financial institution may, without being liable in damages to any person, honor the order or instructions of a depositor or an agent of a depositor who is authorized under records maintained by the depository financial institution to control the depositor's deposit account.

As added by P.L.258-1989, SEC.2. Amended by P.L.1-1998, SEC.156.

IC 28-9-3-3

Adverse claim by one who is not a money judgment creditor of a depositor; accountability of depository financial institution; actions required of adverse claimant

Sec. 3. (a) This section applies to an adverse claimant who is not a money judgment creditor of a depositor.

(b) A depository financial institution may not be held accountable to an adverse claimant for funds in a deposit account that are claimed by the adverse claimant unless the adverse claimant:

(1) serves on the depository financial institution written verified notice of the adverse claim stating in detail:

(A) the nature of the adverse claim, including the facts from which the adverse claim arose;

(B) that an action has been instituted in a court having jurisdiction in Indiana, or will be instituted within three (3) working days after receipt by the depository financial institution of the notice; and

(C) that the action instituted will include all persons known by the adverse claimant to have a claim against or an interest in the deposit account;

(2) serves on the depository financial institution notice of an adverse claim with a restraining order, an injunction, or another legal process that:

(A) directs the depository financial institution to place a hold on or otherwise restrict withdrawals from a deposit account;

(B) is issued or appears to be issued by a court having jurisdiction as a result of an action in which the depositor, the depository financial institution, and all persons who are known to the depository financial institution as having an interest in the deposit account are parties; and

(C) is accompanied by a court order providing for the recovery and collection by the depository financial institution of all costs and expenses, including attorney's fees, that have been or may be incurred by the depository financial institution as a result of the action; or

(3) furnishes to the depository financial institution, in form and with sureties acceptable to the depository financial institution, a bond indemnifying the depository financial institution from payment of damages, costs and expenses, and attorney's fees incurred by the depository financial institution as a result of the:

(A) payment by the depository financial institution of the adverse claim;

(B) dishonor by the depository financial institution of any instructions from, or orders by, a depositor; or

(C) dishonor by the depository financial institution of other duties imposed upon the depository financial institution by contract or law.

As added by P.L.258-1989, SEC.2.

IC 28-9-3-4

Adverse claim by money judgment creditor attempting to garnish deposit account; accountability of depository institution; interrogatories; actions required of adverse claimant

Sec. 4. (a) This section applies to an adverse claimant who is a money judgment creditor attempting to garnish a deposit account.

(b) A depository financial institution may not be held accountable to an adverse claimant for funds in a deposit account that are claimed by the adverse claimant unless the adverse claimant has complied with subsection (d).

(c) A depository institution is not required to respond to interrogatories regarding deposit accounts at the depository financial institution unless the adverse claimant has complied with subsection (d).

(d) An adverse claimant shall do all of the following:

(1) Provide the depository financial institution notice of garnishment proceedings, the unpaid amount of the judgment, and sufficient identifying information about the judgment

defendant to enable the depository financial institution reasonably to verify the judgment defendant as the depositor.

(2) Serve or cause to be served upon the depository financial institution an order to answer interrogatories.

(3) If the judgment defendant is an individual, serve or cause to be served upon the depository financial institution a copy of a notice, or an apparently valid order containing a notice, issued by a court that is directed to the judgment defendant (which is to be used by the depository financial institution to comply with IC 28-9-4-2(a)(3)) and that:

(A) states that the adverse claimant has or may have served or caused to be served upon one (1) or more depository financial institutions notice that may result in the placing of a hold on deposit accounts maintained by the judgment defendant, either individually or jointly with another person, in such depository financial institutions;

(B) states that under federal and state law certain funds are exempt from garnishment, including Social Security, Supplemental Security Income, veterans benefits, and certain disability pension benefits, and that there may be other exemptions from garnishment under federal or state law;

(C) states that if the judgment defendant or another person who maintains a deposit account jointly with the judgment defendant believes that some or all of the funds in the deposit account on which a hold may have been placed are exempt, such person is entitled to a prompt hearing for the purpose of presenting evidence to establish exemptions and seeking removal of the hold; and

(D) has attached to it a preprinted detachable form that may be used by the judgment defendant or other person maintaining a deposit account jointly with the judgment defendant in requesting the prompt hearing specified in clause (C) and that generally instructs such person as to how the form should be used in requesting this hearing.

(4) Serve or cause to be served upon the depository financial institution an apparently valid order issued by a court that expressly directs the depository financial institution to place a hold on a deposit account identified in the order whenever the conditions under subdivisions (1) through (3) are met.

(5) Pay to the depository financial institution five dollars ($5) for each judgment defendant identified by the adverse claimant under subdivision (1). This fee may not be assessed as a cost to the judgment defendant in the action.

(e) An order issued under subsection (d)(4):

(1) is subject to the limitations under IC 28-9-4-2 concerning the duration of the restriction and the amount to be restricted; and

(2) may be terminated or modified to reflect valid exemptions of a depositor that the court has considered.

(f) A depository financial institution is not required to pay funds in a deposit account to an adverse claimant unless the adverse

claimant serves the depository financial institution with a final order in garnishment directing the payment of the lesser of:

(1) the unpaid amount of the judgment specified by the documents and process; or

(2) the balance in the account at the time of receipt of the documents and process.

As added by P.L.258-1989, SEC.2. Amended by P.L.197-1991, SEC.1; P.L.198-1991, SEC.1; P.L.1-1992, SEC.157; P.L.89-1998, SEC.1.

IC 28-9-3-5

Garnishment of deposit account; notice requirements

Sec. 5. (a) The information specified in section 4(b)(3)(B) through 4(b)(3)(C) of this chapter and the legend set forth in subsection (c) must be printed more conspicuously than the other information specified in section 4(b)(3) of this chapter. The information specified in section 4(b)(3)(B) through 4(b)(3)(C) of this chapter and the legend set forth in subsection (c) may be made more conspicuous in any way that highlights it in relation to the other information specified in section 4(b)(3) of this chapter, including, but not limited to, any of the following:

(1) Capitalization, when the other information is printed in capitals and lower case.

(2) Printing in larger type, boldface print, or differentiated typeface.

(3) Printing in a contrasting color.

(4) Underlining.

(b) Use of the following forms will constitute compliance with the notice requirements of section 4(b)(3) of this chapter:

NOTICE OF CERTAIN EXEMPTIONS
AND
YOUR RIGHT TO A PROMPT HEARING

It may be that the plaintiff has or will give notice to your bank or other persons holding property or assets for you of the intent to put a hold on certain accounts held by you, either individually or jointly with another person, including, but not limited to bank, share, and credit union accounts. Under Indiana law, this notice may already have resulted in the placing of a hold on those accounts. UNDER FEDERAL AND STATE LAW, CERTAIN FUNDS ARE EXEMPT FROM GARNISHMENT. THIS MEANS THAT THESE FUNDS MAY NOT BE TAKEN BY CREDITORS EVEN IF THEY HAVE BEEN DEPOSITED INTO YOUR ACCOUNTS. SOCIAL SECURITY, SUPPLEMENTAL SECURITY INCOME, VETERANS BENEFITS, AND CERTAIN DISABILITY PENSION BENEFITS CANNOT BE TAKEN. THERE MAY BE OTHER EXEMPTIONS UNDER STATE OR FEDERAL LAW. IF YOU OR ANOTHER PERSON WHO MAINTAINS A JOINT ACCOUNT WITH YOU BELIEVE THAT ALL OR SOME OF THE FUNDS IN THESE ACCOUNTS ARE EXEMPT, YOU

OR YOUR JOINT DEPOSITOR ARE ENTITLED TO A PROMPT HEARING IN THIS COURT TO PRESENT EVIDENCE TO ESTABLISH EXEMPTIONS AND TO SEEK REMOVAL OF THE HOLD.

To obtain such a hearing, fill in the form marked "Exemption Claim and Request for Hearing" attached hereto and return it to this court either by mail or by personally bringing it to the court. A copy of that form should also be sent to plaintiff's attorney or to the plaintiff, if the plaintiff is not represented by an attorney, at the address set forth below. A prompt hearing will be scheduled by the court as soon as possible, but generally no later than 5 days (excluding Saturdays, Sundays, and legal holidays) after the completed form is received by the court. Please call the court at (___) _____ to find out when the hearing is scheduled. When calling the court, please have the cause number handy. The cause number is located at the top of the right-hand side of this document. After the hearing, the court will decide whether all or part of the funds in each account on which a hold has been placed or other accounts in which you have an interest may be taken by the plaintiff.

If a joint depositor or you do not request an early hearing, there will be a hearing at the time when you are ordered to appear. At that hearing, you and a joint depositor are entitled to assert any exemptions. However, if a joint depositor or you do not request an early hearing, each account on which a hold has been placed may not be released until the time you are ordered to appear.

EXEMPTION CLAIM AND REQUEST
FOR HEARING
THE HONORABLE JUDGE OF THE
COURT OF _____ COUNTY
ROOM NO. _____

_____
(Address)

_____
(City, State, Zip)

Re: Cause No. _____

I believe that all or part of the money in my account(s) that may have been frozen cannot be frozen since the account(s) contain exempt funds. I would like a hearing at the earliest time.

_____
(Signature)

Check One:

_____ I am the judgment defendant.

_____ I maintain a joint account with the judgment defendant.

(c) The notice required by section 4(b)(3) of this chapter may be placed on the reverse side of the order to appear directed to the judgment defendant, in which case the obverse side of the order to appear shall contain substantially the following legend: "See reverse side for important information concerning your exemption and other

rights.". However, in any case, the adverse claimant or an attorney representing the adverse claimant must serve or cause to be served this notice upon the judgment defendant in accordance with the applicable rules of court before or promptly after the notice is served upon the depository financial institution.

As added by P.L.258-1989, SEC.2. Amended by P.L.197-1991, SEC.2.

IC 28-9-4

Chapter 4. Procedure Upon Receipt of Notice

IC 28-9-4-1

Receipt of notice from an adverse claimant who is not a money judgment creditor; hold on deposit account

Sec. 1. (a) Upon receipt of the notice required under IC 28-9-3-3(b)(1), a depository financial institution shall place a hold on the deposit account described in the notice the amount in controversy that is specified by the notice.

(b) If within three (3) working days after receipt by a depository financial institution of the notice required under IC 28-9-3-3(b)(1), the adverse claimant has failed to serve or cause to be served an apparently valid order directing the depository financial institution to hold or restrict the funds in a deposit account against which an adverse claim is asserted, the depository financial institution shall treat the deposit account as if no notice of an adverse claim had been given.

As added by P.L.258-1989, SEC.2.

IC 28-9-4-2

Receipt of notice from an adverse claimant who is a money judgment creditor; restriction on withdrawal from deposit account; expiration of restriction

Sec. 2. (a) Upon receipt from an adverse claimant who is a money judgment creditor of the documents and process required under IC 28-9-3-4(d), a depository financial institution shall:

(1) deduct and obtain from the deposit account the full amount of the fee specified in section 3(b) of this chapter;

(2) within a commercially reasonable time after receiving the documents and process, restrict withdrawal of funds in the deposit account identified in the documents and process in an amount equal to the lesser of:

(A) the unpaid amount of the judgment specified by the documents and process; or

(B) the balance in the account at the time of receipt of the documents and process;

less one-half (1/2) of the amount of the fee deducted under subdivision (1);

(3) if the depository financial institution places a hold on the deposit account of a judgment defendant who is an individual, within one (1) working day after the hold has been placed, send to each depositor whose deposit account is affected at the last known address of such depositor or depositors (as the address is shown by the records of the depository financial institution with respect to that deposit account) a copy of the notice or order containing the notice specified in IC 28-9-3-4(d)(3) and a written notification advising the depositor or depositors that the hold has been placed; and

(4) if the depository financial institution places a hold on the

deposit account of a judgment defendant who is not an individual, within one (1) working day after the hold has been placed, send to each depositor whose deposit account is affected at the last known address of such depositor or depositors (as the address is shown by the records of the depository financial institution with respect to that deposit account) a written notification advising the depositor or depositors that the hold has been placed.

(b) The restriction on withdrawal from a deposit account imposed by a depository financial institution under this section may not exceed ninety (90) days, pending a court's determination of the adverse claimant's rights to the amount restricted.

(c) If:

(1) ninety (90) days have elapsed after the hold is placed on a deposit account; and

(2) an apparently valid order of a court has not been served upon the depository financial institution that directs the depository financial institution to begin or to continue to restrict withdrawals from a deposit account;

the restriction on withdrawal from the deposit account imposed under subsection (a) expires.

As added by P.L.258-1989, SEC.2. Amended by P.L.89-1998, SEC.2.

IC 28-9-4-3

Garnishment fee; credit against unpaid amount of judgment; deposit funds exempt from garnishment

Sec. 3. (a) This section applies to a depository financial institution that is required to place a hold on a deposit account under section 2(a) of this chapter.

(b) Immediately prior to the placing of a hold on a deposit account under section 2(a) of this chapter, the depository financial institution is entitled to receive and deduct from the affected deposit account a garnishment fee equal to the lesser of:

(1) twenty dollars ($20); or

(2) the amount of funds then in the deposit account.

However, if the court determines that the funds from which the garnishment fee is deducted are exempt from garnishment, the depository financial institution shall recredit the deposit account affected with the amount of the garnishment fee previously deducted.

(c) In answering interrogatories served or caused to be served by the adverse claimant regarding the amount of funds in a deposit account, the depository financial institution shall indicate the balance in the deposit account immediately prior to the deduction of the garnishment fee specified in subsection (b).

(d) Upon receipt from the depository financial institution of answers to interrogatories indicating a balance in a deposit account in which the judgment defendant has an interest, the adverse claimant shall credit or cause to be credited against the unpaid amount of the judgment one-half (1/2) of the garnishment fee calculated in accordance with subsection (b). However, if the court determines that

the funds from which the garnishment fee is deducted are exempt from garnishment, that credit against the unpaid amount of the judgment shall be reversed.

(e) For the purposes of subsections (b) and (d), if the court determines that a portion of the funds in a deposit account is exempt from garnishment, the garnishment fee specified in subsection (b) shall be considered to have been deducted first from those funds in the deposit account that are not exempt from garnishment.

(f) Subject only to the provisions of subsection (b) with respect to adjustment of a deposit account based upon an exemption, once the garnishment fee specified in that subsection is deducted, the deducted amount shall not be subject to any claim by the adverse claimant or a depositor.

As added by P.L.258-1989, SEC.2. Amended by P.L.198-1991, SEC.2.

IC 28-9-5

Chapter 5. Immunity; Indemnification; Interpleader

IC 28-9-5-1

Holds on or restrictions of withdrawals from deposit accounts; failure to send copy of order or notice or written notification to depositor; immunity

Sec. 1. (a) A depository financial institution that, in good faith, places a hold on, or otherwise restricts withdrawals from, a deposit account under IC 28-9-4-1(a), under IC 28-9-4-2(a), or in response to the process prescribed in IC 28-9-3-3(b)(2) is immune from civil liability to any person, including any depositor, by reason of the failure of the depository financial institution to treat the deposit account in accordance with an agreement made between the depository financial institution and a depositor.

(b) A depository financial institution that, in good faith, places a hold on a deposit account under IC 28-9-4-2(a) is immune from civil liability to any depositor for the failure of the depository financial institution to send the copy of the order or notice or the written notification required under IC 28-9-4-2(a)(2) or for the failure to send the written notification required under IC 28-9-4-2(a)(3) if the failure was not intentional and was the result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such an error.

As added by P.L.258-1989, SEC.2.

IC 28-9-5-2

Indemnification of depository financial institution by adverse claimant

Sec. 2. If a depository financial institution:

(1) has responded in good faith to an adverse claimant under this article; and

(2) is held liable to a depositor or another person by reason of the failure of the depository financial institution to treat a deposit account in accordance with an agreement made between the depository financial institution and a depositor;

the depository financial institution is entitled to indemnification from the adverse claimant for the full amount of damages incurred by the depository financial institution, including attorney's fees.

As added by P.L.258-1989, SEC.2.

IC 28-9-5-3

Interpleader

Sec. 3. This article does not prevent a depository financial institution from interpleading and paying the funds that are the subject of an adverse claim into a court. If a depository financial institution pays the funds to the court, the depository financial institution is entitled to recover and collect the costs and expenses, including attorney's fees, incurred by the depository financial institution in the interpleader action.

As added by P.L.258-1989, SEC.2.

IC 28-10

ARTICLE 10. GENERAL PROVISIONS AND DEFINITIONS

IC 28-10-1

Chapter 1. General Provisions

IC 28-10-1-1

References to federal laws or regulations

Sec. 1. A reference to a federal law or federal regulation in this title is a reference to the law or regulation as in effect December 31, 2013.

As added by P.L.33-1991, SEC.55. Amended by P.L.14-1992, SEC.159; P.L.42-1993, SEC.88; P.L.122-1994, SEC.106; P.L.262-1995, SEC.69; P.L.176-1996, SEC.27; P.L.192-1997, SEC.23; P.L.11-1998, SEC.20; P.L.215-1999, SEC.7; P.L.23-2000, SEC.10; P.L.63-2001, SEC.22 and P.L.134-2001, SEC.24; P.L.82-2002, SEC.2; P.L.192-2003, SEC.6 and P.L.258-2003, SEC.18; P.L.73-2004, SEC.40; P.L.141-2005, SEC.19; P.L.10-2006, SEC.67 and P.L.57-2006, SEC.67; P.L.213-2007, SEC.90; P.L.217-2007, SEC.88; P.L.90-2008, SEC.66; P.L.182-2009(ss), SEC.372; P.L.35-2010, SEC.192; P.L.89-2011, SEC.68; P.L.27-2012, SEC.106; P.L.216-2013, SEC.65; P.L.137-2014, SEC.38.

IC 28-10-1-2

Applicability of definitions

Sec. 2. The definitions in IC 28-1-1-3 apply in the following statutes:

(1) This article.
(2) IC 28-11.
(3) IC 28-12.
(4) IC 28-13.
(5) IC 28-14.

As added by P.L.14-1992, SEC.160. Amended by P.L.262-1995, SEC.70.

IC 28-10-1-3

"Corporation" defined

Sec. 3. For purposes of IC 28-12, "corporation" means any of the following:

(1) A bank and trust company.
(2) A bank.
(3) A savings association.
(4) A trust company.
(5) A stock savings bank.
(6) A corporate fiduciary.

As added by P.L.14-1992, SEC.161. Amended by P.L.42-1993, SEC.89; P.L.122-1994, SEC.107; P.L.262-1995, SEC.71; P.L.79-1998, SEC.83.

IC 28-10-1-4
"Corporation" defined

Sec. 4. For purposes of IC 28-13, "corporation" means any of the following:

(1) A bank and trust company.
(2) A bank.
(3) A savings association.
(4) A mutual savings bank formed as the result of a conversion under IC 28-1-21.7 and governed by IC 28-6.1.
(5) A stock savings bank that was:
    (A) formed as the result of a conversion under IC 28-1-21.8 or IC 28-1-21.9; or
    (B) incorporated under IC 28-12; and
that is governed by IC 28-6.1.
(6) A trust company.
(7) A corporate fiduciary.

As added by P.L.42-1993, SEC.90. Amended by P.L.122-1994, SEC.108; P.L.262-1995, SEC.72; P.L.79-1998, SEC.84.

IC 28-11

ARTICLE 11. DEPARTMENT OF FINANCIAL INSTITUTIONS

IC 28-11-1

Chapter 1. Establishment of the Department of Financial Institutions

IC 28-11-1-1

Department of financial institutions; establishment; expenses paid by fees; not subject to oversight; examination of funds, accounts, and financial affairs

Sec. 1. (a) The department of financial institutions is established.

(b) The department:

(1) is an independent agency in the executive branch of state government; and

(2) exercises essential public functions.

(c) The expenses of the department in administering the financial institutions subject to the department's oversight are paid by financial institutions through fees established by the department under IC 28-11-3-5.

(d) Subject to subsection (e), the department's regulatory and budgetary functions are not subject to oversight by the following:

(1) The office of management and budget (notwithstanding IC 4-3-22-14).

(2) The budget agency (notwithstanding IC 4-12-1).

(3) The state personnel department (notwithstanding IC 4-15-2.2).

(4) The Indiana department of administration (notwithstanding IC 4-13-1).

(5) The office of technology (notwithstanding IC 4-13.1).

(e) The department's funds, accounts, and financial affairs shall be examined biennially by the state board of accounts under IC 5-11-1-9(c).

As added by P.L.33-1991, SEC.56. Amended by P.L.213-2007, SEC.91; P.L.217-2007, SEC.89; P.L.6-2012, SEC.200.

IC 28-11-1-2

Administration of Title 28

Sec. 2. The department shall administer this title.

As added by P.L.33-1991, SEC.56.

IC 28-11-1-3

Members of department

Sec. 3. (a) The ultimate authority for and the powers, duties, management, and control of the department are vested in the following seven (7) members:

(1) The director of the department, who serves as an ex officio, voting member.

(2) The following six (6) members appointed by the governor as

follows:

(A) Three (3) members must have practical experience at the executive level of a:

(i) state chartered bank;

(ii) state chartered savings association; or

(iii) state chartered savings bank.

(B) One (1) member must have practical experience at the executive level as a lender licensed under IC 24-4.5.

(C) One (1) member must have practical experience at the executive level of a state chartered credit union.

(D) One (1) member must be appointed with due regard for the consumer, agricultural, industrial, and commercial interests of Indiana.

(b) Not more than three (3) members appointed by the governor under subsection (a)(2) after June 30, 2006, may be affiliated with the same political party.

As added by P.L.33-1991, SEC.56. Amended by P.L.262-1995, SEC.73; P.L.79-1998, SEC.85; P.L.10-2006, SEC.68 and P.L.57-2006, SEC.68; P.L.213-2007, SEC.92; P.L.217-2007, SEC.90.

IC 28-11-1-4

Oath of office; necessity

Sec. 4. An individual must take an oath of office before assuming office as a member.

As added by P.L.33-1991, SEC.56.

IC 28-11-1-5

Term of office; reappointment of a member; service to continue until successor appointed

Sec. 5. (a) A member appointed by the governor under section 3(a)(2) of this chapter serves a term of four (4) years but at the pleasure of the governor.

(b) The governor may reappoint a member appointed under section 3(a)(2) of this chapter.

(c) Notwithstanding the expiration of a member's term, the member continues to serve until a successor is appointed and qualified.

As added by P.L.33-1991, SEC.56. Amended by P.L.10-2006, SEC.69 and P.L.57-2006, SEC.69; P.L.35-2010, SEC.193.

IC 28-11-1-6

Chairman

Sec. 6. (a) The governor shall designate one (1) of the members as chairman. The governor may appoint the director as chairman under this section.

(b) The chairman has one (1) vote on all matters voted on by the members.

As added by P.L.33-1991, SEC.56. Amended by P.L.10-2006, SEC.70 and P.L.57-2006, SEC.70.

IC 28-11-1-7
Salary; expenses

Sec. 7. (a) Each member who is not a state officer or employee is entitled to receive an annual salary of four thousand dollars ($4,000).

(b) Each member is entitled to receive actual and necessary travel and other expenses incurred in the performance of the member's duties.

As added by P.L.33-1991, SEC.56. Amended by P.L.10-2006, SEC.71 and P.L.57-2006, SEC.71.

IC 28-11-1-8
Officers; election; term of office

Sec. 8. (a) During the first meeting after June 30 of each year, the members shall elect the following officers:

(1) One (1) member as vice chairman.
(2) One (1) individual, who need not be a member, as secretary.
(3) Other officers considered necessary by the members.

(b) The officers elected under subsection (a) hold office for one (1) year and until their successors are elected and qualified.

As added by P.L.33-1991, SEC.56.

IC 28-11-1-9
Meetings

Sec. 9. Each year the members shall hold the following:

(1) Regular meetings at times specified by resolution of the members.
(2) Special meetings at the call of the chairman.

As added by P.L.33-1991, SEC.56.

IC 28-11-1-9.1
Repealed

(Repealed by P.L.134-2012, SEC.32.)

IC 28-11-1-10
Quorum; action by majority

Sec. 10. (a) Four (4) members constitute a quorum.

(b) Unless otherwise provided for in this title, if a quorum is present, a majority of the members present is sufficient for the department to take action.

As added by P.L.33-1991, SEC.56.

IC 28-11-1-11
Delegation of power

Sec. 11. The members may delegate a power or duty to:

(1) the director;
(2) an agent of the department; or
(3) an employee of the department;

by a rule of the department adopted under IC 4-22-2 or by a resolution of the members.

As added by P.L.33-1991, SEC.56.

IC 28-11-1-12
Adoption of rules

Sec. 12. The department may, by a majority vote of the members, adopt rules under IC 4-22-2 to implement this title.

As added by P.L.33-1991, SEC.56.

IC 28-11-1-13
Policies and procedures

Sec. 13. The members may by resolution establish policies and procedures in order to facilitate:

(1) the supervision of financial institutions by the department; and

(2) the licensing and regulation of persons and entities by the department under:

(A) this title; and

(B) IC 24.

As added by P.L.33-1991, SEC.56. Amended by P.L.262-1995, SEC.74; P.L.213-2007, SEC.93; P.L.217-2007, SEC.91.

IC 28-11-1-13.5
Payments by credit card, debit card, or charge card; discharge of liability; department's authority to contract with vendor; vendor transaction charge or discount fee

Sec. 13.5. (a) The department may accept payment of any of the following by credit card, debit card, charge card, or similar method:

(1) A fee established by the department under IC 28-11-3-5.

(2) A penalty assessed by the department under this title or IC 24-4.5.

(3) A fee assessed:

(A) in connection with the director's designation of an automated central licensing system and repository under IC 24-4.5-3-503(10); and

(B) for:

(i) processing applications and renewals for licenses under IC 24-4.5-3; or

(ii) performing other services that the director determines are necessary for the orderly administration of the department's licensing system under IC 24-4.5-3.

(b) If a fee or penalty described in subsection (a) is paid by credit card, debit card, charge card, or similar method, the liability is not finally discharged until the department receives payment or credit from the institution responsible for making the payment or credit.

(c) The department may contract with a bank or credit card vendor for acceptance of bank or credit cards. If there is a vendor transaction charge or discount fee, whether billed to the department or charged directly to the department's account, the department or the bank or credit card vendor may collect from the person using the bank or credit card a uniform fee that is determined by the department.

As added by P.L.90-2008, SEC.67.

IC 28-11-1-14

Assignments, deeds, and other documents; execution

Sec. 14. All assignments, deeds, instruments, notices, orders, rules, and other documents of the department shall be executed in the name of "The Department of Financial Institutions" by the director or, in case of the director's absence or disability, by:

(1) the chairman;

(2) an officer elected by the members; or

(3) an employee of the department designated in writing by the director or the chairman.

As added by P.L.33-1991, SEC.56. Amended by P.L.213-2007, SEC.94; P.L.217-2007, SEC.92.

IC 28-11-1-15

Director's powers; state of emergency or governor's approval

Sec. 15. If the governor:

(1) declares, under IC 10-14-3-12, a state of emergency in all or part of Indiana; or

(2) in the absence of a declaration under subdivision (1), gives prior approval to the director;

the director is authorized to take necessary and appropriate action to establish or preserve safe and sound methods of banking and other action the director considers necessary under the circumstances to promote and safeguard the interests of depositors, debtors, consumers, creditors, or the public.

As added by P.L.213-2007, SEC.95; P.L.217-2007, SEC.93. Amended by P.L.35-2010, SEC.195.

IC 28-11-2

Chapter 2. Organization of Department

IC 28-11-2-1

Director; appointment; oath of office; term of office; salary; duties; expenses

Sec. 1. (a) The governor shall appoint a qualified individual to be the director of the department. The appointment must be without regard to political beliefs or affiliations.

(b) The director shall take an oath of office before assuming office.

(c) The term of the director is four (4) years. However, the director serves at the pleasure of the governor during the term.

(d) The governor may reappoint the director.

(e) The governor shall fix the director's salary.

(f) The director:

(1) is the chief executive and administrative officer of the department; and

(2) has general supervision of the work of the department and each of the divisions and employees of the department;

subject to the orders and under the direction of the members.

(g) The director is entitled to receive actual and necessary travel and other expenses incurred in the performance of the director's duties.

As added by P.L.33-1991, SEC.56.

IC 28-11-2-2

Organization of department; divisions

Sec. 2. (a) The director, with the approval of the members, shall organize the department.

(b) The department must consist of at least the following divisions:

(1) The division of banks and trust companies.

(2) The division of consumer credit.

(3) The division of credit unions.

As added by P.L.33-1991, SEC.56. Amended by P.L.90-2008, SEC.68.

IC 28-11-2-3

Employees; salaries and benefits; contractors to assist with examinations; contracts not subject to approval

Sec. 3. (a) The director, on behalf of the department, shall employ qualified individuals as assistants, deputies, supervisors, and other necessary employees. Individuals employed by the director are not subject to job classifications or compensation schedules established under IC 4-15. The technical or professional qualification of an applicant shall be determined by examination, by professional rating, or as the director determines. Salaries and benefits for employees of the department shall be:

(1) established by the members, upon recommendation of the

director; and

(2) paid from the financial institutions fund established by section 9 of this chapter.

In making a recommendation under subdivision (1), the director may recommend salaries and benefits substantially equivalent to those paid by the Federal Deposit Insurance Corporation or other federal agencies that supervise financial institutions.

(b) The director may enter into contracts, including contracts for the services of a qualified independent contractor to assist the department in the examination process under this article. Notwithstanding IC 4-13-2-14.1, contracts executed under this section are not subject to the approval of:

(1) the director of the budget agency; or

(2) the commissioner of the Indiana department of administration.

As added by P.L.33-1991, SEC.56. Amended by P.L.141-2005, SEC.20; P.L.213-2007, SEC.96; P.L.217-2007, SEC.94.

IC 28-11-2-4

Performance bonds and crime policies

Sec. 4. (a) The department may require that the members, the director, or specified classes of employees of the department be covered by bonds for faithful performance of their respective duties. A requirement for purchase of faithful performance bonds may be satisfied by the purchase of a blanket bond or a crime insurance policy endorsed to include faithful performance. The cost of a bond or crime insurance policy purchased under this section shall be paid from the fund.

(b) The commissioner of insurance shall prescribe the form of the bonds or crime policies required by this section.

As added by P.L.33-1991, SEC.56. Amended by P.L.49-1995, SEC.11.

IC 28-11-2-5

Repealed

(Repealed by P.L.100-2012, SEC.67.)

IC 28-11-2-6

Conflicts of interest; adoption of policies

Sec. 6. (a) The department shall adopt policies defining conflicts of interest by the members, the director, and the employees of the department.

(b) The policies adopted under subsection (a) must include means by which conflicts of interest can be avoided.

As added by P.L.33-1991, SEC.56.

IC 28-11-2-6.1

Ethics rules and requirements; adopting additional rules

Sec. 6.1. (a) The members, the director, and the employees of the department are:

(1) under the jurisdiction of, and subject to the rules adopted by, the state ethics commission; and

(2) subject to all other ethics rules and requirements that apply to the executive branch of state government.

(b) The department may adopt additional ethics rules and requirements that:

(1) apply to the members, the director, and the employees of the department;

(2) are not less stringent than the rules adopted by the state ethics commission; and

(3) are consistent with state law.

As added by P.L.213-2007, SEC.97; P.L.217-2007, SEC.95.

IC 28-11-2-6.2

Public meetings; transcribing and preserving damaged records

Sec. 6.2. Except as otherwise provided by law, the department is subject to the following:

(1) IC 5-14-1.5.

(2) IC 5-15-3.

As added by P.L.213-2007, SEC.98; P.L.217-2007, SEC.96.

IC 28-11-2-7

Liability for official acts

Sec. 7. The members, director, and employees of the department are not liable in an individual capacity except to the state for an act done or omitted in connection with the performance of their respective duties.

As added by P.L.33-1991, SEC.56.

IC 28-11-2-8

Powers of inquiry; administration of oaths; requiring production of books and records; refusal of person to comply with order or subpoena

Sec. 8. (a) A member, the director, or an employee of the department authorized by the director may do the following:

(1) Administer oaths and require information for any purpose under this title from any of the persons to which this title applies.

(2) Require the production of books, accounts, papers, records, documents, and other evidence for any purpose under this title.

(b) If a person refuses to comply with an order or a subpoena or refuses to appear and testify to any matter regarding which the person may be interrogated, the department may petition an appropriate court for enforcement of the department's order or subpoena.

As added by P.L.33-1991, SEC.56.

IC 28-11-2-9

Financial institutions fund

Sec. 9. (a) The financial institutions fund is established.

(b) The treasurer of state shall invest the money in the fund not

currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the state general fund.

(c) All revenue accruing to the department shall be paid into the fund.

(d) All expenses incurred and all compensation paid by the department shall be paid out of the fund in the same manner as other state expenses and compensation are paid.

(e) Money in the fund at the end of a fiscal year does not revert to the state general fund.

(f) All civil penalties assessed by the department shall be paid into the fund.

(g) If the department is required to defend the constitutionality of any of the statutes or rules the department administers, the costs and expenses incurred in connection with the defense may not:

(1) be paid from the fund; or

(2) be assessed in any way to the department's budget.

As added by P.L.33-1991, SEC.56. Amended by P.L.89-2011, SEC.69.

IC 28-11-3

Chapter 3. Supervision of Financial Institutions

IC 28-11-3-1

Examination of financial institutions; independent audit; report of condition; data processing services; use of report by Federal Home Loan Bank; unauthorized actions concerning reports; examination of vendors

Sec. 1. (a) The department shall examine the affairs of every financial institution as often as the department considers necessary. Examinations may be made without notice to the institution to be examined.

(b) In making an examination, the department may examine any of the officers or agents of the institution under oath.

(c) The department may require an independent audit by a certified public accountant, subject to the standards the department determines.

(d) The department, in the classification of assets, may disregard the amount of an asset in its analysis of capital adequacy of the financial institution until the amount of the asset is recovered.

(e) After the examiners complete the examination of a financial institution, the examiners:

(1) shall submit their written findings and recommendations to:

(A) the board of directors; and

(B) other parties authorized by the board of directors and approved by the director; and

(2) may confer with the parties listed in subdivision (1) on the findings and recommendations.

(f) Upon the conclusion of an examination, a full, true, and detailed report of the condition of the financial institution shall be made to the department by the examiners in the form prescribed by the department.

(g) A financial institution subject to examination by the department may not cause, by contract or otherwise, any data processing or other similar service to be performed, either on or off its premises, until written assurances are furnished to the department by the financial institution and the entity providing the service that the performance of the service will be subject to regulation and examination by the department to the same extent as if the service was being performed by the financial institution on its own premises. Entities that provide data processing or other similar services to more than one (1) financial institution need only file one (1) written assurance to cover all financial institutions to which the entity provides services.

(h) The report of an examination conducted under this section:

(1) is the exclusive property of the department; and

(2) except as provided in subsection (i), shall not be distributed, published, or duplicated without the prior authorization of the director.

(i) A financial institution that is or seeks to become a member of

the Federal Home Loan Bank System may provide a copy of a report of an examination conducted by the department to the Federal Home Loan Bank for the confidential use of the Federal Home Loan Bank if the director and the Federal Home Loan Bank have entered into a written agreement that provides that the report of the examination:

(1) remains the property of the department; and

(2) is not:

(A) subject to inspection under IC 5-14-3;

(B) subject to subpoena;

(C) subject to discovery; or

(D) admissible in evidence in any civil action.

(j) Except as provided in subsection (i), a person who knowingly or intentionally possesses, distributes, publishes, or duplicates a report of an examination conducted under this section without the prior authorization of the director commits a Class B misdemeanor.

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

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

(2) otherwise cease conducting business with the person.

As added by P.L.33-1991, SEC.56. Amended by P.L.262-1995, SEC.75; P.L.90-2008, SEC.69; P.L.35-2010, SEC.196.

IC 28-11-3-2

Visitorial powers

Sec. 2. The department has visitorial powers with respect to any financial institution for the purpose of maintaining the safety and soundness of the financial institution.

As added by P.L.33-1991, SEC.56.

IC 28-11-3-3

Disclosure of confidential information; information sharing agreements

Sec. 3. (a) The director or the director's designee may disclose or make available to a:

(1) state, federal, or foreign law enforcement agency;

(2) state, federal, or foreign financial institution supervisory agency;

(3) state, federal, or foreign prosecutorial agency;

(4) state, federal, or foreign money services business

supervisory agency;

(5) private insurer of deposit accounts or share accounts of a financial institution;

(6) state, federal, or foreign agency responsible for licensing, registering, chartering, or supervising any regulated:

(A) business; or

(B) nonprofit activity; or

(7) the Federal Home Loan Bank;

confidential information described under IC 28-1-2-30 or pertaining to a regulated business or nonprofit activity.

(b) Confidential information provided by the director or the director's designee under this section is privileged by law, remains the property of the department, and is not:

(1) subject to inspection under IC 5-14-3;

(2) subject to subpoena;

(3) subject to discovery; or

(4) admissible in evidence in any civil action.

(c) The director may enter into information sharing agreements with parties authorized to received information under this section.

As added by P.L.33-1991, SEC.56. Amended by P.L.213-2007, SEC.99; P.L.217-2007, SEC.97; P.L.90-2008, SEC.70.

IC 28-11-3-4

Documents, reports, and other papers; certified copies; prima facie evidence

Sec. 4. A copy of a document, report, or other paper received and filed by the department, when certified by the director, shall be received in all courts and places as prima facie evidence of the facts stated in the certified copy.

As added by P.L.33-1991, SEC.56.

IC 28-11-3-5

Schedule of fees; classification of assets; changes or modifications of fees; excess costs of examinations

Sec. 5. (a) As used in this section, "assets" means the assets of a financial institution as disclosed by a report made by the financial institution at the end of the year immediately preceding the fiscal year in which a fee is fixed under this section.

(b) The department shall fix and collect, on an annual basis, a schedule of fees for the services rendered and the duties performed by the department in the administration of financial institutions.

(c) The fees may not exceed the comparative cost to the department in the administration of financial institutions. In determining the costs, the department may classify the assets of financial institutions and fix fees at different rates for the examination, supervision, regulation, and liquidation of the classes of assets, based on the proportionate cost and expense incurred by the department in making examinations and in the administration of financial institutions.

(d) The fees shall be charged and collected until changed or

modified by the department. A change or modification of fees may not be adopted more often than one (1) time each state fiscal year. A modified schedule of fees is effective on the first day of the state fiscal year following the fiscal year in which the modification is adopted.

(e) Administrative charges included in the fee are in addition to charges collected under other statutes.

(f) If the reasonable costs of performing an examination of a financial institution exceed the fees established under this section, the financial institution shall pay the excess costs not later than thirty (30) days after receipt of an invoice from the department. The department may impose a fee, in an amount fixed by the department under this section, for each day that the excess costs are not paid, beginning on the first day after the thirty (30) day period described in this subsection.

As added by P.L.33-1991, SEC.56. Amended by P.L.10-2006, SEC.73 and P.L.57-2006, SEC.73; P.L.35-2010, SEC.197.

IC 28-11-3-6

Federal preemption; exemption of state chartered entities and subsidiaries from provisions of state law

Sec. 6. (a) As used in this section:

(1) "federally chartered" means an entity organized or reorganized under the law of the United States; and

(2) "state chartered" means an entity organized or reorganized under the law of Indiana or another state.

(b) If the department determines that federal law has preempted a provision of IC 24, IC 26, IC 28, IC 29, or IC 30, the provision of IC 24, IC 26, IC 28, IC 29, or IC 30 applies to a state chartered entity only to the same extent that the department determines the provision is applicable to the:

(1) same; or

(2) functionally equivalent;

type of federally chartered entity.

(c) A state chartered entity seeking an exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 based on the preemption of the provision as applied to a federally chartered entity shall submit a letter to the department:

(1) describing in detail; and

(2) documenting the federal preemption of;

the provisions from which it seeks exemption. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter submitted by the requesting entity.

(d) The department shall notify the requesting entity of the department's receipt of the request not later than ten (10) business days after the department's receipt of a letter described in subsection (c). Except as provided in subsection (e), upon receipt of the notification, the requesting entity may operate as if it is exempt from the provision of IC 24, IC 26, IC 28, IC 29, or IC 30 ninety (90) days after the date on which the department receives the letter, unless

otherwise notified by the department. This period may be extended for an additional ninety (90) days if the department determines that the requesting entity's letter raises issues requiring additional information or additional time for analysis. If the department extends the period for the department's review of the request, the requesting entity may operate as if the requesting entity is exempt from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 during the extended period of review only if the requesting entity receives prior written approval from the department. However:

(1) the department must:

(A) approve or deny the requested exemption; or

(B) convene a hearing;

not later than ninety (90) days after the department receives the requesting entity's letter, unless the department has extended the period for the department's review under this subsection; and

(2) if a hearing is convened, the department must approve or deny the requested exemption not later than ninety (90) days after the hearing is concluded.

(e) The department may refuse to exempt a requesting entity from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 if the department finds that any of the following conditions apply:

(1) The department determines that a described provision of IC 24, IC 26, IC 28, IC 29, or IC 30 is not preempted for a federally chartered entity of the:

(A) same; or

(B) functionally equivalent;

type.

(2) The extension of the federal preemption in the form of an exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 to the requesting entity would:

(A) adversely affect the safety and soundness of the requesting entity; or

(B) result in an unacceptable curtailment of consumer protection provisions.

(3) The failure of the department to provide for the exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 will not result in a competitive disadvantage to the requesting entity.

(f) The operation of a financial institution in a manner consistent with exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 under this section is not a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(g) If a financial institution is exempted from the provisions of IC 24, IC 26, IC 28, IC 29, or IC 30 in compliance with this section, the department shall do the following:

(1) Determine whether the exemption shall apply to all financial institutions that, in the opinion of the department, possess a charter that is:

(A) the same as; or

(B) functionally the equivalent of;

the charter of the exempt institution.

(2) For purposes of the determination required under subdivision (1), ensure that applying the exemption to the financial institutions described in subdivision (1) will not:

(A) adversely affect the safety and soundness of the financial institutions; or

(B) unduly constrain Indiana consumer protection provisions.

(3) Issue an order published in the Indiana Register that specifies whether the exemption applies to the financial institutions described in subdivision (1).

(h) If the department denies the request of a financial institution under this section for exemption from Indiana Code provisions that are preempted for federally chartered institutions, the requesting institution may appeal the decision of the department to the circuit court of the county in which the principal office of the requesting institution is located.

(i) If the department determines that federal law has preempted a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 as the provision applies to an operating subsidiary of a federally chartered entity, the provision of IC 24, IC 26, IC 28, IC 29, or IC 30 applies to a qualifying subsidiary (as defined in IC 28-13-16-1) of a state chartered entity only to the same extent that the department determines the provision applies to the operating subsidiary of:

(1) the same; or

(2) the functionally equivalent;

type of federally chartered entity. In determining whether to extend the exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 to a qualifying subsidiary (as defined in IC 28-13-16-1) of a state chartered entity under this subsection, the department shall use the procedures and undertake the considerations described in this section for a preemption determination with respect to a state chartered entity.

As added by P.L.73-2004, SEC.41. Amended by P.L.141-2005, SEC.21.

IC 28-11-4

Chapter 4. Enforcement Powers of the Department

IC 28-11-4-1

Application of IC 4-21.5

Sec. 1. (a) Except as provided in subsection (b), IC 4-21.5 does not apply to a proceeding under this chapter.

(b) IC 4-21.5-5 applies to judicial review of a final order of the department under this chapter.

As added by P.L.33-1991, SEC.56.

IC 28-11-4-2

Unsafe or unsound practices or violations of law; notice of charges; joint exercise of enforcement powers with federal regulators

Sec. 2. If the director has reasonable cause to believe that a financial institution:

(1) has engaged, is engaging, or will engage in an unsafe or unsound practice in conducting the business of the financial institution; or

(2) has violated, is violating, or will violate a:

(A) statute;

(B) rule;

(C) condition imposed in writing by the director in connection with the granting of an application or other request by the financial institution; or

(D) written agreement entered into with the department;

the director may issue and serve upon the financial institution a notice of charges of the practice or violation. The department may, when appropriate, exercise enforcement powers under this chapter jointly with a financial institution's primary federal regulator.

As added by P.L.33-1991, SEC.56. Amended by P.L.141-2005, SEC.22.

IC 28-11-4-3

Violations by certain individuals; director's notice of intent to issue order; felonies; civil penalties

Sec. 3. (a) If the director determines that a current or former director, officer, or employee of a financial institution has:

(1) committed a violation of a statute, a rule, a final cease and desist order, any condition imposed in writing by the director in connection with the grant of any application or other request by the financial institution, or any written agreement between the financial institution and the director or the department;

(2) engaged or participated in an unsafe or unsound practice in connection with the financial institution;

(3) committed or engaged in an act, an omission, or a practice that constitutes a breach of fiduciary duty as director, officer, or employee; or

(4) been convicted of, or is under indictment for, a felony involving fraud, deceit, or misrepresentation under the laws of

Indiana or any other jurisdiction;

the director, subject to subsection (b), may issue and serve upon the officer, director, or employee a notice of the director's intent to issue an order removing the person from the person's office or employment, an order prohibiting any participation by the person in the conduct of the affairs of any financial institution, or an order both removing the person and prohibiting the person's participation.

(b) A violation, practice, or breach specified in subdivision (a) is subject to the authority of the director under subsection (a) if the director finds any of the following:

(1) By reason of the violation, practice, or breach, the financial institution has suffered or will probably suffer substantial financial loss or other damage.

(2) The interests of the financial institution's depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty.

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

(4) The violation, practice, or breach demonstrates a willful or continuing disregard by the officer, director, or employee for the safety and soundness of the financial institution.

(c) A person who:

(1) is under indictment for; or

(2) has been convicted of;

a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction may not serve as a director, an officer, or an employee of a financial institution, or serve in any similar capacity, unless the person obtains the written consent of the director.

(d) A financial institution that willfully permits a person to serve the financial institution in violation of subsection (b) or (c) is subject to a civil penalty of five hundred dollars ($500) for each day the violation continues. A civil penalty paid under this subsection must be deposited into the financial institutions fund established by IC 28-11-2-9.

As added by P.L.33-1991, SEC.56. Amended by P.L.262-1995, SEC.76; P.L.258-2003, SEC.19; P.L.10-2006, SEC.74 and P.L.57-2006, SEC.74; P.L.213-2007, SEC.100; P.L.217-2007, SEC.98; P.L.35-2010, SEC.198; P.L.137-2014, SEC.39.

IC 28-11-4-4

Director's notice of intent to issue order; contents; hearing; final order; removal of officer, director, or employee; suspension or prohibition pending final order; official record

Sec. 4. (a) A notice issued under this chapter must:

(1) contain a statement of the facts constituting the alleged practice, violation, or breach;

(2) state the facts alleged in support of the violation, practice, or breach;

(3) state the director's intention to enter an order under section 3(a) of this chapter;

(4) be delivered to the board of directors of the financial institution;

(5) be delivered to the officer, director, or employee concerned; and

(6) specify the procedures that must be followed to initiate a hearing to contest the facts alleged.

(b) If a hearing is requested within ten (10) days after service of the written notice, the department shall hold a hearing concerning the alleged practice, violation, or breach. The hearing shall be held not later than forty-five (45) days after receipt of the request. The department, based on the evidence presented at the hearing, shall enter:

(1) a final order under section 7 of this chapter for the immediate removal of the officer, director, or employee affected;

(2) a final order under section 7 of this chapter prohibiting further participation by the officer, director, or employee, in any manner, in the conduct of affairs of any financial institution;

(3) a final order under section 7 of this chapter requiring the financial institution and its directors, officers, employees, and agents to:

(A) cease and desist from the practice or violation; or

(B) take affirmative action to correct the conditions resulting from the practice or violation;

(4) a final order consisting of any combination of orders described in subdivisions (1) through (3);

(5) a reprimand of the individuals, entities, or other persons concerned; or

(6) a dismissal of the entire matter.

(c) If no hearing is requested within the time specified in subsection (b), the director may proceed to issue a final order described in subsection (b)(1), (b)(2), (b)(3), or (b)(4) on the basis of the facts set forth in the written notice.

(d) An officer, director, or employee who is removed from a position under a removal order that has become final may not participate in the conduct of the affairs of any financial institution without the approval of the director.

(e) The director may, for the protection of the financial institution or the interests of its depositors, suspend from office or prohibit from participation in the affairs of the financial institution an officer, a director, or an employee of a financial institution who is the subject of a written notice served by the director under section 3(a) of this chapter. A suspension or prohibition under this subsection becomes effective upon service of the notice. Unless stayed by a court in a proceeding authorized by subsection (f), the suspension or prohibition shall remain in effect pending completion of the proceedings related to the written notice served under section 3(a) of this chapter and until the effective date of an order entered by the

department under subsection (b) or the director under subsection (c). Copies of the notice shall also be served upon the financial institution or subsidiary of which the person is an officer, a director, or an employee.

(f) Not more than ten (10) days after an officer, a director, or an employee has been suspended from office or prohibited from participation in the conduct of the affairs of the financial institution or subsidiary under subsection (e), the officer, director, or employee may apply to a court having jurisdiction for a stay of the suspension or prohibition pending completion of the proceedings related to the notice served under section 3(a) of this chapter, and the court may stay the suspension of prohibition.

(g) The department shall maintain an official record of a proceeding under this chapter.

As added by P.L.33-1991, SEC.56. Amended by P.L.122-1994, SEC.109; P.L.258-2003, SEC.20; P.L.10-2006, SEC.75 and P.L.57-2006, SEC.75; P.L.35-2010, SEC.199.

IC 28-11-4-5

Consent to a final order

Sec. 5. If the director of the department enters into a consent to a final order under section 7 of this chapter with a financial institution, director, officer, or employee, the director is not required to issue and serve a notice of charges upon the financial institution, director, or officer under section 2 or 3 of this chapter. A consent agreement may be negotiated and entered into before or after the issuance of a notice of charges.

As added by P.L.33-1991, SEC.56. Amended by P.L.122-1994, SEC.110; P.L.262-1995, SEC.77; P.L.258-2003, SEC.21; P.L.141-2005, SEC.23.

IC 28-11-4-6

Temporary order

Sec. 6. (a) If the director determines that an alleged practice, a violation, or an act specified in a notice served under this chapter is likely to:

(1) cause insolvency of the financial institution;

(2) cause substantial dissipation of assets or earnings of the financial institution; or

(3) otherwise seriously prejudice the interests of the depositors of the financial institution;

the director may issue a temporary order without a hearing.

(b) A temporary order may:

(1) require the financial institution to cease and desist from the practice or violation;

(2) require the financial institution to take affirmative action to correct the conditions resulting from the practice or violation; or

(3) suspend or prohibit a director, an officer, or an employee from participating in the conduct of the affairs of the financial institution.

(c) A temporary order is effective upon service and remains effective and enforceable until the earliest of the following:

(1) The issuance of an injunction by a court under subsection (d).

(2) The dismissal of the charges by the department.

(3) The effective date of a final order under section 7 of this chapter.

(d) A financial institution served with a temporary order under this section may apply to a court having jurisdiction for an injunction to stay, modify, or vacate the order.

As added by P.L.33-1991, SEC.56. Amended by P.L.258-2003, SEC.22; P.L.35-2010, SEC.200.

IC 28-11-4-7

Final order; remedies; consent presumed; confidentiality

Sec. 7. (a) If, after a hearing held under section 4(b) of this chapter, the department finds that the conditions specified in section 2 or 3 of this chapter have been established, the department may issue a final order. If a hearing is not requested within the time specified in section 4(b) of this chapter, the director may issue a final order on the basis of the facts set forth in the written notice served under section 3(a) of this chapter.

(b) Unless the director has entered into a consent agreement described in section 5 of this chapter, a final order must include separately stated findings of fact and conclusions of law for all aspects of the order.

(c) A final order may do any of the following:

(1) Require the financial institution and its directors, officers, employees, and agents to do any of the following:

(A) Cease and desist from the practice or violation.

(B) Take affirmative action to correct the conditions resulting from the practice or violation.

(2) Suspend or prohibit a director, an officer, or an employee from participating in the affairs of a financial institution or subsidiary.

(3) Impose a civil penalty not to exceed the amount specified in section 9 of this chapter.

(d) A final order shall be issued in writing within ninety (90) days after conclusion of a hearing held under section 4(b) of this chapter, unless this period is waived or extended with the written consent of all parties or for good cause shown.

(e) If the financial institution, director, or officer does not appear individually or by a duly authorized representative at a hearing held under section 4(b) of this chapter, the financial institution, director, or officer is considered to have consented to the issuance of a final order.

(f) The director may keep a final order confidential if the director determines that the immediate release of the order would endanger:

(1) the stability of the financial institution; or

(2) the security of depositors' funds.

However, after two (2) years after the date of its issuance, a final order is no longer confidential under IC 28-1-2-30.
As added by P.L.33-1991, SEC.56. Amended by P.L.258-2003, SEC.23; P.L.90-2008, SEC.71; P.L.35-2010, SEC.201.

IC 28-11-4-8
Final order; time in effect

Sec. 8. (a) A final order issued under this chapter is effective:

(1) on the date specified in the order; or

(2) ten (10) days after service of the order, if an effective date is not specified in the order.

A final order issued upon consent under section 7(e) of this chapter is effective at the time specified in the order.

(b) A final order remains effective and enforceable as provided in the order.

(c) The department or a reviewing court may stay, modify, or vacate a final order.
As added by P.L.33-1991, SEC.56. Amended by P.L.89-2011, SEC.70.

IC 28-11-4-9
Civil penalty

Sec. 9. (a) A civil penalty imposed on a director or an officer under section 7 of this chapter may not exceed one thousand dollars ($1,000) per day for each practice, violation, or act found to exist in the final order.

(b) In determining the amount of a civil penalty assessed under section 7 of this chapter, the following factors shall be considered:

(1) The appropriateness of the civil penalty with respect to the financial resources and good faith of the individual charged.

(2) The gravity of the practice, violation, or act.

(3) The history of previous practices, violations, or acts.

(4) The economic benefit derived by the individual from the practice, violation, or act.

(5) Other factors that justice requires.

(c) A financial institution may not indemnify a director or an officer for a civil penalty imposed under section 7 of this chapter.

(d) Civil penalties shall be deposited in the financial institutions fund established by IC 28-11-2-9.
As added by P.L.33-1991, SEC.56. Amended by P.L.89-2011, SEC.71.

IC 28-11-4-10
Enforcement of orders, agreements, and conditions

Sec. 10. The director may enforce any of the following by applying for appropriate relief to a court having jurisdiction:

(1) An order issued under this chapter.

(2) A written agreement entered into by the department or the director and:

(A) a financial institution; or

(B) any director, officer, employee, or agent of the financial institution.

(3) Any condition imposed in writing by the department or the director on:

(A) a financial institution; or

(B) any director, officer, employee, or agent of the financial institution;

in connection with any application, notice, or request concerning the financial institution.

As added by P.L.33-1991, SEC.56. Amended by P.L.90-2008, SEC.72; P.L.35-2010, SEC.202.

IC 28-11-4-11

Persons suspended or prohibited from participation

Sec. 11. An individual who:

(1) is suspended or prohibited from participating in the conduct of the affairs of a financial institution under section 6 or 7 of this chapter; and

(2) after the suspension or prohibition knowingly or intentionally participates, directly or indirectly, in the management of the financial institution;

commits a Level 6 felony.

As added by P.L.33-1991, SEC.56. Amended by P.L.35-2010, SEC.203; P.L.158-2013, SEC.302.

IC 28-11-4-12

Enforcement powers exercised against affiliate of financial institution

Sec. 12. (a) The director of the department may exercise the enforcement powers of this chapter against an affiliate of a financial institution, or against an officer, a director, or an employee of the affiliate, as if the affiliate were a financial institution if the director determines that a practice of the affiliate, or of the officer, director, or employee, could cause either:

(1) the financial institution to suffer substantial loss or other damage; or

(2) the interests of the financial institution's depositors to be seriously prejudiced by reason of a violation, practice, or breach of fiduciary duty.

(b) In exercising the director's enforcement powers under this chapter against an officer, a director, or an employee of an affiliate, the director may:

(1) remove the officer, director, or employee from the person's office, position, or employment;

(2) prohibit any participation by the officer, director, or employee in the conduct of the affairs of any financial institution; or

(3) take both of the actions set forth in subdivisions (1) and (2).

(c) The director of the department may issue and serve upon the officer, director, or employee of the affiliate a notice of charges of the

practice, violation, or act.

(d) For purposes of this section, affiliate has the meaning set forth in IC 28-1-18.2.

As added by P.L.215-1999, SEC.8. Amended by P.L.90-2008, SEC.73.

IC 28-11-5

Chapter 5. Department Oversight of Organization of a Financial Institution

IC 28-11-5-1

Application of chapter

Sec. 1. This chapter applies to the following financial institutions:

(1) A bank.

(2) A savings association.

(3) A credit union.

(4) A savings bank.

(5) A trust company.

(6) A corporate fiduciary.

As added by P.L.42-1993, SEC.91. Amended by P.L.262-1995, SEC.78; P.L.79-1998, SEC.86.

IC 28-11-5-2

Approval of articles of incorporation and organization and establishment of financial institutions

Sec. 2. (a) A financial institution may not be organized, incorporated, or engage in business in Indiana until the department has approved the following:

(1) The articles of incorporation of the proposed financial institution.

(2) The organization and establishment of the financial institution in the city or town in which the incorporators propose to establish the financial institution.

(b) A person who violates this section commits a Class A misdemeanor.

As added by P.L.42-1993, SEC.91.

IC 28-11-5-3

Applications to establish financial institutions

Sec. 3. (a) A request to establish a financial institution must be set forth in an application:

(1) prescribed by the department; and

(2) containing the information required by the department.

(b) Within twenty (20) business days after receiving an application under this section, the department shall:

(1) accept the application for processing;

(2) request additional information to complete the application; or

(3) return the application if it is incomplete.

As added by P.L.42-1993, SEC.91. Amended by P.L.122-1994, SEC.111.

IC 28-11-5-4

Investigation of applicant; disapproval of application; submission of fingerprints

Sec. 4. (a) Upon the acceptance of an application under section 3

of this chapter, the department shall investigate and consider all of the following:

(1) The financial standing and character of the incorporators, organizers, directors, principal shareholders, or controlling corporations.

(2) The character, qualifications, and experience of the officers and directors of the proposed financial institution.

(3) The future earnings prospects for the proposed financial institution.

(4) The adequacy of the financial institution's proposed capital, if the financial institution is to be a bank, trust company, corporate fiduciary, or savings bank.

(b) The members of the department may disapprove the application if:

(1) any of the factors listed in subsection (a) are determined to be unfavorable;

(2) any of the incorporators, directors, principal shareholders, or officers of the proposed financial institution have been convicted of a felony under Indiana law, the laws of any other state, or the laws of the United States; or

(3) the applicant has knowingly or intentionally submitted an application under this chapter that contains false information.

(c) The applicant shall submit to the department or to the Indiana state police, as appropriate, two (2) sets of fingerprints for each incorporator, director, principal shareholder, and officer, if requested by the department under section 4.5 of this chapter.

As added by P.L.42-1993, SEC.91. Amended by P.L.122-1994, SEC.112; P.L.262-1995, SEC.79; P.L.192-1997, SEC.24; P.L.90-2008, SEC.74.

IC 28-11-5-4.5

Background checks; fingerprints

Sec. 4.5. (a) To obtain additional information for the purposes of section 4 of this chapter, the director may require:

(1) criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation;

(2) credit histories; and

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

for any incorporator, director, principal shareholder, or officer of a proposed financial institution.

(b) If the director requests a national criminal history background check under subsection (a) for any individual described in subsection (a), the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate. The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. A national criminal history background check conducted under subsection (a) may be used by the department to:

(1) conduct an investigation under section 4(a)(1) or 4(a)(2) of this chapter; or

(2) disapprove an application under section 4(b)(2) of this chapter.

The director or the department may not release the results of the national criminal history background check to any private entity.

As added by P.L.192-1997, SEC.25. Amended by P.L.90-2008, SEC.75.

IC 28-11-5-5

Hearings on applications

Sec. 5. (a) The department may hold a hearing to determine whether to approve an application filed under section 3 of this chapter.

(b) A hearing may not be held until ten (10) days after the date of the publication of the notice required by section 6 of this chapter.

(c) If the department holds a hearing under this section, the hearing must be held within ninety (90) days after the application is accepted by the department for processing.

As added by P.L.42-1993, SEC.91. Amended by P.L.122-1994, SEC.113.

IC 28-11-5-6

Notice of applications subject to hearings

Sec. 6. (a) If a public hearing is held under section 5 of this chapter, the applicant shall give notice of the application by publication one (1) time in a newspaper of general circulation in the city or town in which the applicant proposes to establish the financial institution. If a newspaper is not published in the city or town, the notice shall be published in one (1) newspaper of general circulation published in the county in which the city or town is located.

(b) The notice required by this section must state the following:

(1) The fact that the application has been filed.

(2) The names of the applicants.

(3) The place where the applicants propose to establish the financial institution.

(4) The date and place of the hearing.

(5) Other facts the department considers relevant.

As added by P.L.42-1993, SEC.91.

IC 28-11-5-7

Hearing procedures

Sec. 7. (a) This section applies only if the department holds a hearing under section 5 of this chapter.

(b) At the time and place designated in the notice, any of the following may conduct the hearing:

(1) All the members of the department.

(2) Any number of the members.

(3) The director of the department.

(4) A deputy director of the department.

(5) The supervisor in charge of the division of the department that would have jurisdiction of the financial institution, if it is established.

(c) Any person who is interested may appear and be heard, either in person or by the person's attorney.

(d) A report of the hearing, in the form and detail the department prescribes, shall be prepared and filed in the department.

As added by P.L.42-1993, SEC.91. Amended by P.L.122-1994, SEC.114.

IC 28-11-5-8

Approval or disapproval of applications

Sec. 8. Within a reasonable time after the application is accepted by the department for processing, but not more than one hundred twenty (120) days from the later of:

(1) the date on which the application is accepted by the department; or

(2) the date on which the hearing is held, if a hearing is held;

the department shall either approve or disapprove the application.

As added by P.L.42-1993, SEC.91. Amended by P.L.122-1994, SEC.115.

IC 28-11-5-9

Payment of expenses

Sec. 9. (a) The applicants shall pay all expenses incurred by the department in performing its duty under this chapter.

(b) At the time of filing the application, the applicants shall deposit with the department the amount of money fixed by the department necessary to defray the expenses incurred by the department in implementing this chapter with respect to the application.

(c) The department shall return to the applicants any balance remaining after proceedings under this chapter are completed.

As added by P.L.42-1993, SEC.91.

IC 28-11-5-10

Financial institutions organized as limited liability companies; treatment as financial institution organized in stock form; exclusive authority of department to regulate; prior approval of department required

Sec. 10. (a) Subject to subsection (g), a financial institution described in section 1 of this chapter that is subject to this chapter may:

(1) be organized as a limited liability company;

(2) convert to a limited liability company; or

(3) merge with or into a limited liability company;

under the laws of Indiana or the United States, including any rules or regulations adopted or promulgated under the laws of Indiana or the United States.

(b) A financial institution organized as a limited liability company

is subject to:

(1) IC 23-18; and

(2) this title.

If a provision of IC 23-18 conflicts with a provision of this title or with any rule of the department, the provision of this title or the rule of the department controls.

(c) Any filing required to be made under IC 23-18 shall be made in the same manner as for a financial institution that is organizing or is organized in stock form.

(d) The department may prescribe any requirements for:

(1) the articles of organization; and

(2) the operating agreement;

of a financial institution that is organized and operates as a limited liability company.

(e) The department has the exclusive authority under this title to regulate a financial institution organized as a limited liability company. A financial institution that is a limited liability company is subject to the department's authority in the same manner as a bank that is organized in stock form.

(f) A financial institution that is a limited liability company is subject to the provisions of this title that apply to banks, except for the provisions concerning corporate governance (IC 28-13), in the same manner as a financial institution that is organized in stock form, subject to the following:

(1) In the case of a manager managed limited liability company, "director" means a manager of the limited liability company.

(2) In the case of a member managed limited liability company, "director" means a member of the limited liability company.

(g) A financial institution may not:

(1) organize as;

(2) convert to; or

(3) merge with or into;

a limited liability company without the prior approval of the department under this title.

As added by P.L.90-2008, SEC.76. Amended by P.L.27-2012, SEC.108; P.L.13-2013, SEC.74.

IC 28-12

ARTICLE 12. FORMATION OF BANKS, TRUST COMPANIES, AND BUILDING AND LOAN ASSOCIATIONS

IC 28-12-1

Chapter 1. Incorporation

IC 28-12-1-1

Incorporators; articles, execution, delivery, and filing

Sec. 1. One (1) or more individuals, all of whom are at least eighteen (18) years of age and at least a majority of whom are citizens of Indiana, may act as the incorporator of a corporation (as defined in IC 28-10-1-3) by doing all of the following:

(1) Signing and acknowledging before a notary public four (4) copies of the articles of incorporation.

(2) Delivering to the department for approval the four (4) copies of the articles of incorporation, and the application and other items required by IC 28-12-4.

(3) Filing the articles of incorporation with the secretary of state after the articles are approved by the department.

As added by P.L.14-1992, SEC.162. Amended by P.L.262-1995, SEC.80.

IC 28-12-1-2

Form of articles

Sec. 2. The department shall prescribe the form of the articles of incorporation.

As added by P.L.14-1992, SEC.162.

IC 28-12-2

Chapter 2. Articles of Incorporation

IC 28-12-2-1

Articles of incorporation; contents

Sec. 1. The articles of incorporation must set forth the following:

(1) A corporate name for the corporation that satisfies the requirements of IC 28-12-3.

(2) The number of shares the corporation is authorized to issue.

(3) The street address of the corporation's principal office in Indiana.

(4) The name and address of each incorporator, unless the articles of incorporation are articles of conversion or articles of restatement under IC 28-13-14-14.

(5) The amount of capital with which the corporation will begin business.

(6) The names and addresses of the individuals who are to serve as the initial directors.

(7) The maximum number of directors.

(8) The purpose or purposes for which the corporation is organized.

(9) The effective date of the articles of incorporation.

As added by P.L.14-1992, SEC.162. Amended by P.L.192-1997, SEC.26; P.L.141-2005, SEC.24.

IC 28-12-2-2

Permissible elements

Sec. 2. The articles may set forth other provisions not inconsistent with law.

As added by P.L.14-1992, SEC.162.

IC 28-12-2-3

Omission of corporate powers

Sec. 3. The articles of incorporation need not set forth any of the corporate powers of the corporation.

As added by P.L.14-1992, SEC.162.

IC 28-12-3

Chapter 3. Corporate Name

IC 28-12-3-1

Unauthorized purpose or power indicated by name

Sec. 1. A corporation may not use as a part of its corporate name any word or phrase that indicates or implies any purpose or power not possessed by a corporation that may be organized under this chapter.

As added by P.L.14-1992, SEC.162.

IC 28-12-3-2

Same or confusingly similar name prohibited

Sec. 2. The corporate name of the proposed corporation may not be the same as, or confusingly similar to, the name of any other corporation then existing under the laws of Indiana or authorized to transact business in Indiana.

As added by P.L.14-1992, SEC.162.

IC 28-12-3-3

Necessary terms

Sec. 3. (a) If the proposed corporation is organized to transact business under IC 28-1-11, the corporate name must include the word "bank", "trust", "banc", "banco", or "bancorp".

(b) If the proposed corporation is to be a corporate fiduciary, the corporate name of the corporation must include the word "trust" or "fiduciary".

As added by P.L.14-1992, SEC.162. Amended by P.L.262-1995, SEC.81; P.L.79-1998, SEC.87; P.L.10-2006, SEC.76 and P.L.57-2006, SEC.76.

IC 28-12-3-4

Change of name

Sec. 4. Any corporation may, with the prior approval of the department, change its corporate name at any time by amending its articles of incorporation under IC 28-13-14.

As added by P.L.14-1992, SEC.162.

IC 28-12-3-5

Existing or authorized corporations; inapplicability of chapter

Sec. 5. This chapter does not affect the right of any corporation that is, as of July 1, 1992, either existing under Indiana law or authorized to transact business in Indiana.

As added by P.L.14-1992, SEC.162.

IC 28-12-4

Chapter 4. Submission of Articles of Incorporation

IC 28-12-4-1

Accompanying terms

Sec. 1. The articles of incorporation submitted to the department for approval must be accompanied by the following:

(1) An application in the form prescribed by the department and containing such information as the department may require.

(2) The deposit of money in an amount determined by the department to be sufficient to defray the expenses of the department in performing its duties under this chapter.

(3) Evidence satisfactory to the department that the corporation has or will have capital in at least the amount of the capital stated in the articles of incorporation.

(4) Evidence satisfactory to the department that the corporation is applying for deposit insurance from the Federal Deposit Insurance Corporation or its successor in interest, unless the corporation is being organized solely as a corporate fiduciary.

(5) Evidence satisfactory to the department that the corporation has or will have adequate insurance coverage on the date the corporation begins operation.

As added by P.L.14-1992, SEC.162. Amended by P.L.262-1995, SEC.82.

IC 28-12-5

Chapter 5. Approval of Application by Department

IC 28-12-5-1

Written or stamped approval; official seal and signature

Sec. 1. (a) If the department approves the application, the department shall write or stamp on the articles of incorporation the following:

(1) The words "Approved by the Department of Financial Institutions of the State of Indiana".

(2) The date of the approval.

(b) The department shall place the impression of the seal of the department and the signature of the director or the director's authorized designee beneath the approval stamp.

As added by P.L.14-1992, SEC.162.

IC 28-12-5-2

Delivery of copies for filing; fees

Sec. 2. If the articles of incorporation are approved by the department, the department shall deliver four (4) copies of the articles of incorporation to the secretary of state for filing, together with the fees that are required.

As added by P.L.14-1992, SEC.162.

IC 28-12-5-3

Return of copies bearing endorsement of secretary of state

Sec. 3. The secretary of state shall return three (3) copies of the articles, bearing the endorsement of the secretary of state, to the department. The department shall return two (2) of the copies to the incorporators. The incorporators shall then file one (1) copy of the articles with the recorder's office of each county in which the corporation maintains an office.

As added by P.L.14-1992, SEC.162. Amended by P.L.122-1994, SEC.116.

IC 28-12-6

Chapter 6. Effective Date of Incorporation

IC 28-12-6-1

Beginning of corporate existence; delayed effective date

Sec. 1. Unless a delayed effective date is specified, the corporate existence of the corporation begins when the articles of incorporation bearing the approval stamp of the department are filed with the secretary of state.

As added by P.L.14-1992, SEC.162.

IC 28-12-6-2

Conclusive proof of compliance with conditions precedent; exception

Sec. 2. The filing of the articles of incorporation with the secretary of state is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

As added by P.L.14-1992, SEC.162.

IC 28-12-7
Chapter 7. Meetings of Corporation

IC 28-12-7-1
Organizational meeting

Sec. 1. After incorporation, the initial directors shall hold an organizational meeting at the call of a majority of the directors.
As added by P.L.14-1992, SEC.162.

IC 28-12-7-2
Agenda of organizational meeting

Sec. 2. At the organizational meeting, the directors shall complete the organization of the corporation by electing or appointing officers, adopting bylaws, and carrying on any other business brought before the meeting.
As added by P.L.14-1992, SEC.162.

IC 28-12-7-3
Consents; actions taken without organizational meeting

Sec. 3. Any action that could be taken at an organizational meeting may be taken without a meeting if the action taken is evidenced by one (1) or more written consents that describe the action taken and that are signed by each initial director.
As added by P.L.14-1992, SEC.162.

IC 28-12-7-4
Place of organizational meeting

Sec. 4. An organizational meeting may be held only in Indiana.
As added by P.L.14-1992, SEC.162.

IC 28-12-8
Chapter 8. Business of Corporation

IC 28-12-8-1
Conditions for indebtedness or transactions

Sec. 1. A corporation may not transact any business or incur any indebtedness, except as is incidental to its organization or to obtaining subscriptions to or payment for shares of its capital stock, unless and until the following requirements are met:

(1) The amount of capital of the corporation as set forth in its articles of incorporation has been fully paid for in money.

(2) There has been filed with the department the affidavit of not less than a majority of the board of directors stating that the amount of capital as stated in its articles of incorporation has been fully paid in.

(3) There has been filed with the department a certificate or other written evidence satisfactory to the department that the corporation has obtained deposit insurance from the Federal Deposit Insurance Corporation or its successor in interest, unless the corporation is being organized solely as a trust company.

As added by P.L.14-1992, SEC.162. Amended by P.L.1-1993, SEC.209.

IC 28-12-8-2
Liability of officers and directors for unauthorized business; dissenters; exemption

Sec. 2. If a corporation transacts any business in violation of section 1 of this chapter, the officers and directors of the corporation, upon learning of the action, are jointly and severally liable for the debts or liabilities of the corporation so incurred or arising from the transactions. The liability imposed by this section does not apply to those officers and directors who dissented to the action and caused their written dissent to be filed in the principal office of the corporation.

As added by P.L.14-1992, SEC.162.

IC 28-12-8-3
Failure to timely complete organization and transact business

Sec. 3. If a corporation organized under this title does not complete its organization and proceeds with the transaction of business within six (6) months after its articles of incorporation have been approved and filed, the approval is revoked and the articles of incorporation are void, unless an extension is granted by the director of the department.

As added by P.L.11-1998, SEC.21.

IC 28-12-9

Chapter 9. Bylaws of Corporation

IC 28-12-9-1

Initial bylaws

Sec. 1. The initial board of directors of the corporation shall adopt initial bylaws for the corporation.

As added by P.L.14-1992, SEC.162.

IC 28-12-9-2

Permissible provisions

Sec. 2. The bylaws of the corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

As added by P.L.14-1992, SEC.162.

IC 28-12-10

Chapter 10. Emergency Bylaws

IC 28-12-10-1

Adoption; effectiveness; management of corporation during emergency

Sec. 1. Unless the articles of incorporation provide otherwise, the board of directors of the corporation may adopt bylaws to be effective only in an emergency. The emergency bylaws may make all provisions necessary for managing the corporation during the emergency, including the following:

(1) Procedures for calling a meeting of the board of directors.

(2) Quorum requirements for the meeting.

(3) Designation of additional or substitute directors.

As added by P.L.14-1992, SEC.162.

IC 28-12-10-2

Continuing effectiveness of regular bylaws; termination of emergency

Sec. 2. All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

As added by P.L.14-1992, SEC.162.

IC 28-12-10-3

Effect of good faith corporate action

Sec. 3. Corporate action taken in good faith in accordance with the emergency bylaws:

(1) binds the corporation; and

(2) may not be used to impose liability on a director, an officer, an employee, or an agent.

As added by P.L.14-1992, SEC.162.

IC 28-12-10-4

Extraordinary event preventing quorum; continuation of emergency

Sec. 4. An emergency exists for purposes of this chapter if an extraordinary event prevents a quorum of the corporation's directors from assembling in time to deal with the business for which the meeting has been or is to be called.

As added by P.L.14-1992, SEC.162.

IC 28-12-11
Chapter 11. Capital Requirements for Corporations

IC 28-12-11-1
Requirements for corporations organized or reorganized under this title

Sec. 1. (a) This section applies only to a corporation that is organized or reorganized under Indiana law and is any of the following:

(1) A bank and trust company.
(2) A bank.
(3) A savings bank.
(4) A trust company.
(5) A savings association.
(6) An industrial loan and investment company.
(7) A credit union.
(8) A corporate fiduciary.
(9) A bank of discount and deposit.
(10) A loan and trust and safe deposit company.

(b) The department shall determine the minimum amount of the capital of a corporation organized or reorganized under this title after giving consideration to:

(1) the potential deposit liability to be anticipated, in the case of a proposed new corporation; or
(2) the existing deposit liability, in the case of a corporation to be reorganized.

As added by P.L.42-1993, SEC.92. Amended by P.L.122-1994, SEC.117; P.L.258-2003, SEC.24; P.L.213-2007, SEC.101; P.L.217-2007, SEC.99.

IC 28-12-11-1.5
Minimum capital

Sec. 1.5. (a) A corporate fiduciary must have at least the minimum capital necessary for the safe and sound operation of the corporate fiduciary.

(b) For the purposes of this section, the department shall determine the minimum capital that is necessary for the safe and sound operation of a corporate fiduciary.

As added by P.L.262-1995, SEC.83.

IC 28-12-11-2
Requirements for corporations merged with existing corporations

Sec. 2. (a) This section applies only to a corporation that is organized or reorganized under Indiana law and is any of the following:

(1) A bank and trust company.
(2) A bank.
(3) A savings bank.
(4) A trust company.
(5) A savings association.

(6) An industrial loan and investment company.
(7) A credit union.
(8) A corporate fiduciary.
(9) A bank of discount and deposit.
(10) A loan and trust and safe deposit company.

(b) Notwithstanding section 1 of this chapter, the amount of capital stock of a corporation to be organized under this title shall be one hundred dollars ($100) if an existing corporation will be merged into or otherwise acquired by the corporation for which application has been made.

(c) The new corporation may not transact business before the merger except as incidental to the merger.

(d) Before completion of the merger, the department may conduct any examination into the affairs and records of any party to the merger, as determined by the director to be necessary.

(e) Upon completion of the merger, the resulting corporation is subject to the paid-in capital requirement of this title.

As added by P.L.42-1993, SEC.92. Amended by P.L.122-1994, SEC.118; P.L.213-2007, SEC.102; P.L.217-2007, SEC.100.

IC 28-12-11-3

Requirements for savings associations organized or recognized under this title

Sec. 3. The department shall determine the capital stock requirements of a savings association organized or reorganized under this title after giving consideration to the following:

(1) In the case of a proposed new savings association, the potential deposit liability anticipated.
(2) In the case of a savings association to be reorganized, the existing deposit liability.

As added by P.L.42-1993, SEC.92. Amended by P.L.79-1998, SEC.88.

IC 28-13

ARTICLE 13. CORPORATE GOVERNANCE

IC 28-13-1

Chapter 1. Shares Generally

IC 28-13-1-1

Number of shares; classes of shares; preferences; limitations; relative rights

Sec. 1. The articles of incorporation must prescribe the number of shares that the corporation is authorized to issue. If more than one (1) class of shares is authorized by the articles of incorporation, the articles of incorporation must prescribe the number of shares in each class and a distinguishing designation for each class. Before the issuance of shares of a class, the preferences, limitations, and relative rights of the class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section 4 of this chapter.

As added by P.L.14-1992, SEC.163.

IC 28-13-1-2

Voting right; rights to assets on dissolution

Sec. 2. The articles of incorporation must authorize the following:

(1) At least one (1) class of shares that together have unlimited voting rights.

(2) At least one (1) class of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

As added by P.L.14-1992, SEC.163.

IC 28-13-1-3

Class of shares with other rights; designations, preferences, and limitations; description not exhaustive

Sec. 3. (a) The articles of incorporation may authorize at least one (1) class of shares that have at least one (1) of the following characteristics:

(1) Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this article.

(2) Are redeemable or convertible as specified in the articles of incorporation:

(A) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;

(B) for cash, indebtedness, securities, or other property; and

(C) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events.

(3) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative.

(4) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(b) The description of the designations, preferences, limitations, and relative rights of share classes in this section is not exhaustive.

As added by P.L.14-1992, SEC.163.

IC 28-13-1-4

Series of shares; distinguishing designation; other rights and preferences; articles of amendment

Sec. 4. (a) If the articles of incorporation so provide, the board of directors may create at least one (1) series, and may determine, in whole or in part, the preferences, limitations, and relative voting and other rights within the limits set forth in sections 1 through 3 of this chapter of the following:

(1) Any class of shares before the issuance of any shares of that class.

(2) At least one (1) series within a class before the issuance of any shares of that series.

(b) Each series of a class must be given a distinguishing designation.

(c) All shares of a series must have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(d) Before issuing shares of a class or series that has the preferences, limitations, and relative voting and other rights determined under this section, the corporation must prepare articles of amendment, which are effective without shareholder action, that set forth the following:

(1) The name of the corporation.

(2) The text of the amendment determining the terms of the class or series of shares.

(3) The date the articles of amendment are adopted.

(4) A statement that the amendment was adopted by the board of directors.

(e) The articles of amendment shall be presented to the director for approval and filed with the secretary of state as provided in IC 28-13-14 before the shares are issued.

As added by P.L.14-1992, SEC.163.

IC 28-13-1-5

Outstanding shares; limitation on reacquisition, redemption, or conversion; unlimited voting rights; right to assets on dissolution

Sec. 5. (a) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until the shares are reacquired, redeemed, converted, or canceled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) and to

IC 28-13-3-3 and IC 28-13-4.

(c) At all times that shares of the corporation are outstanding, at least one (1) share that together has unlimited voting rights and at least one (1) share that together is entitled to receive the net assets of the corporation upon dissolution must be outstanding.

As added by P.L.14-1992, SEC.163.

IC 28-13-1-6

Fractional shares; scrip; rights and preferences

Sec. 6. (a) A corporation may do any of the following:

(1) Issue fractions of a share or pay in money the value of fractions of a share.

(2) Arrange for disposition of fractional shares by the shareholders.

(3) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(b) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by IC 28-13-2-6(b).

(c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to do the following:

(1) Vote.

(2) Receive dividends.

(3) Participate in the assets of the corporation upon liquidation.

The holder of scrip is not entitled to any of these rights unless the scrip provides for the rights.

(d) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including the following:

(1) That the scrip will become void if not exchanged for full shares before a specified date.

(2) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

As added by P.L.14-1992, SEC.163.

IC 28-13-2

Chapter 2. Issuance of Shares

IC 28-13-2-1

Subscription for shares; terms; call for payment; nonassessable shares; default in payment

Sec. 1. (a) A subscription for shares entered into before incorporation is irrevocable for six (6) months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies terms. A call for payment by the board of directors must be uniform as far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued under subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty (20) days after the corporation sends written demand for payment to the subscriber.

As added by P.L.14-1992, SEC.163.

IC 28-13-2-2

Subscription agreement; powers of directors; consideration; escrowed or restricted shares for future services or benefits

Sec. 2. (a) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to this section.

(b) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(c) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including the following:

(1) Cash.

(2) Promissory notes.

(3) Services performed.

(4) Contracts for services to be performed.

(5) Other securities of the corporation. If shares are authorized to be issued for promissory notes or for promises to provide services in the future, the corporation shall report in writing to the shareholders the number of shares authorized to be so issued with or before the notice of the next shareholders' meeting. However, a corporation that is subject to the Securities Exchange Act of 1934, as amended, satisfies the reporting

requirement of this subsection by complying with the proxy disclosure provisions of that act.

(d) The corporation may issue shares for the consideration received or to be received as the board of directors determines to be adequate. The determination by the board of directors is conclusive with regard to the adequacy of consideration for the issuance of shares and with regard to whether the shares are validly issued, fully paid, and nonassessable.

(e) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued are fully paid and nonassessable.

(f) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note or make other arrangements to restrict the transfer of the shares and may credit distributions in respect of the shares against the purchase price until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

As added by P.L.14-1992, SEC.163. Amended by P.L.1-1993, SEC.210.

IC 28-13-2-3

Shareholder liability for corporate acts or indebtedness

Sec. 3. (a) A purchaser from a corporation of the corporation's own shares is not liable to the corporation or the corporation's creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or specified in the subscription agreement.

(b) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that the shareholder may become personally liable by reason of the shareholder's own acts or conduct.

As added by P.L.14-1992, SEC.163.

IC 28-13-2-4

Pro rata shares; share dividend or split; record date of dividend

Sec. 4. (a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of at least one (1) class or series. An issuance of shares under this subsection may be in the form of a share dividend or a share split, but shall be considered a share dividend for purposes of this article.

(b) Shares of one (1) class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(1) the articles of incorporation so authorize;

(2) a majority of the votes entitled to be cast by the class or series to be issued approve the issue; or

(3) there are no outstanding shares of the class or series to be issued.

(c) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.
As added by P.L.14-1992, SEC.163.

IC 28-13-2-5
Purchase rights, options, or warrants; corporate shares or other securities

Sec. 5. A corporation, acting through the corporation's board of directors, may create or issue rights, options, or warrants for the purchase of shares or other securities of the corporation or any successor in interest of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares or other securities are to be issued. The rights, options, or warrants may be issued with or without consideration and may be issued pro rata.
As added by P.L.14-1992, SEC.163.

IC 28-13-2-6
Share certificates; contents; requisites; validity of signature

Sec. 6. (a) Shares may be represented by certificates. Unless this article or another statute expressly provides otherwise, the rights and obligations of shareholders of the same class or series of shares are identical whether or not the shares are represented by certificates.

(b) At a minimum each share certificate must state on the certificate face the following:

(1) The name of the issuing corporation and that the corporation is organized under Indiana law.

(2) The name of the person to whom issued.

(3) The number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class:

(1) the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series and the authority of the board of directors to determine variations for future series must be summarized on the front or back of each certificate; or

(2) each certificate may state conspicuously on the front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(d) Each share certificate:

(1) must be signed either manually or in facsimile by at least two (2) officers designated in the bylaws or by the board of directors; and

(2) may bear the seal or a facsimile of the seal of the corporation.

(e) If the person who signed either manually or in facsimile a share certificate no longer holds office when the certificate is issued,

the certificate remains valid.
As added by P.L.14-1992, SEC.163. Amended by P.L.79-1998, SEC.89.

IC 28-13-2-7
Classes or series of shares without certificates; furnishing shareholder information

Sec. 7. (a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all classes or series without certificates. The authorization does not affect shares already represented by certificates until the certificates are surrendered to the corporation.

(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by section 6(b) and 6(c) of this chapter, and, if applicable, section 8 of this chapter.
As added by P.L.14-1992, SEC.163.

IC 28-13-2-8
Shares subject to registration or transfer restrictions; previously issued shares; enforcement of restrictions against holder or transferee

Sec. 8. (a) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

(b) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of any class or series of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(c) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and the restriction's existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by section 7(b) of this chapter. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

(d) A restriction on the transfer or registration of transfer of shares is authorized:

(1) to preserve exemptions under federal or state securities law; or

(2) for any other reasonable purpose.

(e) A restriction on the transfer or registration of transfer of shares may do any of the following:

(1) Obligate the shareholder first to offer the corporation or other persons separately, consecutively, or simultaneously an

opportunity to acquire the restricted shares.

(2) Obligate the corporation or other persons separately, consecutively, or simultaneously to acquire the restricted shares.

(3) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable.

(4) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

As added by P.L.14-1992, SEC.163.

IC 28-13-2-9

Expenses payable from consideration received for shares

Sec. 9. A corporation may pay the expenses of:

(1) selling or underwriting the corporation's shares; and

(2) organizing or reorganizing the corporation;

from the consideration received for shares.

As added by P.L.14-1992, SEC.163.

IC 28-13-3

Chapter 3. Preemptive Rights–Reacquisition and Reissue of Shares

IC 28-13-3-1

Unissued shares; acquisition rights subject to articles of incorporation

Sec. 1. The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

As added by P.L.14-1992, SEC.163.

IC 28-13-3-2

Security convertible into or carrying right to subscribe for or acquire shares; election to have preemptive rights; applicable principles

Sec. 2. (a) For purposes of sections 1 and 2 of this chapter, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

(b) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights" (or similar words) means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(1) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue the shares.

(2) A shareholder may waive the preemptive right. A waiver evidenced by a writing is irrevocable even though the waiver is not supported by consideration.

(3) There is no preemptive right with respect to any of the following:

(A) Shares issued as compensation to directors, officers, agents, or employees of the corporation, the corporation's subsidiaries, or the corporation's affiliates.

(B) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, the corporation's subsidiaries, or the corporation's affiliates.

(C) Shares authorized in the articles of incorporation that are issued within six (6) months from the effective date of incorporation.

(D) Shares sold otherwise than for money or promissory notes.

(4) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of the class.

(5) Holders of shares of any class with general voting rights but

without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(6) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for one (1) year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one (1) year is subject to the shareholders' preemptive rights.

As added by P.L.14-1992, SEC.163.

IC 28-13-3-3

Acquisition of own shares by corporation; reduction of authorized shares; contents of articles; treasury shares; unlawful reduction of shares producing insolvency

Sec. 3. (a) A corporation may acquire its own shares pursuant to an adopted resolution that is submitted to and approved by the director prior to such acquisition of shares. Unless a resolution of the board of directors or the corporation's articles of incorporation provide otherwise, shares so acquired constitute authorized but unissued shares.

(b) If the board resolution or articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

(c) Articles of amendment for purposes of subsections (b) and (f):

(1) may be adopted by the board of directors without shareholder action;

(2) shall be delivered to the director of the department for approval or disapproval; and

(3) if approved by the director of the department, shall be delivered to the secretary of state for filing by the director of the department.

(d) The articles filed with the secretary of state must state the following:

(1) The name of the corporation.

(2) The reduction in the number of authorized shares, itemized by class and series.

(3) The action resulting in the reduction and a copy of the board resolution authorizing the action.

(4) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

(e) A corporation has authority to use, hold, acquire, cancel, and dispose of treasury shares.

(f) Unless the board of directors adopts an amendment to the corporation's articles of incorporation to reduce the number of authorized shares, as provided in subsection (c), treasury shares of the

corporation that are canceled shall be treated as authorized but unissued shares. Such shares may be canceled by the adoption of a board resolution stating that the shares are to be canceled. The resolution shall be submitted to and approved by the director.

(g) A reduction of the issued and outstanding shares of capital stock of a corporation that renders the corporation insolvent is not lawful.

As added by P.L.14-1992, SEC.163.

IC 28-13-4

Chapter 4. Dividends and Other Distributions

IC 28-13-4-1

Power of board of directors to make distributions

Sec. 1. A board of directors may authorize and the corporation may make distributions to the corporation's shareholders subject to restriction by the articles of incorporation and the limitations in section 3 of this chapter.

As added by P.L.14-1992, SEC.163.

IC 28-13-4-2

Share dividend or distribution dates of record, declaration, and payment

Sec. 2. The board of directors may fix a record date, declaration date, and payment date with respect to any share dividend or distribution to the shareholders of the corporation. If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a repurchase or reacquisition of shares, the record date is the date the board of directors authorizes the distribution.

As added by P.L.14-1992, SEC.163.

IC 28-13-4-3

Dividends; approval of department required; retained net income; exemption from approval requirements

Sec. 3. (a) A corporation may declare a dividend of so much of the undivided profits of the corporation as is considered expedient by the board of directors.

(b) A corporation must obtain the approval of the department for the payment of a dividend if the total of all dividends declared by the corporation during the calendar year, including the proposed dividend, would exceed the sum of the net income for the year to date combined with its retained net income for the previous two (2) years.

(c) As used in subsection (b), "retained net income" means the net income of a specified period, calculated under the consolidated report of income instructions, less the total amount of all dividends declared for the specified period.

(d) The department may establish criteria for a corporation to be exempt from the dividend approval requirements of this section. In establishing the criteria, the department shall consider:

(1) the corporation's composite uniform financial institutions rating assigned as a result of the corporation's most recent federal or state examination, or in the case of a corporate fiduciary, the corporate fiduciary rating assigned as a result of the corporate fiduciary's most recent state examination;

(2) the resulting Tier 1 leverage capital ratio; and

(3) the existence of any corrective or supervisory order or agreement.

As added by P.L.14-1992, SEC.163. Amended by P.L.122-1994,

SEC.119; P.L.262-1995, SEC.84; P.L.176-1996, SEC.28; P.L.11-1998, SEC.22; P.L.90-2008, SEC.77.

IC 28-13-4-4
Withdrawal of capital stock prohibited

Sec. 4. A corporation may not, during the time it continues in business as such, withdraw or authorize or permit to be withdrawn any portion of the capital stock in the form of dividends or otherwise.
As added by P.L.14-1992, SEC.163. Amended by P.L.262-1995, SEC.85; P.L.258-2003, SEC.25.

IC 28-13-4-5
Impairment of capital prohibited; maximum dividend

Sec. 5. (a) A corporation may not declare or pay any dividends to its shareholders in any form if, by the payment of the dividends, its capital stock will be thereby impaired.

(b) A corporation may never pay a dividend in an amount greater than the remainder of undivided profits then on hand after deducting losses, bad debts, or depreciation that the department may have determined, and all other expenses.

(c) A corporation must obtain department approval before reducing the corporation's capital stock, capital surplus, or preferred stock.
As added by P.L.14-1992, SEC.163. Amended by P.L.262-1995, SEC.86; P.L.258-2003, SEC.26.

IC 28-13-4-6
Repealed

(Repealed by P.L.137-2014, SEC.40.)

IC 28-13-4-7
Protective order for increase of capital and surplus or reduction of deposits; time period for compliance; increase in capital by corporate fiduciary

Sec. 7. (a) The department may, if the department considers it necessary for the protection of the depositors, require any bank or trust company, savings bank, or savings association to increase the capital and surplus or to reduce the amount of the deposits of the bank or trust company, savings bank, or savings association. The department shall, in arriving at a decision whether to order a bank or trust company, savings bank, or savings association to increase the capital and surplus or reduce the amount of the deposits for the protection of the depositors of the bank or trust company, savings bank, or savings association, take into consideration the following:

(1) Quality of management.
(2) Liquidity of assets.
(3) History of earnings and the retention of earnings.
(4) Quality and character of ownership.
(5) Burden of occupancy expenses.
(6) Potential volatility of deposit structure.

(7) Quality of operating procedures.
(8) Capacity to meet present and future needs of the area served, considering its competition.

(b) If the department determines that an increase in the capital and surplus or decrease in the deposits is necessary, the department shall enter an order fixing the amount of the increase or decrease. The order shall be complied with within the time period fixed by the order.

(c) The department may require a corporate fiduciary to increase its capital. In deciding whether to order a corporate fiduciary to increase its capital, the department shall take into consideration the following:

(1) Quality of management.
(2) Liquidity of assets.
(3) History of earnings and the retention of earnings.
(4) Quality and character of ownership.
(5) Burden of occupancy expenses.
(6) Quality of operating procedures.
(7) Ability to administer fiduciary accounts in a prudent manner consistent with applicable laws or regulations.

(d) If the department determines that an increase in capital under subsection (c) is necessary, the department shall enter an order fixing the amount of the increase. The order must be complied with within the period fixed by the order.

As added by P.L.14-1992, SEC.163. Amended by P.L.262-1995, SEC.88; P.L.258-2003, SEC.28; P.L.213-2007, SEC.103; P.L.217-2007, SEC.101.

IC 28-13-4-8
Repealed

(Repealed by P.L.79-1998, SEC.112.)

IC 28-13-4-9
Parity of shareholder distribution with corporate indebtedness to unsecured creditors

Sec. 9. A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this chapter is on a parity with the corporation's indebtedness to the corporation's general, unsecured creditors except to the extent subordinated by agreement.

As added by P.L.14-1992, SEC.163.

IC 28-13-5

Chapter 5. Meetings of Shareholders

IC 28-13-5-1

Annual meeting requisites

Sec. 1. (a) A corporation must hold a meeting of the shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual meetings of shareholders shall be held at the principal office of the corporation, or in the city, town, or county in which the principal office is located at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any action taken by the corporation.

(d) If the articles of incorporation or bylaws so provide, any or all shareholders may participate in an annual shareholders' meeting by, or through the use of, any means of communication by which all shareholders participating may simultaneously communicate with each other during the meeting. A shareholder participating in a meeting by this means is considered to be present in person at the meeting.

As added by P.L.14-1992, SEC.163.

IC 28-13-5-2

Special meeting; corporations with more than 50 shareholders

Sec. 2. (a) A corporation with more than fifty (50) shareholders must hold a special meeting of shareholders on call of the corporation's board of directors or the person or persons, including shareholders or officers, specifically authorized to do so by the articles of incorporation or bylaws.

(b) If the articles of incorporation require the holding of a special meeting on the demand of the corporation's shareholders, but do not specify the percentage of votes entitled to be cast on an issue necessary to demand a special meeting, the board of directors may establish the percentage in the corporation's bylaws. Absent adoption of a bylaw provision, the demand for a special meeting must be made by the holders of all of the votes entitled to be cast on an issue.

As added by P.L.14-1992, SEC.163.

IC 28-13-5-3

Special meeting; corporations of 50 or fewer shareholders

Sec. 3. A corporation with not more than fifty (50) shareholders must hold a special meeting of shareholders as follows:

(1) On call of the corporation's board of directors or the person or persons, including shareholders or officers, specifically authorized to do so by the articles of incorporation or bylaws.

(2) If the holders of at least twenty-five percent (25%) of all the votes entitled to be cast on any issue proposed to be considered

at the proposed special meeting sign, date, and deliver to the corporation's secretary one (1) or more written demands for the meeting describing the purpose or purposes for which the meeting is to be held.

As added by P.L.14-1992, SEC.163.

IC 28-13-5-4

Special meeting requisites and procedure

Sec. 4. (a) Special meetings of shareholders shall be held at the principal office of the corporation, or in the city, town, or county in which the principal office is located at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(b) Only business within the purpose or purposes described in the meeting notice required by section 7 of this chapter may be conducted at a special shareholders' meeting.

(c) If the articles of incorporation or bylaws so provide, any or all shareholders may participate in a special meeting of shareholders by, or through the use of, any means of communication by which all shareholders participating may simultaneously communicate with each other during the meeting. A shareholder participating in a meeting by this means is considered to be present in person at the meeting.

As added by P.L.14-1992, SEC.163.

IC 28-13-5-5

Court ordered meeting; requisites and procedure

Sec. 5. (a) The circuit or superior court of the county where a corporation's principal office is located may order a meeting to be held and may fix the time and place of the meeting.

(b) A meeting ordered under this section shall be conducted in accordance with the corporation's articles of incorporation and bylaws:

(1) on application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting; or

(2) on application of a shareholder who signed a demand for a special meeting valid under section 2 of this chapter if:

(A) notice of the special meeting was not given within sixty (60) days after the date the demand was delivered to the corporation's secretary; or

(B) the special meeting was not held in accordance with the notice.

As added by P.L.14-1992, SEC.163.

IC 28-13-5-6

Action taken without meeting; consent of voting shareholders

Sec. 6. (a) Action required or permitted by this article to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by at least one (1) written consent describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporation records.

(b) If not otherwise determined under section 11 of this chapter, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a).

(c) Action taken under this section is effective when the last shareholder signs the consent, unless the consent specifies a different prior or subsequent effective date.

(d) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

As added by P.L.14-1992, SEC.163.

IC 28-13-5-7

Action with unanimous consent of voting shareholders; notice to nonvoting shareholders

Sec. 7. If this article requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least ten (10) days before the action is taken. The notice must contain or be accompanied by the same material that under this article would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

As added by P.L.14-1992, SEC.163.

IC 28-13-5-8

Notice of annual and special shareholders' meeting; prerequisites

Sec. 8. (a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting not less than ten (10) or more than sixty (60) days before the meeting date. Unless this article or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless this article or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under section 11 of this chapter, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.

(e) This subsection applies only to a corporation that is a building and loan association or a mutual savings bank. Notice of the annual or a special meeting of the shareholders may be given by publication of the notice. Notice under this subsection must satisfy all of the following:

(1) The notice must be published one (1) time at least ten (10) days before the date of the meeting.

(2) The notice must be published in one (1) of the following:

(A) A newspaper of general circulation in the city or town in which the principal office of the corporation is located.

(B) If publication cannot be made under clause (A), publication in a newspaper of general circulation in the county in which the principal office of the corporation is located.

(C) If publication cannot be made under clause (A) or (B), publication in a newspaper published closest to the location of the principal office of the corporation.

As added by P.L.14-1992, SEC.163. Amended by P.L.42-1993, SEC.93.

IC 28-13-5-9

Adjournment of annual or special shareholders' meeting; notice

Sec. 9. Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 11 of this chapter, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

As added by P.L.14-1992, SEC.163.

IC 28-13-5-10

Waiver by shareholder entitled to notice of meeting; effect of attendance at meeting

Sec. 10. (a) A shareholder may waive any notice required by this article, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver by the shareholder entitled to the notice must be in writing and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder's attendance at a meeting:

(1) waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(2) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

As added by P.L.14-1992, SEC.163.

IC 28-13-5-11

Record date; fixing for shareholder meeting or action; adjournment by order of court

Sec. 11. (a) The bylaws may fix or provide the manner of fixing the record date for at least one (1) voting group to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(b) A record date fixed under this section may not be more than seventy (70) days before the meeting or action requiring a determination of shareholders.

(c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date. The board of directors must fix a new record date if the meeting is adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting, the court may:

(1) provide that the original record date continues in effect; or

(2) fix a new record date.

As added by P.L.14-1992, SEC.163.

IC 28-13-6

Chapter 6. Voting by Shareholders

IC 28-13-6-1

Shareholders' list; requisites and necessity; inspection and copying

Sec. 1. (a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all the corporation's shareholders who are entitled to notice of a shareholders' meeting. The list must:

(1) be arranged by voting group;

(2) be arranged by class or series of shares within each voting group; and

(3) show the address of and number of shares held by each shareholder.

(b) The shareholders' list must be available for inspection by any shareholder entitled to vote at the meeting, beginning five (5) business days before the date of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, or the shareholder's agent or attorney authorized in writing, is entitled on written demand to inspect and to copy the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection if the following requirements are met:

(1) The shareholder's demand is made in good faith and for a proper purpose.

(2) The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect.

(3) The records are directly connected with the shareholder's purpose.

(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, or the shareholder's agent or attorney authorized in writing, is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, or the shareholder's agent or attorney authorized in writing, to inspect or copy the shareholders' list during the period specified in subsection (b), the circuit or superior court of the county where a corporation's principal office is located, on application of the shareholder, may order the inspection or copying.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

(f) The use and distribution of any information acquired from inspection or copying the shareholders' list under the rights granted by this section are restricted solely to the proper purpose described with particularity under subsection (b).

(g) In addition to the inspection rights described in this section, a shareholder of a corporation is entitled to inspect and copy, during

regular business hours at a reasonable location specified by the corporation, the record of shareholders, if the shareholder:

(1) meets the requirements of subsection (b); and

(2) gives the corporation written notice of the shareholder's demand at least five (5) business days before the date the shareholder wishes to inspect and copy the record.

As added by P.L.14-1992, SEC.163.

IC 28-13-6-2
Voting of shares

Sec. 2. (a) Except as provided in subsections (b), (c), (d), and (e) or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one (1) vote on each matter voted on at a shareholders' meeting.

(b) Absent special circumstances, the shares of a corporation are not entitled to vote if the shares are owned, directly or indirectly, by a second corporation, domestic or foreign, and the corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(c) Subsection (b) does not limit the power of a corporation to vote any shares, including its own shares, held by the corporation in or for an employee benefit plan or in any other fiduciary capacity.

(d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a corporation, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

(e) A mutual savings association or mutual savings bank may establish the rights of its voting parties in its articles of incorporation or articles of conversion.

(f) A member or a shareholder of a mutual savings bank or a mutual savings association that has not established the rights of its voting parties under subsection (e) is entitled at a members' or shareholders' meeting to cast one (1) vote for each one hundred dollars ($100) or fraction of one hundred dollars ($100) of the total amount paid on all deposits in the member's name or all shares standing in the shareholder's name on the books of the mutual savings bank or mutual savings association. Each borrowing member is entitled to cast one (1) vote as a borrower. A person may not, except as proxy, cast more than fifty (50) votes at an election held by the mutual savings bank or mutual savings association.

As added by P.L.14-1992, SEC.163. Amended by P.L.42-1993, SEC.94; P.L.176-1996, SEC.29; P.L.192-1997, SEC.27; P.L.79-1998, SEC.90; P.L.215-1999, SEC.9.

IC 28-13-6-3
Proxy voting

Sec. 3. (a) A shareholder may vote the shareholder's shares in person or by proxy.

(b) A shareholder may appoint a proxy to vote or otherwise act for

the shareholder by signing an appointment form, either personally or by the shareholder's attorney-in-fact.

(c) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven (11) months unless a shorter or longer period is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that the appointment form is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of the following:

(1) A pledgee.

(2) A person who purchased or agreed to purchase the shares.

(3) A creditor of the corporation who extended the corporation credit under terms requiring the appointment.

(4) An employee of the corporation whose employment contract requires the appointment.

(5) A party to a voting agreement created under IC 28-13-7-2.

(e) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(f) An appointment made irrevocable under subsection (d) is revoked when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if:

(1) the transferee did not know of the appointment's existence when the transferee acquired the shares; and

(2) the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to section 5 of this chapter and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

As added by P.L.14-1992, SEC.163.

IC 28-13-6-4

Beneficial owner of shares; recognition procedure; disclosure procedure; sanctions to ensure compliance

Sec. 4. (a) A corporation may establish a recognition procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the recognition procedure.

(b) A corporation may establish a disclosure procedure by which the names of beneficial owners of the corporation's shares shall, to the extent not prohibited by law, be disclosed to the corporation. A corporation may not establish a procedure requiring disclosure of the

names of the beneficial owners of a private trust created in good faith and not for the purpose of circumventing a disclosure procedure adopted pursuant to this section. The corporation may adopt reasonable sanctions to ensure compliance with its disclosure procedure, including:

(1) prohibiting the voting of;

(2) providing for mandatory or optional reacquisition of; or

(3) the withholding or payment into escrow of dividends with respect to;

shares as to which the beneficial owner's name is not disclosed as required by the disclosure procedure.

As added by P.L.14-1992, SEC.163.

IC 28-13-6-5

Acceptance or rejection of vote, consent, waiver, or proxy appointment; validity of signature

Sec. 5. (a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of the corporation's shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if any of the following are met:

(1) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity.

(2) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(3) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(4) The name signed purports to be that of a pledgee, a beneficial owner, or an attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment.

(5) Two (2) or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one (1) of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(c) The corporation is entitled to reject a vote, consent, waiver, or

proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on the vote, consent, waiver, or proxy appointment or about the signatory's authority to sign for the shareholder.

(d) The corporation and the corporation's officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

As added by P.L.14-1992, SEC.163.

IC 28-13-6-6

Separate voting group; action on matter at meeting by less than group majority vote; quorum required for approval; law governing election of directors

Sec. 6. (a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this article require a greater number, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a share is represented for any purpose at a meeting, the share is considered present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(c) If a quorum exists, action on a matter other than the election of directors by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this article require a greater number of affirmative votes.

(d) The election of directors is governed by section 9 of this chapter.

(e) Any number of members represented either in person or by proxy constitutes a quorum of members at a regular or special members meeting of a mutual savings bank or a mutual savings association.

As added by P.L.14-1992, SEC.163. Amended by P.L.122-1994, SEC.120; P.L.79-1998, SEC.91.

IC 28-13-6-7

Quorum for voting requirement for shareholders comprising voting groups

Sec. 7. (a) If the articles of incorporation or this article provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in section 6 of this chapter.

(b) If the articles of incorporation or this article provide for voting by two (2) or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 6 of this chapter. A matter may be voted on by one (1) voting group even though no vote is taken by another voting group entitled to vote on the matter.
As added by P.L.14-1992, SEC.163.

IC 28-13-6-8
Greater quorum or voting requirements; shareholders or voting groups; provision by articles

Sec. 8. The articles of incorporation may provide for a greater quorum or voting requirement for shareholders or voting groups of shareholders than is provided for by this article.
As added by P.L.14-1992, SEC.163.

IC 28-13-6-9
Directors; election by plurality of votes

Sec. 9. Directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.
As added by P.L.14-1992, SEC.163.

IC 28-13-7

Chapter 7. Voting Trusts and Agreements

IC 28-13-7-1

Creation of voting trust; requisites

Sec. 1. At least one (1) shareholder may create a voting trust, conferring on a trustee the right to vote or otherwise act for the shareholders by signing an agreement setting out the provisions of the trust that:

(1) may include anything consistent with the trust's purpose; and

(2) transfer the shareholders' shares to the trustee.

As added by P.L.14-1992, SEC.163. Amended by P.L.1-1993, SEC.211.

IC 28-13-7-2

Duties of voting trustee; agreement and list

Sec. 2. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

As added by P.L.14-1992, SEC.163.

IC 28-13-7-3

Effective date; irrevocability; rights coupled with interest in shares

Sec. 3. A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust may not be made irrevocable for a period of more than ten (10) years after the effective date of the trust unless the voting or consenting rights granted by the trust are coupled with an interest in the shares to which the rights relate. However, if the agreement so provides, the irrevocable rights may from time to time be extended for additional periods of not more than ten (10) years each as to shares deposited under the agreement whose beneficial owners assent in writing to the extension. The rights are considered to be coupled with an interest in the shares if reserved or given for any of the following:

(1) In connection with an option, authority, or contract to buy or sell the shares or part of the shares.

(2) In connection with the pledge of the shares or part of the shares to secure the performance or nonperformance of any act.

(3) In connection with the performance or nonperformance of any act, or an agreement therefor, by the corporation issuing the shares.

(4) In connection with any other act or thing constituting an interest sufficient in law to support a power coupled with it.

As added by P.L.14-1992, SEC.163.

IC 28-13-7-4

Irrevocable trust extension; duties of voting trustee

Sec. 4. If an irrevocable voting trust is extended in accordance

with section 3 of this chapter, the voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.
As added by P.L.14-1992, SEC.163.

IC 28-13-7-5
Voting agreement; exemption; enforceability

Sec. 5. (a) At least two (2) shareholders may provide for the manner in which the shareholders will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to sections 1 through 4 of this chapter.

(b) A voting agreement created under this section is specifically enforceable.
As added by P.L.14-1992, SEC.163.

IC 28-13-8

Chapter 8. Derivative Proceedings

IC 28-13-8-1

"Shareholder" defined

Sec. 1. For purposes of this chapter, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the owner's behalf.

As added by P.L.14-1992, SEC.163.

IC 28-13-8-2

Right to commence proceeding

Sec. 2. (a) A person may not commence a proceeding in the right of a corporation unless the person was a shareholder of the corporation when the transaction complained of occurred or unless the person became a shareholder through transfer by operation of law from one who was a shareholder at that time.

(b) A derivative proceeding may not be maintained if it appears that the person commencing the proceeding does not fairly and adequately represent the interests of the shareholders in enforcing the right of the corporation.

As added by P.L.14-1992, SEC.163.

IC 28-13-8-3

Complaint requisites; stay pending corporate investigation

Sec. 3. (a) A complaint in a proceeding brought in the right of a corporation must be verified and must allege with particularity:

(1) the demand made, if any, to obtain action by the board of directors; and

(2) either that the demand was refused or ignored, or why the shareholder did not make the demand.

(b) Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in the demand or complaint, including an investigation commenced under section 5 of this chapter, the court may stay any proceeding until the investigation is completed.

As added by P.L.14-1992, SEC.163.

IC 28-13-8-4

Discontinuance or settlement of case; approval; notice; payment of defense expenses and fees

Sec. 4. (a) A proceeding commenced under this chapter may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given the shareholders affected.

(b) On termination of the proceeding, the court may require the plaintiff to pay any defendant's reasonable expenses, including attorney's fees, incurred in defending the proceeding if the court finds

that the proceeding was commenced without reasonable cause.
As added by P.L.14-1992, SEC.163.

IC 28-13-8-5
Corporate committee; establishment; powers and duties; determination made independently of board; conclusive presumption on merits; disinterested director or other person

Sec. 5. (a) Unless prohibited by the articles of incorporation, the board of directors may establish a committee consisting of at least three (3) disinterested directors or other disinterested persons to determine:

(1) whether the corporation has a legal or equitable right or remedy; and

(2) whether it is in the best interests of the corporation to pursue that right or remedy, if any, or to dismiss a proceeding that seeks to assert that right or remedy on behalf of the corporation.

(b) In making a determination under subsection (a), the committee is not subject to the direction or control of or termination by the board. A vacancy on the committee may be filled by the majority of the remaining members by selection of another disinterested director or other disinterested person.

(c) If the committee determines that pursuit of a right or remedy through a derivative proceeding or otherwise is not in the best interests of the corporation, the merits of that determination are presumed to be conclusive against any shareholder making a demand or bringing a derivative proceeding with respect to the right or remedy, unless the shareholder can demonstrate that:

(1) the committee was not disinterested, as described in subsection (d); or

(2) the committee's determination was not made after an investigation conducted in good faith.

(d) For purposes of this chapter, a director or other person is disinterested if the director or other person:

(1) has not been made a party to a derivative proceeding seeking to assert the right or remedy in question, or has been made a party but only on the basis of a frivolous or insubstantial claim or for the sole purpose of seeking to disqualify the director or other person from serving on the committee;

(2) is able under the circumstances to render a determination in the best interests of the corporation; and

(3) is not an officer, employee, or agent of the corporation or of a related corporation.

However, an officer, employee, or agent of the corporation or a related corporation who meets the standards of subdivisions (1) and (2) shall be considered disinterested in any case in which the right or remedy under scrutiny is not assertable against a director or officer of the corporation or the related corporation.
As added by P.L.14-1992, SEC.163.

IC 28-13-9
Chapter 9. Board of Directors Generally

IC 28-13-9-1
Necessity of board; powers

Sec. 1. (a) Each corporation must have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, the corporation's board of directors, subject to any limitation set forth in the articles of incorporation.

As added by P.L.14-1992, SEC.163.

IC 28-13-9-2
Qualifications of directors; articles and bylaws prescribing; waiver of citizenship requirement

Sec. 2. (a) Except as provided in subsection (c), every director must, during the director's whole term of service, be a citizen of the United States. A director must be at least eighteen (18) years of age. At least one-half (1/2) of the directors must reside in Indiana or within a distance of not to exceed fifty (50) miles of any office of the corporation of which the director is a director.

(b) The articles of incorporation or bylaws may prescribe other qualifications for directors. A director need not be a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

(c) The director of the department may waive the United States citizenship requirement set forth in subsection (a) for a particular corporation if the waiver would affect only a minority of the total number of directors of the corporation.

As added by P.L.14-1992, SEC.163. Amended by P.L.192-2003, SEC.7; P.L.213-2007, SEC.104; P.L.217-2007, SEC.102.

IC 28-13-9-3
Size of board; articles and bylaws; annual election of directors

Sec. 3. (a) A board of directors must consist of at least three (3) individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws. The articles of incorporation or bylaws may provide that the number of directors may be determined by resolution of the board of directors.

(b) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. However, the minimum must be at least three (3) directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, in the bylaws or by resolution of the board of directors.

(c) Directors are elected at the first annual shareholders' meeting and at each subsequent annual meeting unless the directors' terms are staggered under section 6 of this chapter.

As added by P.L.14-1992, SEC.163.

IC 28-13-9-4
Election of directors; voting groups; classes of shares

Sec. 4. (a) If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of at least one (1) authorized class of shares.

(b) Each class of shares entitled to elect at least one (1) director is a separate voting group for purposes of the election of directors.

As added by P.L.14-1992, SEC.163.

IC 28-13-9-5
Terms of office; vacancies; continuation until qualification of successor

Sec. 5. (a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next annual shareholders' meeting following their election unless the directors' terms are staggered under section 6 of this chapter.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the end of the term for which the director's predecessor was elected.

(e) Despite the expiration of a director's term, the director continues to serve until a successor is elected and qualifies or until there is a decrease in the number of directors.

As added by P.L.14-1992, SEC.163.

IC 28-13-9-6
Staggering terms; groups of directors; expiration of terms

Sec. 6. (a) The articles of incorporation or, if the articles of incorporation so authorize, the bylaws may provide for staggering the board of directors' terms by dividing the total number of directors into either:

(1) two (2) groups, with each group containing one-half (1/2) of the total, as near as may be; or

(2) three (3) groups, with each group containing one-third (1/3) of the total, as near as may be.

(b) If terms are staggered under subsection (a):

(1) the terms of directors in the first group expire at the first annual shareholders' meeting after the directors' election;

(2) the terms of the second group expire at the second annual shareholders' meeting after the directors' election; and

(3) the terms of the third group, if any, expire at the third annual shareholders' meeting after the directors' election.

At each annual shareholders' meeting held after the meetings specified in this subsection, directors shall be chosen for a term of two (2) years or three (3) years, as the case may be, to succeed those whose terms expire.

As added by P.L.14-1992, SEC.163.

IC 28-13-9-7
Resignation; notice; effective date

Sec. 7. (a) A director may resign at any time by delivering written notice:

(1) to the board of directors, its chairman, or the secretary of the corporation; or

(2) if the articles of incorporation or bylaws so provide, to another designated officer.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

As added by P.L.14-1992, SEC.163.

IC 28-13-9-8
Removal from office; meeting; notice

Sec. 8. (a) Directors may be removed in any manner provided in the articles of incorporation. In addition, the shareholders or directors may remove one (1) or more directors for cause or, unless the articles of incorporation provide otherwise, without cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

(c) A director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director.

(d) A director may be removed by the shareholders, if the shareholders are otherwise authorized to do so, only at a meeting called for the purpose of removing the director. The meeting notice must state that the purpose, or one (1) of the purposes, of the meeting, is removal of the director.

As added by P.L.14-1992, SEC.163.

IC 28-13-9-9
Vacancies; filling known future vacancies; temporary appointment by director of department

Sec. 9. (a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) the board of directors may fill the vacancy; or

(2) if the directors remaining in office constitute fewer than a quorum of the board, the directors may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(c) A vacancy that will occur at a specific later date by reason of a resignation effective at a later date under section 7(b) of this chapter or otherwise may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

(d) If a vacancy is not filled through a corporation's normal process for filing vacancies within a time considered reasonable by the department, the director of the department may make a temporary appointment to the board of directors to fill the vacancy. The director of the department shall appoint a person whom the director considers capable of providing competent leadership and decision making ability. A person appointed to a board of directors under this subsection shall serve on the board until the corporation fills the position through the corporation's normal process for filing vacancies on the board. However, a person appointed to a board of directors by the director of the department under this subsection may not serve on the board for more than two (2) years, unless the person is selected to fill the vacancy through the corporation's normal process for filling vacancies. For purposes of this subsection, in determining whether a corporation has had a reasonable period in which to fill a vacancy, the department shall consider the following:

(1) The financial condition of the corporation.

(2) The number of remaining board members.

(3) The likelihood the board of directors will be able to establish a quorum for the transaction of business.

(4) The potential harm to the corporation that could result without an appointment under this subsection.

As added by P.L.14-1992, SEC.163. Amended by P.L.141-2005, SEC.25.

IC 28-13-9-10

Compensation; fixing

Sec. 10. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

As added by P.L.14-1992, SEC.163.

IC 28-13-10

Chapter 10. Meetings and Action of Board of Directors

IC 28-13-10-1

Place of meetings; participants; means of communication; presumption of presence

Sec. 1. (a) The board of directors may hold regular or special meetings in or out of Indiana.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously communicate with one another during the meeting. A director participating in a meeting by this means is considered to be present in person at the meeting.

As added by P.L.14-1992, SEC.163.

IC 28-13-10-2

Action taken without meeting; signed consent; effect

Sec. 2. (a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this article to be taken at a board of directors meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by at least one (1) written consent describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different prior or subsequent effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

As added by P.L.14-1992, SEC.163.

IC 28-13-10-3

Notice of meetings

Sec. 3. (a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two (2) days notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

As added by P.L.14-1992, SEC.163.

IC 28-13-10-4

Waiver of required notice; attendance or participation in meeting

Sec. 4. (a) A director may waive any notice required by this article, the articles of incorporation, or bylaws before or after the date

and time stated in the notice. Except as provided by subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

As added by P.L.14-1992, SEC.163.

IC 28-13-10-5

Quorum of board; effect of majority vote; presumption of assent to action taken; right of dissent or abstention

Sec. 5. (a) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of:

(1) a majority of the fixed number of directors if the corporation has a fixed board size; or

(2) a majority of the number of directors prescribed under IC 28-13-9-3(b).

(b) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless a greater number is required by the articles of incorporation or bylaws.

(c) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is considered to have assented to the action taken unless:

(1) the director objects at the beginning of the meeting or promptly upon the director's arrival to holding the meeting or transacting business at the meeting;

(2) the director's dissent or abstention from the action taken is entered in the minutes of the meeting; or

(3) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before the meeting's adjournment or to the secretary of the corporation immediately after adjournment of the meeting.

(d) The right of dissent or abstention is not available to a director who votes in favor of the action taken.

As added by P.L.14-1992, SEC.163. Amended by P.L.42-1993, SEC.95.

IC 28-13-10-6

Committees; approval of creation and appointment; applicability of chapter; powers and duties; compliance with standards of conduct for directors

Sec. 6. (a) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create at least one (1) committee and appoint members of the board of directors to serve on the committees. Each committee may have at least one (1) member, who serves at the pleasure of the board of directors.

(b) The creation of a committee and appointment of members to the committee must be approved by the greater of:

(1) a majority of all the directors in office when the action is taken; or

(2) the number of directors required by the articles of incorporation or bylaws to take action under section 5 of this chapter.

(c) Sections 1 through 5 of this chapter, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and the members of committees as well.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under IC 28-13-9-1.

(e) A committee may not do any of the following:

(1) Authorize distributions. However, a committee or an executive officer of the corporation designated by the board of directors may authorize or approve a reacquisition of shares or other distribution if done according to a formula or method or within a range prescribed by the board of directors.

(2) Approve or propose to shareholders action that this article requires to be approved by shareholders.

(3) Fill vacancies on the board of directors or on any of the board of directors' committees.

(4) Except to the extent permitted by subdivision (7), amend articles of incorporation under IC 28-13-14-2.

(5) Adopt, amend, or repeal bylaws.

(6) Approve a plan of merger not requiring shareholder approval.

(7) Authorize or approve the issuance or sale or a contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares. However, the board of directors may authorize a committee or an executive officer of the corporation designated by the board of directors to take the action described in this subdivision within limits prescribed by the board of directors.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in IC 28-13-11-1.

As added by P.L.14-1992, SEC.163.

IC 28-13-10-7

Attendance record; report; contents; incorporation in minutes of annual meeting

Sec. 7. (a) In addition to such other duties as may be imposed upon the directors by this article, the directors shall keep a record of the attendance of directors at meetings of the board.

(b) The directors shall make a report showing the following:

(1) The names of the directors.

(2) The number of meetings of the board, regular and special.

(3) The number of meetings attended.

(4) The number of meetings from which each director was absent.

(c) The report required by this section shall be read at and incorporated in the minutes of the annual meeting of the shareholders if the corporation is not wholly owned by a corporation holding company. The directors, at the times as the directors are meeting as a board of directors, shall also require the secretary of the board or another designated agent to make official communications from the department a matter of record in the minutes of the meetings of the board of directors.

As added by P.L.14-1992, SEC.163.

IC 28-13-10-8

Examination of corporation statement; departmental accounting and auditing standards; examination of corporation's holding company

Sec. 8. The board of directors shall cause the corporation to be examined one (1) time each calendar year by a certified public accountant. The board of directors shall submit the examination and a complete statement of the condition of the corporation to the department. The department may require additional information. The department may establish the accounting and auditing standards necessary to define the examination requirements of this section by policy or rule. An examination of a corporation's holding company shall satisfy the requirements of this section if done in accordance with standards prescribed by department policy or rule.

As added by P.L.14-1992, SEC.163.

IC 28-13-10-9

Legal holidays; resolution concerning days other than legal holidays; banking hours; emergencies affecting office hours

Sec. 9. (a) As used in this section, "emergency" means:

(1) any condition or occurrence that:

(A) may interfere physically with the conduct of normal business operations; or

(B) poses an imminent or existing threat to the safety or security of persons, property, or both persons and property;

at one (1) or more of the offices of a corporation;

(2) any condition or occurrence that:

(A) is declared a state of disaster emergency by the governor under IC 10-14-3-12; and

(B) applies to an area that includes one (1) or more of the offices of a corporation; or

(3) the death of or funeral services for an employee, officer, or director of a corporation or for a former employee, officer, or director of a corporation.

(b) A corporation may be closed on any part of a legal holiday by giving reasonable notice to its customers of its intention to be closed in observance of the holiday.

(c) Whenever a corporation is to be closed on a day or part of a day other than a legal holiday, the board of directors shall pass a resolution concerning the closing, and give reasonable notice of the closing to the customers of the corporation.

(d) The board of directors of a corporation may establish and observe different banking hours and designate different fixed days, if any, for closing the principal office and each separate branch office of the corporation.

(e) Any day designated by the President of the United States or by the governor as a day of mourning, celebration, or other special observance is a legal holiday for corporations.

(f) Whenever the officers of a corporation believe that an emergency exists or is impending, which affects or may affect one (1) or more of a corporation's offices, the officers have the authority, in the reasonable and proper exercise of their discretion, to determine not to open any one (1) or more of such offices or, if having opened, to close any one (1) or more of such offices during the continuation of the emergency. The office or offices so closed shall remain closed until the time the officers determine that the emergency has ended. However, such office or offices may not remain closed for more than forty-eight (48) consecutive hours on business days, excluding other legal holidays, without providing prior notice to the director of the department of financial institutions.

(g) A corporation closing an office or offices under subsection (f) shall give prompt notice of its action to the director of the department of financial institutions.

(h) Any date on which a corporation is closed under this section is a legal holiday with respect to the business affairs of the corporation. No liability or loss of rights of any kind, on the part of any corporation, director, officer, or employee, accrues or results by virtue of any closing authorized by this section.

As added by P.L.176-1996, SEC.30. Amended by P.L.90-2008, SEC.78; P.L.137-2014, SEC.41.

IC 28-13-10-10

Commission of crime

Sec. 10. (a) In the event of a commission of a crime or apparent commission of a crime it shall be the responsibility of the corporation to ensure compliance with Part 353 of the Federal Deposit Insurance Corporation rules and regulations.

(b) Reporting of a crime under Part 353 of the Federal Deposit Insurance Corporation rules and regulations satisfies the reporting requirements of criminal activity for the department.

(c) The department shall use the Financial Crimes Enforcement Network of the United States Department of the Treasury instead of receiving written reports from the corporation.

(d) Failure to report the commission of a crime or apparent commission of a crime as required in Part 353 of the Federal Deposit Insurance Corporation is a violation of this section.

(e) If a corporation is a corporate fiduciary or is not insured by the

Federal Deposit Insurance Corporation, the corporation must notify the department of the commission of a crime or the apparent commission of a crime not later than the first business day after the day the crime or apparent crime was discovered. A written notification must also be delivered to the department not later than thirty (30) days after the date the crime or apparent crime was discovered. A written notification under this section must include the:

(1) details of the crime; and

(2) actions taken by the corporation regarding the crime.

As added by P.L.176-1996, SEC.31. Amended by P.L.192-1997, SEC.28; P.L.63-2001, SEC.23 and P.L.134-2001, SEC.25.

IC 28-13-10-11
Records retention

Sec. 11. (a) A corporation shall retain its business records under this section for the period required by this section.

(b) A corporation shall permanently retain:

(1) minute books of meetings of shareholders and directors;

(2) the capital stock ledger and capital stock certificate ledger or stubs;

(3) the general ledger;

(4) the daily statements of condition;

(5) the investment ledger;

(6) the copies of examination reports; and

(7) other records required by the department of financial institutions under this section.

(c) A corporation's board of directors shall develop a records retention policy. In developing the policy, the board of directors shall consider:

(1) legal actions and administrative proceedings in which the production of company records is necessary or desirable;

(2) state and federal statutes of limitation applicable to legal actions and administrative proceedings; and

(3) availability of information contained in the company records from other sources.

(d) Except for records under subsection (b) and for other records required to be permanently retained, a corporation may dispose of a record that has been retained for the period required and in the manner required by this section. A corporation is not under a duty to produce the record in an action or proceeding after the disposal of the record.

(e) This section applies to a corporation under IC 28 and to national banking associations to the extent that this section does not contravene federal law.

As added by P.L.11-1998, SEC.23.

IC 28-13-11
Chapter 11. Standards of Conduct for Directors

IC 28-13-11-1
Discharge of duties; good faith; ordinary prudence; best interests of corporation

Sec. 1. A director shall, based on facts then known to the director, discharge the duties of a director, including the director's duties as a member of a committee:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner the director reasonably believes to be in the best interests of the corporation.

As added by P.L.14-1992, SEC.163.

IC 28-13-11-2
Right to rely on data and other information; financial statements and data

Sec. 2. In discharging the director's duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) at least one (1) officer or employee of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(3) a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

As added by P.L.14-1992, SEC.163.

IC 28-13-11-3
Bad faith; knowledge making reliance on information unwarranted

Sec. 3. A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by section 2 of this chapter unwarranted.

As added by P.L.14-1992, SEC.163.

IC 28-13-11-4
Best interests of corporation; factors considered

Sec. 4. A director may, in considering the best interests of a corporation, consider the effects of any action on shareholders, employees, suppliers, and customers of the corporation, and the communities in which offices or other facilities of the corporation are located, and any other factors the director considers pertinent.

As added by P.L.14-1992, SEC.163.

IC 28-13-11-5
Exemption from personal liability; inapplicability in departmental proceedings

Sec. 5. (a) A director is not liable for any action taken as a director, or any failure to take any action, unless:

(1) the director has breached or failed to perform the duties of the director's office under sections 1 through 4 of this chapter; and

(2) the breach or failure to perform constitutes willful misconduct or recklessness.

(b) The exemption from liability provided by this section does not apply to any proceeding brought by the department against a director.
As added by P.L.14-1992, SEC.163.

IC 28-13-11-6
Legislative intent; business judgment and discretion of directors; corporate takeovers

Sec. 6. (a) In enacting this article, the general assembly established corporate governance rules for Indiana corporations, including in this chapter the standards of conduct applicable to directors of Indiana corporations, and the corporate constituent groups and interests that a director may take into account in exercising the director's business judgment. The general assembly intends to reaffirm certain of these corporate governance rules to ensure that the directors of Indiana corporations, in exercising their business judgment, are not required to approve a proposed corporate action if the directors in good faith determine, after considering and weighing as they consider appropriate the effects of the action on the corporation's constituents, that the action is not in the best interests of the corporation.

(b) In making a determination under this section, directors are not required to consider the effects of a proposed corporate action on any particular corporate constituent group or interest as a dominant or controlling factor. Without limiting the generality of this section, directors are not required to redeem any rights under or to make inapplicable a shareholder rights plan adopted under IC 28-13-2-5, or to take or decline to take any other action under this article, solely because of the effect such action might have on a proposed acquisition of control of the corporation or the amounts that might be paid to shareholders under the acquisition.

(c) Certain judicial decisions in Delaware and other jurisdictions, which might otherwise be looked to for guidance in interpreting the duties of directors of corporations, including decisions relating to potential change of control transactions that impose a different or higher degree of scrutiny on actions taken by directors in response to a proposed acquisition of control of the corporation, are inconsistent with the proper application of the business judgment rule under this article. Therefore, the general assembly intends:

(1) to reaffirm that this section allows directors the full discretion to weigh the factors enumerated in section 4 of this chapter as they consider appropriate; and

(2) to protect both directors and the validity of corporate action taken by the directors in the good faith exercise of their business judgment after reasonable investigation.

As added by P.L.14-1992, SEC.163.

IC 28-13-11-7

Additional considerations affecting board actions or recommendations; approval of majority of disinterested directors; conclusive presumption of validity

Sec. 7. (a) In taking or declining to take any action, or in making or declining to make any recommendation to the shareholders of the corporation with respect to any matter, a board of directors of a corporation may, in the board's discretion, consider both the short term and long term best interests of the corporation.

(b) The board of directors shall take into account, and weigh as the directors consider appropriate, the effects of the action or recommendation on the corporation's shareholders and the other corporate constituent groups and interests listed or described in section 4 of this chapter, as well as any other factors considered pertinent by the directors under section 4 of this chapter.

(c) If a determination is made under this section with the approval of a majority of the disinterested directors of the board of the directors, that determination shall conclusively be presumed to be valid unless, after reasonable investigation, it can be demonstrated that the determination was not made in good faith.

As added by P.L.14-1992, SEC.163.

IC 28-13-11-8

Disinterested persons; director or shareholder of corporation

Sec. 8. (a) For the purposes of section 7 of this chapter, a director is disinterested if:

(1) the director does not have a conflict of interest, within the meaning of section 9(a) of this chapter, in connection with the action or recommendation in question;

(2) in connection with matters described in IC 28-13-8 the director is disinterested (as defined in IC 28-13-8-4(d)); and

(3) in connection with any matter involving or otherwise affecting a transaction under IC 28-1-7, IC 28-1-8, or IC 28-3-2 that would result in a change of the person or persons that have control (as defined in IC 28-2-14-6) over the corporation if the director is not an employee of the corporation or an affiliate or associate of or was not nominated or designated as a director by a person proposing the transaction.

(b) A person may be disinterested under this section even though the person is a director or shareholder of the corporation.

As added by P.L.14-1992, SEC.163.

IC 28-13-11-9

Conflict of interest transactions; direct or indirect interest of director; nonvoidability by corporation; voting for authorization,

approval, or ratification

Sec. 9. (a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. Unless otherwise provided under federal or state laws, regulations, or rules, a conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one (1) of the following is true:

(1) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction.

(2) The material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction.

(3) The transaction was fair to the corporation.

(b) For purposes of subsection (a), a director of the corporation has an indirect interest in a transaction if:

(1) another entity in which the director has a material financial interest or in which the director is a general partner is a party to the transaction; or

(2) another entity of which the director is a director, an officer, or a trustee is a party to the transaction and the transaction is, or is required to be, considered by the board of directors of the corporation.

(c) For purposes of subsection (a)(1), a conflict of interest transaction is authorized, approved, or ratified if the transaction receives the affirmative vote of a majority of the directors on the board of directors or on the committee who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (a)(1) if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

(d) For purposes of subsection (a)(2), shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in subsection (b), may be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction.

As added by P.L.14-1992, SEC.163.

IC 28-13-11-10

Unlawful distribution; liability of director; right to contribution

Sec. 10. (a) Subject to section 5 of this chapter, a director who votes for or assents to a distribution made in violation of this article or the articles of incorporation is personally liable to the corporation

for the amount of the distribution that exceeds what could have been distributed without violating this article or the articles of incorporation.

(b) A director held liable for an unlawful distribution under subsection (a) is entitled to contribution:

(1) from every other director who voted for or assented to the distribution, subject to section 5 of this chapter; and

(2) from each shareholder for the amount the shareholder accepted.

As added by P.L.14-1992, SEC.163.

IC 28-13-12

Chapter 12. Officers Generally

IC 28-13-12-1

Officers; designation; terms; highest acting officer; dual officeholding

Sec. 1. (a) The officers of a corporation must consist of the following:

(1) A president and, if the president is not the highest acting officer of the corporation, another officer designated by the directors, regardless of the title of that officer, whose duties are equivalent to those customarily performed by the highest acting officer.

(2) One (1) or more officers whose duties are equivalent to those customarily performed by a chief financial officer.

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

(4) Any other officers prescribed by the articles of incorporation or the bylaws.

(b) Each of the officers shall be chosen by the board of directors at the time, in the manner, and for the terms as prescribed in the corporation's articles of incorporation or bylaws.

(c) If not already a director, the officer described in subsection (a)(1) who is the highest acting officer of the corporation shall become a director in accordance with the corporation's articles of incorporation or bylaws as soon as practicable after being chosen to serve in that office.

(d) If the articles of incorporation or the bylaws so provide, two (2) or more offices may be held by the same person, except that the duties of an officer described in subsection (a)(1) and an officer described in subsection (a)(2) may not be performed by the same person.

As added by P.L.14-1992, SEC.163. Amended by P.L.1-1993, SEC.212; P.L.216-2013, SEC.66.

IC 28-13-12-2

Powers and duties

Sec. 2. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

As added by P.L.14-1992, SEC.163.

IC 28-13-12-3

Resignation of officer; notice; effective date; removal of officer; replacement of chief executive officer

Sec. 3. (a) An officer may resign at any time by delivering notice:

(1) to the board of directors, its chairman, or the secretary of the corporation; or

(2) if the articles of incorporation or bylaws so provide, to another designated officer.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, the corporation's board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(c) A board of directors may remove any officer at any time with or without cause.

(d) An officer who appoints another officer or assistant officer may remove the appointed officer or assistant officer at any time with or without cause.

(e) If a corporation replaces the chief executive officer of the corporation, the corporation shall give the department written notice of the replacement not later than thirty (30) days after the chief executive officer is replaced.

As added by P.L.14-1992, SEC.163. Amended by P.L.35-2010, SEC.204.

IC 28-13-12-4

Contract rights; effect of election, appointment, or removal

Sec. 4. (a) The election or appointment of an officer does not create contract rights.

(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

As added by P.L.14-1992, SEC.163.

IC 28-13-12-5

Adequate fiduciary coverage required

Sec. 5. (a) Every corporation shall make provision for adequate fidelity coverage for all officers and employees having access to money or bonds of the corporation. The amount and form of fidelity coverage must be approved annually by the board of directors of the corporation. Coverage may be provided:

(1) in the form of a blanket fidelity bond issued by a corporate surety authorized to transact business in Indiana; or

(2) through the establishment of a separate reserve fund within the corporation for that purpose.

(b) If the corporation is a corporate fiduciary (as defined in IC 28-1-1-3), the corporation shall make provision for adequate fiduciary errors and omissions insurance coverage.

As added by P.L.14-1992, SEC.163. Amended by P.L.262-1995, SEC.89.

IC 28-13-13

Chapter 13. Indemnification of Directors

IC 28-13-13-1

"Corporation" defined

Sec. 1. As used in this chapter, "corporation" includes a domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

As added by P.L.14-1992, SEC.163.

IC 28-13-13-2

"Director" defined; scope of term

Sec. 2. As used in this chapter, "director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, an officer, a partner, a trustee, a manager, an employee, or an agent of another foreign or domestic corporation, partnership, joint venture, limited liability company, trust, employee benefit plan, or other enterprise, whether for profit or not. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. The term includes, unless the context requires otherwise, the estate or personal representative of a director.

As added by P.L.14-1992, SEC.163. Amended by P.L.8-1993, SEC.457.

IC 28-13-13-3

"Expenses" defined

Sec. 3. As used in this chapter, "expenses" include attorney's fees.

As added by P.L.14-1992, SEC.163.

IC 28-13-13-4

"Liability" defined

Sec. 4. As used in this chapter, "liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

As added by P.L.14-1992, SEC.163.

IC 28-13-13-5

"Official capacity" defined; scope of term

Sec. 5. (a) As used in this chapter, "official capacity" means:

(1) when used with respect to a director, the office of director in a corporation; and

(2) when used with respect to an individual other than a director, as contemplated in section 13 of this chapter, the office in a corporation held by the officer or the employment or agency

relationship undertaken by the employee or agent on behalf of the corporation.

(b) The term does not include service for any other foreign or domestic corporation or any partnership, joint venture, limited liability company, trust, employee benefit plan, or other enterprise, whether for profit or not.

As added by P.L.14-1992, SEC.163. Amended by P.L.8-1993, SEC.458.

IC 28-13-13-6
"Party" defined

Sec. 6. As used in this chapter, "party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

As added by P.L.14-1992, SEC.163.

IC 28-13-13-7
"Proceeding" defined

Sec. 7. As used in this chapter, "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

As added by P.L.14-1992, SEC.163.

IC 28-13-13-8
Conditional indemnification of director against liability

Sec. 8. (a) A corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if:

(1) the individual's conduct was in good faith; and

(2) the individual reasonably believed:

(A) in the case of conduct in the individual's official capacity with the corporation, that the individual's conduct was in the corporation's best interests; and

(B) in all other cases, that the individual's conduct was at least not opposed to the corporation's best interests; and

(3) in the case of any criminal proceeding, the individual either:

(A) had reasonable cause to believe the individual's conduct was lawful; or

(B) had no reasonable cause to believe the individual's conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (a)(2).

(c) The termination of a proceeding by judgment, order, settlement, or conviction is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

As added by P.L.14-1992, SEC.163. Amended by P.L.137-2014,

SEC.42.

IC 28-13-13-9
Mandatory indemnification of director for expenses of successful defense of proceeding

Sec. 9. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding.
As added by P.L.14-1992, SEC.163.

IC 28-13-13-10
Advancement of expenses before final disposition of proceeding; conditions; procedure

Sec. 10. (a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(1) the director furnishes the corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in section 8 of this chapter;

(2) the director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(3) a determination is made that the facts then known to those making the determination would not preclude indemnification under this chapter.

(b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in section 12 of this chapter.
As added by P.L.14-1992, SEC.163.

IC 28-13-13-11
Court ordered indemnification; determination

Sec. 11. Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification if the court determines:

(1) the director is entitled to mandatory indemnification under section 9 of this chapter, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 8 of this chapter.

As added by P.L.14-1992, SEC.163.

IC 28-13-13-12

Standards for conditional determinations and authorizations; procedure

Sec. 12. (a) A corporation may not indemnify a director under section 8 of this chapter unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in section 8 of this chapter.

(b) The determination shall be made by any one (1) of the following procedures:

(1) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding.

(2) If a quorum cannot be obtained under subdivision (1), by majority vote of a committee designated by the board of directors in which directors who are parties may participate, consisting solely of two (2) or more directors not at the time parties to the proceeding.

(3) By special legal counsel:

(A) selected by the board of directors or its committee in the manner prescribed in subdivision (1) or (2); or

(B) if a quorum of the board of directors cannot be obtained under subdivision (1) and a committee cannot be designated under subdivision (2), selected by majority vote of the full board of directors in which directors who are parties may participate.

(4) By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible. However, if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (b)(3) to select counsel.

As added by P.L.14-1992, SEC.163.

IC 28-13-13-13

Indemnification of corporate officers and employees other than directors

Sec. 13. The following apply unless a corporation's articles of incorporation provide otherwise:

(1) An officer of the corporation, whether or not a director, is entitled to mandatory indemnification under section 9 of this chapter and is entitled to apply for court-ordered

indemnification under section 11 of this chapter, in each case to the same extent as a director.

(2) The corporation may indemnify and advance expenses under this chapter to an officer, employee, or agent of the corporation, whether or not a director, to the same extent as to a director.

(3) A corporation may also indemnify and advance expenses to an officer, employee, or agent, whether or not a director, to the extent, consistent with public policy, that may be provided by the corporation's articles of incorporation, bylaws, general or specific action of the corporation's board of directors, or contract.

As added by P.L.14-1992, SEC.163.

IC 28-13-13-14

Liability insurance purchased and maintained by corporation

Sec. 14. A corporation may purchase and maintain insurance on behalf of an individual:

(1) who is or was a director, an officer, an employee, or an agent of the corporation; or

(2) who, while a director, an officer, an employee, or an agent of the corporation, is or was serving at the request of the corporation as a director, an officer, a partner, a trustee, a manager, an employee, or an agent of another foreign or domestic corporation, partnership, joint venture, trust, limited liability company, employee benefit plan, or other enterprise;

against liability asserted against or incurred by the individual in the capacity described in subdivision (1) or (2). The corporation may purchase and maintain insurance under this section whether or not the corporation would have power to indemnify the individual against the same liability under section 8 or 9 of this chapter.

As added by P.L.14-1992, SEC.163. Amended by P.L.8-1993, SEC.459.

IC 28-13-13-15

Limitation of remedies; effect of chapter

Sec. 15. (a) The indemnification and advance for expenses provided for or authorized by this chapter does not exclude any other rights to indemnification and advance for expenses that a person may have under:

(1) a corporation's articles of incorporation or bylaws;

(2) a resolution of the board of directors or of the shareholders; or

(3) any other authorization, whenever adopted, after notice, by a majority vote of all the voting shares then issued and outstanding.

(b) If the articles of incorporation, bylaws, resolutions of the board of directors or of the shareholders, or other adopted authorization of indemnification or advance for expenses limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles, bylaws, resolution

of the board of directors or of the shareholders, or other adopted authorization of indemnification or advance for expenses.

(c) This chapter does not limit a corporation's power to pay or reimburse expenses incurred by a director, an officer, an employee, or an agent in connection with the person's appearance as a witness in a proceeding at a time when the person has not been made a named defendant or respondent to the proceeding.

As added by P.L.14-1992, SEC.163.

IC 28-13-14

Chapter 14. Amendment of Articles of Incorporation

IC 28-13-14-1

Authority to amend; restriction on shareholder vested rights

Sec. 1. (a) A corporation may amend the corporation's articles of incorporation at any time to add or change a provision that is required or permitted to be in the articles of incorporation or to delete a provision not required to be in the articles of incorporation. Whether a provision is required or permitted to be in the articles of incorporation is determined as of the effective date of the amendment.

(b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation or authorized to be in the bylaws by this article or the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

As added by P.L.14-1992, SEC.163.

IC 28-13-14-2

Adoption without shareholder approval

Sec. 2. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt at least one (1) amendment to the corporation's articles of incorporation without shareholder action to:

(1) extend the duration of the corporation if the corporation was incorporated at a time when limited duration was required by law;

(2) delete the names and addresses of the initial directors;

(3) change each issued and unissued authorized share of an outstanding class into a greater number of whole shares and fractional shares if the corporation has only shares of that class outstanding;

(4) reduce the number of authorized shares solely as the result of a cancellation of treasury shares; or

(5) make any other change expressly permitted by this article to be made without shareholder action.

As added by P.L.14-1992, SEC.163.

IC 28-13-14-3

Proposal authorized

Sec. 3. A corporation's board of directors may propose at least one (1) amendment to the articles of incorporation for submission to the shareholders.

As added by P.L.14-1992, SEC.163.

IC 28-13-14-4

Submission of proposal to shareholders; recommendation; approval vote

Sec. 4. For an amendment to be adopted the following requirements must be met:

(1) The board of directors must adopt a resolution directing that the proposed amendment be submitted to a vote of the shareholders and the resolution shall be submitted to and approved by the directors before or after the proposed amendment or amendments are submitted to the shareholders.

(2) The board of directors must recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances the board of directors should make no recommendation and communicates the basis for the board's determination to the shareholders with the amendment.

(3) The shareholders entitled to vote on the amendment must approve the amendment as provided in section 7 of this chapter.

As added by P.L.14-1992, SEC.163.

IC 28-13-14-5
Conditions of submission to shareholders

Sec. 5. The board of directors may condition the board's submission of the proposed amendment on any basis.

As added by P.L.14-1992, SEC.163.

IC 28-13-14-6
Notice of meeting

Sec. 6. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with IC 28-13-5-8. The notice of meeting must also do the following:

(1) State that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed amendment.

(2) Contain or be accompanied by a copy or summary of the amendment.

As added by P.L.14-1992, SEC.163. Amended by P.L.63-2001, SEC.24 and P.L.134-2001, SEC.26.

IC 28-13-14-7
Vote required

Sec. 7. Unless this article, the articles of incorporation, or the board of directors acting under section 5 of this chapter requires a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

(1) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

(2) the votes required by IC 28-13-6-6 and IC 28-13-6-7 by every other voting group entitled to vote on the amendment.

As added by P.L.14-1992, SEC.163.

IC 28-13-14-8

Voting by class or a series of shares

Sec. 8. (a) The holders of the outstanding shares of a class are entitled to vote as a separate voting group if shareholder voting is otherwise required by this article on a proposed amendment if the amendment would:

(1) increase or decrease the aggregate number of authorized shares of the class;

(2) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(3) effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(4) change the designation, rights, preferences, or limitations of all or part of the shares of the class;

(5) change the shares of all or part of the class into a different number of shares of the same class;

(6) create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(7) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(8) limit or deny an existing preemptive right of all or part of the shares of the class;

(9) cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class; or

(10) decrease the number of shares of a class into a different number of shares of the same class to effect a reverse stock split.

(b) If a proposed amendment would affect a series of a class of shares in at least one (1) of the ways described in subsection (a), the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(c) If a proposed amendment that entitles at least two (2) series of shares to vote as separate voting groups under this section would affect those series in the same or a substantially similar way, the shares of all the series so affected must vote together as a single voting group on the proposed amendment.

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

As added by P.L.14-1992, SEC.163. Amended by P.L.63-2001, SEC.25 and P.L.134-2001, SEC.27.

IC 28-13-14-8.5

Purchase price of stock

Sec. 8.5. (a) The following guidelines and procedures apply when requesting that the director approve an amendment to articles of

incorporation resulting in a reverse stock split authorized by IC 28-13-14-8(a)(10):

(1) The purchase price of the stock must be based on market value if there is an established and active market in the corporation's stock. In the absence of such a market, the fair value of the stock must be determined by obtaining an independent appraisal of the shares upon which the purchase price will be based.

(2) If a market for the corporation's stock exists, the corporation shall clearly disclose to the shareholders how the purchase price was determined in relation to the market value.

(3) If an appraisal is obtained:

(A) the corporation shall disclose to its shareholders:

(i) that an appraisal has been obtained; and

(ii) the identity and qualifications of the person or firm preparing the appraisal, the criteria for selecting the person or firm, and the existence of any material relationship between the bank and the person or firm; and

(B) the corporation shall furnish to each shareholder a summary of the appraisal, the findings and recommendations, the basis for and methods of arriving at the findings and recommendations, and any limitations imposed by the corporation on the preparation of the appraisal.

The corporation must inform its shareholders that the appraisal is available for inspection.

(4) A shareholder that may vote on the amendment to the articles of incorporation on the question of the reverse stock split must be given dissenter's rights in the manner prescribed in IC 28-1-7-21 as if the transaction were a merger of consolidation.

(b) The corporation shall submit to the department a copy of the appraisal or information supporting the purchase price of the stock if an established market already exists, a copy of the proxy material to be sent to the shareholders, and any other correspondence sent to the shareholders describing the proposed amendment to the articles.

As added by P.L.63-2001, SEC.26 and P.L.134-2001, SEC.28.

IC 28-13-14-9

Adoption before issuance of shares

Sec. 9. If a corporation has not yet issued shares:

(1) its board of directors; or

(2) if a board of directors has not been selected, the incorporators;

may adopt at least one (1) amendment to the corporation's articles of incorporation.

As added by P.L.14-1992, SEC.163.

IC 28-13-14-10

Articles of amendment; contents

Sec. 10. A corporation amending its articles of incorporation shall prepare articles of amendment setting forth the following:

(1) The name of the corporation.

(2) The text of each amendment adopted.

(3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself.

(4) The date of each amendment's adoption.

(5) If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required.

(6) If an amendment was approved by the shareholders:

(A) the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group represented at the meeting; and

(B) either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

As added by P.L.14-1992, SEC.163.

IC 28-13-14-11

Articles of amendment; form

Sec. 11. The form of the articles of amendment shall be prescribed and furnished by the department.

As added by P.L.14-1992, SEC.163.

IC 28-13-14-12

Articles of amendment; preparation and signature; presentation for approval or disapproval and filing

Sec. 12. (a) The articles of amendment shall be prepared and signed in triplicate by:

(1) an officer of the corporation;

(2) if the corporation has not yet issued shares, by a director of the corporation; or

(3) if the board of directors has not been selected, by the incorporator;

and shall be presented in triplicate to the department at its office for the approval or disapproval of the director.

(b) When the articles of amendment have been approved by the director, the articles shall be presented to the secretary of state for filing.

As added by P.L.14-1992, SEC.163.

IC 28-13-14-13

Change of corporate name; record of articles of amendment

Sec. 13. If a corporation amends its articles of incorporation to

change its corporate name, the corporation may, after the amendment has become effective, file for record with the county recorder of each county in Indiana in which the corporation has real property at the time the amendment becomes effective a file-stamped copy of the articles of amendment. The validity of a change in name is not affected by a corporation's failure to record the articles of amendment.
As added by P.L.14-1992, SEC.163.

IC 28-13-14-14
Restatement of articles; inclusion of amendment; shareholder notification; articles of restatement; changes not constituting amendment

Sec. 14. (a) A corporation's board of directors or, if the board of directors has not been selected, the incorporators may restate the corporation's articles of incorporation at any time with or without shareholder action.

(b) The restatement may include at least one (1) amendment to the articles. If the restatement includes an amendment requiring shareholder approval, the amendment must be adopted as provided in sections 3 through 7 of this chapter.

(c) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with IC 28-13-5-8. The notice must also do the following:

(1) State that the purpose or one (1) of the purposes of the meeting is to consider the proposed restatement.

(2) Contain or be accompanied by a copy of the restatement that identifies any amendment or other change the corporation would make in the articles.

(d) A corporation restating the corporation's articles of incorporation shall prepare articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(1) whether the restatement contains an amendment to the articles requiring shareholder approval and, if the restatement does not, that the board of directors adopted the restatement; or

(2) if the restatement contains an amendment to the articles requiring shareholder approval, the information required by section 10 of this chapter.

Notwithstanding IC 28-12-2-1(4), the corporation is not required to include in the articles of restatement the name and address of each incorporator.

(e) The following do not constitute an amendment to a corporation's articles of incorporation:

(1) A reordering or renumbering of the articles or sections of the articles.

(2) The correction of grammatical or spelling errors.

As added by P.L.14-1992, SEC.163. Amended by P.L.63-2001, SEC.27 and P.L.134-2001, SEC.29; P.L.141-2005, SEC.26.

IC 28-13-14-15
Articles of restatement; form

Sec. 15. (a) The form of articles of restatement shall be prescribed and furnished by the department.

(b) Articles of restatement shall be prepared and signed in triplicate by:

(1) an officer of the corporation;

(2) if the corporation has not yet issued shares, by a director of the corporation; or

(3) if the board of directors has not been selected, by the incorporator;

and shall be presented in triplicate to the department at the department's office, for the approval or disapproval of the director.

(c) When the articles of restatement have been approved by the director, the articles shall be presented to the secretary of state for filing.

As added by P.L.14-1992, SEC.163.

IC 28-13-14-16
Adopted restated articles; superseding original articles and amendments

Sec. 16. Adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

As added by P.L.14-1992, SEC.163.

IC 28-13-14-17
Restated articles of incorporation; certification

Sec. 17. The department and the secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by section 14(d) of this chapter.

As added by P.L.14-1992, SEC.163.

IC 28-13-14-18
Effect of amendment on existing rights, causes of action, and proceedings

Sec. 18. (a) An amendment to articles of incorporation does not affect the following:

(1) A cause of action existing against or in favor of the corporation.

(2) A proceeding to which the corporation is a party.

(3) The preexisting rights of persons other than shareholders of the corporation.

(b) An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

As added by P.L.14-1992, SEC.163.

IC 28-13-15

Chapter 15. Amendment of Bylaws

IC 28-13-15-1

Authority to amend or repeal

Sec. 1. Unless the articles of incorporation provide otherwise, only a corporation's board of directors may amend or repeal the corporation's bylaws.

As added by P.L.14-1992, SEC.163.

IC 28-13-15-2

Greater quorum or voting requirements; shareholders meeting; directors prohibited from action

Sec. 2. (a) If expressly authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders or voting groups of shareholders than is required by this article.

(b) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (a) may not be adopted, amended, or repealed by the board of directors.

As added by P.L.14-1992, SEC.163.

IC 28-13-15-3

Greater quorum or voting requirements; directors meeting; voting requisites

Sec. 3. (a) A bylaw that fixes a greater than majority quorum or voting requirement for action by the board of directors may be amended or repealed:

(1) if originally adopted by the shareholders, only by the shareholders; or

(2) if originally adopted by the board of directors, only by the board of directors.

(b) A bylaw adopted or amended by the shareholders that fixes a greater than majority quorum or voting requirement for action by the board of directors may provide that the bylaw may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(c) Action by the board of directors under subsection (a)(2) to adopt or amend a bylaw that changes the quorum or voting requirement for action by the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

As added by P.L.14-1992, SEC.163.

IC 28-13-16

Chapter 16. Financial Institution Subsidiaries

IC 28-13-16-1

"Qualifying subsidiary" defined

Sec. 1. As used in this chapter, "qualifying subsidiary" means a foreign or domestic corporation or limited liability company in which a financial institution has more than fifty percent (50%) ownership.

As added by P.L.215-1999, SEC.10.

IC 28-13-16-2

"Nonqualifying subsidiary" defined

Sec. 2. As used in this chapter, "nonqualifying subsidiary" means a foreign or domestic corporation or limited liability company in which a financial institution has fifty percent (50%) or less ownership.

As added by P.L.215-1999, SEC.10.

IC 28-13-16-3

"Financial institution" defined

Sec. 3. As used in this chapter, "financial institution" means:

(1) a bank (as defined by IC 28-1-1-3);

(2) a savings bank;

(3) a savings association; or

(4) an industrial loan and investment company that maintains federal deposit insurance.

As added by P.L.215-1999, SEC.10.

IC 28-13-16-4

Acquisition or establishment; powers of subsidiary

Sec. 4. (a) A financial institution or any of its subsidiaries may acquire or establish a qualifying subsidiary by providing the department with written notice before acquiring or establishing the subsidiary. The department shall notify the requesting financial institution of the department's receipt of the notice.

(b) A subsidiary may exercise a power or engage in an activity permitted to be performed by a financial institution under the same conditions and restrictions as if the power or activity is performed by the financial institution itself, or the activity has been authorized as "activity eligible for notice" procedures under 12 CFR 5.34(e).

(c) The qualified subsidiary may exercise or engage in the activity thirty (30) days after the date on which the department receives the notification unless otherwise notified by the department.

As added by P.L.215-1999, SEC.10. Amended by P.L.258-2003, SEC.29; P.L.73-2004, SEC.42.

IC 28-13-16-5

Acquiring or establishing a nonqualifying subsidiary; application

Sec. 5. A financial institution or any of its subsidiaries may acquire or establish a nonqualifying subsidiary by submitting an

application to the department containing:

(1) a complete description of the financial institution's investment in the subsidiary;

(2) the activity to be conducted; and

(3) a representation that the activity:

(A) could be performed by a financial institution under statutory authority of this title;

(B) is a part of or incidental to the business of banking as determined by the director; or

(C) has been authorized as "activity eligible for notice" procedures under 12 CFR 5.34(e).

The department shall notify the requesting financial institution of the department's receipt of the application.

As added by P.L.215-1999, SEC.10. Amended by P.L.73-2004, SEC.43; P.L.10-2006, SEC.77 and P.L.57-2006, SEC.77.

IC 28-13-16-6

Review of notice or application; change in scope or nature of business activity of qualifying or nonqualifying subsidiary

Sec. 6. (a) The department shall review a financial institution's notice or application to acquire or establish a qualifying or nonqualifying subsidiary to determine:

(1) whether the proposed activities are legally permissible; and

(2) whether the proposal endangers the safety or soundness of the financial institution.

The director shall either approve or disapprove the application for a nonqualifying subsidiary within sixty (60) days after the date on which the department receives the application. The period for approval or disapproval of the application may be extended by the department based on a determination that additional information from the financial institution or additional time for analysis is required.

(b) If there will be a change in the scope or nature of the business activity of a qualifying subsidiary of a financial institution, the financial institution shall provide the department with written notice before the change occurs. The department shall notify the requesting financial institution of the department's receipt of the notice and shall review the notice to determine:

(1) whether the proposed change is legally permissible; and

(2) whether the proposed change endangers the safety or soundness of the financial institution.

The qualifying subsidiary may exercise or engage in the proposed activity thirty (30) days after the date on which the department receives the financial institution's notice, as indicated in the department's notice of receipt, unless otherwise notified by the department.

(c) If there will be a change in the scope or nature of the business activity of a nonqualifying subsidiary of a financial institution, the financial institution shall submit to the department an application containing a complete description of the proposed change. The department shall notify the requesting financial institution of the

department's receipt of the application and shall review the application to determine:

(1) whether the proposed change is legally permissible; and

(2) whether the proposed change endangers the safety or soundness of the financial institution.

The director shall either approve or disapprove the application not later than sixty (60) days after the date on which the department receives the application. The period for approval or disapproval of the application may be extended by the department based on a determination that additional information from the financial institution or additional time for analysis is required.

As added by P.L.215-1999, SEC.10. Amended by P.L.90-2008, SEC.79.

IC 28-13-16-7

Subsidiaries subject to examination

Sec. 7. (a) Each qualifying subsidiary and nonqualifying subsidiary is subject to examination by the department or the appropriate federal banking supervisory authorities.

(b) If, upon examination, the department determines that a qualifying subsidiary or a nonqualifying subsidiary is operating in violation of law, regulation, or written condition or in an unsafe or unsound manner or otherwise threatens the safety and soundness of the financial institution, the department may direct the financial institution or subsidiary to take appropriate remedial action, which may include requiring the financial institution to divest or liquidate the subsidiary or discontinue specified activities.

As added by P.L.215-1999, SEC.10.

IC 28-13-16-8

Rules

Sec. 8. The department may adopt rules under IC 4-22-2 or policies to implement this chapter.

As added by P.L.215-1999, SEC.10.

IC 28-13-17

Chapter 17. Financial Subsidiary Activities of Financial Institutions

IC 28-13-17-1

"Financial institution" defined

Sec. 1. As used in this chapter "financial institution" has the meaning set forth in IC 28-13-16-3.

As added by P.L.63-2001, SEC.28 and P.L.134-2001, SEC.30.

IC 28-13-17-2

"Financial subsidiary" defined

Sec. 2. As used in this chapter, "financial subsidiary" means a foreign or domestic corporation or limited liability company that is controlled by one (1) or more financial institutions that engages in a financial subsidiary activity.

As added by P.L.63-2001, SEC.28 and P.L.134-2001, SEC.30.

IC 28-13-17-3

"Financial subsidiary activity" defined

Sec. 3. As used in this chapter, "financial subsidiary activity" means:

(1) an activity that has been authorized for a financial subsidiary of a national bank under 12 U.S.C. 24a and that may be conducted by a national bank only through a financial subsidiary; or

(2) an activity that has been determined by the department to be financial in nature or incidental to a financial activity.

As added by P.L.63-2001, SEC.28 and P.L.134-2001, SEC.30.

IC 28-13-17-4

"Control" defined

Sec. 4. As used in this chapter, "control" has the meaning set forth in IC 28-2-13-12.

As added by P.L.63-2001, SEC.28 and P.L.134-2001, SEC.30.

IC 28-13-17-5

"Hold an interest" defined

Sec. 5. As used in this chapter, "hold an interest" means the ownership of any equity capital of a financial subsidiary.

As added by P.L.63-2001, SEC.28 and P.L.134-2001, SEC.30.

IC 28-13-17-6

"Equity capital" defined

Sec. 6. As used in this chapter, "equity capital" includes, in addition to an equity investment, a debt instrument issued by a financial subsidiary, if the instrument qualifies as capital of the financial subsidiary under any federal or state law, regulation, or interpretation applicable to the financial subsidiary.

As added by P.L.63-2001, SEC.28 and P.L.134-2001, SEC.30.

IC 28-13-17-7

Interest in financial subsidiaries engaged in financial subsidiary activities

Sec. 7. (a) Notwithstanding any other law, but subject to the provisions of this chapter, a financial institution may control or hold an interest in a financial subsidiary that engages in financial subsidiary activities.

(b) This section does not require an activity to be conducted through a financial subsidiary that is authorized to be conducted directly by the financial institution.

As added by P.L.63-2001, SEC.28 and P.L.134-2001, SEC.30.

IC 28-13-17-8

Financial subsidiary activities engaged in as principal or new financial subsidiary activities

Sec. 8. (a) A financial institution may not establish, control, or hold an interest of a financial subsidiary that engages in financial subsidiary activities as principal or commence any new financial subsidiary activity under this section or under 12 U.S.C. 1831w(a) unless the following occur:

(1) An application has been filed with the department before the financial subsidiary of the financial institution conducts financial subsidiary activities.

(2) The department determines that the financial subsidiary activity poses no significant adverse effects to the safety and soundness of the financial institution and approves the application. An approval under this subdivision may be made subject to conditions and restrictions determined necessary by the department to prevent unsafe or unsound banking practices.

(3) The financial institution and the financial subsidiary comply with 12 U.S.C. 371c and 12 U.S.C. 371c-1, as if the subsidiary were a financial subsidiary, as defined in 12 U.S.C. 371c(e)(1).

(4) All financial institution affiliates of the financial institution are well-capitalized, as defined in the appropriate capital regulation and guidance of each financial institution's primary federal regulator, and the financial institution complies with the capital deduction requirement in accordance with 12 CFR 362.4(e)(1) through 12 CFR 362.4(e)(3), discloses that capital separation in any published financial statements and does not consolidate the financial subsidiary's assets and liabilities with those of the financial institution in any published financial statements.

(5) The financial institution and the financial subsidiary meet the financial and operational safeguards applicable to a financial subsidiary of a national bank conducting the same activities as provided in 12 U.S.C. 24a(d).

(b) A financial institution that controls or holds an interest in a financial subsidiary engaged in a financial subsidiary activity must comply with the requirements of subsection (a)(2) through (a)(5), as long as the financial institution's financial subsidiary is engaged in

the financial subsidiary activity.
As added by P.L.63-2001, SEC.28 and P.L.134-2001, SEC.30.

IC 28-14

ARTICLE 14. CORPORATE FIDUCIARIES

IC 28-14-1

Chapter 1. Definitions

IC 28-14-1-1

Definitions applicable to article

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.262-1995, SEC.90.

IC 28-14-1-2

"Acting as a fiduciary"

Sec. 2. "Acting as a fiduciary" means undertaking to act primarily for the benefit of another. The term includes the following:

(1) Acting alone and jointly with others.

(2) Acting:

(A) as a trustee;

(B) as a personal representative;

(C) as a registrar of stocks and bonds;

(D) as a guardian or conservator of estates;

(E) as an assignee;

(F) as a receiver;

(G) as a custodian;

(H) as an investment manager or agent;

(I) as a managing agent; or

(J) as in any other, similar capacity.

As added by P.L.262-1995, SEC.90.

IC 28-14-1-3

"Clearing corporation"

Sec. 3. "Clearing corporation" has the meaning set forth in IC 26-1-8-102.

As added by P.L.262-1995, SEC.90.

IC 28-14-1-4

"Corporate fiduciary"

Sec. 4. "Corporate fiduciary" has the meaning set forth in IC 28-1-1-3.

As added by P.L.262-1995, SEC.90.

IC 28-14-1-5

"Department"

Sec. 5. "Department" refers to the department of financial institutions established by IC 28-11-1.

As added by P.L.262-1995, SEC.90.

IC 28-14-1-6

"Director"

Sec. 6. "Director" refers to the director of the department

appointed under IC 28-11-2-1.
As added by P.L.262-1995, SEC.90.

IC 28-14-1-7
"Person"

Sec. 7. "Person" means an individual, a corporation, a limited liability company, a partnership, or an unincorporated association.
As added by P.L.262-1995, SEC.90.

IC 28-14-1-8
"The trust business"

Sec. 8. (a) Engaging in "the trust business" means:

(1) acting as a fiduciary for hire as one's primary business purpose; or

(2) holding oneself out to the public as being willing to act as a fiduciary for hire as one's primary business purpose.

(b) Notwithstanding subsection (a), the following persons are not engaged in the trust business with respect to fiduciary services customarily performed by the following persons for compensation as traditionally incident to their regular business activities:

(1) Accountants.
(2) Attorneys.
(3) Banks.
(4) Credit unions.
(5) Industrial loan companies.
(6) Insurance brokers.
(7) Insurance companies.
(8) Investment advisers.
(9) National trust companies organized under the laws of the United States.
(10) Real estate brokers and sales agents.
(11) Savings and loan associations.
(12) Savings banks.
(13) Securities brokers and dealers.
(14) Real estate title insurance companies.
(15) Real estate escrow companies.
(16) Persons acting in a fiduciary capacity in activities relating to:

(A) a business organization in which the person is an officer or an employee; or

(B) an estate where the person is designated as a fiduciary by a will or a court order.

(17) Third-party administrators hired by trustees of split-interest charitable trusts, private foundations, charitable pooled income funds, charitable gift annuities, employee benefit plans, or retirement plans.

(c) Notwithstanding subsection (a), any individual or any organization described in Section 501 of the Internal Revenue Code is not engaged in the trust business for the purposes of this article.

(d) The department may determine that a person not specifically

provided for under subsection (b) or (c) is not engaged in the trust business for the purposes of this article.
As added by P.L.262-1995, SEC.90.

IC 28-14-1-9
"Subsidiary"

Sec. 9. "Subsidiary" means a foreign or domestic corporation or a limited liability company in which a corporate fiduciary has more than a fifty percent (50%) ownership.
As added by P.L.215-1999, SEC.11.

IC 28-14-2
Chapter 2. Application

IC 28-14-2-1
Applicability to nondepository trust company

Sec. 1. A nondepository trust company that was organized under the laws of Indiana before July 1, 1995, is considered a corporate fiduciary.

As added by P.L.262-1995, SEC.90.

IC 28-14-2-2
Powers of nondepository trust company

Sec. 2. A nondepository trust company that is organized under the laws of Indiana after June 30, 1995, has only the powers granted to a corporate fiduciary organized after June 30, 1995.

As added by P.L.262-1995, SEC.90.

IC 28-14-3

Chapter 3. Powers and Duties

IC 28-14-3-1

Scope of chapter

Sec. 1. Subject to the limitations and restrictions set forth in this article and in the articles of incorporation, a corporate fiduciary possesses and may exercise the rights, privileges, and powers provided in this chapter.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-2

Corporate name

Sec. 2. A corporate fiduciary is entitled to perpetual duration and succession of its corporate name.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-3

Articles of incorporation

Sec. 3. The articles of incorporation of a corporate fiduciary must, without limitation, grant the corporate fiduciary the powers described in sections 4 through 8 of this chapter and authorize the corporate fiduciary to do the following:

(1) Sue and be sued in its corporate name.

(2) Have a corporate seal.

(3) Make and amend bylaws that are not inconsistent with the articles of incorporation or Indiana law.

(4) Purchase, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in real or personal property.

(5) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of the corporate fiduciary's property.

(6) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with the:

(A) shares or other interests in; and

(B) obligations of;

any entity, including the corporate fiduciary, except as otherwise prohibited by this article.

(7) Borrow money, make contracts and guarantees, incur liabilities, and issue notes, bonds, and other obligations that may be convertible into or include the option to purchase other securities of the corporate fiduciary.

(8) Mortgage or pledge any of its assets.

(9) Purchase for its own account and sell investment securities under such limitations as the department prescribes by rule or policy.

(10) Conduct business, locate offices, and exercise the powers granted by this article regardless of geographic limitations.

(11) Elect directors, elect and appoint officers, and appoint employees and agents of the corporate fiduciary.
(12) Define the duties of directors, officers, and employees of the corporate fiduciary.
(13) Fix the compensation of directors, officers, and employees of the corporate fiduciary.
(14) Pay or pay for the following:
(A) Deferred compensation.
(B) Employment contracts.
(C) Individual or group life insurance.
(D) Insurance on the life or lives of designated officers.
(15) Make donations for the public welfare or for charitable, scientific, or educational purposes.
(16) Become a member of the Federal Reserve system.
(17) With the approval of the department, convert into a bank.
(18) Cease doing business and dissolve under IC 28-1-9.
(19) Exercise all powers that are incidental to and proper or that may be necessary and usual in carrying on a corporate fiduciary business.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-4
Loans

Sec. 4. (a) A corporate fiduciary may:
(1) lend money; and
(2) receive and hold real and personal property as security for the repayment of loans;

only as authorized in this section.

(b) A corporate fiduciary may make a loan to a fiduciary account it administers and may take security for the loan, unless the governing document prohibits borrowing money and pledging account assets. The terms of a loan described in this subsection must be comparable to the terms available from other lenders.

(c) A corporate fiduciary may make a loan to a director, an officer, or an employee of the corporate fiduciary. A loan made under this subsection must be adequately secured. Loans made under this subsection by a corporate fiduciary may not:
(1) total more than ten thousand dollars ($10,000) for each individual; or
(2) exceed five percent (5%) of total equity capital when all loans to directors, officers, and employees are aggregated.

(d) Loans made to directors, officers, and employees under subsection (c) must be made exclusively from corporate funds. Funds from a fiduciary account may not be used to make or secure a loan under subsection (c).

As added by P.L.262-1995, SEC.90.

IC 28-14-3-5
Securities held by clearing corporation

Sec. 5. (a) Notwithstanding any other law, a corporate fiduciary

holding securities in a fiduciary capacity is authorized to deposit or arrange for the deposit of the securities in a clearing corporation.

(b) When securities are deposited in a clearing corporation under subsection (a), certificates representing securities of the same class of the same issuer may be merged and held in the name of the nominee of the clearing corporation. The records of the corporate fiduciary acting as custodian, managing agent, or custodian for a fiduciary must at all times show the name of the party for whose account the securities are deposited.

(c) Title to the securities held by the clearing corporation under this section may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing the securities.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-6

United States government securities

Sec. 6. (a) Notwithstanding any other law, a corporate fiduciary holding United States government securities in a fiduciary capacity may use the Federal Reserve Book-Entry procedure for United States government securities. The records of the corporate fiduciary must at all times show the name of the party for whose account the United States government securities are deposited.

(b) Title to the United States government securities registered by Federal Reserve Book-Entry under subsection (a) may be transferred by bookkeeping entry on the books of the Federal Reserve without physical delivery of certificates representing the securities.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-7

Benefits; incentives; stock purchase programs

Sec. 7. (a) A corporate fiduciary may do the following:

(1) Pay benefits, offer incentives, and establish benefit plans and incentive plans for an existing or a former director, officer, employee, and agent of the corporate fiduciary.

(2) Adopt stock purchase programs for employees and:

(A) grant options to purchase;

(B) issue; and

(C) sell;

shares of the capital stock of the corporate fiduciary to the employees of the corporate fiduciary or to a trustee on behalf of the employees of the corporate fiduciary.

(b) A corporate fiduciary may act as the trustee to whom shares of the capital stock of the corporate fiduciary are issued and sold on behalf of the employees of the corporate fiduciary under subsection (a)(2).

(c) A corporate fiduciary granting options and issuing capital stock in connection with a stock purchase plan for its employees under subsection (a)(2) is not required to first offer the capital stock to the shareholders of the corporate fiduciary.

(d) A corporate fiduciary granting options and issuing capital stock in connection with a stock purchase plan for its employees under subsection (a)(2) may offer the capital stock to the shareholders for such consideration (but not less than par value), and upon such terms and conditions, as are approved by the:

(1) board of directors of the corporate fiduciary;

(2) holders of a majority of the shares of the corporate fiduciary who are entitled to vote with respect to the issuance of the capital stock; and

(3) director.

(e) In the absence of actual fraud in the transaction, the judgment of the board of directors of a corporate fiduciary as to the sufficiency of the consideration for the issuance of options in connection with a stock purchase plan under subsection (a)(2) is conclusive.

(f) A corporate fiduciary exercising the powers granted in this section may, to the extent approved by the director, have authorized and unissued stock that is required to fulfill a stock option arrangement or another arrangement authorized by this section.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-8

Subsidiaries

Sec. 8. (a) A corporate fiduciary may:

(1) exercise any power through a subsidiary; and

(2) purchase, own, and hold shares of stock of a subsidiary.

(b) A subsidiary of a corporate fiduciary may not:

(1) exercise a power that the corporate fiduciary could not exercise; or

(2) engage in an activity in which the corporate fiduciary would not be permitted to engage.

(c) A corporate fiduciary may acquire or establish a subsidiary by submitting an application to the department containing a complete description of the corporate fiduciary's investment in the subsidiary and the activity to be conducted.

(d) The department shall review a corporate fiduciary's application to acquire or establish a subsidiary to determine:

(1) whether the proposed activities are legally permissible; and

(2) whether the proposal endangers the safety and soundness of the corporate fiduciary.

The director shall either approve or disapprove the application within sixty (60) days after the date on which the department receives the application. The period for approval or disapproval may be extended by the department based on a determination that additional information from the corporate fiduciary or additional time for analysis is required.

(e) Each subsidiary of a corporate fiduciary is subject to examination by the department to the same extent as though the subsidiary were included within the legal entity of the corporate fiduciary.

As added by P.L.262-1995, SEC.90. Amended by P.L.215-1999,

SEC.12.

IC 28-14-3-9
Investment and reinvestment of assets

Sec. 9. (a) Notwithstanding any other law, a corporate fiduciary, in exercising investment discretion in its fiduciary capacity with respect to the investment and reinvestment of assets, may invest and reinvest the assets, subject to the standard set forth in IC 30-4-3-3(c), in the securities of any open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(b) If a corporate fiduciary invests or reinvests assets under subsection (a), the fact that the corporate fiduciary or any affiliate of the corporate fiduciary is:

(1) providing services to the investment company or trust as investment adviser, sponsor, distributor, custodian, transfer agent, registrar, or otherwise; and

(2) receiving reasonable remuneration for the services provided;

does not preclude the corporate fiduciary from investing in the securities of the investment company or trust.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-10
Acting as fiscal or transfer agent

Sec. 10. A corporate fiduciary has the power to act as fiscal or transfer agent of the United States or any state, municipality, body politic, or corporation, and may, in that capacity:

(1) receive and disburse money;

(2) transfer, register, and countersign certificates of stocks, bonds, and other evidence of indebtedness;

(3) authenticate and certify bonds and certificates of indebtedness referred to in subdivision (2);

(4) act as agent to buy and sell domestic and foreign transportation;

(5) solicit and write insurance as insurance producer or broker for any insurance company authorized to do business in Indiana; and

(6) act as attorney in fact or agent of any person or corporation, foreign or domestic, for any lawful purpose.

As added by P.L.262-1995, SEC.90. Amended by P.L.215-1999, SEC.13; P.L.178-2003, SEC.94.

IC 28-14-3-11
Acting as insurance producer for sale of annuity contract or life insurance policy

Sec. 11. (a) Notwithstanding any other provision of this title, a corporate fiduciary may act as an insurance producer for the sale of any annuity contract or any life insurance policy issued by a life insurance company (as defined in IC 27-1-2-3) authorized to do business in Indiana under IC 27-1.

(b) A corporate fiduciary that acts as an agent for the sale of an annuity contract or a life insurance policy:

(1) is subject to all requirements of IC 27 relating to the sale and solicitation of insurance, including licensing as an insurance producer under IC 27-1-15.6; and

(2) must comply with the disclosure requirements under IC 27-1-38.

As added by P.L.262-1995, SEC.90. Amended by P.L.215-1999, SEC.14; P.L.132-2001, SEC.21; P.L.130-2002, SEC.9; P.L.178-2003, SEC.95.

IC 28-14-3-12

Appointment as commissioner for sale of real estate; guardian of minor or incapacitated persons; trustee, receiver, conservator, or committee of property or estate in insolvency or bankruptcy proceedings; depository of funds paid into court; other fiduciary capacities

Sec. 12. A corporate fiduciary may be appointed and act under the order of appointment of a court of competent jurisdiction as commissioner for the sale of real estate, guardian of the person and guardian of the estate of a person less than eighteen (18) years of age, and incapacitated persons (as defined in IC 29-3-1-7.5), or as trustee, receiver, conservator, or committee of the property or estate of a person, corporation, or company in insolvency or bankruptcy proceedings, or as depository of money paid into court, whether for the benefit of a person, regardless of age, corporation, or party, and in any other fiduciary capacity.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-13

Appointment as executor, testamentary trustee, or administrator; corporate successor to will nominee; co-fiduciary with natural person; bond or security

Sec. 13. (a) A corporate fiduciary may:

(1) be appointed; and

(2) accept the appointment;

to act as executor or trustee under the last will and testament, or as administrator, with or without the will annexed, of the estate of any deceased person.

(b) A corporate fiduciary may:

(1) be appointed; and

(2) act under the order of appointment of any court of competent jurisdiction;

as executor of or trustee under any last will and testament, whenever the corporate fiduciary is the successor to any corporation appointed in the last will and testament, whether such succession is the result of merger, consolidation, or otherwise.

(c) Whenever a natural person is appointed with a corporate fiduciary in an appointment as receiver, guardian, commissioner, trustee, executor, or administrator with or without the will annexed, the appointment of the natural person may be:

(1) under such limitation of powers; and
(2) upon such terms and conditions as to:
(A) the possession and control of the trust assets by the corporate fiduciary, or otherwise; and
(B) the bond or security, if any, to be given by the natural person;
as the natural person and the corporate fiduciary may agree to and the court making the appointment shall approve.

(d) Whenever a natural person who is appointed in a fiduciary capacity is required to give a bond or security for the faithful performance of the natural person's duties, a corporate fiduciary may guarantee or become surety for the natural person:
(1) if the corporate fiduciary takes possession and control of the assets belonging to the estate or other fiduciary relationship; and
(2) if the court having jurisdiction of the corporate fiduciary approves the guaranteeing or becoming surety for the natural person.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-14
Appointment upon application or consent of person acting or entitled to serve as guardian, trustee, executor, or administrator

Sec. 14. (a) A corporate fiduciary may be appointed and may act under the order of appointment of any court of competent jurisdiction as:
(1) guardian;
(2) trustee;
(3) executor; or
(4) administrator, with or without the will annexed;
on the application or consent of a person who is acting as guardian, trustee, executor, or administrator, or who is entitled to appointment as guardian, trustee, executor, or administrator.

(b) A corporate fiduciary appointed under subsection (a) serves in the place of and instead of the person who applies for or consents to the appointment.

(c) An appointment under subsection (a) must be made:
(1) upon the notice required by law to the persons interested in the estate or fund; and
(2) on the consent of the principal beneficiaries or other persons interested in the estate or fund as the court making the appointment considers proper.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-15
Trusts

Sec. 15. A corporate fiduciary has the power to:
(1) take, accept, and execute any and all legal trusts, duties, and powers in regard to the holding, management, sale, and disposition of any property or estate, real or personal, wherever located, and the rents and profits of the property or estate, which

may be granted or confided to it by any court of competent jurisdiction, or by any person, corporation, municipality, or other authority;

(2) take, accept, and execute any and all trusts and powers of any nature or description that:

(A) may be conferred upon or entrusted or submitted to it by any person, firm, company, or any body politic, corporation, foreign or domestic, or other authority, by grant, assignment, transfer, devise, bequest, or otherwise; or

(B) may be entrusted, committed, or transferred to it or vested in it by order of a court of competent jurisdiction; and

(3) generally execute trusts of every description not inconsistent with the laws of Indiana or the United States.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-16

Power to act in fiduciary capacity; acting as commissioner for sale of real estate without bond or security; administration of oaths

Sec. 16. (a) Except as otherwise provided in this chapter, a corporate fiduciary has the power:

(1) to act:

(A) in every fiduciary capacity permitted by this article; and

(B) as commissioner for the sale of real estate, without bond or other security; and

(2) to administer oaths attested by the signature of its secretary or cashier and its seal whenever it is acting in a fiduciary capacity and whenever an individual acting in the same capacity is authorized by law to administer oaths.

(b) The court having jurisdiction of a corporate fiduciary may at any time, before or after the corporate fiduciary accepts a fiduciary appointment require the corporate fiduciary to give a bond or other security. If the corporate fiduciary fails to give a bond or security as required, the court may remove the corporate fiduciary and revoke the appointment.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-17

Pledge or deposit of assets prohibited

Sec. 17. A corporate fiduciary shall not pledge or deposit any of its assets as a condition to the exercise of its powers as a fiduciary.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-18

Receipt of property upon deposit for safekeeping or in escrow

Sec. 18. (a) A corporate fiduciary has the power to:

(1) receive, upon terms and conditions prescribed by the corporate fiduciary not inconsistent with the provisions of this section, upon deposit for safekeeping, or in escrow:

(A) money;

(B) bonds;

(C) mortgages;
(D) jewelry;
(E) plate;
(F) stock;
(G) securities and valuable papers of any kind; and
(H) other personal property; and

(2) rent or lease receptacles for the safe deposit of personal property.

(b) Neither a corporate fiduciary nor any of the assets of the corporate fiduciary are liable for:

(1) the value of property received by the corporate fiduciary under this section; or

(2) damages for the loss, theft, or misappropriation of the property.

(c) A corporate fiduciary may procure and carry a policy or policies of insurance for the benefit of the owners of property received by the corporate fiduciary under this section.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-19

Compensation for fiduciary services; counsel fees

Sec. 19. (a) A corporate fiduciary has the power to demand and receive, for the faithful performance and discharge of services performed under the powers vested in the corporate fiduciary by this article:

(1) reasonable compensation, or compensation as fixed by agreement of the parties;

(2) all advances necessarily paid out and expended in the discharge and performance of its duties; and

(3) unless otherwise agreed upon, interest at the legal rate on the advances referred to in subdivision (2).

(b) The advances referred to in subsection (a) may include the compensation paid for the employment of legal services when necessary for the protection of a trust or other fiduciary relation.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-20

Compensation or commission for loan negotiation or trust execution not considered interest or usury

Sec. 20. The compensation or commission paid or agreed to be paid for the negotiation of any loan or the execution of any trust by a corporate fiduciary is not interest within the meaning of any law of Indiana, and the excess of the compensation or commission over any rate of interest permitted by the laws of Indiana shall not be decreed or held to be usury in any court.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-21

Appointment by court having jurisdiction; power to renounce appointment

Sec. 21. (a) A court or an officer of a court having jurisdiction to:

(1) grant letters of guardianship;

(2) appoint a trustee, guardian, receiver, or committee of the estate of a person;

(3) appoint a committee, trustee, or receiver in insolvency or bankruptcy proceedings, or in any other proceeding or action, under state or federal law; or

(4) make any other fiduciary appointment provided for in this article;

may appoint a corporate fiduciary. However, the corporate fiduciary is not required to accept the appointment.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-22

Nonresident fiduciaries; establishment of Indiana office; rights, privileges, and restrictions

Sec. 22. (a) Subject to IC 28-1-22, a corporate fiduciary, trust company, or bank that is organized and doing business under the laws of any state, territory, or district other than Indiana, including a national bank or national trust company that is primarily domiciled in any other state, may establish an office to conduct business as a fiduciary in Indiana if the law of the state, territory, or district in which the corporate fiduciary, trust company, or bank is primarily domiciled would allow an Indiana bank, an Indiana corporate fiduciary, or an Indiana trust company to establish a place of business or an agency in that state, territory, or district for the conduct of business as a fiduciary.

(b) A corporate fiduciary, trust company, or bank that is organized and doing business under the laws of any state, territory, or district other than Indiana, including a national bank or national trust company that is primarily domiciled in any other state, has the same rights, privileges, and restrictions, including capital requirements, as an Indiana bank, an Indiana corporate fiduciary, or an Indiana trust company of like character or charter, and to the same extent as if the corporate fiduciary, trust company, or bank organized and doing business under the laws of any state, territory, or district other than Indiana had been organized under this article, to transact the business for which a certificate of admission is issued.

As added by P.L.262-1995, SEC.90. Amended by P.L.192-1997, SEC.29; P.L.27-2012, SEC.109.

IC 28-14-3-23

Service as successor trustee

Sec. 23. For the purposes of IC 30-4-3-29, a corporate fiduciary may serve as a successor trustee in the same capacity as if the corporate fiduciary were a bank (as defined in IC 28-1-1-3).

As added by P.L.262-1995, SEC.90.

IC 28-14-3-24

Credit union service organizations

Sec. 24. Notwithstanding any other law, a credit union or a group of credit unions may establish a credit union service organization that is a corporate fiduciary.
As added by P.L.262-1995, SEC.90.

IC 28-14-3-25
Powers relating to common trust funds

Sec. 25. For the purposes of IC 30-1-8, a corporate fiduciary has the same powers and authority as a bank.
As added by P.L.262-1995, SEC.90.

IC 28-14-4
Chapter 4. Real Estate Powers of Corporate Fiduciaries

IC 28-14-4-1
Power to purchase or convey real estate necessary for convenient transaction of business

Sec. 1. (a) A corporate fiduciary has the power to purchase, hold, and convey real estate as necessary for the convenient transaction of its business.

(b) Real property that may be purchased or held for the convenient transaction of the business of a corporate fiduciary includes the following:

(1) Real property on which the principal office or a trust office of the corporate fiduciary is located.

(2) Real property that is the location of facilities supporting the operations of the corporate fiduciary.

(3) Real property that the board of directors expects, in good faith, to use as an office or a facility in the future.

As added by P.L.262-1995, SEC.90.

IC 28-14-4-2
Real property held without use for one year

Sec. 2. (a) If real property referred to in section 1(b)(3) of this chapter is held for one (1) year without being used by the corporate fiduciary as an office or a facility, the board of directors of the corporate fiduciary shall state by resolution definite plans for the use of the real property.

(b) A resolution adopted under this section shall be made available for inspection by the department.

As added by P.L.262-1995, SEC.90.

IC 28-14-4-3
Real property held without use for more than three years

Sec. 3. Real property referred to in section 1(b)(3) of this chapter may not be held for more than three (3) years without being used as a corporate fiduciary office or a facility, unless:

(1) the board of directors by resolution:

(A) reaffirms annually that the corporate fiduciary expects to use the real property as a corporate fiduciary office or a facility in the future; and

(B) explains the reason why the real property has not yet been used as an office or a facility; and

(2) the director determines that:

(A) the continued holding of the real property does not endanger the safety and soundness of the corporate fiduciary; and

(B) the corporate fiduciary is holding the real property to use in the future for one (1) of the purposes set forth in section 1(b)(1) and 1(b)(2) of this chapter.

As added by P.L.262-1995, SEC.90.

IC 28-14-4-4

Real property held without use for more than ten years

Sec. 4. Real property referred to in section 1(b)(3) of this chapter may not be held for more than ten (10) years without being used as a corporate fiduciary office or facility unless the director consents in writing to the continued holding of the real estate by the corporate fiduciary.

As added by P.L.262-1995, SEC.90.

IC 28-14-4-5

Maximum limit of investment in real estate and buildings necessary for convenient transaction of business

Sec. 5. The sum that a corporate fiduciary invests in real estate and buildings used for the convenient transaction of its business shall not exceed fifty percent (50%) of the capital and surplus of the corporate fiduciary, exclusive of undivided profits of the corporate fiduciary, unless the director gives approval in writing to investments exceeding the limit set forth in this subsection.

As added by P.L.262-1995, SEC.90.

IC 28-14-4-6

Investment in stock of corporation holding real estate and buildings used by corporate fiduciary

Sec. 6. Investments by a corporate fiduciary under this chapter may be made in the stock of a corporation that is organized to own and hold the real property and building occupied and used wholly or in part by the corporate fiduciary.

As added by P.L.262-1995, SEC.90.

IC 28-14-5

Chapter 5. Investments of Corporate Fiduciaries

IC 28-14-5-1

"Total equity capital"

Sec. 1. As used in this chapter, "total equity capital" means unimpaired capital stock, unimpaired surplus, unimpaired undivided profits, and subordinated debt.

As added by P.L.262-1995, SEC.90.

IC 28-14-5-2

Limitations on dealing in investment securities

Sec. 2. Except as otherwise provided in this article, the business of dealing in investment securities by a corporate fiduciary is limited to purchasing and selling securities without recourse, solely upon the order and for the account of customers and not for its own account.

As added by P.L.262-1995, SEC.90.

IC 28-14-5-3

Underwriting or guarantee of issue of securities

Sec. 3. A corporate fiduciary may not underwrite or guarantee all or any part of an issue of securities other than obligations issued or guaranteed by or on behalf of:

(1) the state;

(2) a political subdivision of the state; or

(3) an agency or instrumentality of the state.

As added by P.L.262-1995, SEC.90.

IC 28-14-5-4

Purchase for own account and sale of investment securities

Sec. 4. (a) A corporate fiduciary may purchase for its own account and sell investment securities under the limitations and restrictions the department prescribes by rule or policy. However, the total amount of the investment securities of any one (1) obligor or maker purchased or held by a corporate fiduciary for its own account shall not at any time exceed ten percent (10%) of the amount of the total equity capital of the corporate fiduciary.

(b) The limitations imposed by subsection (a) do not apply to:

(1) the direct or indirect obligations of the United States; or

(2) the direct obligations of:

(A) a United States territory or insular possession;

(B) the state of Indiana; or

(C) any municipal corporation or taxing district in Indiana.

As added by P.L.262-1995, SEC.90.

IC 28-14-5-5

Purchase for own account and sale of shares of investment companies and mortgage backed securities

Sec. 5. A corporate fiduciary may purchase for its own account and sell:

(1) shares of investment companies, the portfolios of which consist solely of securities that are eligible for purchase and sale by national banking associations; and

(2) mortgage backed securities that are eligible for purchase and sale by national banking associations, only to the extent that a national banking association can purchase and sell mortgage backed securities.

As added by P.L.262-1995, SEC.90.

IC 28-14-5-6

Deposit of funds by corporate fiduciaries

Sec. 6. A corporate fiduciary may deposit funds into accounts, and in amounts, that are federally insured. A credit union service organization established as a corporate fiduciary under IC 28-14-3-24 may deposit its funds in the credit union or credit unions that control the credit union service organization.

As added by P.L.262-1995, SEC.90. Amended by P.L.35-2010, SEC.205.

IC 28-14-5-6.5

Purchase of speculative securities or securities not rated by a generally recognized security rating service

Sec. 6.5. (a) A corporate fiduciary may not purchase for its own account any bond, note, or other evidence of indebtedness that is commonly designated as a security that is speculative in character or that has speculative characteristics. For the purposes of this subsection, a security is speculative or has speculative characteristics if at the time of purchase the security:

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

(2) is in default; or

(3) is otherwise considered speculative by the director.

(b) A corporate fiduciary may purchase for its own account a security that is not rated by a generally recognized security rating service if:

(1) the corporate fiduciary at the time of purchase obtains financial information that is adequate to document the investment quality of the security; and

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

As added by P.L.176-1996, SEC.32. Amended by P.L.89-2011, SEC.72.

IC 28-14-5-7

Prohibition on purchases of stock of nonsubsidiaries

Sec. 7. Except as otherwise authorized by this title, a corporate fiduciary may not purchase any share of stock of a corporation that is not a subsidiary of the corporate fiduciary.

As added by P.L.262-1995, SEC.90.

IC 28-14-5-8
Investment in casualty insurance company

Sec. 8. (a) Notwithstanding any other provision of this article, a corporate fiduciary may invest in a casualty insurance company organized solely for the purpose of insuring:

(1) banks;
(2) corporate fiduciaries;
(3) trust companies; and
(4) bank holding companies and their officers and directors;

from and against liabilities, including those covered by bankers' blanket bonds and director and officer liability insurance and other public liability insurance.

(b) Investments made under subsection (a) must take the form of:

(1) the purchase for the corporate fiduciary's own account of:
  (A) shares of stock of the casualty insurance company; or
  (B) shares of stock of an association of banks organized for the purpose of funding the casualty insurance company; or
(2) loans to an association of banks referred to in subdivision (1)(B).

(c) The total investment of a corporate fiduciary under subsection (a) may not exceed five percent (5%) of the capital and surplus of the corporate fiduciary.

As added by P.L.262-1995, SEC.90.

IC 28-14-5-9
"Investment security"

Sec. 9. The rules or policies adopted by the department under IC 28-14-8 may define the term "investment security" for the purposes of this chapter.

As added by P.L.262-1995, SEC.90.

IC 28-14-5-10
Purchase records

Sec. 10. A corporate fiduciary that purchases a security for its own account shall maintain sufficient records of the security to allow the security to be properly identified by the department for examination purposes.

As added by P.L.176-1996, SEC.33.

IC 28-14-6

Chapter 6. Books and Records of Corporate Fiduciaries

IC 28-14-6-1

Access and examination by department

Sec. 1. (a) Books and records of the corporate fiduciary must be reasonably accessible to the department.

(b) If the records of a corporate fiduciary are located outside Indiana:

(1) the records shall be made available to the department at a convenient location within Indiana; or

(2) the corporate fiduciary shall pay the reasonable and necessary expenses for the department or its representative to examine the records where they are maintained.

As added by P.L.262-1995, SEC.90.

IC 28-14-6-2

Separate bookkeeping for fiduciary accounts; segregation of securities and property held for fiduciary accounts

Sec. 2. A corporate fiduciary exercising trust powers or any powers as a fiduciary shall:

(1) keep, separate and apart from its other business, separate books and accounts for its fiduciary accounts; and

(2) keep all securities and property that is held for its fiduciary accounts (other than money) at all times segregated from and unmingled with its own securities and property.

As added by P.L.262-1995, SEC.90.

IC 28-14-6-3

Fiduciary account information required; timely posting of activities

Sec. 3. (a) The records of a corporate fiduciary must contain full information relative to each fiduciary account, including accounting, correspondence, and legal documentation as needed for the successful administration of the account.

(b) The records of a corporate fiduciary must meet the following requirements:

(1) Documentation that accountings are made in accordance with general trust and probate statutes must be retained by the corporate fiduciary.

(2) Records must account for cash funds of each account, and must be constructed in a manner consistent with identification of cash by its origin and ultimate distribution.

(3) Records must provide information relative to each asset held for each account, and provide sufficient detail to clearly identify each asset.

(4) Records must be posted in a manner as timely as activity levels dictate.

As added by P.L.262-1995, SEC.90.

IC 28-14-6-4

Duty to keep books of account and minutes of corporate proceedings

Sec. 4. A corporate fiduciary shall keep correct and complete books of accounts and minutes of the proceedings of shareholders, directors, executives, and finance committees.

As added by P.L.262-1995, SEC.90.

IC 28-14-6-5

Stock transfer book; shareholders list

Sec. 5. A corporate fiduciary shall keep at its principal office:

(1) an original or a duplicate stock transfer book; or

(2) records setting forth:

(A) the names and addresses of all shareholders; and

(B) the number of shares held by each shareholder; or

(3) the records described in subdivisions (1) and (2).

As added by P.L.262-1995, SEC.90.

IC 28-14-7

Chapter 7. Requirements and Prohibitions Applying to Corporate Fiduciaries

IC 28-14-7-1

Prohibited transactions; investigatory and enforcement powers of department

Sec. 1. (a) A corporate fiduciary is prohibited from entering into any transaction that would be prohibited for a bank under IC 28-1-18.2.

(b) The department has the same:

(1) powers of investigation; and

(2) enforcement authority;

concerning corporate fiduciaries and their affiliates as the department has with respect to banks and their affiliates under IC 28-1-18.2.

As added by P.L.262-1995, SEC.90.

IC 28-14-7-2

Statements of condition

Sec. 2. (a) The department may in any year require a corporate fiduciary to prepare and submit as many statements of condition as the department considers necessary.

(b) Statements of condition required by the department under this section must be:

(1) verified; and

(2) prepared and submitted:

(A) on the forms; and

(B) on the dates;

designated in notices given by the director.

(c) Statements of condition required by the department under this section must include a statement summarizing fiduciary activities engaged in by the corporate fiduciary.

(d) The department is authorized to provide copies of a report submitted under this section upon request at a cost established by the department.

As added by P.L.262-1995, SEC.90.

IC 28-14-7-3

Violations; penalties

Sec. 3. (a) A corporate fiduciary that:

(1) fails to prepare and submit a statement of condition required by the department under section 2 of this chapter; or

(2) violates any order of the department with respect to a statement of condition required by the department under section 2 of this chapter;

is subject to a civil penalty of one hundred dollars ($100) for each day that elapses after the date fixed by the department for compliance with the notice concerning the statement of condition.

(b) A penalty paid under subsection (a) must be deposited in the financial institutions fund established by IC 28-11-2-9.

As added by P.L.262-1995, SEC.90.

IC 28-14-7-4
Duty to report shortages and irregularities

Sec. 4. A corporate fiduciary is subject to the reporting requirements concerning shortages and irregularities that are set forth in IC 28-13-10-10(e).

As added by P.L.262-1995, SEC.90. Amended by P.L.63-2001, SEC.29 and P.L.134-2001, SEC.31.

IC 28-14-7-5
Maintenance of principal office in county in which corporate fiduciary conducts trust business; post office address of principal office

Sec. 5. (a) A corporate fiduciary that engages in the trust business in Indiana shall maintain an office or a place of business in Indiana. The office maintained under this subsection shall be known as the principal office, and must be located in a county in which the corporate fiduciary conducts business.

(b) The post office address of the principal office shall be stated in the original articles of incorporation, at the time of the incorporation. Thereafter, the location of the principal office may be changed at any time or from time to time when authorized by the board of directors and approved by the department, by filing with the secretary of state, before the date on which the change is to take effect, a certificate that:

(1) is signed by the president or a vice president and by the secretary or cashier of the corporate fiduciary;

(2) is verified by one (1) of the officers signing the certificate; and

(3) states that the change is to be made and that it is made under authorization by the board of directors.

As added by P.L.262-1995, SEC.90.

IC 28-14-7-6
Administration of common trust funds

Sec. 6. A corporate fiduciary that administers common trust funds is subject to 12 CFR 9.18.

As added by P.L.262-1995, SEC.90.

IC 28-14-7.5

Chapter 7.5. Conservatorship of Corporate Fiduciaries

IC 28-14-7.5-1

Application of chapter

Sec. 1. This chapter applies to a corporate fiduciary (as defined in IC 28-1-1-3(19)).

As added by P.L.10-2006, SEC.78 and P.L.57-2006, SEC.78.

IC 28-14-7.5-2

Applications of definitions

Sec. 2. Except as otherwise provided, the definitions in IC 28-14-1 apply throughout this chapter.

As added by P.L.10-2006, SEC.78 and P.L.57-2006, SEC.78.

IC 28-14-7.5-3

Appointment of conservator; bond or security

Sec. 3. (a) The department may appoint a conservator for a corporate fiduciary if the department determines that:

(1) one (1) or more grounds for the appointment of a receiver under IC 28-1-3.1-2(a) exist with respect to the corporate fiduciary; or

(2) the appointment of a conservator is necessary to conserve the assets of the corporate fiduciary for the benefit of:

(A) creditors of the corporate fiduciary;

(B) the beneficiaries of trusts and other fiduciary accounts administered by the corporate fiduciary; or

(C) other persons for whom the corporate fiduciary acts in a fiduciary capacity.

(b) A conservator appointed under this section shall give any bond or security that the department considers appropriate.

(c) The department may appoint any competent and disinterested person as a conservator under this section.

As added by P.L.10-2006, SEC.78 and P.L.57-2006, SEC.78.

IC 28-14-7.5-4

Reimbursement of department; administrative expenses; payment from assets

Sec. 4. (a) A conservator appointed by the department under this chapter shall reimburse the department for all amounts expended by the department in connection with the conservatorship. Amounts reimbursed to the department under this subsection shall be paid from the assets of the corporate fiduciary as administrative expenses. Upon approval of the department, the conservator shall pay all other administrative expenses of the conservatorship from the assets of the corporate fiduciary.

(b) Administrative expenses described in this section constitute a first charge against the assets of the corporate fiduciary. The conservator shall pay the administrative expenses in full before any:

(1) final distribution of the corporate fiduciary's assets; or

(2) payments to any person described in section 3(a)(2) of this chapter.

As added by P.L.10-2006, SEC.78 and P.L.57-2006, SEC.78.

IC 28-14-7.5-5

Possession of books, records, and assets; conservation of assets; powers and obligations of conservator; rights of parties

Sec. 5. (a) Under the direction of the department, a conservator appointed under this chapter shall:

(1) take possession of the books, records, and assets of the corporate fiduciary; and

(2) take any action necessary to conserve the assets of the corporate fiduciary pending:

(A) a liquidation under IC 28-1-3.1; or

(B) other disposition of the corporate fiduciary's business as provided by law.

(b) A conservator appointed under this chapter:

(1) has all the rights, powers, and privileges of a receiver appointed under IC 28-1-3.1, except the power to liquidate a corporate fiduciary; and

(2) is subject to those obligations and liabilities to which a receiver is subject, to the extent the obligations and liabilities are consistent with this chapter.

(c) Throughout the time a conservator is in possession of a corporate fiduciary under this chapter, the rights of all parties with respect to the corporate fiduciary are the same as if a receiver had been appointed under IC 28-1-3.1.

As added by P.L.10-2006, SEC.78 and P.L.57-2006, SEC.78.

IC 28-14-7.5-6

Amounts available to creditors and beneficiaries; assets received after placement in conservatorship

Sec. 6. (a) While a corporate fiduciary is in conservatorship under this chapter, the department may require the conservator to set aside and make available for payment to any persons described in section 3(a)(2) of this chapter, on a pro rata basis, any amounts that, in the opinion of the department, may be safely and prudently used for such payments.

(b) Any assets received or acquired after a corporate fiduciary is placed in conservatorship under this chapter shall be:

(1) kept in cash;

(2) invested in direct obligations of the United States; or

(3) deposited in depository institutions designated by the department.

As added by P.L.10-2006, SEC.78 and P.L.57-2006, SEC.78.

IC 28-14-7.5-7

Loans in aid of operation or reorganization; security

Sec. 7. With the prior approval of the department, a conservator appointed under this chapter may borrow money as necessary or

expedient to aid in the operation or reorganization of the corporate fiduciary. Any loan obtained by the conservator under this section may be secured by the pledge or mortgage of, or through a lien upon or security interest in, any assets:

(1) belonging to the corporate fiduciary; and

(2) not held in trust for the benefit of another person.

As added by P.L.10-2006, SEC.78 and P.L.57-2006, SEC.78.

IC 28-14-7.5-8

Termination of conservatorship; appointment of receiver; liquidation

Sec. 8. (a) The department may:

(1) terminate a conservatorship ordered under this chapter; and

(2) permit the corporate fiduciary subject to the conservatorship to resume the transaction of the corporate fiduciary's business, subject to any terms, conditions, restrictions, and limitations that the department may prescribe;

if the department is satisfied that a termination of the conservatorship may be done safely and is in the public interest.

(b) Subject to subsection (c), the department may:

(1) terminate a conservatorship ordered under this chapter; and

(2) apply for the appointment of a receiver for the corporate fiduciary under IC 28-1-3.1;

if the department determines that the appointment of a receiver for the corporate fiduciary is in the public interest.

(c) If the department determines that the liquidation of a corporate fiduciary placed in conservatorship under this chapter is in the public interest, the department shall:

(1) terminate the conservatorship ordered under this chapter; and

(2) apply for the appointment of a receiver for the corporate fiduciary under IC 28-1-3.1.

As added by P.L.10-2006, SEC.78 and P.L.57-2006, SEC.78.

IC 28-14-7.5-9

Adoption of rules

Sec. 9. The department may adopt rules under IC 4-22-2 to implement this chapter.

As added by P.L.10-2006, SEC.78 and P.L.57-2006, SEC.78.

IC 28-14-8

Chapter 8. Rule Making

IC 28-14-8-1

Rules

Sec. 1. The department may adopt rules under IC 4-22-2 or policies to administer this article.

As added by P.L.262-1995, SEC.90.

IC 28-15

ARTICLE 15. SAVINGS ASSOCIATIONS

IC 28-15-1

Chapter 1. Definitions

IC 28-15-1-1

Applicability of definitions

Sec. 1. The definitions in this chapter apply throughout IC 28-15, except where the context requires otherwise.

As added by P.L.193-1997, SEC.2.

IC 28-15-1-2

"Automated teller machine"

Sec. 2. "Automated teller machine" means unmanned electronic or mechanical equipment that performs routine financial transactions for the public.

As added by P.L.193-1997, SEC.2.

IC 28-15-1-3

"Branch office"

Sec. 3. "Branch office" means any office, agency, mobile unit, messenger service, or other place of business at which deposits are received, checks paid, or money lent. However, the term does not include:

(1) the principal office of a savings association;

(2) an automated teller machine;

(3) a night depository; or

(4) a temporary facility for a savings association as provided in IC 28-2-13-22.5.

As added by P.L.193-1997, SEC.2.

IC 28-15-1-4

"Department"

Sec. 4. "Department" refers to the department of financial institutions.

As added by P.L.193-1997, SEC.2.

IC 28-15-1-5

"Deposit account"

Sec. 5. (a) "Deposit account":

(1) means the total monetary interest of a depositor in a savings association; and

(2) consists of the withdrawal value of such interest.

(b) For the purposes of IC 28, a "share account" in a share account association organized and existing before January 1, 1997, has the same meaning as a deposit account.

As added by P.L.193-1997, SEC.2.

IC 28-15-1-6

"Deposit association"

Sec. 6. "Deposit association" means any savings association governed by its members.

As added by P.L.193-1997, SEC.2.

IC 28-15-1-7

"Depositor"

Sec. 7. "Depositor" means a person who owns a withdrawable interest in an account or deposit in a savings association.

As added by P.L.193-1997, SEC.2.

IC 28-15-1-8

"Member"

Sec. 8. "Member" means:

(1) any depositor in a deposit association or owner of a share account in a share account association; and

(2) unless otherwise provided by the articles of incorporation, any debtor.

As added by P.L.193-1997, SEC.2.

IC 28-15-1-9

"Mutual association"

Sec. 9. (a) "Mutual association" means a nonstock savings association that is governed by members.

(b) The term includes a deposit association or share account association organized and existing before January 1, 1997.

As added by P.L.193-1997, SEC.2.

IC 28-15-1-9.8

"Primary federal regulator"

Sec. 9.8. "Primary federal regulator" means the federal agency primarily responsible for the regulation of:

(1) savings associations; or

(2) savings association holding companies;

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

As added by P.L.27-2012, SEC.110.

IC 28-15-1-10

"Property improvement loan"

Sec. 10. "Property improvement loan" means a loan to the owners of real estate, the proceeds of which are used to improve or equip real estate or a structure upon it.

As added by P.L.193-1997, SEC.2.

IC 28-15-1-11

"Savings association"

Sec. 11. "Savings association" means any:

(1) building and loan association;

(2) savings and loan association;

(3) rural loan and savings association; or

(4) guaranty loan and savings association;

organized and operating under the laws of Indiana, whether in stock or mutual form.

As added by P.L.193-1997, SEC.2.

IC 28-15-1-12

"Share account"

Sec. 12. "Share account" in a share account association organized and existing before January 1, 1997, has the same meaning as a deposit account.

As added by P.L.193-1997, SEC.2.

IC 28-15-1-13

"Share account association"

Sec. 13. "Share account association" means any savings association that has accounts representing interests in the shares of the savings association (referred to in this chapter as share accounts).

As added by P.L.193-1997, SEC.2.

IC 28-15-1-14

"Stock association"

Sec. 14. "Stock association" means a savings association owned by holders of capital stock.

As added by P.L.193-1997, SEC.2.

IC 28-15-1-15

"Unimpaired capital and unimpaired surplus"

Sec. 15. "Unimpaired capital and unimpaired surplus" means capital and surplus as that term is defined in 12 CFR 3.100.

As added by P.L.193-1997, SEC.2.

IC 28-15-2

Chapter 2. Powers of Savings Associations

IC 28-15-2-1

Enumerated powers; purchasing and holding life insurance

Sec. 1. (a) Savings associations may do the following:

(1) Accept deposit accounts.

(2) Issue evidence of deposit account ownership.

(3) Declare and distribute earnings to members.

(4) Pay, in part or in full, withdrawal requests of deposit accounts.

(5) Subject to the provisions and restrictions of 12 U.S.C. 84 and 12 CFR 32:

(A) Make loans to members on the security of deposit accounts.

(B) Make property improvement loans.

(C) Make other loans as provided under IC 28-15-8.

(D) Make mortgage loans.

(E) Accept additional collateral on mortgage loans.

(F) Purchase and sell loans.

(G) Negotiate loan servicing agreements.

(H) Purchase and sell participating interests in loans.

(I) Issue letters of credit with specific expiration dates.

(J) Make secured or unsecured loans, which are partially insured or guaranteed in any manner by any state of the United States, the United States government, or any of its agencies or government sponsored enterprises.

(K) Purchase commercial paper that is denominated in United States currency and that:

(i) is rated by at least one (1) nationally recognized investment rating service in one (1) of the two (2) highest grades; or

(ii) meets another standard of creditworthiness determined to be appropriate by the director.

(L) Make, purchase, or participate in alternative mortgage loans as provided in IC 28-15-11.

(6) Acquire and sell real estate in satisfaction of debts previously contracted.

(7) Acquire real estate for the convenient transaction of its business. A savings association has the same powers under this subdivision as a bank or trust company has under IC 28-1-11-5.

(8) Notwithstanding any other law, establish, maintain, or relocate one (1) or more branch offices by following the provisions of IC 28-2-13, IC 28-2-17, or IC 28-2-18 as if the savings association were a bank.

(9) Become a member in any agency or instrumentality of the federal government. For the purposes of this subdivision, membership in an agency or instrumentality of the federal government may include:

(A) purchasing stock;

(B) purchasing notes and debentures; or
(C) borrowing money.

(10) Subject to any limitations imposed by the department through policy:

(A) invest the money deposited in the savings association in the shares of the capital stock, bonds, debentures, notes, or other obligations of a federal home loan bank of the United States;

(B) become a member of the federal home loan bank of the district in which Indiana is located or an adjoining district;

(C) borrow money from:

(i) a federal home loan bank described in clause (B);
(ii) the Federal Deposit Insurance Corporation; or
(iii) any other corporation;

(D) transfer, assign to, and pledge with a federal home loan bank described in clause (B), the Federal Deposit Insurance Corporation, or any other corporation any of the bonds, notes, contracts, mortgages, securities, or other property of the savings association held or acquired as security for the payment of loans entered into under clause (C); and

(E) exercise all rights, powers, and privileges conferred upon, and do all things and perform all acts required of, members or shareholders of a federal home loan bank by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449).

(11) Subject to the provisions and restrictions of 12 U.S.C. 24 and 12 CFR 1, invest in the following types of securities:

(A) Bonds, notes, certificates, and other valid obligations of the United States government or any agency of the United States government.

(B) Accounts offered by federally insured banks, savings banks, and savings associations.

(C) Bonds, notes, or other evidences of indebtedness that are general obligations supported by the full faith and credit of any state in the United States or any city, town, or other political subdivision in any state in the United States if the obligations:

(i) have been assigned one (1) of the four (4) highest grades by a nationally recognized investment rating service; or
(ii) meet another standard of creditworthiness determined to be appropriate by the director.

(D) Shares of stock of a subsidiary that does not exercise a power or engage in any activity that is not authorized for the savings association. The investment power granted by this subdivision is separate from the investment power granted by IC 28-15-9.

(E) Corporate debt securities that are denominated in United States currency and that:

(i) are rated by at least one (1) nationally recognized

investment rating service in one (1) of the four (4) highest grades; or

(ii) meet another standard of creditworthiness determined to be appropriate by the director.

Corporate debt securities in which a savings association invests under this clause must be convertible into stock at the sole option of the holder, and a savings association is prohibited from exercising the conversion option.

(F) Shares of open end investment companies that are eligible for purchase by national banks.

(G) Bankers' acceptances that are eligible for purchase by national banks.

(12) For the purpose of:

(A) check and deposit sorting and posting;

(B) computation and posting of interest and other credits and charges;

(C) preparation and mailing of checks, statements, notices, and similar items; or

(D) other clerical, bookkeeping, accounting, statistical, or similar functions performed by a savings association;

invest in a corporation organized in any state to perform those functions for two (2) or more savings associations, each of which owns a portion of the capital stock of the corporation. The total investment of a savings association under this subdivision may not exceed ten percent (10%) of the capital and surplus of the savings association. A savings association may not invest in this type of corporation unless the corporation furnishes assurances to the department that it will subject itself to examination by the department to the same extent as if the services were performed by the savings association.

(13) Lend money to other savings associations:

(A) the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(B) that are incorporated and operating under the laws of any state or of the United States.

(14) Borrow money and mortgage or pledge its property to secure payment.

(15) Issue subordinated notes or debentures.

(16) Assess and collect interest, fees, and other charges.

(17) Insure its deposit accounts with the Federal Deposit Insurance Corporation or its successor.

(18) Act as an agent for the United States or its instrumentalities.

(19) Accept property for safe keeping or escrow.

(20) Rent or lease safe deposit boxes.

(21) Issue and sell checks, drafts, money orders, and other instruments for the transmission or payment of money.

(22) Exercise all the powers that:

(A) are incidental and proper; or

(B) may be necessary and usual;

in carrying on the business of the savings association.

(23) Purchase or construct buildings, hold legal title to the buildings, and lease the buildings for public purposes to municipal corporations or other public authorities that have resources sufficient to make payment of all rentals as they become due. Each lease agreement entered into under this subdivision must provide that, upon expiration, the lessee will become the owner of the building.

(24) Open or establish automated teller machines at any location. An automated teller machine opened or established under this subdivision may be owned and operated individually or jointly on a cost sharing or fee basis.

(25) Act:

(A) in any fiduciary capacity in which a bank or trust company is permitted to act under this title; and

(B) as an agent for the sale of real estate, without bond or other security.

(26) Accept and maintain demand deposit accounts if the savings association is insured by the Federal Deposit Insurance Corporation or its successor.

(27) Without the approval of the department, to the extent authorized by the board of directors of the savings association, establish or maintain agencies that:

(A) only service and originate, but do not approve, loans and contracts; or

(B) manage or sell real estate owned by the savings association.

An agency established or maintained under this subdivision may offer any services not referred to in this subdivision with the approval of the department, except for accepting payment on savings accounts. An agency shall maintain records of all business it transacts and transmit copies to a branch or home office of the savings association.

(b) Subject to any limitations or restrictions that the department or a federal regulator may impose by regulation, rule, policy, or guidance, a savings association may purchase and hold life insurance as follows:

(1) Life insurance purchased or held in connection with employee compensation or benefit plans approved by the savings association's board of directors.

(2) Life insurance purchased or held to recover the cost of providing preretirement or postretirement employee benefits approved by the savings association's board of directors.

(3) Life insurance on the lives of borrowers.

(4) Life insurance held as security for a loan.

(5) Life insurance that a national bank may purchase or hold under 12 U.S.C. 24 (Seventh).

As added by P.L.193-1997, SEC.2. Amended by P.L.258-2003, SEC.30; P.L.10-2006, SEC.79 and P.L.57-2006, SEC.79; P.L.89-2011, SEC.73; P.L.27-2012, SEC.111.

IC 28-15-2-1.5
Profit or commission on sales or purchases; necessity of specific authorization; surcharge

Sec. 1.5. (a) Except for interest at the legal rate on a loan or advancement, a savings association may not, directly or indirectly, receive a profit or commission from the sale to or purchase from an estate, a guardianship, or a trust of which the savings association is the fiduciary unless the profit or commission is authorized by agreement with the creator of the trust or a court with jurisdiction over the estate, guardianship, or trust.

(b) A savings association that receives a profit or commission in violation of subsection (a) shall be surcharged an amount equal to the profit or commission. In addition, a court with jurisdiction over the estate, guardianship, or trust may remove the savings association as the fiduciary.

As added by P.L.192-2003, SEC.8.

IC 28-15-2-2
Request to exercise rights and privileges granted federal savings associations; appeal

Sec. 2. (a) As used in this section, "rights and privileges" means the power:

(1) to:
(A) create;
(B) deliver;
(C) acquire; or
(D) sell;
a product, a service, or an investment that is available to or offered by; or
(2) to engage in mergers, consolidations, reorganizations, or other activities or to exercise other powers authorized for;

federal savings associations domiciled in Indiana.

(b) Subject to this section, savings associations may exercise the rights and privileges that are granted to federal savings associations.

(c) A savings association that intends to exercise any rights and privileges that are:

(1) granted to federal savings associations; but
(2) not authorized for savings associations under:
(A) the Indiana Code (except for this section); or
(B) a rule adopted under IC 4-22-2;

shall submit a letter to the department, describing in detail the requested rights and privileges granted to federal savings associations that the savings association intends to exercise. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter.

(d) The department shall promptly notify the requesting savings association of its receipt of the letter submitted under subsection (c). Except as provided in subsection (f), the savings association may exercise the requested rights and privileges sixty (60) days after the date on which the department receives the letter unless otherwise

notified by the department.

(e) The department may deny the requested rights and privileges if the department finds that:

(1) federal savings associations in Indiana do not possess the requested rights and privileges;

(2) the exercise of the requested rights and privileges by the savings association would adversely affect the safety and soundness of the savings association;

(3) the exercise of the requested rights and privileges by the savings association would result in an unacceptable curtailment of consumer protection; or

(4) the failure of the department to approve the requested rights and privileges will not result in a competitive disadvantage to the savings association.

(f) The sixty (60) day period referred to in subsection (d) may be extended by the department based on a determination that the savings association letter raises issues requiring additional information or additional time for analysis. If the sixty (60) day period is extended under this subsection, the savings association may exercise the requested rights and privileges only if the savings association receives prior written approval from the department. However:

(1) the department must:

(A) approve or deny the requested rights and privileges; or

(B) convene a hearing;

not later than sixty (60) days after the department receives the savings association's letter; and

(2) if a hearing is convened, the department must approve or deny the requested rights and privileges not later than sixty (60) days after the hearing is concluded.

(g) The exercise of rights and privileges by a savings association in compliance with and in the manner authorized by this section does not constitute a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(h) If a savings association receives approval to exercise the requested rights and privileges granted to national savings associations domiciled in Indiana, the department shall determine by order whether all savings associations may exercise the same rights and privileges. In making the determination required by this subsection, the department must ensure that the exercise of the rights and privileges by all savings associations will not:

(1) adversely affect their safety and soundness; or

(2) unduly constrain Indiana consumer protection provisions.

(i) If the department denies the request of a savings association under this section to exercise any rights and privileges that are granted to national savings associations, the company may appeal the decision of the department to the circuit court with jurisdiction in the county in which the principal office of the savings association is located.

As added by P.L.193-1997, SEC.2. Amended by P.L.73-2004, SEC.44; P.L.213-2007, SEC.105; P.L.217-2007, SEC.103;

P.L.35-2010, SEC.206.

IC 28-15-2-3
Denial of rights and privileges; appeal

Sec. 3. If the department denies the request of a savings association under section 2 of this chapter to exercise any rights and privileges that are granted to federal savings associations, the savings association may appeal the decision of the department to the circuit court with jurisdiction in the county in which the principal office of the savings association is located. In an appeal under this section, the court shall determine the matter de novo.
As added by P.L.193-1997, SEC.2.

IC 28-15-3

Chapter 3. Powers and Duties of Deposit Associations

IC 28-15-3-1

Applicability of statutes relating to share account associations

Sec. 1. Deposit associations:

(1) continue to possess all the rights, powers, privileges, and immunities afforded by IC 28-1 and any other statutes relating to share account associations; and

(2) are subject to all the duties and obligations imposed upon share account associations by IC 28-1 or other statutes relating to share account associations.

As added by P.L.193-1997, SEC.2.

IC 28-15-3-2

Share account association; conversion to deposit association

Sec. 2. A share account association may convert to a deposit association by amending its articles of incorporation in accordance with IC 28-13-14.

As added by P.L.193-1997, SEC.2.

IC 28-15-4

Chapter 4. Deposit Accounts

IC 28-15-4-1

Depositors

Sec. 1. A person becomes a depositor when the person is accepted by the savings association.

As added by P.L.193-1997, SEC.2.

IC 28-15-4-2

Terms and conditions

Sec. 2. The board of directors of a savings association may determine the terms and conditions of accepting deposits and making withdrawals.

As added by P.L.193-1997, SEC.2.

IC 28-15-4-3

Assessable amount

Sec. 3. All deposit accounts in a mutual association are assessable only to the extent of their withdrawal value.

As added by P.L.193-1997, SEC.2.

IC 28-15-4-4

Eligible investments for trust funds

Sec. 4. (a) Deposit accounts are eligible investments for trust funds administered by a savings association.

(b) As a fiduciary, a savings association must comply with the provisions of IC 30-4-3-7.

(c) A fiduciary has all rights and privileges of a member of a mutual savings association except the right to hold office or serve on the board of the savings association.

As added by P.L.193-1997, SEC.2.

IC 28-15-5

Chapter 5. Withdrawal of Deposit Accounts

IC 28-15-5-1

Advance notice

Sec. 1. A savings association may require advance notice of withdrawal.

As added by P.L.193-1997, SEC.2.

IC 28-15-5-2

Depositor; status after withdrawal request

Sec. 2. A member who has made a deposit withdrawal request does not cease to be a depositor until the request is paid.

As added by P.L.193-1997, SEC.2.

IC 28-15-5-3

Methods of withdrawing deposits

Sec. 3. All persons, regardless of age, may become depositors in a savings association and shall be subject to the same duties and liabilities respecting their deposits. Whenever a deposit is accepted by a savings association 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 it is signed by the depositor, and constitutes a valid release and discharge to the savings association 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.).

As added by P.L.81-2001, SEC.8.

IC 28-15-6

Chapter 6. Lending Limits

IC 28-15-6-1

Limits on loans made to single borrower; derivative transactions

Sec. 1. (a) The following limits apply to the loans that a savings association may make to one (1) borrower:

(1) Loans that a savings association may make to one (1) borrower are restricted by the provisions of 12 U.S.C. 84 and 12 CFR 32.

(2) Notwithstanding subdivision (1), a savings association may loan to one (1) borrower no more than the lesser of:

(A) an amount equal to four percent (4%) of the assets of the savings association; or

(B) five hundred thousand dollars ($500,000).

(3) Notwithstanding subdivisions (1) and (2), a savings association may make loans to one (1) borrower to develop domestic residential housing units in an amount equal to or less than thirty percent (30%) of the savings association's unimpaired capital and surplus if:

(A) the final purchase price of each single family dwelling unit whose development is financed under this section does not exceed five hundred thousand dollars ($500,000);

(B) loans made under this subdivision to all borrowers do not in the aggregate exceed one hundred fifty percent (150%) of the savings association's unimpaired capital and surplus; and

(C) the loans made under this subdivision comply with the applicable loan to value requirements that apply to federal savings associations.

(b) For purposes of any lending limits set forth under this article with respect to savings associations, the total loans and extensions of credit by a savings association includes any credit exposure to a person arising from a derivative transaction (as defined in 12 U.S.C. 84(b)(3)) between the savings association and the person.

As added by P.L.193-1997, SEC.2. Amended by P.L.27-2012, SEC.112.

IC 28-15-7

Chapter 7. Loans on Deposit Accounts

IC 28-15-7-1

Note and pledge required

Sec. 1. Each deposit account loan of a savings association must be evidenced by a note and a pledge of the deposit account.

As added by P.L.193-1997, SEC.2.

IC 28-15-8

Chapter 8. Other Types of Loans

IC 28-15-8-1

Transactions regarding interests in certain loans

Sec. 1. A savings association may make, buy, sell, or hold interests in the following loans:

(1) Mobile home loans.

(2) Real estate mortgage loans on real property or leasehold improvements insured or guaranteed by any state of the United States, the United States government, or any of the agencies or government sponsored enterprises of the United States government.

(3) Loans for construction and development of residential or commercial property.

(4) Secured or unsecured consumer loans or leases.

(5) Secured or unsecured commercial loans or leases.

(6) Education loans.

As added by P.L.193-1997, SEC.2.

IC 28-15-8-2

Loans on security of certain property interests

Sec. 2. (a) Subject to such additional limitations as the department may prescribe, savings associations may make loans on the security of any of the following:

(1) Real estate.

(2) A leasehold or subleasehold interests.

(3) An assignment or transfer of stock certificates or other evidence of the borrower's ownership interest in a corporation formed for the cooperative ownership of real estate.

(b) A savings association may make loans secured by real estate in compliance with 12 U.S.C. 1828(O) as implemented by 12 CFR 365.

(c) Real estate appraisals shall be performed concerning loans authorized by this section in compliance with 12 CFR 323.

As added by P.L.193-1997, SEC.2.

IC 28-15-9

Chapter 9. Formation of and Investment in Service Corporations

IC 28-15-9-1

Limitations

Sec. 1. A savings association may form and invest in a service corporation to the same extent and with the same limitations as a federally chartered savings association, as provided for by 12 CFR 559.

As added by P.L.193-1997, SEC.2. Amended by P.L.215-1999, SEC.15.

IC 28-15-9-2

Notice of establishment or acquisition of or new activity through service corporation

Sec. 2. A savings association shall notify the department:

(1) not less than thirty (30) days before the establishment or acquisition of any service corporation; and

(2) not less than thirty (30) days before the commencement of any new activity through a service corporation.

As added by P.L.193-1997, SEC.2.

IC 28-15-10

Chapter 10. Interstate Acquisition of Savings Associations

IC 28-15-10-1

"Foreign savings association" defined

Sec. 1. As used in this chapter, "foreign savings association" means:

(1) a savings association:

(A) that is organized or reorganized under the laws of any other state or territory of the United States, including the District of Columbia; and

(B) whose home office is located outside Indiana; or

(2) a federal savings association whose home office is located outside Indiana.

As added by P.L.193-1997, SEC.2.

IC 28-15-10-2

"Foreign savings association holding company" defined

Sec. 2. As used in this chapter, "foreign savings association holding company" means a savings association holding company whose principal place of business is located outside Indiana.

As added by P.L.193-1997, SEC.2.

IC 28-15-10-3

"Indiana savings association" defined

Sec. 3. As used in this chapter, "Indiana savings association" means:

(1) a savings association whose home office is located in Indiana; or

(2) a federal savings and loan association whose home office is located in Indiana.

As added by P.L.193-1997, SEC.2.

IC 28-15-10-4

"Indiana savings association holding company" defined

Sec. 4. As used in this chapter, "Indiana savings association holding company" means a savings association holding company whose principal place of business is located in Indiana.

As added by P.L.193-1997, SEC.2.

IC 28-15-10-5

Indiana savings association holding company; acquisitions by

Sec. 5. (a) An Indiana savings association holding company is entitled to acquire one (1) or more:

(1) foreign savings associations; or

(2) foreign savings association holding companies;

after the department grants the application of the holding company for approval of the proposed acquisition.

(b) The department shall approve or deny an application for approval of a proposed acquisition under this section not more than

ninety (90) days after the department receives the application, unless the department needs additional time for consideration of the application.
As added by P.L.193-1997, SEC.2.

IC 28-15-10-6
Foreign savings association holding company; acquisitions by

Sec. 6. (a) A foreign savings association holding company is entitled to acquire one (1) or more:

(1) Indiana savings associations; or
(2) Indiana savings association holding companies;

after the department grants the application of the foreign savings association holding company for approval of the proposed acquisition.

(b) The department shall approve or deny an application for approval of a proposed acquisition under this section not more than ninety (90) days after the department receives the application, unless the department needs additional time for consideration of the application.
As added by P.L.193-1997, SEC.2.

IC 28-15-10-7
Acquisition of foreign savings associations and holding companies

Sec. 7. (a) The acquisition of a foreign savings association by an Indiana savings association holding company under section 5 of this chapter includes the acquisition of all the branches owned by the foreign savings association.

(b) The acquisition of the holding company of a foreign savings association by an Indiana savings association holding company includes the acquisition of:

(1) all the subsidiaries of the acquired foreign savings association holding company; and
(2) all the branches of the subsidiaries of the foreign savings association holding company.

(c) After an acquisition under section 5 of this chapter:

(1) an acquiring Indiana savings association;
(2) an acquired foreign savings association; and
(3) the subsidiaries of an acquired foreign savings association holding company;

have the same branching rights as a foreign savings association.
As added by P.L.193-1997, SEC.2.

IC 28-15-10-8
Acquisition of Indiana savings associations

Sec. 8. (a) The acquisition of an Indiana savings association under section 6 of this chapter includes the acquisition of all subsidiaries of the Indiana savings association.

(b) The acquisition of the holding company of an Indiana savings association under this chapter includes the acquisition of:

(1) the Indiana savings association subsidiaries of the acquired

Indiana savings association holding company; and

(2) all branches of the Indiana savings association subsidiaries of the acquired Indiana savings association holding company.

(c) After an acquisition under section 6 of this chapter:

(1) an acquiring foreign savings association;

(2) an acquired Indiana savings association; and

(3) the subsidiaries of an acquired Indiana savings association holding company;

have the same branching rights as an Indiana savings association.

As added by P.L.193-1997, SEC.2.

IC 28-15-10-9

Applications for acquisitions; required filings

Sec. 9. (a) If federal law requires a savings association or savings association holding company to submit an application to a federal agency before an acquisition under this chapter, the savings association or savings association holding company must comply with federal law and file with the department:

(1) a copy of all papers filed with the federal agency; and

(2) when issued, a copy of the approval or other action taken by the federal agency regarding the application.

(b) For purposes of an acquisition under this chapter, compliance with federal law requiring the submission and approval of a permit authorizing the acquisition constitutes compliance with the requirements of this chapter.

As added by P.L.193-1997, SEC.2.

IC 28-15-11

Chapter 11. Alternative Mortgage Loans of Savings Associations

IC 28-15-11-1

"Adjustable mortgage loan"

Sec. 1. As used in this chapter, "adjustable mortgage loan" means a loan:

(1) whose terms permit adjustments to the interest rate that:

(A) reflect the movement of the money cost index; and

(B) are implemented through changes in the monthly payment amounts, adjustments to the outstanding principal loan balance, or changes in the loan term; and

(2) whose term does not exceed forty (40) years.

As added by P.L.193-1997, SEC.2.

IC 28-15-11-2

"Alternative mortgage loan"

Sec. 2. As used in this chapter, "alternative mortgage loan" means a mortgage loan authorized by this chapter.

As added by P.L.193-1997, SEC.2.

IC 28-15-11-3

"Association"

Sec. 3. As used in this chapter, "association" refers to a savings association (as defined in IC 28-15-1-11).

As added by P.L.193-1997, SEC.2.

IC 28-15-11-4

"Federal savings association"

Sec. 4. As used in this chapter, "federal savings association" means any federal savings association or federal savings bank chartered or regulated under Section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464).

As added by P.L.193-1997, SEC.2. Amended by P.L.27-2012, SEC.113.

IC 28-15-11-5

"Graduated payment mortgage loan"

Sec. 5. As used in this chapter, "graduated payment mortgage loan" or "GPM loan" means a mortgage loan under which:

(1) the scheduled repayments begin at a level lower than that of a comparable standard mortgage loan and rise to a point determined by the loan documents; and

(2) the period of the rise, the rate of increase, and the interest rate are fixed in the loan documents.

As added by P.L.193-1997, SEC.2.

IC 28-15-11-6

"Loan documents"

Sec. 6. As used in this chapter, "loan documents" means the documents evidencing a loan transaction.
As added by P.L.193-1997, SEC.2.

IC 28-15-11-7
"Money cost index"

Sec. 7. As used in this chapter, "money cost index" means any of the following:

(1) The Federal Cost of Funds Index calculated and made available by the Federal Home Loan Mortgage Corporation on or about the twentieth day of each month.

(2) The monthly average of weekly auction rates on United States Treasury bills with a maturity of three (3) months or six (6) months, as published in the Federal Reserve Bulletin and made available by the Federal Reserve Board each month.

(3) The monthly average yield on United States Treasury securities adjusted to a constant maturity of one (1), two (2), three (3), or five (5) years, as published in the Federal Reserve Bulletin and made available by the Federal Reserve Board each month.

(4) Any rate that is designated by the department.

As added by P.L.193-1997, SEC.2. Amended by P.L.89-2011, SEC.74; P.L.27-2012, SEC.114.

IC 28-15-11-8
"Mortgage loan"

Sec. 8. As used in this chapter, "mortgage loan" means:

(1) a loan:

(A) secured by a mortgage on real estate that is improved by a dwelling intended for occupancy by at least one (1) and not more than four (4) families; and

(B) that includes:

(i) the note;

(ii) the mortgage; and

(iii) any other documents constituting the loan transaction; or

(2) a loan:

(A) secured by a mortgage on real estate that is improved by a combination home and business building; and

(B) that includes:

(i) the note;

(ii) the mortgage; and

(iii) any other documents constituting the loan transaction.

As added by P.L.193-1997, SEC.2.

IC 28-15-11-9
"Reverse annuity mortgage loan" or "RAM loan"

Sec. 9. As used in this chapter, "reverse annuity mortgage loan" or "RAM loan" means a mortgage loan that:

(1) provides periodic payments to the borrower based on the

accumulated equity in the real estate securing the loan, with payments made directly by the lender or through the purchase of an annuity from an insurance company; and

(2) becomes due either:

(A) at a specified date; or

(B) on the occurrence of a specified event, such as a sale of the real estate securing the loan or the death of the borrower.

As added by P.L.193-1997, SEC.2.

IC 28-15-11-10

"Rollover mortgage"

Sec. 10. As used in this chapter, "rollover mortgage" means a mortgage loan that:

(1) is secured by a first mortgage on real estate improved by:

(A) a dwelling intended for occupancy by at least one (1) and not more than four (4) families; or

(B) a combination home and business building; and

(2) may be subject to rate adjustments at regularly scheduled times.

As added by P.L.193-1997, SEC.2.

IC 28-15-11-11

"Standard mortgage loan"

Sec. 11. As used in this chapter, "standard mortgage loan" means a loan under which the principal and interest are paid in equal monthly installments for a period of not more than forty (40) years.

As added by P.L.193-1997, SEC.2.

IC 28-15-11-12

Regulation of graduated payment mortgage loans

Sec. 12. (a) Graduated payment mortgage (GPM) loans are subject to the following:

(1) Interest only may be paid for five (5) years, or increases in mortgage payments may be made for periods of not more than ten (10) years within the following maximum rates of increase:

(A) Seven and one-half percent (7.5%) annually for five (5) years or less.

(B) Six and one-half percent (6.5%) annually for six (6) years.

(C) Five and one-half percent (5.5%) annually for seven (7) years.

(D) Four and one-half percent (4.5%) annually for eight (8) years.

(E) Three and one-half percent (3.5%) annually for nine (9) years.

(F) Three percent (3%) annually for ten (10) years.

(2) Payment amounts may be changed annually only after one (1) year following the first regular loan payment.

(b) The borrower may convert a GPM loan into a standard mortgage loan with the same interest rate and maturity if the

borrower is qualified under the normal underwriting standards of the savings association. A savings association may not assess penalties for any conversion.
As added by P.L.193-1997, SEC.2.

IC 28-15-11-13
Repealed
(Repealed by P.L.35-2010, SEC.209.)

IC 28-15-11-14
Regulation of adjustable mortgage loans
Sec. 14. Adjustable mortgage loans are subject to the following:
(1) Adjustments to the principal loan balance are permissible only if:
(A) the initial payment amount is sufficient to fully amortize the loan at the beginning of the loan term; and
(B) the payment amount is adjusted at least every five (5) years to amortize the loan at the current interest rate and principal loan balance over the remaining term of the loan.
(2) Prepayment in full or in part shall be allowed without penalty.
(3) Adjustments to the interest rate must correspond directly to the movement of the money cost index, subject to such rate-adjustment limitations, if any, as a savings association may provide. For the purposes of this subdivision:
(A) the initial money cost index value is the value of the money cost index most recently available within six (6) months before the date of the closing of the loan; and
(B) the interest rate at adjustment shall reflect the difference, in reference to the interest rate of the loan on the date of closing, between the initial money cost index value and either:
(i) the money cost index value most recently available as of the date of rate adjustment, if the payment is not simultaneously adjusted; or
(ii) the money cost index value most recently available as of the date of notification of a payment adjustment.
However, when the movement of the money cost index permits an interest rate increase, the savings association may decline to increase the interest rate by the indicated amount. The savings association may decrease the interest rate at any time.
(4) The borrower may not be charged any costs or fees in connection with regularly scheduled adjustments to:
(A) the interest rate;
(B) the payment;
(C) the outstanding principal loan balance; or
(D) the loan term.
As added by P.L.193-1997, SEC.2.

IC 28-15-11-15

Restrictions on graduated payment adjustable mortgage loans

Sec. 15. A savings association may make graduated payment adjustable mortgage loans subject to the requirements set forth in section 14 of this chapter, except that:

(1) the amount of the scheduled monthly payment at the beginning of the loan may be insufficient to fully amortize the loan; and

(2) during a period of not more than ten (10) years beginning with the closing date of the loan, the scheduled payments must rise sufficiently to amortize the loan at the then existing interest rate and principal balance over the then remaining loan term, and thereafter the monthly payments must be adjusted every five (5) years to a level sufficient to fully amortize the loan.

As added by P.L.193-1997, SEC.2.

IC 28-15-11-16

Regulation of rollover mortgage loans

Sec. 16. Rollover mortgage loans are subject to the following:

(1) At each scheduled adjustment time, if the loan is not in default, the lender shall make rate adjustments available for the amount of the outstanding loan.

(2) In adjusting the loan, administrative expenses may not be charged to the borrower.

(3) Adjustments must be at least one (1) year apart.

(4) The lender may not charge a penalty or other assessment for the prepayment of the loan.

(5) The lender and the borrower may agree to increase or decrease the interest rate applicable to the outstanding balance of the loan at each adjustment.

(6) The lender may grant the borrower the option of extending the amortization period for purposes of calculating monthly payments on the loan in accordance with the following rules:

(A) The extension of the amortization period may equal up to one-third (1/3) of the original amortization period, regardless of whether this extends the amortization period beyond thirty (30) years.

(B) To the extent of any extension of the amortization period, the amortization period will be reduced upon a subsequent downward adjustment in the interest rate.

As added by P.L.193-1997, SEC.2.

IC 28-15-11-17

Alternative mortgage loans; required disclosures

Sec. 17. (a) Any statement, disclosure, or notification required by this chapter with respect to an alternative mortgage loan may be made in the form prescribed by the primary federal regulator or its successor for a similar alternative mortgage loan made by a federal savings association.

(b) In addition to the disclosures required by this chapter, the department may adopt rules under IC 4-22-2, including emergency

rules under IC 4-22-2-37.1, or policies that require additional disclosures for alternative mortgage loans.

As added by P.L.193-1997, SEC.2. Amended by P.L.27-2012, SEC.115; P.L.140-2013, SEC.20.

IC 28-15-11-18

Inapplicability of Indiana laws; interest added to principal; lien provided by mortgage

Sec. 18. (a) Subsections (b) and (c) apply to alternative mortgage loans and to similar loans authorized under federal law or regulations for a federal savings association.

(b) Any Indiana laws prohibiting:

(1) the compounding of interest;

(2) capitalizing interest because contracted loan repayments create negative amortization; or

(3) paying interest on interest;

do not apply. For purposes of the application of IC 24-4.5-3 to a loan described in subsection (a), "principal" (as defined in IC 24-4.5-3-107(3)) includes interest unpaid and added to principal because the contracted repayments under the loan do not cover the entire interest due at any time.

(c) The lien of the loan provided by the mortgage and the loan documents:

(1) includes all advances or additions to principal of either principal or interest that are made in accordance with the terms of the loan documents; and

(2) is superior to any lien on the property created after the date the mortgage securing the loan is recorded, other than taxes and special property or taxing district assessments.

As added by P.L.193-1997, SEC.2. Amended by P.L.27-2012, SEC.116.

IC 28-15-12

Chapter 12. Voting Rights of Members

IC 28-15-12-1

Mutual savings association; member entitled to one vote

Sec. 1. (a) In a mutual savings association, each member is entitled at every members' meeting to cast one (1) vote for each:

(1) one hundred dollars ($100); or

(2) fraction of one hundred dollars ($100);

of the total amount paid in on all share or deposit accounts standing in the member's name on the books of the mutual savings association.

(b) Each borrowing member of a mutual savings association who is not a depositor or owner of a share account is entitled at a members' meeting to cast one (1) vote, if the articles of incorporation of the mutual savings association provide the borrowing member the right to vote.

(c) A member of a mutual savings association may not, except as proxy, cast more than fifty (50) votes at an election held by the mutual savings association.

As added by P.L.193-1997, SEC.2.

IC 28-15-13

Chapter 13. Applicability of Corporate Governance Laws

IC 28-15-13-1

References to shareholders and shareholders' meetings

Sec. 1. A reference in IC 28-13-5, IC 28-13-6, IC 28-1-7, IC 28-1-7.1, IC 28-1-8, or IC 28-1-9 to shareholders and shareholders' meetings means, as to a mutual savings association, members and members' meetings.

As added by P.L.193-1997, SEC.2. Amended by P.L.27-2012, SEC.117.

IC 28-15-14

Chapter 14. Merger or Consolidation With Federal Savings and Loan Association

IC 28-15-14-1

Vote required; compliance with laws

Sec. 1. (a) A savings association may be:

(1) merged or consolidated with; or

(2) converted into;

a federal savings and loan association, under the charter of the federal savings and loan association or under a new charter issued to the converted association or the merged or consolidated association, upon a vote of fifty-one percent (51%) or more of the votes cast at a legal meeting of the shareholders and members of the state chartered savings association called to consider the proposed merger, consolidation, or conversion.

(b) A merger, consolidation, or conversion under this section must be accomplished:

(1) in compliance with the laws of the United States relating to the merger, consolidation, or conversion; and

(2) upon terms and conditions prescribed or approved by the Office of the Comptroller of the Currency or its successor.

As added by P.L.193-1997, SEC.2. Amended by P.L.27-2012, SEC.118.

IC 28-15-14-2

Filing requirements

Sec. 2. (a) If a savings association:

(1) merges with;

(2) consolidates with; or

(3) is converted into;

a federal savings and loan association, the savings association shall file with the secretary of state three (3) copies of a certificate executed by a duly constituted federal authority showing the merger, consolidation, or conversion.

(b) Upon the payment of the fees prescribed by law, the secretary of state shall:

(1) note the filing upon each of the copies;

(2) retain one (1) copy in the secretary's office; and

(3) return two (2) copies to the association.

(c) One (1) of the copies returned to a savings association under subsection (b) shall be filed by the savings association with the department and the other copy shall be filed with the recorder of the county in which the principal office of the savings association is located.

(d) Upon completion of the filings required by this section, the savings association ceases to be a corporation under Indiana law, except as provided in section 4 of this chapter.

As added by P.L.193-1997, SEC.2.

IC 28-15-14-3
Effect on resulting federal savings and loan association of merger, consolidation, or conversion

Sec. 3. (a) Upon the effective date of a merger, consolidation, or conversion under sections 1 and 2 of this chapter, all of the assets and property of the state chartered savings association of every kind and character, including:

(1) real, personal, and mixed property;
(2) tangible and intangible property; and
(3) choses in action, rights, and credits that:
(A) the savings association owns; or
(B) would inure to the savings association;

shall immediately, by operation of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of the federal savings and loan association.

(b) A federal savings and loan association referred to in subsection (a) shall have, hold, and enjoy the assets and property of the state chartered savings association after a merger, consolidation, or conversion under sections 1 and 2 of this chapter in its own right, as fully and to the same extent that the assets and property were possessed, held, and enjoyed by the state chartered savings association before the merger, consolidation, or conversion.

(c) After a merger, consolidation, or conversion under sections 1 and 2 of this chapter, the federal savings and loan association is considered a continuation of the entity and identity of the state chartered savings association, and all of the rights and obligations of the savings association remain unimpaired.

(d) The federal association, at the time of the taking effect of the merger, consolidation, or conversion under sections 1 and 2 of this chapter, shall succeed to all of the rights and obligations and the duties and liabilities connected with the state chartered savings association.

As added by P.L.193-1997, SEC.2.

IC 28-15-14-4
Conversion of federal savings and loan association to state chartered savings association

Sec. 4. (a) Subject to regulations prescribed by the Office of the Comptroller of the Currency or its successor, a federal savings and loan association located in Indiana, by resolution approved by its board of directors and adopted by a vote of fifty-one percent (51%) or more of the votes cast at any annual meeting or at any special meeting of its members called to consider the action, may convert itself into a state chartered savings association under this article.

(b) A resolution referred to in subsection (a), when adopted by the members of a federal savings and loan association, must:

(1) designate the names and the number of the directors who will serve as directors of the savings association after the conversion takes effect; and
(2) authorize the directors to execute articles of incorporation.

(c) The articles of incorporation executed under this section must include the contents required by IC 28-12-2-1 except that, instead of disclosing the name and address of each incorporator as required by IC 28-12-2-1(4), the articles must:

(1) indicate that the savings association is incorporated by conversion of a federal savings and loan association into a state chartered savings association; and

(2) state the name of the federal savings and loan association converted under this section.

(d) The department must receive from the federal savings and loan association:

(1) three (3) copies of the resolution, certified by the secretary or assistant secretary of the federal savings and loan association; and

(2) the articles of incorporation, in triplicate, signed and acknowledged by the directors designated under subsection (b)(1).

(e) The department shall approve or disapprove the proposed conversion of a federal savings and loan association into a state chartered savings association under this section. The department may not approve a proposed conversion unless the department, after appropriate investigation or examination, finds all of the following:

(1) That the state chartered savings association resulting from the conversion will operate in a safe, sound, and prudent manner.

(2) That the proposed charter conversion will not result in a state chartered savings association that has:

(A) inadequate capital;

(B) unsatisfactory management; or

(C) poor earnings prospects.

(3) That the management or other principals of the savings association are qualified by character and financial responsibility to control and operate in a legal and proper manner the proposed state chartered savings association.

(4) That the interests of the depositors, the creditors, and the public generally will not be jeopardized by the proposed charter conversion.

(f) If the department approves the resolution and articles of incorporation submitted under subsection (d), the department shall:

(1) indicate its approval on the resolution and articles of incorporation in the manner prescribed by IC 28-12-5-1; and

(2) present the articles of incorporation to the secretary of state.

(g) If the secretary of state finds that the articles of incorporation conform to law, the secretary of state shall:

(1) endorse the secretary's approval on the copies of the articles of incorporation;

(2) when all fees required by law have been paid:

(A) file one (1) copy of the articles of incorporation in the secretary's office; and

(B) issue a certificate of incorporation to the savings

association; and

(3) return the certificate of incorporation and two (2) copies of the articles of incorporation to the directors of the savings association designated under subsection (b)(1).

(h) The conversion of a federal savings and loan association into a state chartered savings association under this section is effective when the secretary of state issues the certificate of incorporation under subsection (g). However, before the savings association may transact business under this article or incur indebtedness, except indebtedness that is incidental to its organization, one (1) of the copies of its articles of incorporation bearing the endorsement of the approval of the department and of the secretary of state must be filed for record with the recorder of the county in which the principal office of the savings association is located.

As added by P.L.193-1997, SEC.2. Amended by P.L.27-2012, SEC.119.

IC 28-15-14-5

Effect on resulting state chartered savings association of conversion from federal savings and loan association

Sec. 5. (a) Upon the effective date of the conversion of a federal savings and loan association into a state chartered savings association under section 4 of this chapter, all of the assets and property of the federal savings and loan association of every kind and character, including:

(1) real, personal, and mixed property;

(2) tangible and intangible property; and

(3) choses in action, rights, and credits that:

(A) the savings and loan association owns; or

(B) would inure to the savings and loan association;

shall immediately, by operation of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of the state chartered savings association.

(b) After the conversion of a federal savings and loan association into a state chartered savings association under section 4 of this chapter:

(1) the state chartered savings association shall have, hold, and enjoy the assets and property of the federal savings and loan association in its own right, as fully and to the same extent that the assets and property were possessed, held, and enjoyed by the federal savings and loan association before the conversion; and

(2) the state chartered savings association is considered a continuation of the entity and identity of the federal savings and loan association, and all of the rights and obligations of the federal savings and loan association remain unimpaired.

(c) When the conversion of a federal savings and loan association into a state chartered savings association under section 4 of this chapter takes effect, the state chartered savings association succeeds to all of the rights and obligations and the duties and liabilities connected with the federal savings and loan association.

As added by P.L.193-1997, SEC.2.

IC 28-15-14-6
Organization of new savings association; bylaws

Sec. 6. After the conversion of a federal savings and loan association into a state chartered savings association under section 4 of this chapter, the organization of the savings association shall be completed in the manner provided by IC 28-12, except that bylaws for the savings association:

(1) may be adopted by the members of the federal association when the members adopt the resolution authorizing the conversion; and

(2) may become effective upon the issuance of the certificate of incorporation under section 4(f) of this chapter.

As added by P.L.193-1997, SEC.2.

IC 28-15-15

Chapter 15. Loans to Insiders

IC 28-15-15-1

Extensions of credit to officers, directors, and shareholders

Sec. 1. A savings association may extend credit to officers, directors, and principal shareholders of the savings association in compliance with 12 CFR 215.

As added by P.L.193-1997, SEC.2.

IC 28-15-16

Chapter 16. Applicability of the Federal Reserve Act

IC 28-15-16-1

Applicability

Sec. 1. For purposes of this article, a savings association that is not a member of the Federal Reserve System is subject to Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c or 371c-1) to the same extent and in the same manner as if the savings association were a member of the Federal Reserve System.

As added by P.L.258-2003, SEC.31.

IC 28-15-16-2

Violations

Sec. 2. A violation of Section 23A or 23B of the Federal Reserve Act (12 U.S.C. 371c or 371c-1) by a savings association or a subsidiary constitutes a violation of this chapter.

As added by P.L.258-2003, SEC.31.