



February 1, 2001

HOUSE BILL No. 1705

DIGEST OF HB 1705 (Updated January 31, 2001 10:12 AM - DI 94)

Citations Affected: IC 24-4.5; IC 24-7; IC 28-1; IC 28-5; IC 28-6.1; IC 28-7; IC 28-8; IC 28-10; IC 28-13; IC 28-14; noncode.

Synopsis: Financial and consumer entity regulation. Updates consumer law and financial institution law references to federal law. Specifies that rental purchase agreements do not apply to motor vehicles. Provides for notice to the department of financial institutions if certain events happen to an entity. Allows the director of financial institutions to require evidence of licensee compliance for certain licensees. Allows the director of financial institutions to obtain criminal history reports for certain licensees. Allows a bank or trust company to act as an agent or broker for an insurance company in other states. Allows an out of state financial institution to convert to a state chartered commercial bank. Makes certain changes to filing requirements with the secretary of state and the department of financial institutions. Allows a savings bank to act as an agent or broker for an insurance company in other states. Makes a change to a provision regulating credit unions to comply with federal law. Requires uninsured financial institutions to notify the department of financial institutions when a crime has occurred. Allows financial institutions to do a reverse stock split. Allows financial institutions to engage in expanded financial activities through subsidiaries. Limits certain additional pawnbroker fees. Makes technical corrections.

Effective: July 1, 2001.

Bodiker, Burton, Ruppel

January 17, 2001, read first time and referred to Committee on Financial Institutions.
January 31, 2001, amended, reported — Do Pass.

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February 1, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

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HOUSE BILL No. 1705

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

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

- 1 SECTION 1. IC 24-4.5-1-102, AS AMENDED BY P.L.23-2000,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2001]: Sec. 102. Purposes; Rules of Construction†(1) This
4 article shall be liberally construed and applied to promote its
5 underlying purposes and policies.
6 (2) The underlying purposes and policies of this article are:
7 (a) to simplify, clarify, and modernize the law governing retail
8 installment sales, consumer credit, small loans, and usury;
9 (b) to provide rate ceilings to assure an adequate supply of credit
10 to consumers;
11 (c) to further consumer understanding of the terms of credit
12 transactions and to foster competition among suppliers of
13 consumer credit so that consumers may obtain credit at
14 reasonable cost;
15 (d) to protect consumer buyers, lessees, and borrowers against
16 unfair practices by some suppliers of consumer credit, having due
17 regard for the interests of legitimate and scrupulous creditors;

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

3 (f) to conform the regulation of consumer credit transactions to
4 the policies of the Federal Consumer Credit Protection Act; and

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

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

10 (4) A reference to a federal law in IC 24-4.5 is a reference to the law
11 in effect December 31, ~~1999~~. **2000**.

12 SECTION 2. IC 24-4.5-2-209, AS AMENDED BY P.L.23-2000,
13 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2001]: Sec. 209. Right to Prepay - (1) Subject to the
15 provisions on rebate upon prepayment (IC 24-4.5-2-210), the buyer
16 may prepay in full the unpaid balance of a consumer credit sale,
17 refinancing, or consolidation at any time without penalty.

18 (2) At the time of prepayment of a credit sale not subject to the
19 provisions of rebate upon prepayment (IC 24-4.5-2-210), the total
20 credit service charge, including the prepaid credit service charge, ~~but~~
21 ~~excluding the loan origination fee allowed under IC 24-4.5-3-201~~, may
22 not exceed the maximum charge allowed under this chapter for the
23 period the credit sale was in effect.

24 (3) The creditor or mortgage servicer shall provide an accurate
25 payoff of the consumer credit sale to the debtor within ten (10)
26 calendar days after the creditor or mortgage servicer receives the
27 debtor's written request for the accurate consumer credit sale payoff
28 amount. A creditor or mortgage servicer who fails to provide the
29 accurate consumer credit sale payoff amount is liable for:

30 (A) one hundred dollars (\$100) if an accurate consumer credit
31 sale payoff amount is not provided by the creditor or mortgage
32 servicer within ten (10) calendar days after the creditor or
33 mortgage servicer receives the debtor's first written request;
34 and

35 (B) the greater of:

36 (i) one hundred dollars (\$100); or

37 (ii) the credit service charge that accrues on the sale from
38 the date the creditor or mortgage servicer receives the first
39 written request until the date on which the accurate
40 consumer credit sale payoff amount is provided;

41 if an accurate consumer credit sale payoff amount is not
42 provided by the creditor or mortgage servicer within ten (10)

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1 calendar days after the creditor or mortgage servicer receives
 2 the debtor's second written request, and the creditor or
 3 mortgage servicer failed to comply with clause (A).

4 A liability under this subsection is an excess charge under
 5 IC 24-4.5-5-202.

6 SECTION 3. IC 24-4.5-3-505 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 505. Records; Annual
 8 Reports † (1) Every licensee shall maintain records in conformity with
 9 generally accepted accounting principles and practices in a manner that
 10 will enable the department to determine whether the licensee is
 11 complying with the provisions of this article. The record keeping
 12 system of a licensee shall be sufficient if the licensee makes the
 13 required information reasonably available. The department shall
 14 determine the sufficiency of the records and whether the licensee has
 15 made the required information reasonably available. The department
 16 shall be given free access to the records wherever located. The records
 17 pertaining to any loan shall be retained for two (2) years after making
 18 the final entry relating to the loan, but in the case of a revolving loan
 19 account the two (2) years is measured from the date of each entry.

20 (2) Every licensee shall file with the department a composite report
 21 as required by the department, but not more frequently than annually,
 22 in the form prescribed by the department relating to all consumer loans
 23 made by the licensee. The department shall consult with comparable
 24 officials in other states for the purpose of making the kinds of
 25 information required in the reports uniform among the states.
 26 Information contained in the reports shall be confidential and may be
 27 published only in composite form. The department may impose a fee
 28 of five dollars (\$5) for each day that a licensee fails to file the report
 29 required by this subsection.

30 (3) Every licensee shall file notification with the department if
 31 the licensee:

- 32 (a) has a change in name, address, or principals;
- 33 (b) opens a new branch, closes an existing branch, or relocates
 34 an existing branch;
- 35 (c) files for bankruptcy or reorganization; or
- 36 (d) is subject to revocation or suspension proceedings by a
 37 state or governmental authority with regard to the licensee's
 38 activities;

39 not later than thirty (30) days after the date of the event described
 40 in this subsection.

41 (4) Every licensee shall file notification with the department if
 42 a key officer or director of the licensee:

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1 (a) is under a felony indictment related to the licensee's
2 activities; or

3 (b) has been convicted of a felony related to the licensee's
4 activities;

5 **not later than thirty (30) days after the date of the event described**
6 **in this subsection.**

7 SECTION 4. IC 24-4.5-6-202 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 202. (1) Persons
9 subject to IC 24-4.5-6-201, this section, and IC 24-4.5-6-203 shall file
10 notification with the department within thirty (30) days after
11 commencing business in this state, and thereafter, on or before January
12 31 of each year. The notification shall state:

13 (a) name of the person;

14 (b) name in which business is transacted if different from
15 subdivision (a);

16 (c) address of principal office, which may be outside this state;
17 and

18 (d) address of all offices or retail stores, if any, in this state at
19 which consumer credit sales, consumer leases, or consumer loans
20 are made, or in the case of a person taking assignments of
21 obligations, the offices or places of business within this state at
22 which business is transacted.

23 (2) If information in a notification becomes inaccurate after filing,
24 no further notification is required until the following January 31.

25 **(3) Persons subject to IC 24-4.5-6-201, IC 24-4.5-6-203 and this**
26 **section, shall notify the department not later than thirty (30) days**
27 **after the person:**

28 (a) has a change in name, address, or principals;

29 (b) opens a new branch, closes an existing branch, or relocates
30 an existing branch;

31 (c) files for bankruptcy or reorganization;

32 (d) is notified that the person is subject to revocation or
33 suspension proceedings by a state or governmental authority
34 with regard to the person's activities;

35 (e) is under a felony indictment related to the person's
36 activities; or

37 (f) has been convicted of a felony related to the person's
38 activities.

39 SECTION 5. IC 24-7-1-5 IS AMENDED TO READ AS FOLLOWS
40 [EFFECTIVE JULY 1, 2001]: Sec. 5. ~~This article does not apply to~~
41 Rental purchase agreements involving motor vehicles (as defined in
42 IC 9-13-2-105(a)) **are prohibited under this article.**



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1 SECTION 6. IC 28-1-2-23 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 23. (a) A corporation
 3 or an individual acting directly, indirectly, or through or in concert with
 4 one (1) or more other corporations or individuals may not acquire
 5 control of any bank, trust company, stock savings bank, bank holding
 6 company, corporate fiduciary, or industrial loan and investment
 7 company unless the department has received an application for change
 8 in control by which the department is given one hundred twenty (120)
 9 days prior written notice of the proposed change in control and within
 10 that time the department has issued a notice approving the proposed
 11 change in control. The application shall contain the name and address
 12 of the corporation, individual, or individuals, who propose to acquire
 13 control.

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

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

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

19 (A) the department determines that the corporation, individual,
 20 or individuals, who propose to acquire control have not
 21 submitted substantial evidence of the qualifications described
 22 in subsection (c);

23 (B) the department determines that any material information
 24 submitted is substantially inaccurate; or

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

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

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

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

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

5 (e) As used in this section, "control" means the power directly or
 6 indirectly to:

7 (1) direct the management or policies of a bank, a trust company,
 8 a bank holding company, a corporate fiduciary, or an industrial
 9 loan and investment company; or

10 (2) vote at least twenty-five percent (25%) of any class of voting
 11 securities of a bank, a trust company, a bank holding company, a
 12 corporate fiduciary, or an industrial loan and investment
 13 company.

14 (f) The president or other chief executive officer of a financial
 15 institution shall report to the director of the department any transfer or
 16 sale of shares of stock of the financial institution that results in direct
 17 or indirect ownership by a stockholder or an affiliated group of
 18 stockholders of at least ten percent (10%) of the outstanding stock of
 19 the financial institution. The report required by this section must be
 20 made not later than ten (10) days after the transfer of the shares of
 21 stock on the books of the financial institution.

22 SECTION 7. IC 28-1-11-2 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. Any bank or trust
 24 company shall have power to act as fiscal or transfer agent of the
 25 United States or of any state, municipality, body politic or corporation;
 26 and in such capacity to receive and disburse money; to transfer, register
 27 and countersign certificates of stock, bonds or other evidence of
 28 indebtedness; to authenticate and certify any such bonds and
 29 certificates of indebtedness; to act as agent to buy and sell domestic
 30 and foreign transportation; to solicit and write insurance as agent or
 31 broker for any insurance company authorized to do business in ~~this the~~
 32 state **or states where the agent or broker operates**; and to act as
 33 attorney in fact or agent of any person or corporation, foreign or
 34 domestic, for any lawful purpose.

35 SECTION 8. IC 28-1-20-4, AS AMENDED BY P.L.215-1999,
 36 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2001]: Sec. 4. (a) Except as provided in subsections (c), (d),
 38 (g), and (k) it is unlawful for any person, firm, limited liability
 39 company, or corporation (other than a bank or trust company or
 40 corporate fiduciary organized or reorganized under IC 28 or statutes in
 41 effect at the time of organization or reorganization or under the laws of
 42 the United States):

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- 1 (1) to use the word "~~trust~~" or the word "bank" as a part of the
 2 name or title of the person, firm, or corporation; or
 3 (2) to advertise or represent the person, firm, limited liability
 4 company, or corporation to the public:
 5 (A) as a bank or trust company or a corporate fiduciary; or
 6 (B) as affording the services or performing the duties which by
 7 law only a bank or trust company or a corporate fiduciary is
 8 entitled to afford and perform.
- 9 (b) A financial institution organized under the laws of any state or
 10 the United States that establishes a branch office under this title is
 11 authorized to do business at that branch using a name other than the
 12 name of its home office.
- 13 (c) Notwithstanding the prohibitions of this section, an out-of-state
 14 financial institution with the word "bank" in its legal name may use the
 15 word "bank" if the financial institution is insured by the Federal
 16 Deposit Insurance Corporation or its successor.
- 17 (d) Notwithstanding subsection (a), a building and loan association
 18 organized under IC 28-4 (before its repeal) may include in its name or
 19 title:
 20 (1) the words "savings bank"; or
 21 (2) the word "bank" if the name or title also includes either the
 22 words "savings bank" or letters "SB".
 23 A building and loan association that includes "savings bank" in its title
 24 under this section does not by that action become a savings bank for
 25 purposes of IC 28-6.1.
- 26 (e) The name or title of a savings bank governed by IC 28-6.1 must
 27 include the words "savings bank" or the letters "SB".
- 28 (f) A savings association may include in its name the words
 29 "building and loan association".
- 30 (g) Notwithstanding subsection (a), a bank holding company (as
 31 defined in 12 U.S.C. 1841) may use the word "bank" or "banks" as a
 32 part of its name. However, this subsection does not permit a bank
 33 holding company to advertise or represent itself to the public as
 34 affording the services or performing the duties that by law a bank or
 35 trust company only is entitled to afford and perform.
- 36 (h) The department is authorized to investigate the business affairs
 37 of any person, firm, limited liability company, or corporation that uses
 38 "bank" or "~~trust~~" in its title or holds itself out as a **bank, corporate**
 39 **fiduciary**, or trust **company** for the purpose of determining whether
 40 the person, firm, limited liability company, or corporation is violating
 41 any of the provisions of this article, and, for that purpose, the
 42 department and its agents shall have access to any and all of the books,

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1 records, papers, and effects of the person, firm, limited liability
 2 company, or corporation. In making its examination, the department
 3 may examine any person and the partners, officers, members, or agents
 4 of the firm, limited liability company, or corporation under oath,
 5 subpoena witnesses, and require the production of the books, records,
 6 papers, and effects considered necessary. On application of the
 7 department, the circuit or superior court of the county in which the
 8 person, firm, limited liability company, or corporation maintains a
 9 place of business shall, by proper proceedings, enforce the attendance
 10 and testimony of witnesses and the production and examination of
 11 books, papers, records, and effects.

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

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

21 (k) The word "bank" may not be included in the name of a corporate
 22 fiduciary.

23 SECTION 9. IC 28-1-21.10 IS ADDED TO THE INDIANA CODE
 24 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2001]:

26 **Chapter 21.10. Conversion of an Out of State Financial**
 27 **Institution Charter Into a Commercial Bank**

28 **Sec. 1. As used in this chapter, "charter conversion" means the**
 29 **conversion of an out of state financial institution to a commercial**
 30 **bank.**

31 **Sec. 2. As used in this chapter, "commercial bank" means a**
 32 **bank or trust company (as defined by IC 28-1-1-3(2)).**

33 **Sec. 3. As used in this chapter, "department" means the**
 34 **department of financial institutions and, if applicable, the**
 35 **department's authorized delegate.**

36 **Sec. 4. As used in this chapter, "effective time of the charter**
 37 **conversion" means:**

38 **(1) the date that articles of conversion are filed with the**
 39 **secretary of state; or**

40 **(2) the date designated in the articles of conversion.**

41 **Sec. 5. As used in this chapter, "out-of-state financial**
 42 **institution" means a bank or savings bank organized under the**

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1 laws of any other state or the United States that has a branch or
 2 branches in Indiana that were established under IC 28-2-17 or
 3 IC 28-2-18.

4 **Sec. 6. An out-of-state financial institution may, upon approval
 5 of the department, effect a charter conversion.**

6 **Sec. 7. The department shall prescribe procedures for charter
 7 conversions. The procedures prescribed by the department must
 8 include the following:**

9 (1) **The out-of-state financial institution shall prepare and
 10 submit a plan of charter conversion to the department that
 11 provides the terms and conditions of the charter conversion
 12 as required by the department.**

13 (2) **The plan of charter conversion must be adopted by not less
 14 than a majority of the board of directors of the out-of-state
 15 financial institution.**

16 (3) **Upon approval of a plan of charter conversion by the
 17 board of directors of the out-of-state financial institution, the
 18 plan of charter conversion and a certified copy of the
 19 resolution of the board of directors approving the plan of
 20 charter conversion must be submitted to the department for
 21 approval.**

22 (4) **The plan of charter conversion must be conditioned upon
 23 the approval of not less than a majority of the total number of
 24 votes cast at a regular or special meeting of the shareholders.**

25 (5) **The out-of-state financial institutions shall provide to the
 26 department the additional relevant information requested by
 27 the department in connection with the plan of charter
 28 conversion.**

29 **Sec. 8. (a) The department may approve or disapprove the plan
 30 of charter conversion filed under section 7 of this chapter.**

31 **(b) Solicitation of the votes of voting parties may occur before
 32 receipt of the approval of the department.**

33 **(c) The department may not approve the plan of charter
 34 conversion unless the department finds, after appropriate
 35 investigation or examination, and without the requirement of a
 36 public hearing, that the following requirements have been fulfilled:**

37 (1) **That the resulting commercial bank will operate in a safe,
 38 sound, and prudent manner.**

39 (2) **That the proposed charter conversion will not result in a
 40 commercial bank that has inadequate capital, unsatisfactory
 41 management, or poor earnings prospects.**

42 (3) **That the management or other principals of the out of**

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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) That the interests of the depositors, the creditors, and the public generally will not be jeopardized by the proposed charter conversion.

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.

Sec. 10. The department may authorize the resulting commercial bank to do the following:

(1) Wind up any activities legally engaged in by the out-of-state financial institution at the time of charter conversion not permitted to commercial banks.

(2) Retain any assets legally held by the out-of-state financial institution 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 at the discretion of the department. However, the transitional period may not exceed ten (10) years after the effective date of the charter conversion.

Sec. 11. A commercial bank created by charter conversion may retain all branches lawfully established.

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.

Sec. 13. Upon the effective date of charter conversion, the

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1 **converted commercial bank shall, unless otherwise provided in this**
 2 **chapter, immediately become subject to all statutes and rules**
 3 **applicable to commercial banks.**

4 SECTION 10. IC 28-1-22-4 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) To be admitted
 6 to do business in Indiana, a foreign corporation must file an application
 7 for admission in the form prescribed by the director. The application
 8 must be accompanied by:

- 9 (1) the fees prescribed by the department; and
 10 (2) a copy of its articles of incorporation ~~authenticated by the~~
 11 ~~proper officer of the state or country in which the foreign~~
 12 ~~corporation is incorporated.~~ **or association.**

13 (b) The application for admission filed by a foreign corporation
 14 must:

- 15 (1) be signed by:
 16 (A) the president or a vice president of the foreign corporation;
 17 and
 18 (B) the secretary or cashier of the foreign corporation;
 19 (2) be verified under oath by the officers signing the application;
 20 and
 21 (3) include a description of the nature of business that the foreign
 22 corporation intends to carry on in Indiana under its articles of
 23 incorporation or association.

24 SECTION 11. IC 28-1-22-7 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. Upon submission of
 26 a foreign corporation's application for admission, the department shall
 27 issue to the foreign corporation a certificate of admission, which shall
 28 be filed with the secretary of state. The secretary of state shall file one
 29 (1) copy of the certificate of admission issued by the department and
 30 ~~an authenticated copy of the articles of incorporation or association of~~
 31 ~~the corporation, and~~ shall issue to the corporation an original and a
 32 duplicate certificate of admission. The certificate of admission issued
 33 by the secretary of state must set forth

- 34 (1) the name of the corporation **and** the state or country where it
 35 was incorporated. ~~and the location of its principal office in such~~
 36 ~~state or country; and~~
 37 (2) ~~the nature of the business it is authorized to transact in this~~
 38 ~~state.~~

39 SECTION 12. IC 28-1-22-18 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 18. Upon submission
 41 of an application for an amended certificate of admission, the
 42 department shall issue an amended certificate of admission, which shall



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1 be filed with the secretary of state. The secretary of state shall file one
 2 (1) copy of the amended certificate of admission issued by the
 3 department and shall issue to the corporation an original and a
 4 duplicate amended certificate of admission. ~~The amended certificate~~
 5 ~~issued by the secretary of state shall set forth the character of business~~
 6 ~~that the corporation is authorized to transact in this state.~~

7 SECTION 13. IC 28-1-29-3 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) No person shall
 9 operate a budget service company in the state of Indiana without
 10 having obtained a license from the department. **The director may**
 11 **request evidence of compliance with this section at the time of**
 12 **application or after a license is issued. The evidence of compliance**
 13 **may include, but is not limited to, an official report of criminal**
 14 **activity from the state in which the applicant resides.** The fee for a
 15 license or renewal shall be fixed by the department under IC 28-11-3-5
 16 and shall be nonrefundable. A licensee failing to renew annually shall
 17 be required to pay a fee fixed by the department under IC 28-11-3-5 for
 18 a new application.

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

25 (c) **A license issued under this section is not assignable or**
 26 **transferable.**

27 SECTION 14. IC 28-1-29-8 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. A licensee:

29 (1) Shall deliver to every contract debtor, at the time the contract
 30 is made, a copy of the contract, showing the:

31 (A) date executed;

32 (B) ~~the maximum~~ rate of charge **the licensee will impose;**

33 (C) initial set up fee;

34 (D) ~~the~~ cancellation fee; ~~and~~

35 (E) amount of debts claimed by the contract debtor to be due
 36 his creditors;

37 (F) **total amount of fee to be assessed by the licensee,**
 38 **including the initial set-up fee, but excluding the**
 39 **cancellation fee; and**

40 (G) **total amount of debt to be repaid under the contract;**
 41 and shall immediately notify all creditors of the licensee's and
 42 debtor's relationship. The contract shall specify the schedule of

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- 1 payments from the debtor under the debt program.
- 2 (2) May take no fee unless a debt program, or finance program, or
3 both agreed upon by the licensee and the contract debtor has been
4 arranged. All creditors must be notified of the debtor's and
5 licensee's relationship. Acceptance of a program payment
6 constitutes agreement by the creditor.
- 7 (3) Shall give to the contract debtor a dated receipt for each
8 payment, at the time of the payment, unless the payment is made
9 by check, money order, or direct deposit.
- 10 (4) Shall, upon cancellation by contract debtor of the contract,
11 notify immediately in writing all creditors of contract debtor.
- 12 (5) Shall maintain in his business such books, accounts, and
13 records as will enable the department or the state's attorney
14 general to determine whether such license is complying with this
15 chapter. Such books, accounts, and records shall be preserved for
16 at least three (3) years after making the final entry of any contract
17 recorded therein.
- 18 (6) May not, except as provided in subdivision (7), receive a fee
19 from the contract debtor for services in excess of fifteen percent
20 (15%) of the amount the debtor agrees to pay through the
21 licensee, divided into equal monthly payments over the term of
22 the contract. The total monthly amount of fees paid by the
23 contract debtor to the licensee plus the fair share fees paid by the
24 contract debtor's creditors to the licensee shall not exceed twenty
25 percent (20%) of the monthly amount the debtor agrees to pay
26 through the licensee. The accrual method of accounting shall
27 apply to the creditor's fair share fees received by the licensee. The
28 program fee may be charged for any one (1) month or part of a
29 month. As a portion of the total fees and charges stated in the
30 contract, the licensee may require the debtor to pay a maximum
31 initial payment of fifty dollars (\$50). The initial payment must be
32 deducted from the total contract fees and charges to determine the
33 monthly amortizable amount for subsequent fees. Unless
34 approved by the department, the licensee may not retain in the
35 debtor's trust account, for charges, an amount more than one (1)
36 month's fee plus the close-out fee. Any fee charged by the
37 licensee to the debtor under this section for services rendered by
38 the licensee, other than the amount pursuant to subdivision (7), is
39 not considered a debt owed by the debtor to the licensee.
- 40 (7) Upon cancellation by a contract debtor or termination of
41 payments by a contract debtor, may not withhold for his own
42 benefit, in addition to the amounts specified in subdivision (6),

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1 more than one hundred dollars (\$100), which may be accrued as
 2 a close-out fee. The licensee may not charge the contract debtor
 3 more than one (1) set up fee, or cancellation fee, or both unless
 4 the contract debtor leaves the services of the licensee for more
 5 than six (6) months.

6 (8) May not accept an account unless a thorough, written budget
 7 analysis of the debtor indicates that the debtor can reasonably
 8 meet the payments required in the budget analysis.

9 (9) May not enter into a contract with a contract debtor for a
 10 period longer than twenty-four (24) months.

11 SECTION 15. IC 28-5-3-2 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. When, in case of any
 13 loan made by any industrial loan and investment company organized
 14 under the laws of this state, the borrower or any other person furnishing
 15 security on behalf of the borrower, shall, as an inducement to such
 16 industrial loan and investment company to make the loan, represent to
 17 it, in writing, that he or she is eighteen (18) years of age or older or
 18 otherwise make any false statement or representation to any such
 19 industrial loan and investment company, and such company is
 20 deceived, and the loan is made in reliance upon such representation,
 21 neither the person so ~~representating~~ **representing** nor any one in his
 22 or her behalf nor any person otherwise legally liable to pay such loan,
 23 shall afterwards be allowed, as against such industrial loan and
 24 investment company, to take advantage of the fact that the person
 25 making the representation was under eighteen (18) years of age, but
 26 each person shall be estopped by such representation.

27 SECTION 16. IC 28-6.1-6-14 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14. (a) A savings bank
 29 may solicit and write insurance as an agent or a broker for any
 30 insurance company authorized to do business in ~~Indiana~~ **the state or**
 31 **states where the agent or broker operates.**

32 (b) A savings bank or its affiliate (as defined in IC 28-6.2-1-4) may
 33 act as an agent for the sale of any life insurance policy or annuity
 34 contract issued by a life insurance company (as defined in IC 27-1-2-3)
 35 authorized to do business in ~~Indiana~~ **under IC 27-1** **the state or states**
 36 **where the agent operates.**

37 (c) A savings bank or its affiliate that acts as an agent for the sale of
 38 a life insurance policy or an annuity contract under subsection (b):

39 (1) is subject to all requirements of IC 27 **with respect to the**
 40 **agent's activity in Indiana**; and

41 (2) must comply with the disclosure requirements under
 42 IC 28-1-11-2.6.

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1 (d) A savings bank or its affiliate may not condition:
 2 (A) an extension of credit;
 3 (B) a lease or sale of real or personal property;
 4 (C) the performance of a service; or
 5 (D) the amount charged for:
 6 (i) extending credit;
 7 (ii) leasing or selling real or personal property; or
 8 (iii) performing services;
 9 upon a person's purchase of a life insurance policy or an annuity
 10 contract from the savings bank or its affiliate.

11 (e) This section does not prohibit a savings bank or its affiliate from
 12 requiring that a person, as a condition to a transaction, obtain a life
 13 insurance policy from an insurance company acceptable to the savings
 14 bank or its affiliate.

15 SECTION 17. IC 28-7-1-9, AS AMENDED BY P.L.62-1999,
 16 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2001]: Sec. 9. A credit union has the following powers:

18 (1) To issue shares of its capital stock to its members. No
 19 commission or compensation shall be paid for securing members
 20 or for the sale of shares.

21 (2) To make loans to members or other credit unions. A loan to
 22 another credit union may not exceed twenty percent (20%) of the
 23 paid-in capital and surplus of the credit union making the loan.

24 (3) To make loans to officers, directors, or committee members,
 25 but only if:

26 (A) the loan complies with all requirements under this chapter
 27 with respect to loans to other borrowers and is not on terms
 28 more favorable than those extended to other borrowers;

29 (B) upon the making of the loan, the aggregate amount of
 30 loans outstanding under this subdivision will not exceed
 31 twenty percent (20%) of the unimpaired capital and surplus of
 32 the credit union;

33 (C) the loan is approved by the credit committee or loan
 34 officer; and

35 (D) the borrower takes no part in the consideration of or vote
 36 on the application.

37 (4) To invest in any of the following:

38 (A) Bonds, notes, or certificates that are the direct or indirect
 39 obligations of the United States, or of the state, or the direct
 40 obligations of a county, township, city, town, or other taxing
 41 district or municipality or instrumentality of Indiana and that
 42 are not in default.

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- 1 (B) Bonds or debentures issued by the Federal Home Loan
 2 Bank Act (12 U.S.C. 1421 through 1449) or the Home Owners'
 3 Loan Act (12 U.S.C. 1461 through 1468).
 4 (C) Interest-bearing obligations of the FSLIC Resolution Fund
 5 and obligations of national mortgage associations issued under
 6 the authority of the National Housing Act.
 7 (D) Mortgages on real estate situated in Indiana which are
 8 fully insured under Title 2 of the National Housing Act (12
 9 U.S.C. 1707 through 1715z).
 10 (E) Obligations issued by farm credit banks and banks for
 11 cooperatives under the Farm Credit Act of 1971 (12 U.S.C.
 12 2001 through 2279aa-14).
 13 (F) In savings and loan associations, other credit unions that
 14 are insured under IC 28-7-1-31.5 and certificates of
 15 indebtedness or investment of an industrial loan and
 16 investment company if the association or company is federally
 17 insured. Not more than twenty percent (20%) of the assets of
 18 a credit union may be invested in the shares or certificates of
 19 an association or company; nor more than forty percent (40%)
 20 in all such associations and companies.
 21 (G) Corporate credit unions.
 22 (H) Federal funds or similar types of daily funds transactions
 23 with other financial institutions.
 24 (I) Mutual funds created and controlled by credit unions, credit
 25 union associations, or their subsidiaries. Mutual funds referred
 26 to in this clause may invest only in instruments that are
 27 approved for credit union purchase under this chapter.
 28 (J) Shares, stocks, or obligations of any credit union service
 29 organization (as defined in Section ~~701-27~~ 712 of the Rules
 30 and Regulations of the National Credit Union Administration)
 31 with the approval of the department. Not more than five
 32 percent (5%) of the total paid in and unimpaired capital of the
 33 credit union may be invested under this clause.
 34 (5) To deposit its funds into:
 35 (A) depository institutions that are federally insured; or
 36 (B) state chartered credit unions that are privately insured by
 37 an insurer approved by the department.
 38 (6) To purchase, hold, own, or convey real estate as may be
 39 conveyed to the credit union in satisfaction of debts previously
 40 contracted or in exchange for real estate conveyed to the credit
 41 union.
 42 (7) To own, hold, or convey real estate as may be purchased by

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- 1 the credit union upon judgment in its favor or decrees of
- 2 foreclosure upon mortgages.
- 3 (8) To issue shares of stock and upon the terms, conditions,
- 4 limitations, and restrictions and with the relative rights as may be
- 5 stated in the bylaws of the credit union, but no stock may have
- 6 preference or priority over the other to share in the assets of the
- 7 credit union upon liquidation or dissolution or for the payment of
- 8 dividends except as to the amount of the dividends and the time
- 9 for the payment of the dividends as provided in the bylaws.
- 10 (9) To charge the member's share account for the actual cost of
- 11 necessary locator service when the member has failed to keep the
- 12 credit union informed about the member's current address. The
- 13 charge shall be made only for amounts paid to a person or concern
- 14 normally engaged in providing such service, and shall be made
- 15 against the account or accounts of any one (1) member not more
- 16 than once in any twelve (12) month period.
- 17 (10) To transfer to an accounts payable, a dormant account, or a
- 18 special account share accounts which have been inactive, except
- 19 for dividend credits, for a period of two (2) years. The credit
- 20 union shall not consider the payment of dividends on the
- 21 transferred account.
- 22 (11) To invest in fixed assets with the funds of the credit union.
- 23 An investment in fixed assets in excess of five percent (5%) of its
- 24 assets is subject to the approval of the department.
- 25 (12) To establish branch offices, upon approval of the department,
- 26 provided that all books of account shall be maintained at the
- 27 principal office.
- 28 (13) To pay an interest refund on loans proportionate to the
- 29 interest paid during the dividend period by borrowers who are
- 30 members at the end of the dividend period.
- 31 (14) To purchase life savings and loan protection insurance for
- 32 the benefit of the credit union and its members, if:
- 33 (A) the coverage is placed with an insurance company licensed
- 34 to do business in Indiana; and
- 35 (B) no officer, director, or employee of the credit union
- 36 personally benefits, directly or indirectly, from the sale or
- 37 purchase of the coverage.
- 38 (15) To sell and cash negotiable checks, travelers checks, and
- 39 money orders for members.
- 40 (16) To purchase members' notes from any liquidating credit
- 41 union, with written approval from the department, at prices agreed
- 42 upon by the boards of directors of both the liquidating and the

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1 purchasing credit unions. However, the aggregate of the unpaid
 2 balances of all notes of liquidating credit unions purchased by any
 3 one (1) credit union shall not exceed ten percent (10%) of its
 4 unimpaired capital and surplus unless special written
 5 authorization has been granted by the department.

6 (17) To exercise such incidental powers necessary or requisite to
 7 enable it to carry on effectively the business for which it is
 8 incorporated.

9 (18) To act as a custodian or trustee of any trust created or
 10 organized in the United States and forming part of a stock bonus,
 11 pension, or profit sharing plan which qualifies or qualified for
 12 specific tax treatment under Section 408(a) or Section 401(d) of
 13 the Internal Revenue Code, if the funds of the trust are invested
 14 only in share accounts or insured certificates of the credit union.

15 (19) To issue shares of its capital stock or insured certificates to
 16 a trustee or custodian of a pension plan, profit sharing plan, or
 17 stock bonus plan which qualifies for specific tax treatment under
 18 Sections 401(d) or 408(a) of the Internal Revenue Code.

19 (20) ~~Subject to the restrictions in section 9.1 of this chapter, to~~
 20 ~~engage in any activities in which the credit union could engage if~~
 21 ~~the A credit union were a federally chartered credit union, may~~
 22 **exercise any rights and privileges that are:**

23 **(A) granted to federal credit unions; but**

24 **(B) not authorized for credit unions under the Indiana**
 25 **Code (except for this section) or any rule adopted under**
 26 **the Indiana Code;**

27 ~~if the department authorizes the credit union to engage in the~~
 28 ~~activities: complies with section 9.2 of this chapter.~~

29 (21) To sell, pledge, or discount any of its assets, to purchase all
 30 or part of the assets of another credit union, and to assume the
 31 liabilities of the selling credit union. However, a credit union may
 32 not pledge any of its assets as security for the safekeeping and
 33 prompt payment of any money deposited, except that a credit
 34 union may, for the safekeeping and prompt payment of money
 35 deposited, give security as authorized by federal law.

36 (22) To act as a fiscal agent of the United States and to receive
 37 deposits from nonmember units of the federal, state, or county
 38 governments, from political subdivisions, and from other credit
 39 unions upon which the credit union may pay varying interest rates
 40 at varying maturities subject to terms, rates, and conditions that
 41 are established by the board of directors. However, the total
 42 amount of public funds received from units of state and county

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1 governments and political subdivisions that a credit union may
 2 have on deposit may not exceed ten percent (10%) of the total
 3 assets of that credit union, excluding those public funds.

4 (23) To join the National Credit Union Administration Central
 5 Liquidity Facility.

6 (24) To participate in community investment initiatives under the
 7 administration of organizations:

8 (A) exempt from taxation under Section 501(c)(3) of the
 9 Internal Revenue Code; and

10 (B) located or conducting activities in communities in which
 11 the credit union does business.

12 Participation may be in the form of either charitable contributions
 13 or participation loans. In either case, disbursement of funds
 14 through the administering organization is not required to be
 15 limited to members of the credit union. Total contributions or
 16 participation loans may not exceed one tenth of one percent
 17 (0.001) of total assets of the credit union. A recipient of a
 18 contribution or loan is not considered qualified for credit union
 19 membership. A contribution or participation loan made under this
 20 subdivision must be approved by the board of directors.

21 (25) To establish and operate an automated teller machine
 22 (ATM):

23 (A) at any location within Indiana; or

24 (B) as permitted by the laws of the state in which the
 25 automated teller machine is to be located.

26 (26) To demand and receive, for the faithful performance and
 27 discharge of services performed under the powers vested in the
 28 credit union by this article:

29 (A) reasonable compensation, or compensation as fixed by
 30 agreement of the parties;

31 (B) all advances necessarily paid out and expended in the
 32 discharge and performance of its duties; and

33 (C) unless otherwise agreed upon, interest at the legal rate on
 34 the advances referred to in clause (B).

35 **(27) Subject to any restrictions the department may impose,
 36 to become the owner or lessor of personal property acquired
 37 upon the request and for the use of a member and to incur
 38 additional obligations as may be incident to becoming an
 39 owner or lessor of such property.**

40 SECTION 18. IC 28-7-1-9.1 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9.1. (a) A credit union
 42 or a related credit union service organization (as defined in section

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1 ~~0.5(f)~~ **0.5(7)** of this chapter) that acts as an agent for the sale of a life
 2 insurance policy or an annuity contract issued by a life insurance
 3 company (as defined in IC 27-1-2-3):
 4 (1) is subject to the requirements of IC 27; and
 5 (2) must comply with the disclosure requirements of
 6 IC 28-1-11-2.6.
 7 (b) A credit union or credit union service organization may not
 8 condition:
 9 (1) an extension of credit;
 10 (2) a lease or sale of real or personal property;
 11 (3) the performance of a service; or
 12 (4) the amount charged for:
 13 (A) extending credit;
 14 (B) leasing or selling real or personal property; or
 15 (C) performing services;
 16 upon a person's purchase of a life insurance policy or an annuity
 17 contract from the credit union or related credit union service
 18 organization.
 19 (c) This section does not prohibit a credit union or a credit union
 20 service organization from requiring that a person, as a condition to a
 21 transaction, obtain a life insurance policy from an insurance company
 22 acceptable to the credit union or credit union service organization.
 23 SECTION 19. IC 28-7-1-9.2 IS ADDED TO THE INDIANA CODE
 24 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 25 1, 2001]: **Sec. 9.2. (a) As used in this section, "rights and privileges"**
 26 **means the power to:**
 27 (1) create;
 28 (2) deliver;
 29 (3) acquire; or
 30 (4) sell;
 31 **a product, a service, or an investment that is available to or offered**
 32 **by federal credit unions domiciled in Indiana.**
 33 (b) A credit union that intends to exercise any rights and
 34 privileges that are:
 35 (1) granted to federal credit unions; but
 36 (2) not authorized for credit unions under the Indiana Code
 37 (except for this section) or any rule adopted under the Indiana
 38 Code;
 39 shall submit a letter to the department describing in detail the
 40 requested rights and privileges granted to federal credit unions
 41 that the credit union intends to exercise. If available, copies of
 42 relevant federal law, regulations, and interpretive letters must be

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1 attached to the letter submitted by the credit union.

2 (c) The department shall promptly notify the requesting credit
3 union of the department's receipt of the letter submitted under
4 subsection (b). Except as provided in subsection (e), the credit
5 union may exercise the requested rights and privileges sixty (60)
6 days after the date on which the department receives the letter
7 unless otherwise notified by the department.

8 (d) The department, through its members, may prohibit the
9 credit union from exercising the requested rights and privileges
10 only if the members find that:

11 (1) federal credit unions domiciled in Indiana do not possess
12 the requested rights and privileges; or

13 (2) the exercise of the requested rights and privileges by the
14 credit union would adversely affect the safety and soundness
15 of the credit union.

16 (e) The sixty (60) day period referred to in subsection (c) may be
17 extended by the department based on a determination that the
18 credit union's letter raised issues requiring additional information
19 or additional time for analysis. If the sixty (60) day period is
20 extended under this subsection, the credit union may exercise the
21 requested rights and privileges only if the credit union receives
22 prior written approval from the department. However:

23 (1) the members must:

24 (A) approve or deny the requested rights and privileges; or

25 (B) convene a hearing;

26 not later than sixty (60) days after the department receives the
27 credit union's letter; and

28 (2) if a hearing is convened, the members must approve or
29 deny the requested rights and privileges not later than sixty
30 (60) days after the hearing is concluded.

31 (f) The exercise of rights and privileges by a credit union in
32 compliance with and in the manner authorized by this section is not
33 a violation of any provision of the Indiana Code or rules adopted
34 under IC 4-22-2.

35 (g) Whenever, in compliance with this section, a credit union
36 exercises rights and privileges granted to federal credit unions
37 domiciled in Indiana, all credit unions may exercise the same rights
38 and privileges if the department by order determines that the
39 exercise of the rights and privileges by all credit unions would not
40 adversely affect their safety and soundness.

41 (h) If the department denies the request of a credit union under
42 this section to exercise any rights and privileges that are granted



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1 to federal credit unions, the credit union may appeal the decision
 2 of the department to the circuit court with jurisdiction in the
 3 county in which the principal office of the credit union is located.
 4 In an appeal under this section, the court shall determine the
 5 matter de novo.

6 SECTION 20. IC 28-7-5-4 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) Application for
 8 a pawnbroker's license shall be submitted on a form prescribed by the
 9 department and must include all information required by the
 10 department.

11 (b) The director may request that the applicant provide
 12 evidence of compliance with this section at the time of application
 13 or after a license is issued. Evidence of compliance includes, but is
 14 not limited to, an official report of criminal activity from the state
 15 where the applicant resides.

16 SECTION 21. IC 28-7-5-28.5 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 28.5. In addition to the
 18 loan finance charge authorized by section 28 of this chapter, a
 19 pawnbroker may charge, contract for, and receive a fee not to exceed
 20 one-fifth (1/5) of the principal amount of the loan per month or any
 21 fractional part of a month for servicing the pledge that may include
 22 investigating the title, storing, providing security, appraisal, handling,
 23 making daily reports to local law enforcement officers, and for other
 24 expenses and costs associated with servicing the pledge. **The fee for
 25 each month after the second month of the loan transaction is
 26 limited to one-thirtieth (1/30) of the monthly fee for each day the
 27 loan is outstanding.** Such a charge when made and collected is not
 28 interest and is not a rate under IC 35-45-7-1.

29 SECTION 22. IC 28-8-4-20 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 20. (a) A person may
 31 not engage in the business of money transmission without a license
 32 required by this chapter.

33 (b) An application for a license must be submitted on a form
 34 prescribed by the department and must include the information
 35 required by the department.

36 (c) The director may request that the applicant provide evidence
 37 of compliance with this section at the time of application or after
 38 a license is issued. Evidence of compliance includes, but is not
 39 limited to, an official report of criminal activity from the state
 40 where the applicant resides.

41 SECTION 23. IC 28-8-5-12 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 12. (a) The department

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1 shall determine the financial responsibility, business experience,
2 character, and general fitness of the applicant before issuing the
3 license.

4 (b) The department may refuse to issue a license if an applicant who
5 is an individual has been convicted of a felony.

6 (c) The director of the department may request evidence of
7 compliance with this section by the licensee. **Evidence of compliance**
8 **includes, but is not limited to, an official report of criminal activity**
9 **from the state where the applicant resides.**

10 SECTION 24. IC 28-10-1-1, AS AMENDED BY P.L.23-2000,
11 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2001]: Sec. 1. A reference to a federal law or federal
13 regulation in IC 28 is a reference to the law or regulation in effect
14 January 1, ~~2000~~: **2001**.

15 SECTION 25. IC 28-13-10-10 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10. (a) In the event of
17 a commission of a crime or apparent commission of a crime it shall be
18 the responsibility of the corporation to ensure compliance with Part 353
19 of the Federal Deposit Insurance Corporation rules and regulations.

20 (b) Reporting of a crime under Part 353 of the Federal Deposit
21 Insurance Corporation rules and regulations satisfies the reporting
22 requirements of criminal activity for the department.

23 (c) The department shall use the Financial Crimes Enforcement
24 Network of the United States Department of the Treasury instead of
25 receiving written reports from the corporation.

26 (d) Failure to report the commission of a crime or apparent
27 commission of a crime as required in Part 353 of the Federal Deposit
28 Insurance Corporation is a violation of this section.

29 **(e) If a corporation is a corporate fiduciary or is not insured by**
30 **the Federal Deposit Insurance Corporation, the corporation must**
31 **notify the department of the commission of a crime or the apparent**
32 **commission of a crime not later than the first business day after the**
33 **day the crime or apparent crime was discovered. A written**
34 **notification must also be delivered to the department not later than**
35 **thirty (30) days after the date the crime or apparent crime was**
36 **discovered. A written notification under this section must include**
37 **the:**

38 **(1) details of the crime; and**

39 **(2) actions taken by the corporation regarding the crime.**

40 SECTION 26. IC 28-13-14-6 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. The corporation shall
42 notify each shareholder, whether or not entitled to vote, of the proposed

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1 shareholders' meeting in accordance with ~~IC 28-13-5-5~~ **IC 28-13-5-8**.
 2 The notice of meeting must also do the following:
 3 (1) State that the purpose, or one (1) of the purposes, of the
 4 meeting is to consider the proposed amendment.
 5 (2) Contain or be accompanied by a copy or summary of the
 6 amendment.
 7 SECTION 27. IC 28-13-14-8 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. (a) The holders of
 9 the outstanding shares of a class are entitled to vote as a separate voting
 10 group if shareholder voting is otherwise required by this article on a
 11 proposed amendment if the amendment would:
 12 (1) increase or decrease the aggregate number of authorized
 13 shares of the class;
 14 (2) effect an exchange or reclassification of all or part of the
 15 shares of the class into shares of another class;
 16 (3) effect an exchange or reclassification, or create the right of
 17 exchange, of all or part of the shares of another class into shares
 18 of the class;
 19 (4) change the designation, rights, preferences, or limitations of
 20 all or part of the shares of the class;
 21 (5) change the shares of all or part of the class into a different
 22 number of shares of the same class;
 23 (6) create a new class of shares having rights or preferences with
 24 respect to distributions or to dissolution that are prior, superior, or
 25 substantially equal to the shares of the class;
 26 (7) increase the rights, preferences, or number of authorized
 27 shares of any class that, after giving effect to the amendment,
 28 have rights or preferences with respect to distributions or to
 29 dissolution that are prior, superior, or substantially equal to the
 30 shares of the class;
 31 (8) limit or deny an existing preemptive right of all or part of the
 32 shares of the class; ~~or~~
 33 (9) cancel or otherwise affect rights to distributions or dividends
 34 that have accumulated but not yet been declared on all or part of
 35 the shares of the class; **or**
 36 **(10) decrease the number of shares of a class into a different**
 37 **number of shares of the same class to effect a reverse stock**
 38 **split.**
 39 (b) If a proposed amendment would affect a series of a class of
 40 shares in at least one (1) of the ways described in subsection (a), the
 41 shares of that series are entitled to vote as a separate voting group on
 42 the proposed amendment.

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1 (c) If a proposed amendment that entitles at least two (2) series of
2 shares to vote as separate voting groups under this section would affect
3 those series in the same or a substantially similar way, the shares of all
4 the series so affected must vote together as a single voting group on the
5 proposed amendment.

6 (d) A class or series of shares is entitled to the voting rights granted
7 by this section although the articles of incorporation provide that the
8 shares are nonvoting shares.

9 SECTION 28. IC 28-13-14-8.5 IS ADDED TO THE INDIANA
10 CODE AS A NEW SECTION TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2001]: **Sec. 8.5. (a) The following guidelines
12 and procedures apply when requesting that the director approve
13 an amendment to articles of incorporation resulting in a reverse
14 stock split authorized by IC 28-13-14-8(a)(10):**

15 (1) **The purchase price of the stock must be based on market
16 value if there is an established and active market in the
17 corporation's stock. In the absence of such a market, the fair
18 value of the stock must be determined by obtaining an
19 independent appraisal of the shares upon which the purchase
20 price will be based.**

21 (2) **If a market for the corporation's stock exists, the
22 corporation shall clearly disclose to the shareholders how the
23 purchase price was determined in relation to the market
24 value.**

25 (3) **If an appraisal is obtained:**
26 (A) **the corporation shall disclose to its shareholders:**
27 (i) **that an appraisal has been obtained; and**
28 (ii) **the identity and qualifications of the person or firm**
29 **preparing the appraisal, the criteria for selecting the**
30 **person or firm, and the existence of any material**
31 **relationship between the bank and the person or firm;**
32 **and**

33 (B) **the corporation shall furnish to each shareholder a**
34 **summary of the appraisal, the findings and**
35 **recommendations, the basis for and methods of arriving at**
36 **the findings and recommendations, and any limitations**
37 **imposed by the corporation on the preparation of the**
38 **appraisal.**

39 **The corporation must inform its shareholders that the**
40 **appraisal is available for inspection.**

41 (4) **A shareholder that may vote on the amendment to the**
42 **articles of incorporation on the question of the reverse stock**

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1 split must be given dissenter's rights in the manner prescribed
2 in IC 28-1-7-21 as if the transaction were a merger of
3 consolidation.

4 (b) The corporation shall submit to the department a copy of the
5 appraisal or information supporting the purchase price of the stock
6 if an established market already exists, a copy of the proxy
7 material to be sent to the shareholders, and any other
8 correspondence sent to the shareholders describing the proposed
9 amendment to the articles.

10 SECTION 29. IC 28-13-14-14 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14. (a) A corporation's
12 board of directors or, if the board of directors has not been selected, the
13 incorporators may restate the corporation's articles of incorporation at
14 any time with or without shareholder action.

15 (b) The restatement may include at least one (1) amendment to the
16 articles. If the restatement includes an amendment requiring
17 shareholder approval, the amendment must be adopted as provided in
18 sections 3 through 7 of this chapter.

19 (c) If the board of directors submits a restatement for shareholder
20 action, the corporation shall notify each shareholder, whether or not
21 entitled to vote, of the proposed shareholders' meeting in accordance
22 with ~~IC 28-13-5-5~~. IC 28-13-5-8. The notice must also do the
23 following:

24 (1) State that the purpose or one (1) of the purposes of the
25 meeting is to consider the proposed restatement.

26 (2) Contain or be accompanied by a copy of the restatement that
27 identifies any amendment or other change the corporation would
28 make in the articles.

29 (d) A corporation restating the corporation's articles of incorporation
30 shall prepare articles of restatement setting forth the name of the
31 corporation and the text of the restated articles of incorporation
32 together with a certificate setting forth:

33 (1) whether the restatement contains an amendment to the articles
34 requiring shareholder approval and, if the restatement does not,
35 that the board of directors adopted the restatement; or

36 (2) if the restatement contains an amendment to the articles
37 requiring shareholder approval, the information required by
38 section 10 of this chapter.

39 SECTION 30. IC 28-13-17 IS ADDED TO THE INDIANA CODE
40 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2001]:

42 **Chapter 17. Financial Subsidiary Activities of Financial**

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1 **Institutions**

2 **Sec. 1. As used in this chapter "financial institution" has the**
3 **meaning set forth in IC 28-13-16-3.**

4 **Sec. 2. As used in this chapter, "financial subsidiary" means a**
5 **foreign or domestic corporation or limited liability company that**
6 **is controlled by one (1) or more financial institutions that engages**
7 **in a financial subsidiary activity.**

8 **Sec. 3. As used in this chapter, "financial subsidiary activity"**
9 **means:**

10 **(1) an activity that has been authorized for a financial**
11 **subsidiary of a national bank under 12 U.S.C. 24a and that**
12 **may be conducted by a national bank only through a financial**
13 **subsidiary; or**

14 **(2) an activity that has been determined by the department to**
15 **be financial in nature or incidental to a financial activity.**

16 **Sec. 4. As used in this chapter, "control" has the meaning set**
17 **forth in IC 28-2-13-12.**

18 **Sec. 5. As used in this chapter, "hold an interest" means the**
19 **ownership of any equity capital of a financial subsidiary.**

20 **Sec. 6. As used in this chapter, "equity capital" includes, in**
21 **addition to an equity investment, a debt instrument issued by a**
22 **financial subsidiary, if the instrument qualifies as capital of the**
23 **financial subsidiary under any federal or state law, regulation, or**
24 **interpretation applicable to the financial subsidiary.**

25 **Sec. 7. (a) Notwithstanding any other law, but subject to the**
26 **provisions of this chapter, a financial institution may control or**
27 **hold an interest in a financial subsidiary that engages in financial**
28 **subsidiary activities.**

29 **(b) This section does not require an activity to be conducted**
30 **through a financial subsidiary that is authorized to be conducted**
31 **directly by the financial institution.**

32 **Sec. 8. (a) A financial institution may not establish, control, or**
33 **hold an interest of a financial subsidiary that engages in financial**
34 **subsidiary activities as principal or commence any new financial**
35 **subsidiary activity under this section or under 12 U.S.C. 1831w(a)**
36 **unless the following occur:**

37 **(1) An application has been filed with the department before**
38 **the financial subsidiary of the financial institution conducts**
39 **financial subsidiary activities.**

40 **(2) The department determines that the financial subsidiary**
41 **activity poses no significant adverse effects to the safety and**
42 **soundness of the financial institution and approves the**



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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.

SECTION 31. IC 28-14-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. A corporate fiduciary is subject to the reporting requirements concerning shortages and irregularities that are set forth in ~~750 IAC 8-1-1~~ and ~~750 IAC 8-1-2~~. **IC 28-13-10-10(e).**

SECTION 32. IC 28-1-22-14 IS REPEALED [EFFECTIVE JULY 1, 2001].

SECTION 33. [EFFECTIVE JULY 1, 2001] **750 IAC 2-4-2 is void. The publisher of the Indiana Administrative Code and Indiana Register shall remove this rule from the Indiana Administrative Code.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1705, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, after line 42, begin a new paragraph and insert:

"SECTION 6. IC 28-1-2-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: 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, bank holding company, corporate fiduciary, or industrial loan and investment company unless the department has received an application for change in control by which the department is given one hundred twenty (120) days prior written notice of the proposed change in control and within that time the department has issued 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 department 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 department determines that any material information submitted is substantially inaccurate; or

(C) the department 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, a corporate fiduciary, or industrial loan and investment company

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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, a 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, "bank 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 controls one (1) or more state chartered banks.

(e) As used in this section, "control" means the power directly or indirectly to:

(1) direct the management or policies of a bank, a trust company, a bank holding company, a corporate fiduciary, or an industrial loan and investment company; or

(2) vote at least twenty-five percent (25%) of any class of voting securities of a bank, a trust company, a bank holding company, a corporate fiduciary, or an industrial loan and investment company.

(f) The president or other chief executive officer of a financial institution shall report to the director of the department any transfer or sale of shares of stock of the financial institution 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. The report required by this section must be made not later than ten (10) days after the transfer of the shares of stock on the books of the financial institution."

Page 5, between lines 13 and 14, begin a new paragraph and insert:

"SECTION 7. IC 28-1-20-4, AS AMENDED BY P.L.215-1999, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) Except as provided in subsections (c), (d), (g), and (k) it is unlawful for any person, firm, limited liability company, or corporation (other than a bank or trust company or corporate fiduciary 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 "~~trust~~" or the word "bank" as a part of the name or title of the person, firm, 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

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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 that establishes a branch office under this title is authorized to do business at that branch using a name other than the name of its home office.

(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" or ~~"trust"~~ 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

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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 two hundred dollars (\$200) 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" may not be included in the name of a corporate fiduciary."

Page 11, between lines 1 and 2, begin a new paragraph and insert:

"SECTION 16. IC 28-5-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: 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 ~~representating~~, **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."

Page 23, line 28, delete "12 U.S.C. 24A" and insert "**12 U.S.C. 24a**".

Page 24, line 20, delete "protect the financial institution from undue".

Page 24, line 21, delete "risk or to".

Page 24, line 39, delete "12 U.S.C. 24A(d)" and insert "**12 U.S.C. 24a(d)**".

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to HB 1705 as introduced.)

BODIKER, Chair

Committee Vote: yeas 11, nays 0.

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