



Reprinted  
April 8, 2003

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# ENGROSSED HOUSE BILL No. 1834

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DIGEST OF HB 1834 (Updated April 7, 2003 4:09 PM - DI 105)

**Citations Affected:** IC 24-4.5; IC 28-1; IC 28-2; IC 28-6.1; IC 28-7; IC 28-8; IC 28-10; IC 28-11; IC 28-12; IC 28-13; IC 28-15; noncode.

**Synopsis:** Financial institutions. Changes the date as of which reference is made to federal laws and regulations. Reduces bond requirements for payday lenders. Defines "month" in the pawnbroker act to ensure consistent calculation of interest. Specifically provides for the right of credit unions to buy and sell assets. Authorizes the department of financial institutions to remove officers, directors, and employees of financial institutions for certain practices, violations, and breaches. Requires department approval for reductions in capital stock, capital surplus, and preferred stock levels. Modifies provisions concerning the establishment of trust offices. Prohibits the unauthorized use of: (1) the term banc or banco; and (2) the name of an existing bank or bank holding company or a name confusingly similar to the name of an existing bank or bank holding company. Treats savings associations and savings banks as though they are members of the Federal Reserve System even if they are not members. Requires approval of the department prior to establishing a subsidiary. Modifies the change of control statute. Broadens the ability of banks to invest in Federal Home Loan Bank stock while maintaining a ceiling on such investments. Makes technical corrections.

**Effective:** Upon passage; July 1, 2003.

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## Bardon, Burton

(SENATE SPONSOR — PAUL)

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January 23, 2003, read first time and referred to Committee on Financial Institutions.  
February 17, 2003, amended, reported — Do Pass.  
February 20, 2003, read second time, ordered engrossed.  
February 21, 2003, engrossed.  
February 24, 2003, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 27, 2003, read first time and referred to Committee on Insurance and Financial Institutions.  
March 31, 2003, reported favorably — Do Pass.  
April 7, 2003, read second time, amended, ordered engrossed.

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EH 1834—LS 7068/DI 108+



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April 8, 2003

First Regular Session 113th General Assembly (2003)

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 2002 Regular or Special Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1834

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.82-2002,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2003]: 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, ~~2001~~: **2002**.

12 SECTION 2. IC 24-4.5-7-401, AS ADDED BY P.L.38-2002,  
13 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
14 JULY 1, 2003]: Sec. 401. (1) Except as provided in subsection (2), a  
15 small loan may not be made for a term of less than fourteen (14) days.

16 (2) After the consumer's third consecutive small loan, ~~renewal~~,  
17 another small loan may not be made to that consumer within seven (7)  
18 days after the date of the third consecutive small loan unless the new  
19 small loan is for a term of twenty-eight (28) days or longer.

20 SECTION 3. IC 24-4.5-7-413, AS ADDED BY P.L.38-2002,  
21 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
22 JULY 1, 2003]: Sec. 413. (1) A person engaged in making small loans  
23 under this chapter shall post a bond to the department in the amount of  
24 fifty thousand dollars (\$50,000) for each location where small loans  
25 will be made, up to a maximum bond amount of five hundred thousand  
26 dollars (\$500,000).

27 (2) A bond posted under subsection (1) must continue in effect for  
28 ~~five (5)~~ **two (2)** years after the lender ceases operation in Indiana. The  
29 bond must be available to pay damages and penalties to a consumer  
30 harmed by a violation of this chapter.

31 SECTION 4. IC 28-1-2-23, AS AMENDED BY P.L.134-2001,  
32 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
33 JULY 1, 2003]: Sec. 23. (a) A corporation or an individual acting  
34 directly, indirectly, or through or in concert with one (1) or more other  
35 corporations or individuals may not acquire control of any bank, trust  
36 company, stock savings bank, ~~bank~~ holding company, corporate  
37 fiduciary, or industrial loan and investment company unless the  
38 department has received an application for change in control by which  
39 the department is given one hundred twenty (120) days prior written  
40 notice of the proposed change in control and within that time the  
41 department has issued a notice approving the proposed change in  
42 control. The application shall contain the name and address of the



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1 corporation, individual, or individuals, who propose to acquire control.

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

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

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

7 (A) the department determines that the corporation, individual,  
8 or individuals, who propose to acquire control have not  
9 submitted substantial evidence of the qualifications described  
10 in subsection (c);

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

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

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

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

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

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

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

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

41 (2) vote at least twenty-five percent (25%) of any class of voting  
42 securities of a bank, a trust company, a ~~bank~~ holding company, a

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1 corporate fiduciary, or an industrial loan and investment  
2 company.

3 (f) The president or other chief executive officer of a financial  
4 institution **or holding company** shall report to the director of the  
5 department any transfer or sale of shares of stock of the financial  
6 institution **or holding company** that results in direct or indirect  
7 ownership by a stockholder or an affiliated group of stockholders of at  
8 least ten percent (10%) of the outstanding stock of the financial  
9 institution **or holding company**. The report required by this section  
10 must be made not later than ten (10) days after the transfer of the shares  
11 of stock on the books of the financial institution **or holding company**.

12 SECTION 5. IC 28-1-11-12.5 IS ADDED TO THE INDIANA  
13 CODE AS A NEW SECTION TO READ AS FOLLOWS  
14 [EFFECTIVE JULY 1, 2003]: **Sec. 12.5. Subject to any limitations**  
15 **imposed by the department through policy, a bank or trust**  
16 **company may do any of the following:**

17 (1) **Invest the money deposited in the bank or trust company**  
18 **in the shares of the capital stock, bonds, debentures, notes, or**  
19 **other obligations of a federal home loan bank of the United**  
20 **States.**

21 (2) **Become a member of the federal home loan bank of the**  
22 **district in which Indiana is located or an adjoining district.**

23 (3) **Borrow money from:**

24 (A) **a federal home loan bank described in subdivision (2);**

25 (B) **the Federal Deposit Insurance Corporation; or**

26 (C) **any other corporation.**

27 (4) **Transfer, assign to, and pledge with a federal home loan**  
28 **bank described in subdivision (2), the Federal Deposit**  
29 **Insurance Corporation, or other corporation any of the**  
30 **bonds, notes, contracts, mortgages, securities, or any other**  
31 **property of the bank or trust company held or acquired as**  
32 **security for the payment of loans entered into under**  
33 **subdivision (3).**

34 (5) **Exercise all rights, powers, and privileges conferred upon,**  
35 **and do all things and perform all acts required of, members**  
36 **or shareholders of a federal home loan bank by the Federal**  
37 **Home Loan Bank Act (12 U.S.C. 1421 through 1449).**

38 SECTION 6. IC 28-1-20-4, IS AMENDED TO READ AS  
39 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) Except as  
40 provided in subsections (c), (d), (g), and (k), it is unlawful for any  
41 person, firm, limited liability company, or corporation (other than a  
42 bank or trust company, **bank holding company**, or corporate fiduciary

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1 organized or reorganized under IC 28 or statutes in effect at the time of  
2 organization or reorganization or under the laws of the United States):

3 (1) to use the word "bank", **banc, or banco** as a part of the name  
4 or title of the person, firm, or corporation; or

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

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

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

11 (b) A financial institution organized under the laws of any state or  
12 the United States that establishes a branch office under this title is  
13 authorized to do business at that branch using a name other than the  
14 name of its home office.

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

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

22 (1) the words "savings bank"; or

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

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

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

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

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

38 (h) The department is authorized to investigate the business affairs  
39 of any person, firm, limited liability company, or corporation that uses  
40 "bank", **banc, or banco** in its title or holds itself out as a bank,  
41 corporate fiduciary, or trust company for the purpose of determining  
42 whether the person, firm, limited liability company, or corporation is

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

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

17 (j) A person, firm, limited liability company, or corporation who  
 18 violates this section is subject to a penalty of ~~two~~ **five** hundred dollars  
 19 ~~(\$200)~~ **(\$500)** per day for each and every day during which the  
 20 violation continues. The penalty imposed shall be recovered in the  
 21 name of the state on relation of the department and, when recovered,  
 22 shall be paid into the financial institutions fund established by  
 23 IC 28-11-2-9.

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

26 **(l) A person, firm, limited liability company, or corporation may**  
 27 **not use the name of an existing bank or bank holding company or**  
 28 **a name confusingly similar to that of an existing bank or bank**  
 29 **holding company when marketing to or soliciting business from a**  
 30 **customer or prospective customer if the reference to the existing**  
 31 **bank or bank holding company is:**

32 **(1) without the consent of the existing bank or bank holding**  
 33 **company; and**

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

36 **(A) originated from;**

37 **(B) is endorsed by; or**

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

39 **the existing bank or bank holding company.**

40 **(m) An existing bank or bank holding company may, in addition**  
 41 **to any other remedies available under the law, report an alleged**  
 42 **violation of subsection (l) to the department. If the department**

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1 finds that the marketing material or solicitation in question is in  
 2 violation of subsection (l), the department may direct the person,  
 3 firm, limited liability company, or corporation to cease and desist  
 4 from using that marketing material or solicitation in Indiana. If  
 5 that person, firm, limited liability company, or corporation persists  
 6 in using the marketing material or solicitation, the department  
 7 may impose a civil penalty of up to fifteen thousand dollars  
 8 (\$15,000) for each violation. Each instance in which the marketing  
 9 material or solicitation is sent to a customer or prospective  
 10 customer constitutes a separate violation of subsection (l).

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

16 (1) originated from;

17 (2) is endorsed by; or

18 (3) is in any other way the responsibility of;  
 19 the existing bank or bank holding company.

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

22 SECTION 7. IC 28-2-13-26 IS AMENDED TO READ AS  
 23 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 26. (a) A bank, trust  
 24 company, corporate fiduciary, or savings bank **organized under the**  
 25 **laws of Indiana** may establish a trust office to exercise its powers as  
 26 a fiduciary **to conduct business** in any location that is approved by the  
 27 department. Before the department approves a trust office **to exercise**  
 28 **powers as a fiduciary** under this subsection, it must determine to its  
 29 satisfaction that the bank, trust company, corporate fiduciary, or  
 30 savings bank will have adequate capital, sound management, and  
 31 adequate future earnings prospects after the establishment of the trust  
 32 office.

33 (b) A trust office established under this section by a bank, trust  
 34 company, or savings bank shall not:

35 (1) receive deposits;

36 (2) pay checks; or

37 (3) lend money;

38 at the trust office.

39 SECTION 8. IC 28-6.1-8-8 IS AMENDED TO READ AS  
 40 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. **Subject to any**  
 41 **limitations imposed by the department through policy, a** savings  
 42 bank may do any of the following:

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1 (1) Invest the money deposited in the savings bank in the shares  
 2 of the capital stock, bonds, debentures, notes, or other obligations  
 3 of a federal home loan bank of the United States.

4 (2) Become a member of the federal home loan bank of this or an  
 5 adjoining district.

6 (3) Borrow money from:

7 (A) a bank described in subdivision (2);

8 (B) the Federal Deposit Insurance Corporation; or

9 (C) any other corporation.

10 (4) Transfer, assign to, and pledge with a bank described in  
 11 subdivision (2), the Federal Deposit Insurance Corporation, or  
 12 other corporation, any of the bonds, notes, contracts, mortgages,  
 13 securities, or other property of the savings bank held or acquired,  
 14 as security for the payment of loans entered into under  
 15 subdivision (3).

16 (5) Exercise all rights, powers, and privileges conferred upon, and  
 17 to do all things and perform all acts required of, members or  
 18 shareholders of a federal home loan bank by the Federal Home  
 19 Loan Bank Act (12 U.S.C. 1421 through 1449).

20 SECTION 9. IC 28-6.1-20 IS ADDED TO THE INDIANA CODE  
 21 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 22 JULY 1, 2003]:

23 **Chapter 20. Applicability of the Federal Reserve Act**

24 **Sec. 1. For purposes of this article, a savings bank that is not a**  
 25 **member of the Federal Reserve System is subject to Sections 23A**  
 26 **and 23B of the Federal Reserve Act (12 U.S.C. 371c or 371c-1) to**  
 27 **the same extent and in the same manner as if the savings bank were**  
 28 **a member of the Federal Reserve System.**

29 **Sec. 2. A violation of Section 23A or 23B of the Federal Reserve**  
 30 **Act (12 U.S.C. 371c or 371c-1) by a savings bank or a subsidiary**  
 31 **constitutes a violation of this chapter.**

32 SECTION 10. IC 28-7-1-9, AS AMENDED BY P.L.134-2001,  
 33 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34 JULY 1, 2003]: Sec. 9. A credit union has the following powers:

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

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

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

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- 1 (A) the loan complies with all requirements under this chapter
- 2 with respect to loans to other borrowers and is not on terms
- 3 more favorable than those extended to other borrowers;
- 4 (B) upon the making of the loan, the aggregate amount of
- 5 loans outstanding under this subdivision will not exceed
- 6 twenty percent (20%) of the unimpaired capital and surplus of
- 7 the credit union;
- 8 (C) the loan is approved by the credit committee or loan
- 9 officer; and
- 10 (D) the borrower takes no part in the consideration of or vote
- 11 on the application.
- 12 (4) To invest in any of the following:
- 13 (A) Bonds, notes, or certificates that are the direct or indirect
- 14 obligations of the United States, or of the state, or the direct
- 15 obligations of a county, township, city, town, or other taxing
- 16 district or municipality or instrumentality of Indiana and that
- 17 are not in default.
- 18 (B) Bonds or debentures issued by the Federal Home Loan
- 19 Bank Act (12 U.S.C. 1421 through 1449) or the Home Owners'
- 20 Loan Act (12 U.S.C. 1461 through 1468).
- 21 (C) Interest-bearing obligations of the FSLIC Resolution Fund
- 22 and obligations of national mortgage associations issued under
- 23 the authority of the National Housing Act.
- 24 (D) Mortgages on real estate situated in Indiana which are
- 25 fully insured under Title 2 of the National Housing Act (12
- 26 U.S.C. 1707 through 1715z).
- 27 (E) Obligations issued by farm credit banks and banks for
- 28 cooperatives under the Farm Credit Act of 1971 (12 U.S.C.
- 29 2001 through 2279aa-14).
- 30 (F) In savings and loan associations, other credit unions that
- 31 are insured under IC 28-7-1-31.5 and certificates of
- 32 indebtedness or investment of an industrial loan and
- 33 investment company if the association or company is federally
- 34 insured. Not more than twenty percent (20%) of the assets of
- 35 a credit union may be invested in the shares or certificates of
- 36 an association or company; nor more than forty percent (40%)
- 37 in all such associations and companies.
- 38 (G) Corporate credit unions.
- 39 (H) Federal funds or similar types of daily funds transactions
- 40 with other financial institutions.
- 41 (I) Mutual funds created and controlled by credit unions, credit
- 42 union associations, or their subsidiaries. Mutual funds referred

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- 1 to in this clause may invest only in instruments that are  
 2 approved for credit union purchase under this chapter.  
 3 (J) Shares, stocks, or obligations of any credit union service  
 4 organization (as defined in Section 712 of the Rules and  
 5 Regulations of the National Credit Union Administration) with  
 6 the approval of the department. Not more than five percent  
 7 (5%) of the total paid in and unimpaired capital of the credit  
 8 union may be invested under this clause.
- 9 (5) To deposit its funds into:  
 10 (A) depository institutions that are federally insured; or  
 11 (B) state chartered credit unions that are privately insured by  
 12 an insurer approved by the department.
- 13 (6) To purchase, hold, own, or convey real estate as may be  
 14 conveyed to the credit union in satisfaction of debts previously  
 15 contracted or in exchange for real estate conveyed to the credit  
 16 union.
- 17 (7) To own, hold, or convey real estate as may be purchased by  
 18 the credit union upon judgment in its favor or decrees of  
 19 foreclosure upon mortgages.
- 20 (8) To issue shares of stock and upon the terms, conditions,  
 21 limitations, and restrictions and with the relative rights as may be  
 22 stated in the bylaws of the credit union, but no stock may have  
 23 preference or priority over the other to share in the assets of the  
 24 credit union upon liquidation or dissolution or for the payment of  
 25 dividends except as to the amount of the dividends and the time  
 26 for the payment of the dividends as provided in the bylaws.
- 27 (9) To charge the member's share account for the actual cost of  
 28 necessary locator service when the member has failed to keep the  
 29 credit union informed about the member's current address. The  
 30 charge shall be made only for amounts paid to a person or concern  
 31 normally engaged in providing such service, and shall be made  
 32 against the account or accounts of any one (1) member not more  
 33 than once in any twelve (12) month period.
- 34 (10) To transfer to an accounts payable, a dormant account, or a  
 35 special account share accounts which have been inactive, except  
 36 for dividend credits, for a period of two (2) years. The credit  
 37 union shall not consider the payment of dividends on the  
 38 transferred account.
- 39 (11) To invest in fixed assets with the funds of the credit union.  
 40 An investment in fixed assets in excess of five percent (5%) of its  
 41 assets is subject to the approval of the department.
- 42 (12) To establish branch offices, upon approval of the department,

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- 1 provided that all books of account shall be maintained at the  
 2 principal office.
- 3 (13) To pay an interest refund on loans proportionate to the  
 4 interest paid during the dividend period by borrowers who are  
 5 members at the end of the dividend period.
- 6 (14) To purchase life savings and loan protection insurance for  
 7 the benefit of the credit union and its members, if:
- 8 (A) the coverage is placed with an insurance company licensed  
 9 to do business in Indiana; and
- 10 (B) no officer, director, or employee of the credit union  
 11 personally benefits, directly or indirectly, from the sale or  
 12 purchase of the coverage.
- 13 (15) To sell and cash negotiable checks, travelers checks, and  
 14 money orders for members.
- 15 (16) To purchase members' notes from any liquidating credit  
 16 union, with written approval from the department, at prices agreed  
 17 upon by the boards of directors of both the liquidating and the  
 18 purchasing credit unions. However, the aggregate of the unpaid  
 19 balances of all notes of liquidating credit unions purchased by any  
 20 one (1) credit union shall not exceed ten percent (10%) of its  
 21 unimpaired capital and surplus unless special written  
 22 authorization has been granted by the department.
- 23 (17) To exercise such incidental powers necessary or requisite to  
 24 enable it to carry on effectively the business for which it is  
 25 incorporated.
- 26 (18) To act as a custodian or trustee of any trust created or  
 27 organized in the United States and forming part of a stock bonus,  
 28 pension, or profit sharing plan which qualifies or qualified for  
 29 specific tax treatment under Section 408(a) or Section 401(d) of  
 30 the Internal Revenue Code, if the funds of the trust are invested  
 31 only in share accounts or insured certificates of the credit union.
- 32 (19) To issue shares of its capital stock or insured certificates to  
 33 a trustee or custodian of a pension plan, profit sharing plan, or  
 34 stock bonus plan which qualifies for specific tax treatment under  
 35 Sections 401(d) or 408(a) of the Internal Revenue Code.
- 36 (20) A credit union may exercise any rights and privileges that  
 37 are:
- 38 (A) granted to federal credit unions; but
- 39 (B) not authorized for credit unions under the Indiana Code  
 40 (except for this section) or any rule adopted under the Indiana  
 41 Code;
- 42 if the credit union complies with section 9.2 of this chapter.

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1 (21) To sell, pledge, or discount any of its assets. ~~to purchase all~~  
 2 ~~or part of the assets of another credit union; and to assume the~~  
 3 ~~liabilities of the selling credit union.~~ However, a credit union may  
 4 not pledge any of its assets as security for the safekeeping and  
 5 prompt payment of any money deposited, except that a credit  
 6 union may, for the safekeeping and prompt payment of money  
 7 deposited, give security as authorized by federal law.

8 **(22) To purchase assets of another credit union and to assume**  
 9 **the liabilities of the selling credit union.**

10 **(23)** To act as a fiscal agent of the United States and to receive  
 11 deposits from nonmember units of the federal, state, or county  
 12 governments, from political subdivisions, and from other credit  
 13 unions upon which the credit union may pay varying interest rates  
 14 at varying maturities subject to terms, rates, and conditions that  
 15 are established by the board of directors. However, the total  
 16 amount of public funds received from units of state and county  
 17 governments and political subdivisions that a credit union may  
 18 have on deposit may not exceed ten percent (10%) of the total  
 19 assets of that credit union, excluding those public funds.

20 ~~(23)~~ **(24)** To join the National Credit Union Administration  
 21 Central Liquidity Facility.

22 ~~(24)~~ **(25)** To participate in community investment initiatives  
 23 under the administration of organizations:

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

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

28 Participation may be in the form of either charitable contributions  
 29 or participation loans. In either case, disbursement of funds  
 30 through the administering organization is not required to be  
 31 limited to members of the credit union. Total contributions or  
 32 participation loans may not exceed one tenth of one percent  
 33 (0.001) of total assets of the credit union. A recipient of a  
 34 contribution or loan is not considered qualified for credit union  
 35 membership. A contribution or participation loan made under this  
 36 subdivision must be approved by the board of directors.

37 ~~(25)~~ **(26)** To establish and operate an automated teller machine  
 38 (ATM):

39 (A) at any location within Indiana; or

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

42 ~~(26)~~ **(27)** To demand and receive, for the faithful performance and

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1 discharge of services performed under the powers vested in the  
2 credit union by this article:

3 (A) reasonable compensation, or compensation as fixed by  
4 agreement of the parties;

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

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

9 ~~(27)~~ **(28)** Subject to any restrictions the department may impose,  
10 to become the owner or lessor of personal property acquired upon  
11 the request and for the use of a member and to incur additional  
12 obligations as may be incident to becoming an owner or lessor of  
13 such property.

14 SECTION 11. IC 28-7-5-2 IS AMENDED TO READ AS  
15 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. In this chapter,  
16 unless the context otherwise requires:

17 "Pawnbroker" means any person, partnership, association, or  
18 corporation lending money on the deposit or pledge of personal  
19 property, or who deals in the purchase of personal property on the  
20 condition of selling the property back again at a stipulated price, other  
21 than choses in action, securities, or printed evidence of indebtedness.

22 "Pledge" means personal property deposited with a pawnbroker as  
23 security for a loan.

24 "Pledger" means the person who delivers personal property into the  
25 possession of a pawnbroker as security for a loan unless such person  
26 discloses that the person is or was acting for another; and in such event  
27 "pledger" means the disclosed principal.

28 "Department" means the department of financial institutions.

29 "Person" means an individual, a firm, an association, a limited  
30 liability company, a partnership, a joint stock association, a trust, or a  
31 corporation.

32 **"Month" means a period extending from a given date in one (1)  
33 calendar month to the like date in the succeeding calendar month  
34 or, if there is no such like date, then to the last day of the  
35 succeeding calendar month. For purposes of this chapter, each  
36 month is considered to have thirty (30) days.**

37 SECTION 12. IC 28-7-5-28 IS AMENDED TO READ AS  
38 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 28. (a) The maximum  
39 rate of interest charged by pawnbrokers shall be the same as the  
40 maximum loan finance charge for supervised lenders under  
41 IC 24-4.5-3-508(2). **For purposes of this subsection:**

42 **(1) the term of a loan commences on the date on which the**

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**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.

SECTION 13. IC 28-7-5-28.5, AS AMENDED BY P.L.163-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: 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 ~~sixty (60) days~~ 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.**

SECTION 14. IC 28-7-5-30, AS AMENDED BY P.L.163-2001, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 30. ~~After~~ **Upon** the expiration of ~~sixty (60) days~~ **two (2) months** from the maturity of the loan, a pawned article

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1 becomes the property of the pawnbroker and **is** subject to sale.

2 SECTION 15. IC 28-7-5-35 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 35. If more than one (1)  
4 person shall claim the right to redeem a pledge, the pawnbroker shall  
5 incur no liability for refusing to deliver the pledge until the respective  
6 rights of the claimants shall have been adjudicated. If no action be  
7 brought against the pawnbroker by either party within the period for  
8 which the pawnbroker is required under section 30 of this chapter to  
9 hold the pledge, or within ~~thirty (30) days~~ **one (1) month** after notice  
10 of an adverse claim, the pawnbroker may proceed to sell the pledge  
11 subject to adjudication of the parties' rights.

12 SECTION 16. IC 28-8-4-1 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) This chapter does  
14 not apply to the following:

- 15 (1) The United States or an instrumentality of the United States.
- 16 (2) The state, a political subdivision of the state, or an  
17 instrumentality of the state or of a political subdivision of the  
18 state.
- 19 (3) A bank, a bank holding company, an industrial loan and  
20 investment company, a credit union, a savings association, a  
21 savings bank, a mutual bank, or a mutual savings bank organized  
22 under the laws of any state or the United States.

23 (b) Unless otherwise provided in this chapter, this chapter does not  
24 apply to an authorized delegate of a person:

- 25 (1) licensed under this chapter **or excluded under subsection**  
26 **(a);** and
- 27 (2) acting within the scope of authority conferred by a written  
28 contract conforming to the requirements of section 49 of this  
29 chapter.

30 SECTION 17. IC 28-10-1-1, AS AMENDED BY P.L.82-2002,  
31 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
32 JULY 1, 2003]: Sec. 1. A reference to a federal law or federal  
33 regulation in IC 28 is a reference to the law or regulation in effect  
34 January 1, ~~2002~~ **2003**.

35 SECTION 18. IC 28-11-4-3 IS AMENDED TO READ AS  
36 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) If the director  
37 determines that ~~(+) a director, or an officer,~~ **or an employee** of a  
38 financial institution has:

- 39 ~~(A) (1)~~ **(1)** committed a violation of a statute, a rule, ~~or a final cease~~  
40 and desist order, **any condition imposed in writing by the**  
41 **director in connection with the grant of any application or**  
42 **other request by the financial institution, or any written**

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1 **agreement between the financial institution and the director;**  
 2 ~~(B)~~ **(2)** engaged or participated in an unsafe or unsound practice  
 3 in connection with the financial institution;  
 4 ~~(C)~~ **(3)** committed or engaged in an act, an omission, or a practice  
 5 that constitutes a breach of fiduciary duty as director, ~~or~~ officer,  
 6 **or employee; or**  
 7 ~~(D)~~ **(4)** been charged in a complaint, an indictment, or an  
 8 information with the commission of or participation in a crime  
 9 involving dishonesty or breach of trust that is punishable by  
 10 imprisonment for a term exceeding one (1) year under federal law  
 11 or the law of a state; ~~and~~  
 12 ~~(2)~~ **either:**

13 **the director, subject to subsection (b), may issue and serve upon**  
 14 **the officer, director, or employee a notice of the director's intent to**  
 15 **issue an order removing the person from the person's office or**  
 16 **employment, an order prohibiting any participation by the person**  
 17 **in the conduct of the affairs of any financial institution, or an order**  
 18 **both removing the person and prohibiting the person's**  
 19 **participation.**

20 **(b) A violation, practice, or breach specified in subdivision (a)**  
 21 **is subject to the authority of the director under subsection (a) if the**  
 22 **director finds both of the following:**

- 23 **(1) By reason of the violation, practice, or breach:**  
 24 (A) the financial institution has suffered or will probably  
 25 suffer substantial financial loss or other damage; or  
 26 (B) the interests of the financial institution's depositors could  
 27 be seriously prejudiced by reason of the violation, practice, or  
 28 breach of fiduciary duty.

29 ~~the director may issue and serve upon the director or the officer a~~  
 30 ~~notice of charges of the practice; violation; or act.~~

- 31 ~~(b)~~  
 32 **(2) The violation, practice, or breach:**  
 33 **(A) involves personal dishonesty on the part of the officer,**  
 34 **director, or employee; or**  
 35 **(B) demonstrates a willful or continuing disregard by the**  
 36 **officer, director, or employee for the safety and soundness**  
 37 **of the financial institution.**

38 **(c) A person convicted of a:**  
 39 (1) felony; or  
 40 (2) crime involving dishonesty or breach of trust;  
 41 may not serve as a director, an officer, or an employee of a financial  
 42 institution, or serve in any similar capacity, unless the person obtains

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1 the written consent of the department.

2 ~~(c)~~ **(d)** A financial institution that willfully permits a person to serve  
3 the financial institution in violation of subsection (b) **or (c)** is subject  
4 to a civil penalty of five hundred dollars (\$500) for each day the  
5 violation continues. A civil penalty paid under this subsection must be  
6 deposited into the financial institutions fund established by  
7 IC 28-11-2-9.

8 SECTION 19. IC 28-11-4-4 IS AMENDED TO READ AS  
9 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) A notice issued  
10 under this chapter must: ~~do the following:~~

11 (1) contain a statement of the facts constituting the alleged  
12 practice, violation, or ~~act.~~

13 ~~(2) Fix a time and place at which a hearing will be held by the~~  
14 ~~department to determine whether a final order under section 7 of~~  
15 ~~this chapter should be issued.~~

16 ~~(b) The hearing shall be fixed for a date:~~

17 ~~(1) not earlier than thirty (30) days; and~~

18 ~~(2) not later than one hundred twenty (120) days;~~

19 ~~after service of the notice. However, at the request of the party to whom~~  
20 ~~the notice is issued, the department may fix the hearing for a date~~  
21 ~~specified in the request: breach;~~

22 **(2) state the facts alleged in support of the violation, practice,**  
23 **or breach;**

24 **(3) state the director's intention to enter an order under**  
25 **section 3(a) of this chapter;**

26 **(4) be delivered to the board of directors of the financial**  
27 **institution;**

28 **(5) be delivered to the officer, director, or employee**  
29 **concerned; and**

30 **(6) specify the procedures that must be followed to initiate a**  
31 **hearing to contest the facts alleged.**

32 **(b) If a hearing is requested within ten (10) days after service of**  
33 **the written notice, the director or designee of the director shall**  
34 **hold a hearing concerning the alleged practice, violation, or**  
35 **breach. The hearing shall be held not later than forty-five (45) days**  
36 **after receipt of the request. The director or designee of the**  
37 **director, based on the evidence presented at the hearing, shall**  
38 **enter:**

39 **(1) a final order under section 7 of this chapter for the**  
40 **immediate removal of the officer, director, or employee**  
41 **affected;**

42 **(2) a final order under section 7 of this chapter prohibiting**

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further participation by the officer, director, or employee, in any manner, in the conduct of affairs of any financial institution;  
(3) a final order consisting of both an order described in subdivision (1) and an order described in subdivision (2);  
(4) a reprimand of the individuals, entities, or other persons concerned; or  
(5) 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), or (b)(3) 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 subsection (a). 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 notice shall remain in effect pending completion of the proceeding under the written notice served under subsection (a) and until the effective date of an order entered by the director under subsection (b) or (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 under subsection (b), and the court may stay the suspension or prohibition.

(g) The department shall maintain an official record of a proceeding under this chapter.

SECTION 20. IC 28-11-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. If the department

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1 enters into a consent to a final order under section 7 of this chapter with  
 2 a financial institution, director, ~~or~~ officer, **or employee**, the director is  
 3 not required to issue and serve a notice of charges upon the financial  
 4 institution, director, or officer under section 2 or 3 of this chapter. A  
 5 consent agreement may be negotiated and entered into before or after  
 6 the issuance of a notice of charges.

7 SECTION 21. IC 28-11-4-6 IS AMENDED TO READ AS  
 8 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) If the department  
 9 determines that an alleged practice, a violation, or an act specified in  
 10 a notice served under this chapter is likely to:

- 11 (1) cause insolvency of the financial institution;
- 12 (2) cause substantial dissipation of assets or earnings of the  
 13 financial institution; or
- 14 (3) otherwise seriously prejudice the interests of the depositors of  
 15 the financial institution;

16 the department may issue a temporary order without a hearing.

17 (b) A temporary order may

- 18 (1) require the financial institution to cease and desist from the  
 19 practice or violation. ~~or~~
- 20 (2) temporarily remove a director or an officer of the financial  
 21 institution.

22 (c) A temporary order is effective upon service and remains  
 23 effective and enforceable until the earliest of the following:

- 24 (1) The issuance of an injunction by a court under subsection (d).
- 25 (2) The dismissal of the charges by the department.
- 26 (3) The effective date of a final order under section 7 of this  
 27 chapter.

28 (d) A financial institution a ~~director~~, ~~or an officer~~ served with a  
 29 temporary order under this section may apply to a court having  
 30 jurisdiction for an injunction to stay, modify, or vacate the order.

31 SECTION 22. IC 28-11-4-7 IS AMENDED TO READ AS  
 32 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) If ~~upon the record~~  
 33 ~~made at a hearing under this chapter~~ the department finds that the  
 34 conditions specified in section 2 or 3 of this chapter have been  
 35 established, the department may issue a final order.

36 (b) A final order must include separately stated findings of fact **and**  
 37 **conclusions of law** for all aspects of the order. ~~including any remedy~~  
 38 ~~under subsection (c). Findings of ultimate fact must be accompanied by~~  
 39 ~~a concise statement of the underlying basic facts of record to support~~  
 40 ~~the findings.~~

41 (c) A final order may do any of the following:

- 42 (1) Require the financial institution and its directors, officers,

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1 employees, and agents to do any of the following:

2 (A) Cease and desist from the practice or violation.

3 (B) Take affirmative action to correct the conditions resulting  
4 from the practice or violation.

5 (2) ~~Permanently remove~~ **Suspend or prohibit** a director, ~~or an~~  
6 officer, **or an employee from participating in the affairs of a**  
7 **financial institution or subsidiary.**

8 (3) Impose a civil penalty not to exceed the amount specified in  
9 section 9 of this chapter.

10 (d) A final order shall be issued in writing within ninety (90) days  
11 after conclusion of the hearing, unless this period is waived or extended  
12 with the written consent of all parties or for good cause shown. **A final**  
13 **order issued under this chapter may be made public by the**  
14 **department.**

15 (e) If the financial institution, director, or officer does not appear  
16 individually or by a duly authorized representative at the hearing, the  
17 financial institution, director, or officer is considered to have consented  
18 to the issuance of a final order.

19 SECTION 23. IC 28-12-11-1 IS AMENDED TO READ AS  
20 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) This section  
21 applies only to a corporation that is any of the following:

22 (1) A bank and trust company.

23 (2) A bank.

24 (3) A stock savings bank.

25 (b) The department shall determine the minimum amount of the  
26 capital ~~stock~~ of a corporation organized or reorganized under this title  
27 after giving consideration to the potential deposit liability to be  
28 anticipated in the case of a proposed new corporation, or the existing  
29 deposit liability of a corporation to be reorganized.

30 SECTION 24. IC 28-13-4-4 IS AMENDED TO READ AS  
31 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. A ~~bank, trust~~  
32 ~~company, or corporate fiduciary corporation~~ **corporation** may not, during the time  
33 it continues in business as such, withdraw or authorize or permit to be  
34 withdrawn any portion of the capital stock in the form of dividends or  
35 otherwise.

36 SECTION 25. IC 28-13-4-5 IS AMENDED TO READ AS  
37 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) A ~~bank, trust~~  
38 ~~company, or corporate fiduciary corporation~~ may not declare or pay  
39 any dividends to its shareholders in any form if, by the payment of the  
40 dividends, its capital stock will be thereby impaired.

41 (b) A ~~bank, trust company, or corporate fiduciary corporation~~ may  
42 never pay a dividend in an amount greater than the remainder of

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1 undivided profits then on hand after deducting losses, bad debts, or  
 2 depreciation that the department may have determined, and all other  
 3 expenses.

4 **(c) A corporation must obtain department approval before**  
 5 **reducing the corporation's capital stock, capital surplus, or**  
 6 **preferred stock.**

7 SECTION 26. IC 28-13-4-6 IS AMENDED TO READ AS  
 8 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. All debts due to a  
 9 ~~bank, trust company, or corporate fiduciary~~ **corporation** on which  
 10 interest is past due for a period of six (6) months are bad debts unless,  
 11 in the opinion of the department, the debts are well secured.

12 SECTION 27. IC 28-13-4-7 IS AMENDED TO READ AS  
 13 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) The department  
 14 may, if the department considers it necessary for the protection of the  
 15 depositors, require any bank or trust **company, savings bank, or**  
 16 **savings association** to increase the sound capital or to reduce the  
 17 amount of the deposits of the bank or trust **company, savings bank, or**  
 18 **savings association**. The department shall, in arriving at a decision  
 19 whether to order a bank or trust **company, savings bank, or savings**  
 20 **association** to increase the sound capital or reduce the amount of the  
 21 deposits for the protection of **the depositors of** the bank or trust  
 22 ~~company's depositors,~~ **company, savings bank, or savings**  
 23 **association**, take into consideration the following:

- 24 (1) Quality of management.
- 25 (2) Liquidity of assets.
- 26 (3) History of earnings and the retention of earnings.
- 27 (4) Quality and character of ownership.
- 28 (5) Burden of occupancy expenses.
- 29 (6) Potential volatility of deposit structure.
- 30 (7) Quality of operating procedures.
- 31 (8) Capacity to meet present and future needs of the area served,  
 32 considering its competition.

33 (b) If the department determines that an increase in the sound  
 34 capital or decrease in the deposits is necessary, the department shall  
 35 enter an order fixing the amount of the increase or decrease. The order  
 36 shall be complied with within the time period fixed by the order.

37 (c) The department may require a corporate fiduciary to increase its  
 38 capital. In deciding whether to order a corporate fiduciary to increase  
 39 its capital, the department shall take into consideration the following:

- 40 (1) Quality of management.
- 41 (2) Liquidity of assets.
- 42 (3) History of earnings and the retention of earnings.



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- 1 (4) Quality and character of ownership.
- 2 (5) Burden of occupancy expenses.
- 3 (6) Quality of operating procedures.
- 4 (7) Ability to administer fiduciary accounts in a prudent manner
- 5 consistent with applicable laws or regulations.
- 6 (d) If the department determines that an increase in capital is
- 7 necessary, the department shall enter an order fixing the amount of the
- 8 increase. The order must be complied with within the period fixed by
- 9 the order.
- 10 SECTION 28. IC 28-13-16-4, AS ADDED BY P.L.215-1999,
- 11 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 12 JULY 1, 2003]: Sec. 4. (a) A financial institution **or any of its**
- 13 **subsidiaries** may acquire or establish a qualifying subsidiary by
- 14 providing the department with written notice before acquiring or
- 15 establishing the subsidiary. The department shall notify the requesting
- 16 financial institution of the department's receipt of the notice.
- 17 (b) A subsidiary may exercise a power or engage in an activity
- 18 permitted to be performed by a financial institution under the same
- 19 conditions and restrictions as if the power or activity is performed by
- 20 the financial institution itself, or the activity has been authorized by 12
- 21 CFR 5.34(e)(2)(ii).
- 22 (c) The qualified subsidiary may exercise or engage in the activity
- 23 thirty (30) days after the date on which the department receives the
- 24 notification unless otherwise notified by the department.
- 25 SECTION 29. IC 28-15-2-1 IS AMENDED TO READ AS
- 26 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. Savings associations
- 27 may do the following:
- 28 (1) Accept deposit accounts.
- 29 (2) Issue evidence of deposit account ownership.
- 30 (3) Declare and distribute earnings to members.
- 31 (4) Pay, in part or in full, withdrawal requests of deposit accounts.
- 32 (5) Subject to the provisions and restrictions of 12 U.S.C. 84 and
- 33 12 CFR 32:
- 34 (A) Make loans to members on the security of deposit
- 35 accounts.
- 36 (B) Make property improvement loans.
- 37 (C) Make other loans as provided under IC 28-15-8.
- 38 (D) Make mortgage loans.
- 39 (E) Accept additional collateral on mortgage loans.
- 40 (F) Purchase and sell loans.
- 41 (G) Negotiate loan servicing agreements.
- 42 (H) Purchase and sell participating interests in loans.

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- 1 (I) Issue letters of credit with specific expiration dates.  
 2 (J) Make secured or unsecured loans, which are partially  
 3 insured or guaranteed in any manner by any state of the United  
 4 States, the United States government, or any of its agencies or  
 5 government sponsored enterprises.  
 6 (K) Purchase commercial paper that is denominated in United  
 7 States currency and rated by at least one (1) nationally  
 8 recognized investment rating service in one (1) of the two (2)  
 9 highest grades.  
 10 (L) Make, purchase, or participate in alternative mortgage  
 11 loans as provided in IC 28-15-11.  
 12 (6) Acquire and sell real estate in satisfaction of debts previously  
 13 contracted.  
 14 (7) Acquire real estate for the convenient transaction of its  
 15 business. A savings association has the same powers under this  
 16 subdivision as a bank or trust company has under IC 28-1-11-5.  
 17 (8) Notwithstanding any other law, establish, maintain, or relocate  
 18 one (1) or more branch offices by following the provisions of  
 19 IC 28-2-13, IC 28-2-17, or IC 28-2-18 as if the savings association  
 20 were a bank.  
 21 (9) Become a member in any agency or instrumentality of the  
 22 federal government. For the purposes of this subdivision,  
 23 membership in an agency or instrumentality of the federal  
 24 government may include:  
 25 (A) purchasing stock;  
 26 (B) purchasing notes and debentures; or  
 27 (C) borrowing money.  
 28 (10) **Subject to any limitations imposed by the department**  
 29 **through policy:**  
 30 (A) **invest the money deposited in the savings association in**  
 31 **the shares of the capital stock, bonds, debentures, notes, or**  
 32 **other obligations of a federal home loan bank of the United**  
 33 **States;**  
 34 (B) **become a member of the federal home loan bank of the**  
 35 **district in which Indiana is located or an adjoining district;**  
 36 (C) **borrow money from:**  
 37 (i) **a federal home loan bank described in clause (B);**  
 38 (ii) **the Federal Deposit Insurance Corporation; or**  
 39 (iii) **any other corporation;**  
 40 (D) **transfer, assign to, and pledge with a federal home loan**  
 41 **bank described in clause (B), the Federal Deposit**  
 42 **Insurance Corporation, or any other corporation any of**

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1           **the bonds, notes, contracts, mortgages, securities, or other**  
 2           **property of the savings association held or acquired as**  
 3           **security for the payment of loans entered into under clause**  
 4           **(C); and**  
 5           **(E) exercise all rights, powers, and privileges conferred**  
 6           **upon, and do all things and perform all acts required of,**  
 7           **members or shareholders of a federal home loan bank by**  
 8           **the Federal Home Loan Bank Act (12 U.S.C. 1421 through**  
 9           **1449).**

10           **(11)** Subject to the provisions and restrictions of 12 U.S.C. 24 and  
 11           12 CFR 1, invest in the following types of securities:

12           (A) Bonds, notes, certificates, and other valid obligations of  
 13           the United States government or any agency of the United  
 14           States government.

15           (B) Accounts offered by federally insured banks, savings  
 16           banks, and savings associations.

17           (C) Bonds, notes, or other evidences of indebtedness that are  
 18           general obligations supported by the full faith and credit of any  
 19           state in the United States or any city, town, or other political  
 20           subdivision in any state in the United States if the obligations  
 21           have been assigned one (1) of the four (4) highest grades by a  
 22           nationally recognized investment rating service.

23           (D) Shares of stock of a subsidiary that does not exercise a  
 24           power or engage in any activity that is not authorized for the  
 25           savings association. The investment power granted by this  
 26           subdivision is separate from the investment power granted by  
 27           IC 28-15-9.

28           (E) Corporate debt securities that are denominated in United  
 29           States currency and rated by at least one (1) nationally  
 30           recognized investment rating service in one (1) of the four (4)  
 31           highest grades. Corporate debt securities in which a savings  
 32           association invests under this clause must be convertible into  
 33           stock at the sole option of the holder, and a savings association  
 34           is prohibited from exercising the conversion option.

35           (F) Shares of open end investment companies that are eligible  
 36           for purchase by national banks.

37           (G) Bankers' acceptances that are eligible for purchase by  
 38           national banks.

39           ~~(11)~~ **(12)** For the purpose of:

40           (A) check and deposit sorting and posting;

41           (B) computation and posting of interest and other credits and  
 42           charges;

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- 1 (C) preparation and mailing of checks, statements, notices, and  
 2 similar items; or  
 3 (D) other clerical, bookkeeping, accounting, statistical, or  
 4 similar functions performed by a savings association;  
 5 invest in a corporation organized in any state to perform those  
 6 functions for two (2) or more savings associations, each of which  
 7 owns a portion of the capital stock of the corporation. The total  
 8 investment of a savings association under this subdivision may  
 9 not exceed ten percent (10%) of the capital and surplus of the  
 10 savings association. A savings association may not invest in this  
 11 type of corporation unless the corporation furnishes assurances to  
 12 the department that it will subject itself to examination by the  
 13 department to the same extent as if the services were performed  
 14 by the savings association.
- 15 ~~(12)~~ **(13)** Lend money to other savings associations:  
 16 (A) the deposits of which are insured by the Federal Deposit  
 17 Insurance Corporation; and  
 18 (B) that are incorporated and operating under the laws of any  
 19 state or of the United States.
- 20 ~~(13)~~ **(14)** Borrow money and mortgage or pledge its property to  
 21 secure payment.
- 22 ~~(14)~~ **(15)** Issue subordinated notes or debentures.
- 23 ~~(15)~~ **(16)** Assess and collect interest, fees, and other charges.
- 24 ~~(16)~~ **(17)** Insure its deposit accounts with the Federal Deposit  
 25 Insurance Corporation or its successor.
- 26 ~~(17)~~ **(18)** Act as an agent for the United States or its  
 27 instrumentalities.
- 28 ~~(18)~~ **(19)** Accept property for safe keeping or escrow.
- 29 ~~(19)~~ **(20)** Rent or lease safe deposit boxes.
- 30 ~~(20)~~ **(21)** Issue and sell checks, drafts, money orders, and other  
 31 instruments for the transmission or payment of money.
- 32 ~~(21)~~ **(22)** Exercise all the powers that:  
 33 (A) are incidental and proper; or  
 34 (B) may be necessary and usual;  
 35 in carrying on the business of the savings association.
- 36 ~~(22)~~ **(23)** Purchase or construct buildings, hold legal title to the  
 37 buildings, and lease the buildings for public purposes to  
 38 municipal corporations or other public authorities that have  
 39 resources sufficient to make payment of all rentals as they become  
 40 due. Each lease agreement entered into under this subdivision  
 41 must provide that, upon expiration, the lessee will become the  
 42 owner of the building.

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1           ~~(23)~~ **(24)** Open or establish automated teller machines at any  
 2 location. An automated teller machine opened or established  
 3 under this subdivision may be owned and operated individually  
 4 or jointly on a cost sharing or fee basis.

5           ~~(24)~~ **(25)** Act:

6           (A) in any fiduciary capacity in which a bank or trust company  
 7 is permitted to act under this title; and

8           (B) as an agent for the sale of real estate, without bond or other  
 9 security.

10          ~~(25)~~ **(26)** Accept and maintain demand deposit accounts if the  
 11 savings association is insured by the Federal Deposit Insurance  
 12 Corporation or its successor.

13          ~~(26)~~ **(27)** Without the approval of the department, to the extent  
 14 authorized by the board of directors of the savings association,  
 15 establish or maintain agencies that:

16           (A) only service and originate, but do not approve, loans and  
 17 contracts; or

18           (B) manage or sell real estate owned by the savings  
 19 association.

20          An agency established or maintained under this subdivision may  
 21 offer any services not referred to in this subdivision with the  
 22 approval of the department, except for accepting payment on  
 23 savings accounts. An agency shall maintain records of all  
 24 business it transacts and transmit copies to a branch or home  
 25 office of the savings association.

26          SECTION 30. IC 28-15-16 IS ADDED TO THE INDIANA CODE  
 27 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 28 JULY 1, 2003]:

29           **Chapter 16. Applicability of the Federal Reserve Act**

30           **Sec. 1. For purposes of this article, a savings association that is**  
 31 **not a member of the Federal Reserve System is subject to Sections**  
 32 **23A and 23B of the Federal Reserve Act (12 U.S.C. 371c or 371c-1)**  
 33 **to the same extent and in the same manner as if the savings**  
 34 **association were a member of the Federal Reserve System.**

35           **Sec. 2. A violation of Section 23A or 23B of the Federal Reserve**  
 36 **Act (12 U.S.C. 371c or 371c-1) by a savings association or a**  
 37 **subsidiary constitutes a violation of this chapter.**

38          SECTION 31. [EFFECTIVE UPON PASSAGE] **This act does not**  
 39 **affect:**

40           **(1) rights or liabilities accrued;**

41           **(2) penalties incurred;**

42           **(3) crimes committed; or**



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1           **(4) proceedings begun;**  
2           **before the effective date of this act. Those rights, liabilities,**  
3           **penalties, crimes, and proceedings continue and shall be imposed**  
4           **under prior law as if this act had not been enacted.**  
5           **SECTION 32. An emergency is declared for this act.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1834, 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 5, between lines 12 and 13, begin a new paragraph and insert:

"SECTION 7. IC 28-6.1-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: 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)."

Page 14, line 27, delete "public".

Page 15, between lines 33 and 34, begin a new paragraph and insert:

"SECTION 19. IC 28-11-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. If the department enters into a consent to a final order under section 7 of this chapter with a financial institution, director, ~~or~~ 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.

SECTION 20. IC 28-11-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) If the department determines that an alleged practice, a violation, or an act specified in

**EH 1834—LS 7068/DI 108+**



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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 department 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. ~~or~~
- (2) temporarily remove a director or an officer 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 a ~~director, or an officer~~ 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."

Page 16, line 15, after "cause shown." insert "**A final order issued under this chapter may be made public by the department.**"

Page 17, line 16, delete "company" and insert "**company, savings bank, or savings association**".

Page 17, line 18, delete "company or savings bank." and insert "**company, savings bank, or savings association.**".

Page 17, line 19, delete "company" and insert "**company, savings bank, or savings association**".

Page 17, line 20, after "protection of" insert "**the depositors of**".

Page 17, line 21, strike "company's depositors," and insert "**company, savings bank, or savings association,**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1834 as introduced.)

BARDON, Chair

Committee Vote: yeas 11, nays 0.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1834, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1834 as printed February 18, 2003.)

PAUL, Chairperson

Committee Vote: Yeas 7, Nays 0.

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## SENATE MOTION

Mr. President: I move that Engrossed House Bill 1834 be amended to read as follows:

Page 4, line 29, after "other corporation" delete ",".

Page 4, between lines 37 and 38, begin a new paragraph and insert:

"SECTION 6. IC 28-1-20-4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: 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, **bank holding 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 "bank", **banc, or banco** 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 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

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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 ~~two~~ **five** hundred dollars (~~\$200~~) (**\$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 bank or bank holding company or a name confusingly similar to that of an existing bank or bank holding company when marketing to or soliciting business from a customer or prospective customer if the reference to the existing bank or bank holding company is:**

**(1) without the consent of the existing bank or bank holding**

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company; 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 bank or bank holding company.

(m) An existing bank or bank holding company 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 bank or bank holding company 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 bank or bank holding company.

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

Page 4, line 41, delete "this state" and insert "Indiana".

Page 5, line 39, after "Act" delete ".".

Page 6, line 5, delete "section." and insert "chapter."

Page 13, line 32, delete "or".

Page 14, line 12, insert "A".

Page 21, line 16, after "other corporation" delete ",".

Page 22, line 13, delete "(12)For" and insert "(12) For".

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Page 24, line 10, delete ",".

Page 24, line 11, delete "section" and insert "**chapter**".

Renumber all SECTIONS consecutively.

(Reference is to EHB 1834 as printed April 1, 2003.)

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