

**CONFERENCE COMMITTEE REPORT  
DIGEST FOR EHB 1229**

**Citations Affected:** IC 4-4-3-8; IC 4-4-3-23; IC 4-6-12; IC 23-2-5-3; IC 23-2-5-19; IC 23-15-8-3; IC 24-4.5-1-102; IC 24-4.5-1-202; IC 24-4.5-7; IC 24-9; IC 28-1-20-4; IC 28-7-1-9; IC 28-7-1-9.2; IC 28-8-4-27; IC 28-8-4-33; IC 28-10-1-1; IC 28-11-3-6; IC 28-13-16-4; IC 28-13-16-5; IC 28-15-2-2; IC 32-29-1-2.5; IC 34-7-4-2; IC 36-2-7-10; IC 24-4.5-7-407; IC 24-4.5-7-408.

**Synopsis:** Home loan practices. Restricts certain lending acts and practices. Establishes the homeowner protection unit in the office of the attorney general. Provides enforcement procedures for deceptive mortgage acts. Establishes a \$3 mortgage recording fee. Requires the department of commerce to provide home ownership education programs. Provides that certain provisions do not apply to certain financial institutions. Makes changes to the definition of a high cost home loan. Prohibits certain lending practices. Updates references in financial institutions law to conform with federal law. Permits a state chartered financial institution to engage in activities related to a product, a service, or an investment that is available to or offered by national banks domiciled in Indiana. Removes limitations on the amount of public funds that may be deposited in a credit union. (Currently, deposits of public funds are limited to 10% of total credit union assets.) Increases the minimum amount of the bond required for a money transmitter from \$100,000 to \$200,000 and the maximum amount from \$200,000 to \$300,000. Increases the insurance coverage required for a money transmitter for criminal or dishonest acts from 50% to 100% of the amount of the money transmitter's security bond or deposit. Provides that state law applies to a state chartered bank, trust company, savings association, savings bank, credit union, corporate fiduciary, or industrial loan and investment company to the same extent it applies to a federally chartered institution of the same type. Establishes administrative procedures governing requests for an exemption from state law due to the preemption of state law as it is applied to federally chartered institutions. Makes various changes in the small loan provisions of the Uniform Consumer Credit Code, including: (1) defines a small loan as a loan with a principal amount that is more than \$50 and not more than \$500; (2) prohibits the renewal of a small loan; (3) removes limitations on finance charges; (4) increases delinquency charges; (5) allows a small loan to be secured by a borrower's authorization to debit an account instead of a borrower's check; (6)

increases civil penalties and statutory damages from \$1,000 to \$2,000; and (7) prohibits a small loan if the total payable amount of the small loan exceeds 15% of the borrower's monthly gross income. (Current law provides that a small loan is prohibited if it exceeds 20% of the borrower's monthly net income.) Repeals provisions that relate to the renewal of a small loan. Permits the secretary of state to administratively dissolve a business entity whose name contains the term "banc" or "banco" in violation of financial institutions law. (Current law allows the secretary of state to take this action in the case of an entity whose name contains the term "bank".) Permits the use of the word "bank", "banc", or "banco" in the name of a subsidiary of : (1) a bank or trust company; and (2) a bank holding company. Prohibits a lender from requiring a borrower to obtain hazard insurance in an amount exceeding the replacement value of the improvements on mortgaged property as a condition of receiving or maintaining the mortgage. Voids provisions in an agreement to purchase a security that would waive compliance with securities law or a rule or order made under securities law. Provides a procedure for an issuer of securities to respond to comments regarding an application for registration made by the securities division. Permits the appointment of a securities division attorney to serve as a special deputy prosecutor in actions arising under securities law. Prohibits the issuance of an interpretive opinions by the securities commissioner concerning an activity that occurred before or is occurring on the date that the opinion is requested. Requires that notice and opportunity to be heard must be provided to a person accused of violating securities law, rather than requiring that a hearing occur as provided by current law. Prohibits various deceptive practices by a person that supplies information concerning securities. Provides that an administrative action under securities law survives the death of a person who might have been a respondent. Makes changes to definitions used in the loan broker statutes. Exempts persons engaged in certain federally regulated transactions from the requirements of the loan broker law. **(This conference committee report: requires the department of commerce, rather than the Indiana housing finance authority, to provide home ownership education programs; and incorporates the provisions of SB 222, ESB 405, ESB 406, ESB 469, and some provisions of HB 1230.)**

**Effective:** Upon passage; January 1, 2004 (retroactive); July 1, 2004; January 1, 2005.

Adopted Rejected

## CONFERENCE COMMITTEE REPORT

**MR. SPEAKER:**

*Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1229 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:  
2 SECTION 1. IC 4-4-3-8 IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JANUARY 1, 2005]: Sec. 8. (a) The department shall  
4 develop and promote programs designed to make the best use of the  
5 resources of the state so as to assure a balanced economy and  
6 continuing economic growth for Indiana and for those purposes may  
7 do the following:  
8 (1) Cooperate with federal, state, and local governments and  
9 agencies in the coordination of programs to make the best use of  
10 the resources of the state.  
11 (2) Receive and expend all funds, grants, gifts, and contributions  
12 of money, property, labor, interest accrued from loans made by the  
13 department, and other things of value from public and private  
14 sources, including grants from agencies and instrumentalities of the  
15 state and the federal government. The department:  
16 (A) may accept federal grants for providing planning assistance,  
17 making grants, or providing other services or functions

- 1           necessary to political subdivisions, planning commissions, or  
 2           other public or private organizations;  
 3           (B) shall administer these grants in accordance with their terms;  
 4           and  
 5           (C) may contract with political subdivisions, planning  
 6           commissions, or other public or private organizations to carry out  
 7           the purposes for which the grants were made.
- 8           (3) Direct that assistance, information, and advice regarding the  
 9           duties and functions of the department be given the department by  
 10          any officer, agent, or employee of the state. The head of any other  
 11          state department or agency may assign one (1) or more of the  
 12          department's or agency's employees to the department on a  
 13          temporary basis, or may direct any division or agency under the  
 14          department's or agency's supervision and control to make any  
 15          special study or survey requested by the director.
- 16          (b) The department shall perform the following duties:
- 17               (1) Disseminate information concerning the industrial, commercial,  
 18               governmental, educational, cultural, recreational, agricultural, and  
 19               other advantages of Indiana.  
 20               (2) Plan, direct, and conduct research activities.  
 21               (3) Develop and implement industrial development programs to  
 22               encourage expansion of existing industrial, commercial, and  
 23               business facilities within Indiana and to encourage new industrial,  
 24               commercial, and business locations within Indiana.  
 25               (4) Assist businesses and industries in acquiring, improving, and  
 26               developing overseas markets and encourage international plant  
 27               locations within Indiana. The director, with the approval of the  
 28               governor, may establish foreign offices to assist in this function.  
 29               (5) Promote the growth of minority business enterprises by doing  
 30               the following:
- 31                   (A) Mobilizing and coordinating the activities, resources, and  
 32                   efforts of governmental and private agencies, businesses, trade  
 33                   associations, institutions, and individuals.  
 34                   (B) Assisting minority businesses in obtaining governmental or  
 35                   commercial financing for expansion, establishment of new  
 36                   businesses, or individual development projects.  
 37                   (C) Aiding minority businesses in procuring contracts from  
 38                   governmental or private sources, or both.  
 39                   (D) Providing technical, managerial, and counseling assistance to  
 40                   minority business enterprises.
- 41               (6) Assist in community economic development planning and the  
 42               implementation of programs designed to further this development.  
 43               (7) Assist in the development and promotion of Indiana's tourist  
 44               resources, facilities, attractions, and activities.  
 45               (8) Assist in the promotion and marketing of Indiana's agricultural  
 46               products, and provide staff assistance to the director in fulfilling the  
 47               director's responsibilities as commissioner of agriculture.  
 48               (9) Perform the following energy related functions:
- 49                   (A) Assist in the development and promotion of alternative energy  
 50                   resources, including Indiana coal, oil shale, hydropower, solar,

- 1 wind, geothermal, and biomass resources.
- 2 (B) Encourage the conservation and efficient use of energy,  
3 including energy use in commercial, industrial, residential,  
4 governmental, agricultural, transportation, recreational, and  
5 educational sectors.
- 6 (C) Assist in energy emergency preparedness.
- 7 (D) Not later than January 1, 1994, establish:
- 8 (i) specific goals for increased energy efficiency in the  
9 operations of state government and for the use of alternative  
10 fuels in vehicles owned by the state; and
- 11 (ii) guidelines for achieving the goals established under item (i).
- 12 (E) Establish procedures for state agencies to use in reporting to  
13 the department on energy issues.
- 14 (F) Carry out studies, research projects, and other activities  
15 required to:
- 16 (i) assess the nature and extent of energy resources required to  
17 meet the needs of the state, including coal and other fossil  
18 fuels, alcohol fuels produced from agricultural and forest  
19 products and resources, renewable energy, and other energy  
20 resources;
- 21 (ii) promote cooperation among government, utilities, industry,  
22 institutions of higher education, consumers, and all other  
23 parties interested in energy and recycling market development  
24 issues; and
- 25 (iii) promote the dissemination of information concerning  
26 energy and recycling market development issues.
- 27 (10) Implement any federal program delegated to the state to  
28 effectuate the purposes of this chapter.
- 29 (11) Promote the growth of small businesses by doing the  
30 following:
- 31 (A) Assisting small businesses in obtaining and preparing the  
32 permits required to conduct business in Indiana.
- 33 (B) Serving as a liaison between small businesses and state  
34 agencies.
- 35 (C) Providing information concerning business assistance  
36 programs available through government agencies and private  
37 sources.
- 38 (12) Assist the Indiana commission for agriculture and rural  
39 development in performing its functions under IC 4-4-22.
- 40 (13) Develop and promote markets for the following recyclable  
41 items:
- 42 (A) Aluminum containers.
- 43 (B) Corrugated paper.
- 44 (C) Glass containers.
- 45 (D) Magazines.
- 46 (E) Steel containers.
- 47 (F) Newspapers.
- 48 (G) Office waste paper.
- 49 (H) Plastic containers.
- 50 (I) Foam polystyrene packaging.

- 1 (J) Containers for carbonated or malt beverages that are primarily  
 2 made of a combination of steel and aluminum.  
 3 (14) Produce an annual recycled products guide and at least one (1)  
 4 time each year distribute the guide to the following:  
 5 (A) State agencies.  
 6 (B) The judicial department of state government.  
 7 (C) The legislative department of state government.  
 8 (D) State educational institutions (as defined in IC 20-12-0.5-1).  
 9 (E) Political subdivisions (as defined in IC 36-1-2-13).  
 10 (F) Bodies corporate and politic created by statute.

11 A recycled products guide distributed under this subdivision must  
 12 include a description of supplies and other products that contain  
 13 recycled material and information concerning the availability of the  
 14 supplies and products.

15 **(15) Beginning July 1, 2005, the department shall identify,**  
 16 **promote, assist, and fund home ownership education programs**  
 17 **conducted throughout Indiana by nonprofit counseling**  
 18 **agencies certified by the department using funds appropriated**  
 19 **under IC 4-4-3-23(e). The department shall adopt rules under**  
 20 **IC 4-22-2 governing certification procedures and counseling**  
 21 **requirements for nonprofit home ownership counselors. The**  
 22 **attorney general and the entities listed in IC 4-6-12-4(a)(1)**  
 23 **through IC 4-6-12-4(a)(10) shall cooperate with the**  
 24 **department in implementing this subdivision.**

25 (c) The department shall submit a report to the general assembly  
 26 before October 1 of each year concerning the availability of and location  
 27 of markets for recycled products in Indiana. The report must include  
 28 the following:

- 29 (1) A priority listing of recyclable materials to be targeted for  
 30 market development. The listing must be based on an examination  
 31 of the need and opportunities for the marketing of the following:  
 32 (A) Paper.  
 33 (B) Glass.  
 34 (C) Aluminum containers.  
 35 (D) Steel containers.  
 36 (E) Bi-metal containers.  
 37 (F) Glass containers.  
 38 (G) Plastic containers.  
 39 (H) Landscape waste.  
 40 (I) Construction materials.  
 41 (J) Waste oil.  
 42 (K) Waste tires.  
 43 (L) Coal combustion wastes.  
 44 (M) Other materials.  
 45 (2) A presentation of a market development strategy that:  
 46 (A) considers the specific material marketing needs of Indiana;  
 47 and  
 48 (B) makes recommendations for legislative action.  
 49 (3) An analysis that examines the cost and effectiveness of future

1 market development options.

2 SECTION 2. IC 4-4-3-23 IS ADDED TO THE INDIANA CODE AS  
3 A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY**  
4 **1, 2005]: Sec. 23. (a) The home ownership education account**  
5 **within the state general fund is established to support the home**  
6 **ownership education programs established under section 8(b)(15)**  
7 **of this chapter. The account is administered by the department.**

8 **(b) The home ownership education account consists of fees**  
9 **collected under IC 24-9-9.**

10 **(c) The expenses of administering the home ownership education**  
11 **account shall be paid from money in the fund.**

12 **(d) The treasurer of state shall invest the money in the home**  
13 **ownership education account not currently needed to meet the**  
14 **obligations of the account in the same manner as other public**  
15 **money may be invested.**

16 **(e) Money in the account may be spent only after appropriation**  
17 **by the general assembly.**

18 SECTION 3. IC 4-6-3-3, AS AMENDED BY P.L.2-2002, SECTION  
19 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY  
20 1, 2005]: Sec. 3. If the attorney general has reasonable cause to believe  
21 that a person may be in possession, custody, or control of documentary  
22 material, or may have knowledge of a fact that is relevant to an  
23 investigation conducted to determine if a person is or has been engaged  
24 in a violation of IC 4-6-9, IC 4-6-10, IC 13-14-10, IC 13-14-12,  
25 IC 13-24-2, IC 13-30-4, IC 13-30-5, IC 13-30-6, IC 13-30-8,  
26 IC 23-7-8, IC 24-1-2, IC 24-5-0.5, IC 24-5-7, IC 24-5-8, **IC 24-9,**  
27 **IC 25-1-7, IC 32-34-1,** or any other statute enforced by the attorney  
28 general, only the attorney general may issue in writing, and cause to be  
29 served upon the person or the person's representative or agent, an  
30 investigative demand that requires that the person served do any  
31 combination of the following:

32 (1) Produce the documentary material for inspection and copying  
33 or reproduction.

34 (2) Answer under oath and in writing written interrogatories.

35 (3) Appear and testify under oath before the attorney general or the  
36 attorney general's duly authorized representative.

37 SECTION 4. IC 4-6-12 IS ADDED TO THE INDIANA CODE AS  
38 A **NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY**  
39 **1, 2005]:**

40 **Chapter 12. Homeowner Protection Unit**

41 **Sec. 1. As used in this chapter, "unit" refers to the homeowner**  
42 **protection unit established under this chapter.**

43 **Sec. 2. The attorney general shall establish a homeowner**  
44 **protection unit to enforce IC 24-9 and to carry out this chapter.**

45 **Sec. 3. (a) Beginning July 1, 2005, the unit shall do the**  
46 **following:**

47 **(1) Investigate deceptive acts in connection with mortgage**  
48 **lending.**

- 1           **(2) Investigate violations of IC 24-9.**  
 2           **(3) Institute appropriate administrative and civil actions to**  
 3           **redress:**  
 4               **(A) deceptive acts in connection with mortgage lending; and**  
 5               **(B) violations of IC 24-5-0.5 and IC 24-9.**  
 6           **(4) Cooperate with federal, state, and local law enforcement**  
 7           **agencies in the investigation of:**  
 8               **(A) deceptive acts in connection with mortgage lending;**  
 9               **(B) criminal violations involving deceptive acts in connection**  
 10              **with mortgage lending; and**  
 11              **(C) violations of IC 24-5-0.5 and IC 24-9.**  
 12           **(b) The attorney general shall adopt rules under IC 4-22-2 to the**  
 13           **extent necessary to organize the unit.**  
 14           **Sec. 4. (a) The following may cooperate with the unit to**  
 15           **implement this chapter:**  
 16               **(1) The Indiana professional licensing agency and the**  
 17               **appropriate licensing boards with respect to persons licensed**  
 18               **under IC 25.**  
 19               **(2) The department of financial institutions.**  
 20               **(3) The department of insurance with respect to the sale of**  
 21               **insurance in connection with mortgage lending.**  
 22               **(4) The securities division of the office of the secretary of**  
 23               **state.**  
 24               **(5) The supreme court disciplinary commission with respect to**  
 25               **attorney misconduct.**  
 26               **(6) The Indiana housing finance authority.**  
 27               **(7) The department of state revenue.**  
 28               **(8) The state police department.**  
 29               **(9) A prosecuting attorney.**  
 30               **(10) Local law enforcement agencies.**  
 31               **(11) The department of commerce.**  
 32           **(b) Notwithstanding IC 5-14-3, the entities listed in subsection**  
 33           **(a) may share information with the unit.**  
 34           **Sec. 5. The attorney general may file complaints with any of the**  
 35           **entities listed in section 4 of this chapter to carry out this chapter**  
 36           **and IC 24-9.**  
 37           **Sec. 6. The establishment of the unit and the unit's powers does**  
 38           **not limit the jurisdiction of an entity described in section 4 of this**  
 39           **chapter.**  
 40           **Sec. 7. The attorney general and an investigator of the unit may**  
 41           **do any of the following when conducting an investigation under**  
 42           **section 3 of this chapter:**  
 43               **(1) Issue and serve a subpoena for the production of records,**  
 44               **including records stored in electronic data processing systems,**  
 45               **for inspection by the attorney general or the investigator.**  
 46               **(2) Issue and serve a subpoena for the appearance of a person**  
 47               **to provide testimony under oath.**



1           **(3) Apply to a court with jurisdiction to enforce a subpoena**  
 2           **described in subdivision (1) or (2).**

3           **Sec. 8. The unit shall cooperate with the department of**  
 4           **commerce in the development and implementation of the home**  
 5           **ownership education programs established under**  
 6           **IC 4-4-3-8(b)(15).**

7           **Sec. 9. (a) The homeowner protection unit account within the**  
 8           **general fund is established to support the operations of the unit.**  
 9           **The account is administered by the attorney general.**

10          **(b) The homeowner protection unit account consists of fees**  
 11          **collected under IC 24-9-9.**

12          **(c) The expenses of administering the homeowner protection**  
 13          **unit account shall be paid from money in the account.**

14          **(d) The treasurer of state shall invest the money in the**  
 15          **homeowner protection unit account not currently needed to meet**  
 16          **the obligations of the account in the same manner as other public**  
 17          **money may be invested.**

18          **(e) Before July 1, 2007:**

19           **(1) money in the homeowner protection unit account at the**  
 20           **end of the state fiscal year does not revert to the state general**  
 21           **fund; and**

22           **(2) there is annually appropriated to the attorney general**  
 23           **from the homeowner protection unit account money sufficient**  
 24           **for carrying out the purposes of this chapter and IC 24-9.**

25          **(f) After June 30, 2007:**

26           **(1) money in the homeowner protection unit account at the**  
 27           **end of a state fiscal year reverts to the state general fund;**  
 28           **and**

29           **(2) money in the homeowner protection unit account may only**  
 30           **be spent after appropriation by the general assembly.**

31          SECTION 5. IC 23-2-1-2 IS AMENDED TO READ AS FOLLOWS  
 32          [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The following securities are  
 33          exempted from the registration requirements of section 3 of this  
 34          chapter:

35           (1) A security (including a revenue obligation) issued or guaranteed  
 36           by the United States, a state, a political subdivision of a state, or an  
 37           agency or corporate or other instrumentality of one (1) or more of  
 38           the foregoing or a certificate of deposit for any of the foregoing.

39           (2) A security issued or guaranteed by Canada, a Canadian  
 40           province, a political subdivision of a Canadian province, an agency,  
 41           or corporate or other instrumentality of one (1) or more of the  
 42           foregoing, or any other foreign government with which the United  
 43           States currently maintains diplomatic relations, if the security is  
 44           recognized as a valid obligation by the issuer or guarantor.

45           (3) A security issued by and representing an interest in or a debt of,  
 46           or guaranteed by a bank organized under the laws of the United  
 47           States, a bank, savings institution, or trust company organized and  
 48           supervised under the laws of a state, a federal savings association,

1 a savings association organized under the laws of a state and  
2 authorized to do business in Indiana, a federal credit union or a  
3 credit union, industrial loan association, or similar association  
4 organized and supervised under the laws of this state, or a  
5 corporation or organization whose issuance of securities is required  
6 by any other law to be passed upon and authorized by the  
7 department of financial institutions or by a federal agency or  
8 authority.

9 (4) A security issued or guaranteed by a railroad or other common  
10 or contract carrier, a public utility, or a common or contract carrier  
11 or public utility holding company. However, an issuer or guarantor  
12 must be subject to regulation or supervision as to the issuance of  
13 its own securities by a public commission, board, or officer of the  
14 government of the United States, of a state, territory, or insular  
15 possession of the United States, of a municipality located in a state,  
16 territory, or insular possession, of the District of Columbia, or of  
17 the Dominion of Canada or a province of Canada.

18 (5) A security listed or approved for listing upon notice of issuance  
19 on the New York Stock Exchange, the American Stock Exchange,  
20 the Chicago Stock Exchange, or on any other exchange approved  
21 and designated by the commissioner, any other security of the  
22 same issuer that is of senior rank or substantially equal rank, a  
23 security called for by subscription rights or warrants so listed or  
24 approved, or a warrant or right to purchase or subscribe to any of  
25 the foregoing.

26 (6) A promissory note, draft, bill of exchange, or banker's  
27 acceptance that is evidence of:

28 (A) an obligation;

29 (B) a guarantee of an obligation;

30 (C) a renewal of an obligation; or

31 (D) a guarantee of a renewal of an obligation;

32 to pay cash within nine (9) months after the date of issuance,  
33 excluding grace days, that is issued in denominations of at least  
34 fifty thousand dollars (\$50,000) and receives a rating in one (1) of  
35 the three (3) highest rating categories from a nationally recognized  
36 statistical rating organization.

37 (7) A security issued in connection with an employee stock  
38 purchase, savings, pension, profit-sharing, or similar benefit plan.

39 (8) A security issued by an association incorporated under  
40 IC 15-7-1.

41 (9) A security that is an industrial development bond (as defined in  
42 Section 103(b)(2) of the Internal Revenue Code of 1954) the  
43 interest of which is excludable from gross income under Section  
44 103(a)(1) of the Internal Revenue Code of 1954 if, by reason of the  
45 application of paragraph (4) or (6) of Section 103(b) of the Internal  
46 Revenue Code of 1954 (determined as if paragraphs (4)(A), (5),  
47 and (7) were not included in Section 103(b)), paragraph (1) of  
48 Section 103(b) does not apply to the security.

49 (10) A security issued by a nonprofit corporation that meets the  
50 requirements of Section 103(e) of the Internal Revenue Code of

1 1954 and is designated by the governor as the secondary market  
2 for guaranteed student loans under IC 20-12-21.2.

3 (11) A security designated or approved for designation upon notice  
4 of issuance on the National Association of Securities Dealers  
5 Automatic Quotation National Market System or any other national  
6 market system approved and designated by the commissioner, any  
7 other security of the same issuer that is of senior rank or  
8 substantially equal rank, a security called for by subscription rights  
9 or warrants so listed or approved, or a warrant or right to purchase  
10 or subscribe to any of the foregoing.

11 (12) A security that is a "qualified bond" (as defined in Section  
12 141(e) of the Internal Revenue Code, as amended).

13 (b) The following transactions are exempted from the registration  
14 requirements of section 3 of this chapter:

15 (1) An isolated nonissuer offer or sale, whether effected through a  
16 broker-dealer or not.

17 (2) A nonissuer sale effected by or through a registered  
18 broker-dealer pursuant to an unsolicited order or offer to buy.

19 (3) A nonissuer offer or sale by a registered broker-dealer, acting  
20 either as principal or agent, of issued and outstanding securities if  
21 the following conditions are satisfied:

22 (A) The securities are sold at prices reasonably related to the  
23 current market price at the time of sale, and if the registered  
24 broker-dealer is acting as agent, the commission collected by the  
25 registered broker-dealer on account of the sale is not in excess of  
26 usual and customary commissions collected with respect to  
27 securities and transactions having comparable characteristics.

28 (B) The securities do not constitute an unsold allotment to or  
29 subscription by the broker-dealer as a participant in the  
30 distribution of the securities by the issuer or by or through an  
31 underwriter.

32 (C) Either:

33 (i) information consisting of the names of the issuer's officers  
34 and directors, a balance sheet of the issuer as of a date not  
35 more than eighteen (18) months prior to the date of the sale,  
36 and a profit and loss statement for either the fiscal year  
37 preceding that date or the most recent year of operations is  
38 published in a securities manual approved by the  
39 commissioner;

40 (ii) the issuer is required to file reports with the Securities and  
41 Exchange Commission pursuant to sections 13 and 15 of the  
42 Securities Exchange Act of 1934 (15 U.S.C. 78m and 78o) and  
43 is not delinquent in the filing of the reports on the date of the  
44 sale; or

45 (iii) information consisting of the names of the issuer's officers  
46 and directors, a balance sheet of the issuer as of a date not  
47 more than sixteen (16) months prior to the date of the sale, and  
48 a profit and loss statement for either the fiscal year preceding  
49 that date or the most recent year of operations is on file with  
50 the commissioner. The information required by this item to be

1 on file with the commissioner must be on a form and made in  
2 a manner as the commissioner prescribes. The fee for the initial  
3 filing of the form shall be twenty-five dollars (\$25). The fee  
4 for the annual renewal filing shall be fifteen dollars (\$15).  
5 When a filing is withdrawn or is not completed by the issuer,  
6 the commissioner must retain the filing fee.

7 (D) There has been compliance with section 6(l) of this chapter.

8 (E) Unless the issuer is registered under the Investment Company  
9 Act of 1940, all the following must be true at the time of the  
10 transaction:

11 (i) The security belongs to a class that has been in the hands of  
12 the public for at least ninety (90) days.

13 (ii) The issuer of the security is a going concern, is actually  
14 engaged in business, and is not in bankruptcy or receivership.

15 (iii) Except as permitted by order of the commissioner, the  
16 issuer and any predecessors have been in continuous operation  
17 for at least five (5) years. An issuer or predecessor is in  
18 continuous operation only if the issuer or predecessor has  
19 gross operating revenue in each of the five (5) years  
20 immediately preceding the issuer's or predecessor's claim of  
21 exemption and has had total gross operating revenue of at least  
22 two million five hundred thousand dollars (\$2,500,000) for  
23 those five (5) years or has had gross operating revenue of at  
24 least five hundred thousand dollars (\$500,000) in not less than  
25 three (3) of those five (5) years.

26 The commissioner may revoke the exemption afforded by this  
27 subdivision with respect to any securities by issuing an order:

28 (i) if the commissioner finds that the further sale of the  
29 securities in this state would work or tend to work a fraud on  
30 purchasers of the securities;

31 (ii) if the commissioner finds that the financial condition of the  
32 issuer is such that it is in the public interest and is necessary  
33 for the protection of investors to revoke or restrict the  
34 exemption afforded by this subsection; or

35 (iii) if the commissioner finds that, due to the limited number  
36 of shares in the hands of the public or due to the limited  
37 number of broker-dealers making a market in the securities,  
38 there is not a sufficient market for the securities so that there  
39 is not a current market price for the securities.

40 (4) A transaction between the issuer or other person on whose  
41 behalf the offering is made by an underwriter, or among  
42 underwriters.

43 (5) A transaction in a bond or other evidence of indebtedness  
44 secured by a real or chattel mortgage or deed of trust, or by  
45 agreement for the sale of real estate or chattels, if the entire  
46 mortgage, deed of trust, or agreement, together with all the bonds  
47 or other evidences of indebtedness, is offered and sold as a unit.

48 (6) A transaction by an executor, administrator, personal  
49 representative, sheriff, marshal, receiver, trustee in bankruptcy,  
50 guardian, conservator, or a person acting in a trust or fiduciary

- 1 capacity where the transaction is effected pursuant to the authority  
2 of or subject to approval by a court of competent jurisdiction.
- 3 (7) A transaction executed by a bona fide pledgee without any  
4 purpose of evading this chapter.
- 5 (8) An offer or sale to a bank, a savings institution, a trust  
6 company, an insurance company, an investment company (as  
7 defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1  
8 through 80a-52)), a pension or profit-sharing trust, or other  
9 financial institution or institutional buyer, or to a broker-dealer,  
10 whether the purchaser is acting for itself or in a fiduciary capacity.
- 11 (9) The offer or sale of securities of an issuer:
- 12 (i) to a person who is:
- 13 (A) a director, an executive officer, a general partner, a  
14 administrator, or a person who performs similar functions for  
15 or who is similarly situated with respect to the issuer;
- 16 (B) a director, an executive officer, or a general partner of a  
17 general partner of the issuer; or
- 18 (C) any other natural person employed on a full-time basis by  
19 the issuer as an attorney or accountant if the person has been  
20 acting in this capacity for at least one (1) year immediately  
21 prior to the offer or sale;
- 22 (ii) to an entity affiliated with the issuer;
- 23 (iii) if the issuer is a corporation, to a person who is the owner  
24 of shares of the corporation or of an affiliated corporation  
25 representing and possessing ten percent (10%) or more of the  
26 total combined voting power of all classes of stock (of the  
27 corporation or affiliated corporation) issued and outstanding and  
28 who is entitled to vote; or
- 29 (iv) if the issuer is a limited liability company, to a person who is  
30 the owner of an interest in the limited liability company  
31 representing and possessing at least ten percent (10%) of the  
32 total combined voting power of all classes of such interests (of  
33 the limited liability company or affiliated limited liability company)  
34 issued and outstanding.
- 35 (10) The offer or sale of a security by the issuer of the security if  
36 all of the following conditions are satisfied:
- 37 (A) The issuer reasonably believes that either:
- 38 (i) there are no more than thirty-five (35) purchasers of the  
39 securities from the issuer in an offering pursuant to this  
40 subsection, including purchasers outside Indiana; or
- 41 (ii) there are no more than twenty (20) purchasers in Indiana.
- 42 In either case, there shall be excluded in determining the number  
43 of purchasers a purchaser whom the issuer reasonably believes  
44 to be an accredited investor or who purchases the securities after  
45 they are registered under this chapter.
- 46 (B) The issuer does not offer or sell the securities by means of  
47 a form of general advertisement or general solicitation.
- 48 (C) The issuer reasonably believes that each purchaser of the  
49 securities is acquiring the securities for the purchaser's own  
50 investment and is aware of any restrictions imposed on

1 transferability and resale of the securities. The basis for  
2 reasonable belief may include:

- 3 (i) obtaining a written representation signed by the purchaser  
4 that the purchaser is acquiring the securities for the  
5 purchaser's own investment and is aware of any restrictions  
6 imposed on the transferability and resale of the securities; and  
7 (ii) placement of a legend on the certificate or other document  
8 that evidences the securities stating that the securities have not  
9 been registered under section 3 of this chapter, and setting  
10 forth or referring to the restrictions on transferability and sale  
11 of the securities.

12 (D) The issuer:

- 13 (i) files with the commissioner and provides to each purchaser  
14 in this state an offering statement that sets forth all material  
15 facts with respect to the securities; and  
16 (ii) reasonably believes immediately before making a sale that  
17 each purchaser who is not an accredited investor either alone  
18 or with a purchaser representative has knowledge and  
19 experience in financial and business matters to the extent that  
20 the purchaser is capable of evaluating the merits and risks of  
21 the prospective investment.

22 (E) If the aggregate offering price of the securities in an offering  
23 pursuant to this subdivision (including securities sold outside of  
24 Indiana) does not exceed five hundred thousand dollars  
25 (\$500,000), the issuer is not required to comply with clause (D)  
26 if the issuer files with the commissioner and provides to each  
27 purchaser in Indiana the following information and materials:

- 28 (i) copies of all written materials, if any, concerning the  
29 securities that have been provided by the issuer to any  
30 purchaser; and  
31 (ii) unless clearly presented in all written materials, a written  
32 notification setting forth the name, address, and form of  
33 organization of the issuer and any affiliate, the nature of the  
34 principal businesses of the issuer and any affiliate, and the  
35 information required in section 5(b)(1)(B), 5(b)(1)(C),  
36 5(b)(1)(D), 5(b)(1)(E), 5(b)(1)(H), and 5(b)(1)(I) of this  
37 chapter.

38 (F) The commissioner does not disallow the exemption provided  
39 by this subdivision within ten (10) full business days after receipt  
40 of the filing required by clause (D) or (E). The issuer may make  
41 offers (but not sales) before and during the ten (10) day period,  
42 if:

- 43 (i) each prospective purchaser is advised in writing that the  
44 offer is preliminary and subject to material change; and  
45 (ii) no enforceable offer to purchase the securities may be  
46 made by a prospective purchaser, and no consideration in any  
47 form may be accepted or received (directly or indirectly) from  
48 a prospective purchaser, before the expiration of the ten (10)  
49 day period and the vacation of an order disallowing the  
50 exemption.

- 1 (G) The issuer need not comply with clause (D), (E), or (F) if:  
2 (i) each purchaser has access to all the material facts with  
3 respect to the securities by reason of the purchaser's active  
4 involvement in the organization or management of the issuer or  
5 the purchaser's family relationship with a person actively  
6 involved in the organization or management of the issuer;  
7 (ii) there are not more than fifteen (15) purchasers in Indiana  
8 and each Indiana purchaser is an accredited investor or is a  
9 purchaser described in item (i); or  
10 (iii) the aggregate offering price of the securities, including  
11 securities sold outside Indiana, does not exceed five hundred  
12 thousand dollars (\$500,000), the total number of purchasers,  
13 including purchasers outside of Indiana, does not exceed  
14 twenty-five (25) and each purchaser either receives all of the  
15 material facts with respect to the security or is an accredited  
16 investor or a purchaser described in item (i).
- 17 (H) If the issuer makes or is required to make a filing with the  
18 commissioner under clause (D) or (E), the issuer must also file  
19 with the commissioner at the time of the filing the consent to  
20 service of process required by section 16 of this chapter. The  
21 issuer shall also file with the commissioner, at the times and in  
22 the forms as the commissioner may prescribe, notices of sales  
23 made in reliance upon this subdivision.
- 24 (I) The commissioner may by rule deny exemption provided in  
25 this subdivision to a particular class of issuers, or may make the  
26 exemption available to the issuers upon compliance with  
27 additional conditions and requirements, if appropriate in  
28 furtherance of the intent of this chapter.
- 29 (11) An offer or sale of securities to existing security holders of the  
30 issuer, including persons who at the time of the transaction are  
31 holders of convertible securities, nontransferable warrants, or  
32 transferable warrants exercisable within not more than ninety (90)  
33 days of their issuance if no commission or other remuneration  
34 (other than a standby commission) is paid or given for soliciting a  
35 security holder in this state.
- 36 (12) An offer (but not a sale) of a security for which registration  
37 statements or applications have been filed under this chapter and  
38 the Securities Act of 1933 (15 U.S.C. 77a-77aa), if no stop order  
39 or refusal order is in effect and no public proceeding or  
40 examination looking toward an order is pending under either law.
- 41 (13) The deposit of shares under a voting-trust agreement and the  
42 issue of voting-trust certificates for the deposit.
- 43 (14) The offer or sale of a commodity futures contract.
- 44 (15) The offer or sale of securities to or for the benefit of security  
45 holders incident to a vote by the security holders pursuant to the  
46 articles of incorporation or applicable instrument, on a merger or  
47 share exchange under IC 23-1-40 or the laws of another state,  
48 reclassification of securities, exchange of securities under  
49 IC 28-1-7.5, or sale of assets of the issuer in consideration of the  
50 issuance of securities of the same or another issuer.

1 (16) A limited offering transactional exemption, which may be  
2 created by rule adopted by the commissioner. The exemption must  
3 further the objectives of compatibility with federal exemptions and  
4 uniformity among the states.

5 (c) The commissioner may consider and determine if a proposed sale,  
6 transaction, issue, or security is entitled to an exemption accorded by  
7 this section. The commissioner may decline to exercise the  
8 commissioner's authority as to a proposed sale, transaction, issue, or  
9 security. An interested party desiring the commissioner to exercise the  
10 commissioner's authority must submit to the commissioner a verified  
11 statement of all material facts relating to the proposed sale, transaction,  
12 issue, or security, which must be accompanied by a request for a ruling  
13 as to the particular exemption claimed, together with a filing fee of one  
14 hundred dollars (\$100). After notice to the interested parties as the  
15 commissioner determines is proper and after a hearing, if any, the  
16 commissioner may enter an order finding the proposed sale, transaction,  
17 issue, or security entitled or not entitled to the exemption claimed. An  
18 order entered, unless an appeal is taken from it in the manner prescribed  
19 in section 20 of this chapter, is binding upon the commissioner and  
20 upon all interested parties, provided that the proposed sale, transaction,  
21 issue, or security when consummated or issued conforms in every  
22 relevant and material particular with the facts as set forth in the verified  
23 statement submitted.

24 (d) The commissioner may by order deny or revoke an exemption  
25 specified in subsection (a)(6), (a)(7), or (b) with respect to a specific  
26 security or transaction, if the commissioner finds that the securities to  
27 which the exemption applies would not qualify for registration under  
28 sections 4 and 5 of this chapter. No order may be entered without  
29 appropriate prior notice to all interested parties, opportunity for hearing,  
30 and written findings of fact and conclusions of law, except that the  
31 commissioner may by order summarily deny or revoke any of the  
32 specific exemptions pending final determination of a proceeding under  
33 this subsection. Upon the entry of a summary order, the commissioner  
34 shall promptly notify all interested parties that it has been entered, of the  
35 reasons for the order, and that within fifteen (15) days of the receipt of  
36 a written request the matter will be set down for hearing. If no hearing  
37 is requested and none is ordered by the commissioner, the order will  
38 remain in effect until it is modified or vacated by the commissioner. If  
39 a hearing is requested or ordered, the commissioner, after notice of and  
40 opportunity for hearing to all interested persons, may modify or vacate  
41 the order or extend it until final determination. No order under this  
42 subsection may operate retroactively. No person may be considered to  
43 have violated section 3 of this chapter by reason of an offer or sale  
44 effected after the entry of an order under this subsection if the person  
45 sustains the burden of proof that the person did not know, and in the  
46 exercise of reasonable care could not have known, of the order.

47 (e) If, with respect to an offering of securities, any notices or written  
48 statements are required to be filed with the commissioner under  
49 subsection (b)(10), the first filing made with respect to the offering  
50 must be accompanied by a filing fee of one hundred dollars (\$100).



1           **(f) A condition, stipulation, or provision requiring a person**  
2 **acquiring a security to waive compliance with this chapter or a**  
3 **rule or order under this chapter is void.**

4           SECTION 6. IC 23-2-1-6 IS AMENDED TO READ AS FOLLOWS  
5 [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) An application for registration  
6 may be filed by:

- 7           (1) the issuer;
- 8           (2) any other person on whose behalf the offering is to be made; or
- 9           (3) a registered broker-dealer.

10           (b) A person filing an application for registration shall pay a filing fee  
11 of one-twentieth of one percent (0.05%) of the maximum aggregate  
12 offering price at which the registered securities are to be offered in  
13 Indiana, but the fee may not be less than two hundred fifty dollars  
14 (\$250) and may not be more than one thousand dollars (\$1,000).

15           (c) When an application for registration under subsection (b) is  
16 withdrawn before the effective date or a preeffective stop order is  
17 entered under section 7 of this chapter, the commissioner shall retain  
18 two hundred fifty dollars (\$250) of the fee.

19           (d) A person filing an amendment to an effective registration which  
20 requires an order of the commissioner shall pay a twenty-five dollar  
21 (\$25) filing fee.

22           (e) An application for registration shall specify:

- 23           (1) the amount of securities to be offered in this state;
- 24           (2) the states in which a registration statement or similar document  
25 in connection with the offering has been or is to be filed; and
- 26           (3) an adverse order, judgment, or decree entered in connection  
27 with the offering by the regulatory authorities in each state or by a  
28 court or the Securities and Exchange Commission.

29           (f) A document filed under this chapter within five (5) years  
30 preceding the filing of an application for registration may be  
31 incorporated by reference in the application for registration if the  
32 document is currently accurate.

33           (g) The commissioner may by rule or otherwise permit the omission  
34 of an item of information or document from an application for  
35 registration.

36           (h) In the case of a nonissuer distribution, any part of the information  
37 that might otherwise be required under section 5 of this chapter or  
38 subsection (i) need not be furnished if the person filing the application  
39 for registration produces evidence to the reasonable satisfaction of the  
40 commissioner that the person, or the persons on whose behalf the  
41 distribution is to be made, cannot furnish that part of the required  
42 information without unreasonable effort or expense.

43           (i) A registration is effective for:

- 44           (1) two (2) years from its effective date; or
- 45           (2) a shorter period during which the security is being offered or  
46 distributed in a nonexempted transaction by or for the account of  
47 the issuer or the person on whose behalf the offering is being made  
48 or by an underwriter or broker-dealer who is still offering part of  
49 an unsold allotment or subscription taken by the underwriter or  
50 broker-dealer as a participant in the distribution, except during the

1 time a stop order is in effect under section 7 of this chapter.

2 (j) So long as a registration is effective, the commissioner may by  
3 rule or order require the person who filed the application for registration  
4 to file reports, not more often than quarterly, to keep reasonably current  
5 the information contained in the application for registration and to  
6 disclose the progress of the offering.

7 (k) The commissioner may by rule or order require as a condition of  
8 registration by qualification or coordination:

9 (1) that a security issued within the past three (3) years or to be  
10 issued to a promoter for a consideration substantially different from  
11 the public offering price, or to a person for a consideration other  
12 than cash, be deposited in escrow; and

13 (2) that the proceeds from the sale of the registered security be  
14 impounded until the issuer receives a specified amount.

15 The commissioner may by rule or order determine the conditions of an  
16 escrow or impounding required under this subsection, but the  
17 commissioner may not reject a depository solely because of location in  
18 another state.

19 (l) No transferable share is exempt from registration under section  
20 2(b)(3) of this chapter or is qualified for registration under sections 4  
21 or 5 of this chapter unless the issuer has designated a qualified transfer  
22 agent to handle all transfers. The commissioner may adopt rules to  
23 implement this subsection. The commissioner may by rule or order  
24 exempt an issuer, wholly or partially, from the requirements of this  
25 subsection.

26 (m) A registration statement may be amended after its effective date  
27 to increase the securities specified to be offered and sold if the public  
28 offering price and underwriters' discounts and commissions are not  
29 changed from the amounts reported to the commissioner. An  
30 amendment becomes effective upon an order of the commissioner. A  
31 person filing an amendment must pay a late registration fee of  
32 twenty-five dollars (\$25) and a filing fee under subsection (b) for the  
33 additional securities proposed to be offered. An amendment relates back  
34 to the date of the sale of additional securities being registered if the  
35 amendment is filed within three (3) months after the date of the sale and  
36 the additional filing fee and late registration fee are paid.

37 (n) As permitted by Section 106(c) of the Secondary Mortgage  
38 Market Enhancement Act of 1984 (15 U.S.C. 77r-1(c)), securities that  
39 are offered and sold pursuant to Section 4(5) of the Securities Act of  
40 1933 or that are mortgage-related securities (as that term is defined in  
41 Section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C.  
42 78c(a)(41)):

43 (1) must comply with all applicable:

44 (A) registration and qualification requirements of this chapter;  
45 and

46 (B) rules adopted by the commissioner; and

47 (2) shall not be treated as obligations issued by the United States for  
48 the purposes of this chapter.

49 (o) **If:**

50 (1) **the division:**

- 1           **(A) does not approve an application for registration by**  
 2           **coordination or qualification; and**  
 3           **(B) notifies the applicant not later than ten (10) days after**  
 4           **the date the application was not approved of a deficiency in**  
 5           **the application that, if satisfied, would allow the approval of**  
 6           **the application;**  
 7           **the applicant may satisfy the deficiency within sixty (60) days**  
 8           **after the date described in clause (B); and**  
 9           **(2) an applicant does not satisfy the deficiency described in**  
 10           **subdivision (1):**  
 11           **(A) the application is considered abandoned;**  
 12           **(B) the issuer does not receive a refund of the application**  
 13           **fee; and**  
 14           **(C) no further action is required by the division.**

15           SECTION 7. IC 23-2-1-15, AS AMENDED BY P.L.270-2003,  
 16           SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 17           JULY 1, 2004]: Sec. 15. (a) This chapter shall be administered by a  
 18           division of the office of the secretary of state. The secretary of state  
 19           shall appoint a securities commissioner who shall be responsible for the  
 20           direction and supervision of the division and the administration of this  
 21           chapter under the direction and control of the secretary of state. The  
 22           salary of the securities commissioner shall be paid out of the funds  
 23           appropriated for the administration of this chapter. The commissioner  
 24           shall serve at the will of the secretary of state.

25           (b) The secretary of state:

- 26           (1) shall employ a chief deputy, a senior investigator, a senior  
 27           accountant, and other deputies, investigators, accountants, clerks,  
 28           stenographers, and other employees necessary for the  
 29           administration of this chapter; and  
 30           (2) shall fix their compensation with the approval of the budget  
 31           agency.

32           The chief deputy, other deputies, the senior investigator, and the senior  
 33           accountant, once employed under this chapter, may be dismissed only  
 34           for cause by the secretary of state upon ten (10) days notice in writing  
 35           stating the reasons for dismissal. Within fifteen (15) days after  
 36           dismissal, the chief deputy, other deputies, the senior investigator, and  
 37           the senior accountant may appeal to the state personnel board. The state  
 38           personnel board shall hold a hearing, and if it finds that the appealing  
 39           party was dismissed for a political, social, religious, or racial reason, the  
 40           appealing party shall be reinstated to the appealing party's position  
 41           without loss of pay. In all other cases, if the decision is favorable to the  
 42           appealing party, the secretary of state shall follow the findings and  
 43           recommendations of the board, which may include reinstatement and  
 44           payment of salary or wages lost. The hearing and any subsequent  
 45           proceedings or appeals shall be governed by the provisions of IC 4-15-2  
 46           and IC 4-21.5.

47           (c) Fees and funds of whatever character accruing from the  
 48           administration of this chapter shall be accounted for by the secretary of  
 49           state and shall be deposited with the treasurer of state to be deposited

1 by the treasurer of state in the general fund of the state. Expenses  
2 incurred in the administration of this chapter shall be paid from the  
3 general fund upon appropriation being made for the expenses in the  
4 manner provided by law for the making of those appropriations.  
5 However, costs of investigations recovered under sections 16(d) and  
6 17.1(c) of this chapter shall be deposited with the treasurer of state to  
7 be deposited by the treasurer of state in a separate account to be known  
8 as the securities division enforcement account. The funds in the  
9 account shall be available, with the approval of the budget agency, to  
10 augment and supplement the funds appropriated for the administration  
11 of this chapter. The funds in the account do not revert to the general  
12 fund at the end of any fiscal year.

13 (d) In connection with the administration and enforcement of the  
14 provisions of this chapter, the attorney general shall render all necessary  
15 assistance to the securities commissioner upon the commissioner's  
16 request, and to that end, the attorney general shall employ legal and  
17 other professional services as are necessary to adequately and fully  
18 perform the service under the direction of the securities commissioner  
19 as the demands of the securities division shall require. Expenses  
20 incurred by the attorney general for the purposes stated in this  
21 subsection shall be chargeable against and paid out of funds  
22 appropriated to the attorney general for the administration of the  
23 attorney general's office.

24 (e) Neither the secretary of state, the securities commissioner, nor an  
25 employee of the securities division shall be liable in their individual  
26 capacity, except to the state, for an act done or omitted in connection  
27 with the performance of their respective duties under this chapter.

28 (f) The commissioner, subject to the approval of the secretary of  
29 state, may adopt rules, orders, and forms necessary to carry out this  
30 chapter, including rules and forms concerning registration statements,  
31 applications, reports, and the definitions of any terms if the definitions  
32 are consistent with this chapter. The commissioner may by rule or  
33 order allow for exemptions from registration requirements under  
34 sections 3 and 8 of this chapter if the exemptions are consistent with  
35 the public interest and this chapter.

36 (g) The provisions of this chapter delegating and granting power to  
37 the secretary of state, the securities division, and the securities  
38 commissioner shall be liberally construed to the end that:

39 (1) the practice or commission of fraud may be prohibited and  
40 prevented;

41 (2) disclosure of sufficient and reliable information in order to  
42 afford reasonable opportunity for the exercise of independent  
43 judgment of the persons involved may be assured; and

44 (3) the qualifications may be prescribed to assure availability of  
45 reliable broker-dealers, investment advisers, and agents engaged in  
46 and in connection with the issuance, barter, sale, purchase,  
47 transfer, or disposition of securities in this state.

48 It is the intent and purpose of this chapter to delegate and grant to and  
49 vest in the secretary of state, the securities division, and the securities  
50 commissioner full and complete power to carry into effect and

1 accomplish the purpose of this chapter and to charge them with full and  
2 complete responsibility for its effective administration.

3 (h) It is the duty of a prosecuting attorney, as well as of the attorney  
4 general, to assist the securities commissioner upon the commissioner's  
5 request in the prosecution to final judgment of a violation of the penal  
6 provisions of this chapter and in a civil proceeding or action arising  
7 under this chapter. If the commissioner determines that an action based  
8 on the securities division's investigations is meritorious:

9 (1) the commissioner or a designee empowered by the  
10 commissioner shall certify the facts drawn from the investigation  
11 to the prosecuting attorney of the judicial circuit in which the crime  
12 may have been committed;

13 (2) the commissioner and the securities division shall assist the  
14 prosecuting attorney in prosecuting an action under this section,  
15 **which may include a securities division attorney serving as a**  
16 **special deputy prosecutor appointed by the prosecuting**  
17 **attorney;**

18 (3) a prosecuting attorney to whom facts concerning fraud are  
19 certified under subdivision (1) may refer the matter to the attorney  
20 general; and

21 (4) if a matter has been referred to the attorney general under  
22 subdivision (3), the attorney general may:

23 (A) file an information in a court with jurisdiction over the matter  
24 in the county in which the offense is alleged to have been  
25 committed; and

26 (B) prosecute the alleged offense.

27 (i) The securities commissioner shall take, prescribe, and file the oath  
28 of office prescribed by law. The securities commissioner, senior  
29 investigator, and each deputy are police officers of the state and shall  
30 have all the powers and duties of police officers in making arrests for  
31 violations of this chapter, or in serving any process, notice, or order  
32 connected with the enforcement of this chapter by whatever officer or  
33 authority or court issued. The securities commissioner, the deputy  
34 commissioners for enforcement, and the investigators comprise the  
35 enforcement department of the division and are considered a criminal  
36 justice agency for purposes of IC 5-2-4 and IC 10-13-3.

37 (j) The securities commissioner and each employee of the securities  
38 division shall be reimbursed for necessary hotel and travel expenses  
39 when required to travel on official duty. Hotel and travel  
40 reimbursements shall be paid in accordance with the travel regulations  
41 prescribed by the budget agency.

42 (k) It is unlawful for the secretary of state, the securities  
43 commissioner, or the securities division's employees to use for personal  
44 benefit information that is filed with or obtained by the securities  
45 division and that is not made public. No provision of this chapter  
46 authorizes the secretary of state, the securities commissioner, or the  
47 employees of the securities division to disclose information except  
48 among themselves, or when necessary or appropriate, in a proceeding  
49 or investigation under this chapter. No provision of this chapter either  
50 creates or derogates from a privilege that exists at common law or

1 otherwise when documentary or other evidence is sought under a  
 2 subpoena directed to the secretary of state, the securities commissioner,  
 3 or the securities division or its employees.

4 (l) The commissioner may honor requests from interested persons for  
 5 interpretative opinions and from interested persons for determinations  
 6 that the commissioner will not institute enforcement proceedings against  
 7 specified persons for specified activities. A determination not to institute  
 8 enforcement proceedings must be consistent with this chapter. **A**  
 9 **person may not request an interpretive opinion concerning an**  
 10 **activity that:**

11 **(1) occurred before; or**

12 **(2) is occurring on;**

13 **the date that the opinion is requested.** The commissioner shall  
 14 charge a fee of one hundred dollars (\$100) for an interpretative opinion  
 15 or determination.

16 SECTION 8. IC 23-2-1-19 IS AMENDED TO READ AS FOLLOWS  
 17 [EFFECTIVE JULY 1, 2004]: Sec. 19. (a) A person who offers or sells  
 18 a security in violation of this chapter, and who does not sustain the  
 19 burden of proof that the person did not know and in the exercise of  
 20 reasonable care could not have known of the violation, is liable to any  
 21 other party to the transaction who did not knowingly participate in the  
 22 violation or who did not have, at the time of the transaction, knowledge  
 23 of the violation, who may sue either at law or in equity to rescind the  
 24 transaction or to recover the consideration paid, together, in either case,  
 25 with interest as computed in subsection (g)(1), plus costs, and  
 26 reasonable attorney's fees, less the amount of any cash or other  
 27 property received on the security upon the tender of the security by the  
 28 person bringing the action or for damages if the person no longer owns  
 29 the security. Damages are the amount that would be recoverable upon  
 30 a tender less:

31 (1) the value of the security when the buyer disposed of the  
 32 security; and

33 (2) the interest as computed in subsection (g)(1) on the value of the  
 34 security from the date of disposition.

35 (b) A person who purchases a security in violation of this chapter,  
 36 and who does not sustain the burden of proof that the person did not  
 37 know and in the exercise of reasonable care could not have known of  
 38 the violation, is liable to any other party to the transaction who did not  
 39 knowingly participate in the violation or who did not have, at the time  
 40 of the transaction, knowledge of the violation. The other party to the  
 41 transaction may bring an action to rescind the transaction or for  
 42 damages, together, in either case, with reasonable attorney's fees, upon  
 43 the tender of the consideration received by the person bringing the  
 44 action.

45 (c) A person who, for compensation, engages in the business of  
 46 advising others, either directly or through publications or writings, as  
 47 to the value of securities or as to the advisability of investing in,  
 48 purchasing, or selling securities, or who, for compensation and as a  
 49 part of a regular business, issues analyses or reports concerning

1 securities and:

- 2 (1) violates section 8, 12.1(b), ~~or~~ 14, or 26 of this chapter;  
 3 (2) employs a device, scheme, or artifice to defraud a person; or  
 4 (3) engages in an act that operates or would operate as fraud or  
 5 deceit upon a person;

6 is liable to the other person, who may bring an action to recover any  
 7 consideration paid for advice, any loss due to advice, interest at eight  
 8 percent (8%) each year from the date consideration was paid, costs,  
 9 and reasonable attorney's fees less the value of cash or property  
 10 received due to the advice. It is a defense to an action brought for a  
 11 violation of section 12.1(b) or 26 of this chapter that the person  
 12 accused of the violation did not know of the violation and, exercising  
 13 reasonable care, could not have known of the violation.

14 (d) A person who directly or indirectly controls a person liable under  
 15 subsection (a), (b), or (c), a partner, officer, or director of the person,  
 16 a person occupying a similar status or performing similar functions, an  
 17 employee of a person who materially aids in the conduct creating the  
 18 liability, and a broker-dealer or agent who materially aids in the conduct  
 19 are also liable jointly and severally with and to the same extent as the  
 20 person, unless the person who is liable sustains the burden of proof that  
 21 the person did not know, and in the exercise of reasonable care could  
 22 not have known, of the existence of the facts by reason of which the  
 23 liability is alleged to exist. There is contribution as in cases of contract  
 24 among the several persons liable.

25 (e) A tender specified in this section may be made at any time before  
 26 entry of judgment.

27 (f) A cause of action under this statute survives the death of a person  
 28 who might have been a plaintiff or defendant.

29 (g) Action under this section shall be commenced within three (3)  
 30 years after discovery by the person bringing the action of a violation of  
 31 this chapter, and not afterwards. No person may sue under this section:

32 (1) if that person received a written offer, before suit and at a time  
 33 when the person owned the security, to refund the consideration  
 34 paid together with interest on that amount from the date of payment  
 35 to the date of repayment, with interest on:

36 (A) interest-bearing obligations to be computed at the same rate  
 37 as provided on the security; and

38 (B) all other securities at the rate of eight percent (8%) per year;  
 39 less the amount of any income received on the security, and the  
 40 person failed to accept the offer within thirty (30) days of its  
 41 receipt; or

42 (2) if the person received an offer before suit and at a time when  
 43 the person did not own the security, unless the person rejected the  
 44 offer in writing within thirty (30) days of its receipt.

45 (h) No person who has made or engaged in the performance of a  
 46 contract in violation of this chapter or a rule or order under this chapter,  
 47 or who has acquired a purported right under a contract with knowledge  
 48 of the facts by reason of which its making or performance was in  
 49 violation, may base a suit on the contract.

50 (i) A condition, stipulation, or provision binding a person acquiring a

1 security to waive compliance with this chapter or a rule or order under  
2 this chapter is void.

3 (j) The rights and remedies specifically prescribed by this chapter are  
4 the only rights and remedies created by this chapter, but are in addition  
5 to any other rights or remedies that exist at law or in equity.

6 SECTION 9. IC 23-2-1-19.5 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19.5. (a) If the  
8 commissioner determines, after **notice and opportunity for** a hearing,  
9 that any person has violated this chapter, the commissioner may, in  
10 addition to or in lieu of all other remedies, impose a civil penalty upon  
11 any person who has violated this chapter. This penalty may not exceed  
12 ten thousand dollars (\$10,000) for each violation of this chapter found  
13 to have been committed. An appeal from the decision of the  
14 commissioner imposing a civil penalty under this subsection may be  
15 taken by any aggrieved party pursuant to section 20 of this chapter.

16 (b) The commissioner may bring any action in the circuit or superior  
17 court of Marion County to enforce payment of any penalty imposed  
18 under subsection (a).

19 (c) Penalties collected under this section shall be deposited in the  
20 securities division enforcement account established under section 15(c)  
21 of this chapter.

22 SECTION 10. IC 23-2-1-26 IS ADDED TO THE INDIANA CODE  
23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
24 1, 2004]: **Sec. 26. (a) This section applies to a person engaged in  
25 the business of providing advice to others, directly or by means of  
26 analyses, reports, or other publications, concerning:**

27 **(1) the value of securities; or**

28 **(2) the advisability of:**

29 **(A) investing in;**

30 **(B) purchasing; or**

31 **(C) selling;**

32 **securities.**

33 **(b) A person described in subsection (a) may not:**

34 **(1) employ a device, a scheme, or an artifice to defraud a  
35 person; or**

36 **(2) engage in an act, a practice, or a course of business that  
37 operates or would operate as fraud or deceit upon a person.**

38 SECTION 11. IC 23-2-1-27 IS ADDED TO THE INDIANA CODE  
39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
40 1, 2004]: **Sec. 27. An administrative action under this chapter  
41 survives the death of a person who might have been a respondent.**

42 SECTION 12. IC 23-2-5-3, AS AMENDED BY P.L.115-2001,  
43 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
44 JULY 1, 2004]: Sec. 3. (a) As used in this chapter, "certificate of  
45 registration" means a certificate issued by the commissioner authorizing  
46 an individual to engage in origination activities on behalf of a licensee.

47 (b) As used in this chapter, "creditor" means a person:

48 (1) that loans funds of the person in connection with a loan; and

49 (2) to whom the loan is initially payable on the face of the note or



1 contract evidencing the loan.

2 (c) As used in this chapter, "license" means a license issued by the  
3 commissioner authorizing a person to engage in the loan brokerage  
4 business.

5 (d) As used in this chapter, "licensee" means a person that is issued  
6 a license under this chapter.

7 (e) As used in this chapter, "loan broker" means any person who, in  
8 return for any consideration from any **source procures, attempts to**  
9 **procure, or assists in procuring a loan from a third party or any**  
10 **other person, promises to procure a loan for any person or assist any**  
11 **person in procuring a loan from any third party, or who promises to**  
12 **consider whether or not to make a loan to any person, whether or not**  
13 **the person seeking the loan actually obtains the loan.** "Loan  
14 broker" does not include:

15 (1) any bank, savings bank, trust company, savings association,  
16 credit union, or any other financial institution that is:

17 (A) regulated by any agency of the United States or any state;  
18 and

19 (B) regularly actively engaged in the business of making  
20 consumer loans that are not secured by real estate or taking  
21 assignment of consumer sales contracts that are not secured by  
22 real estate;

23 ~~(2) any person authorized to sell and service loans for the Federal~~  
24 ~~National Mortgage Association or the Federal Home Loan Mortgage~~  
25 ~~Corporation, issue securities backed by the Government National~~  
26 ~~Mortgage Association, make loans insured by the United States~~  
27 ~~Department of Housing and Urban Development, act as a~~  
28 ~~supervised lender or nonsupervised automatic lender of the United~~  
29 ~~States Department of Veterans Affairs, or act as a correspondent~~  
30 ~~of loans insured by the United States Department of Housing and~~  
31 ~~Urban Development;~~

32 ~~(3)~~ (2) any insurance company; or

33 ~~(4)~~ (3) any person arranging financing for the sale of the person's  
34 product.

35 (f) As used in this chapter, "loan brokerage business" means a person  
36 acting as a loan broker.

37 (g) As used in this chapter, "origination activities" means ~~establishing~~  
38 ~~the terms or conditions of a loan with a borrower or prospective~~  
39 ~~borrower~~ **communication with or assistance of a borrower or**  
40 **prospective borrower in the selection of loan products or terms.**

41 (h) **As used in this chapter, "originator" means a person**  
42 **engaged in origination activities. The term "originator" does not**  
43 **include a person who performs origination activities for any entity**  
44 **that is not a loan broker under subsection (e).**

45 (i) As used in this chapter, "person" means an individual, a  
46 partnership, a trust, a corporation, a limited liability company, a limited  
47 liability partnership, a sole proprietorship, a joint venture, a joint stock  
48 company, or another group or entity, however organized.

49 ~~(j)~~ (j) As used in this chapter, "registrant" means an individual who is

1 registered to engage in origination activities under this chapter.

2 ~~(j)~~ **(k)** As used in this chapter, "ultimate equitable owner" means a  
3 person who, directly or indirectly, owns or controls any ownership  
4 interest in a person, regardless of whether the person owns or controls  
5 the ownership interest through one (1) or more other persons or one (1)  
6 or more proxies, powers of attorney, or variances.

7 SECTION 13. IC 23-2-5-19, AS AMENDED BY P.L.230-1999,  
8 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
9 JULY 1, 2004]: Sec. 19. (a) The following persons are exempt from the  
10 requirements of sections 4, 5, 6, 9, ~~10~~, 17, ~~and~~ 18, **and 21** of this  
11 chapter:

12 (1) Any attorney while engaging in the practice of law.

13 (2) Any certified public accountant, public accountant, or  
14 accountant practitioner holding a certificate or registered under  
15 IC 25-2.1 while performing the practice of accountancy (as defined  
16 by IC 25-2.1-1-10).

17 (3) Any person licensed as a real estate broker or salesperson under  
18 IC 25-34.1 to the extent that the person is rendering loan related  
19 services in the ordinary course of a transaction in which a license  
20 as a real estate broker or salesperson is required.

21 (4) Any broker-dealer, agent, or investment advisor registered  
22 under IC 23-2-1.

23 (5) Any person that:

24 (A) procures;

25 (B) promises to procure; or

26 (C) assists in procuring;

27 a loan that is not subject to the Truth in Lending Act (15 U.S.C.  
28 1601 through 1667e).

29 **(6) Any community development corporation (as defined in**  
30 **IC 4-4-28-2) acting as a subrecipient of funds from the**  
31 **Indiana housing finance authority established by IC 5-20-1-3.**

32 **(7) The Indiana housing finance authority.**

33 **(8) Any person authorized to:**

34 **(A) sell and service a loan for the Federal National Mortgage**  
35 **Association or the Federal Home Loan Mortgage**  
36 **Association;**

37 **(B) issue securities backed by the Government National**  
38 **Mortgage Association;**

39 **(C) make loans insured by the United States Department of**  
40 **Housing and Urban Development or the United States**  
41 **Department of Agriculture Rural Housing Service;**

42 **(D) act as a supervised lender or nonsupervised automatic**  
43 **lender of the United States Department of Veterans Affairs;**

44 **or**

45 **(E) act as a correspondent of loans insured by the United**  
46 **States Department of Housing and Urban Development.**

47 **(9) Any person who is a creditor, or proposed to be a creditor, for**  
48 **any loan.**

49 (b) As used in this chapter, "bona fide third party fee" includes fees

1 for the following:

2 (1) Credit reports, investigations, and appraisals performed by a  
3 person who holds a license or certificate as a real estate appraiser  
4 under IC 25-34.1-8.

5 (2) If the loan is to be secured by real property, title examinations,  
6 an abstract of title, title insurance, a property survey, and similar  
7 purposes.

8 (3) The services provided by a loan broker in procuring possible  
9 business for a lending institution if the fees are paid by the lending  
10 institution.

11 (c) As used in this section, "successful procurement of a loan" means  
12 that a binding commitment from a creditor to advance money has been  
13 received and accepted by the borrower.

14 (d) The burden of proof of any exemption or classification provided  
15 in this chapter is on the party claiming the exemption or classification.

16 SECTION 14. IC 23-15-8-3, AS ADDED BY P.L.277-2001,  
17 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
18 JULY 1, 2004]: Sec. 3. (a) If the department of financial institutions  
19 determines that a business entity has violated IC 28-1-20-4, the  
20 department of financial institutions shall notify the secretary of state of  
21 the violation.

22 (b) The secretary of state shall commence a proceeding under this  
23 section to administratively dissolve a business entity if:

24 (1) the name of the business entity contains the word "bank",  
25 **"banc", or "banco";** and

26 (2) the department of financial institutions determines that the  
27 business entity violates IC 28-1-20-4.

28 (c) If the secretary of state commences an administrative dissolution  
29 under subsection (b), the secretary of state shall serve the business  
30 entity with written notice of the determination under subsection (b)(2).

31 The secretary of state shall, at the same time notice is sent to the  
32 business entity, provide a copy of the notice to the department of  
33 financial institutions.

34 (d) If a business entity that receives a notice under subsection (c)  
35 does not:

36 (1) correct the grounds for dissolution; or

37 (2) demonstrate to the reasonable satisfaction of the department of  
38 financial institutions that the grounds for dissolution do not exist;

39 at any time after sixty (60) days after service of the notice is perfected,  
40 the department of financial institutions shall notify the secretary of state  
41 in writing of the continuing violation. After receiving the written notice  
42 from the department of financial institutions, the secretary of state shall  
43 administratively dissolve the business entity by signing a certificate of  
44 dissolution that recites the grounds for dissolution and the effective date  
45 of the dissolution. The secretary of state shall file the original certificate  
46 of dissolution and serve a copy of the certificate of dissolution on the  
47 business entity.

48 (e) A business entity administratively dissolved under this section may  
49 carry on only those activities necessary to wind up and liquidate the  
50 business entity's affairs.

1 SECTION 15. IC 24-4.5-1-102, AS AMENDED BY P.L.258-2003,  
 2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JANUARY 1, 2004 (RETROACTIVE)]: Sec. 102. Purposes; Rules of  
 4 Construction--(1) This article shall be liberally construed and applied to  
 5 promote its 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 reasonable  
 14 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;

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

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

22 (g) to make uniform the law including administrative rules among  
 23 the various jurisdictions.

24 (3) A reference to a requirement imposed by this article includes  
 25 reference to a related rule of the department adopted pursuant to this  
 26 article.

27 (4) A reference to a federal law in IC 24-4.5 is a reference to the law  
 28 in effect December 31, ~~2002~~ 2003.

29 SECTION 16. IC 24-4.5-1-202 IS AMENDED TO READ AS  
 30 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 202. This article does  
 31 not apply to the following:

32 (1) Extensions of credit to government or governmental agencies  
 33 or instrumentalities.

34 (2) The sale of insurance by an insurer, except as otherwise  
 35 provided in the chapter on insurance (IC 24-4.5-4).

36 (3) Transactions under public utility, municipal utility, or common  
 37 carrier tariffs if a subdivision or agency of this state or of the  
 38 United States regulates the charges for the services involved, the  
 39 charges for delayed payment, and any discount allowed for early  
 40 payment.

41 (4) The rates and charges and the disclosure of rates and charges  
 42 of a licensed pawnbroker established in accordance with a statute  
 43 or ordinance concerning these matters.

44 (5) A sale of goods, services, or an interest in land in which the  
 45 goods, services, or interest in land are purchased primarily for a  
 46 purpose other than a personal, family, or household purpose.

47 (6) A loan in which the debt is incurred primarily for a purpose  
 48 other than a personal, family, or household purpose.

49 (7) An extension of credit primarily for a business, a commercial,  
 50 or an agricultural purpose.

1 (8) An installment agreement for the purchase of home fuels in  
2 which a finance charge is not imposed.

3 (9) Loans made, insured, or guaranteed under a program authorized  
4 by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070  
5 et seq.).

6 (10) Transactions in securities or commodities accounts in which  
7 credit is extended by a broker-dealer registered with the Securities  
8 and Exchange Commission or the Commodity Futures Trading  
9 Commission.

10 **(11) A loan made:**

11 **(A) in compliance with the requirements of; and**

12 **(B) by a community development corporation (as defined in**  
13 **IC 4-4-28-2) acting as a subrecipient of funds from;**

14 **the Indiana housing finance authority established by**  
15 **IC 5-20-1-3.**

16 SECTION 17. IC 24-4.5-7-104, AS ADDED BY P.L.38-2002,  
17 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
18 JULY 1, 2004]: Sec. 104. "Small loan" means a loan:

19 (a) with a principal loan amount that is ~~more than~~ **at least** fifty  
20 dollars (\$50) and ~~less than four not more than five~~ **hundred one**  
21 ~~dollars (\$401); (\$500);~~ and

22 (b) in which the lender holds the borrower's check **or receives the**  
23 **borrower's written authorization to debit the borrower's**  
24 **account** under an agreement, either express or implied, for a  
25 specific period before the lender:

26 (i) offers the check for deposit or presentment; or

27 (ii) ~~seeks exercises the~~ authorization to ~~transfer or withdraw~~  
28 ~~funds from debit~~ the borrower's account.

29 SECTION 18. IC 24-4.5-7-105, AS ADDED BY P.L.38-2002,  
30 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
31 JULY 1, 2004]: Sec. 105. "Principal" means the total of:

32 (a) the net amount paid to, receivable by, or paid or payable from  
33 the account of the ~~consumer; borrower;~~ and

34 (b) to the extent that the payment is deferred, the additional charges  
35 permitted by this chapter that are not included in subdivision (a).

36 SECTION 19. IC 24-4.5-7-107, AS ADDED BY P.L.38-2002,  
37 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
38 JULY 1, 2004]: Sec. 107. "Renewal" refers to a small loan that takes the  
39 place of an existing small loan by:

40 (a) renewing;

41 (b) repaying;

42 (c) refinancing; or

43 (d) consolidating;

44 a small loan with the proceeds of another small loan made to the same  
45 ~~consumer borrower~~ by a lender.

46 SECTION 20. IC 24-4.5-7-108, AS ADDED BY P.L.38-2002,  
47 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
48 JULY 1, 2004]: Sec. 108. "Consecutive small loan" means a new small  
49 loan agreement that the lender enters with the same ~~consumer borrower~~

1 not later than seven (7) calendar days after a previous small loan made  
2 to that ~~customer borrower~~ is paid in full.

3 SECTION 21. IC 24-4.5-7-109, AS ADDED BY P.L.38-2002,  
4 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
5 JULY 1, 2004]: Sec. 109. "Paid in full" means the termination of a small  
6 loan through:

7 (1) the payment of the ~~consumer's borrower's~~ check by the  
8 drawee bank or authorized electronic transfer;

9 (2) the return of a check to a ~~consumer borrower~~ who redeems it  
10 for consideration;

11 (3) **the authorized debiting of the borrower's account;** or

12 (4) any other method of termination.

13 SECTION 22. IC 24-4.5-7-110, AS ADDED BY P.L.38-2002,  
14 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
15 JULY 1, 2004]: Sec. 110. "Monthly ~~net gross~~ income" means the  
16 income received by the ~~consumer borrower~~ in the ~~four (4) week~~ **thirty**  
17 **(30) day** period preceding the ~~consumer's borrower's~~ application for  
18 a small loan under this chapter and exclusive of any income other than  
19 regular ~~net gross~~ pay received, or as otherwise determined by the  
20 department.

21 SECTION 23. IC 24-4.5-7-201, AS ADDED BY P.L.38-2002,  
22 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
23 JULY 1, 2004]: Sec. 201. (1) Finance charges on the first ~~one two~~  
24 hundred **fifty** dollars ~~(\$100)~~ **(\$250)** of a small loan are limited to fifteen  
25 percent (15%) of the principal.

26 (2) Finance charges on the amount of a small loan greater than ~~one~~  
27 **two** hundred **fifty** dollars ~~(\$100)~~ **(\$250)** and less than or equal to  
28 **four hundred dollars (\$400)** are limited to ~~ten~~ **thirteen** percent ~~(10%)~~  
29 **(13%)** of the amount over ~~one two~~ hundred **fifty** dollars ~~(\$100)~~ **(\$250)**  
30 and less than **four hundred dollars (\$400)**.

31 (3) ~~The total amount of finance charges may not exceed thirty-five~~  
32 ~~dollars (\$35). Finance charges on the amount of the small loan~~  
33 ~~greater than four hundred dollars (\$400) and less than or equal to~~  
34 ~~five hundred dollars (\$500) are limited to ten percent (10%) of the~~  
35 ~~amount over four hundred dollars (\$400) and less than five~~  
36 ~~hundred dollars (\$500).~~

37 SECTION 24. IC 24-4.5-7-202, AS ADDED BY P.L.38-2002,  
38 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
39 JULY 1, 2004]: Sec. 202. (1) Notwithstanding any other law, ~~only the~~  
40 ~~following fees the only fee that~~ may be contracted for and received  
41 by the lender on a small loan ~~or subsequent refinancing~~:

42 (a) ~~The parties may contract for a delinquency charge of not more~~  
43 ~~than five dollars (\$5) on any installment not paid in full within ten~~  
44 ~~(10) days after its scheduled due date.~~

45 (b) ~~A delinquency charge under this section may be collected only~~  
46 ~~once on an installment, however long it remains in default. A~~  
47 ~~delinquency charge may be collected any time after it accrues.~~

48 ~~(2) an additional charge may be made is a charge,~~ not to exceed

1 twenty dollars (\$20), for each:

- 2 (a) return by a bank or other depository institution of a:  
 3 (i) dishonored check;  
 4 (ii) negotiable order of withdrawal; or  
 5 (iii) share draft issued by the ~~consumer~~; **borrower; or**  
 6 **(b) time an authorization to debit the borrower's account is**  
 7 **dishonored.**

8 This additional charge may be assessed one (1) time regardless of how  
 9 many times a check **or an authorization to debit the borrower's**  
 10 **account** may be submitted by the lender and dishonored.

11 SECTION 25. IC 24-4.5-7-301, AS ADDED BY P.L.38-2002,  
 12 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 13 JULY 1, 2004]: Sec. 301. (1) For purposes of this section, the lender  
 14 shall disclose to the ~~consumer~~ **borrower** to whom credit is extended  
 15 with respect to a small loan the information required by the Federal  
 16 Consumer Credit Protection Act.

17 (2) In addition to the requirements of subsection (1), the lender must  
 18 conspicuously display in bold type a notice to the public both in the  
 19 lending area of each business location and in the loan documents the  
 20 following statement:

21 "WARNING: A small loan is not intended to meet long term  
 22 financial needs. A small loan should be used only to meet short  
 23 term cash needs. ~~Renewing the small loan rather than paying the~~  
 24 ~~debt in full will require additional finance charges.~~ The cost of your  
 25 small loan may be higher than loans offered by other lending  
 26 institutions. Small loans are regulated by the State of Indiana  
 27 Department of Financial Institutions.

28 A ~~consumer~~ **borrower** may rescind a small loan without cost not  
 29 later than the end of the business day immediately following the day  
 30 on which the small loan was made. To rescind a small loan, a  
 31 ~~consumer~~ **borrower** must inform the lender that the ~~consumer~~  
 32 **borrower** wants to rescind the small loan, and the ~~consumer~~  
 33 **borrower** must return the cash amount of the principal of the small  
 34 loan to the lender."

35 (3) The statement required in subsection (2) must be in:

- 36 (a) 14 point bold face type in the loan documents; and  
 37 (b) not less than one (1) inch bold print in the lending area of the  
 38 business location.

39 **(4) When a borrower enters into a small loan, the lender shall**  
 40 **provide the borrower with a pamphlet approved by the department**  
 41 **that describes:**

- 42 (a) **the availability of debt management and credit counseling**  
 43 **services; and**  
 44 (b) **the borrower's rights and responsibilities in the**  
 45 **transaction.**

46 SECTION 26. IC 24-4.5-7-401, AS AMENDED BY P.L.258-2003,  
 47 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 48 JULY 1, 2004]: Sec. 401. (1) ~~Except as provided in subsection (2);~~ A  
 49 small loan may not be made for a term of less than fourteen (14) days.

1 (2) After the ~~consumer's third borrower's fifth~~ consecutive small  
 2 loan, another small loan may not be made to that ~~consumer borrower~~  
 3 within seven (7) days after the **due** date of the ~~third fifth~~ consecutive  
 4 small loan. ~~unless the new small loan is for a term of twenty-eight (28)~~  
 5 ~~days or longer.~~ **After the borrower's fifth consecutive small loan,**  
 6 **the balance must be paid in full. However, the borrower and**  
 7 **lender may agree to enter into a simple interest loan, payable in**  
 8 **installments, under IC 24-4.5-3 within seven (7) days after the**  
 9 **due date of the fifth consecutive small loan.**

10 SECTION 27. IC 24-4.5-7-402, AS ADDED BY P.L.38-2002,  
 11 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12 JULY 1, 2004]: Sec. 402. (1) A lender is prohibited from making a  
 13 small loan to a ~~consumer borrower~~ if the total payable amount of the  
 14 small loan exceeds ~~twenty fifteen~~ percent ~~(20%)~~ **(15%)** of the  
 15 ~~consumer's borrower's~~ monthly ~~net gross~~ income.

16 (2) A small loan may be secured by only one (1) check or ~~electronic~~  
 17 **authorization to debit the borrower's account** per small loan. The  
 18 check or electronic debit may not exceed the amount advanced to or on  
 19 behalf of the ~~consumer borrower~~ plus loan finance charges contracted  
 20 for and permitted.

21 (3) A ~~consumer borrower~~ may make partial payments in any amount  
 22 on the small loan without charge at any time before the due date of the  
 23 small loan. After each payment is made on a small loan, whether the  
 24 payment is in part or in full, the lender shall give a signed and dated  
 25 receipt to the ~~consumer borrower~~ making a payment showing the  
 26 amount paid and the balance due on the small loan.

27 (4) The lender shall provide to each ~~consumer borrower~~ a copy of  
 28 the required loan documents before the disbursement of the loan  
 29 proceeds.

30 (5) A ~~consumer borrower~~ may rescind a small loan without cost not  
 31 later than the end of the business day immediately following the day on  
 32 which the small loan was made. To rescind a small loan, a ~~consumer~~  
 33 **borrower** must:

- 34 (a) inform the lender that the ~~consumer borrower~~ wants to rescind
- 35 the small loan; and
- 36 (b) return the cash amount of the principal of the small loan to the
- 37 lender.

38 **(6) A lender shall not enter into a renewal with a borrower. If a**  
 39 **loan is paid in full, a subsequent loan is not a renewal.**

40 SECTION 28. IC 24-4.5-7-404, AS ADDED BY P.L.38-2002,  
 41 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 42 JULY 1, 2004]: Sec. 404. (1) **As used in this section, "commercially**  
 43 **reasonable method of verification" means one (1) or more private**  
 44 **consumer credit reporting services that the department**  
 45 **determines to be capable of providing a lender with adequate**  
 46 **verification information necessary to ensure compliance with**  
 47 **subsection (4).**

48 (2) With respect to a small loan, ~~or subsequent refinancing,~~ no lender



1 may permit a person to become obligated under more than one (1) loan  
2 agreement with the lender at any time.

3 ~~(2)~~ **(3)** A lender shall not make a small loan ~~or subsequent refinancing~~  
4 that, when combined with another outstanding small loan owed to  
5 another lender, exceeds a total of ~~four~~ **five** hundred dollars ~~(\$400)~~  
6 **(\$500)** when the face amounts of the checks written ~~or debits~~  
7 **authorized** in connection with each loan are combined into a single  
8 sum. A lender shall not make a small loan to a ~~consumer borrower~~ who  
9 has two (2) or more small loans outstanding, regardless of the total  
10 value of the small loans.

11 ~~(3)~~ **(4)** A lender complies with subsection ~~(2)~~ **(3)** if the ~~consumer~~  
12 **borrower** represents in writing that the ~~consumer borrower~~ does not  
13 have any outstanding small loans with the lender, ~~or with any other~~  
14 **another lender, an affiliate of the lender or another lender, or a**  
15 **separate entity involved in a business association with the lender**  
16 **or another lender in making small loans**, and the lender  
17 independently verifies the accuracy of the ~~consumer's borrower's~~  
18 written representation through a commercially reasonable ~~means:~~  
19 **method of verification**. A lender's method of verifying whether a  
20 ~~consumer borrower~~ has any outstanding small loans will be considered  
21 commercially reasonable if the method includes a manual investigation  
22 or an electronic query of:

23 (a) the lender's own records, including both records maintained at  
24 the location where the ~~consumer borrower~~ is applying for the  
25 transaction and records maintained at other locations within the  
26 state that are owned and operated by the lender; and

27 (b) available ~~department approved third party~~ databases.

28 **(5) The department shall monitor the effectiveness of private**  
29 **consumer credit reporting services in providing the verification**  
30 **information required under subsection (4). If the department**  
31 **determines that one (1) or more commercially reasonable**  
32 **methods of verification are available, the department shall:**

33 **(a) provide reasonable notice to all lenders identifying the**  
34 **commercially reasonable methods of verification that are**  
35 **available; and**

36 **(b) require each lender to use one (1) of the identified**  
37 **commercially reasonable methods of verification as a means**  
38 **of complying with subsection (4).**

39 ~~(4)~~ **(6)** The excess amount of loan finance charge provided for in  
40 agreements in violation of this section is an excess charge for purposes  
41 of the provisions concerning effect of violations on rights of parties (IC  
42 24-4.5-5-202) and the provisions concerning civil actions by the  
43 department (IC 24-4.5-6-113).

44 SECTION 29. IC 24-4.5-7-406, AS ADDED BY P.L.38-2002,  
45 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
46 JULY 1, 2004]: Sec. 406. An agreement with respect to a small loan  
47 may not provide for charges as a result of default by the ~~consumer~~  
48 **borrower** other than those authorized by this chapter. A provision in

1 violation of this section is unenforceable.

2 SECTION 30. IC 24-4.5-7-409, AS ADDED BY P.L.38-2002,  
3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2004]: Sec. 409. (1) This section applies to licensees and  
5 unlicensed persons.

6 (2) **The following apply to small loans only when a check or an**  
7 **authorization to debit a borrower's account is used to defraud**  
8 **another person:**

9 (a) IC 26-1-3.1-502.5 (surcharge after dishonor).

10 (b) IC 26-2-7 (penalties for stopping payments or permitting  
11 dishonor of checks and drafts).

12 (c) IC 34-4-30 (before its repeal).

13 (d) IC 34-24-3 ~~and~~ (treble damages allowed in certain civil  
14 actions by crime victims).

15 (e) IC 35-43-5 ~~apply to small loans only when a check is used to~~  
16 ~~defraud another person.~~ (forgery, fraud, and other deceptions).

17 (f) IC 24-4.5-3-404 (attorney's fees) does not apply to a small  
18 loan.

19 (3) A contractual agreement in a small loan transaction must include  
20 the language of subsection (2) in 14 point bold type.

21 (4) A person who violates this chapter:

22 (a) is subject to a civil penalty up to ~~one two~~ thousand dollars  
23 (~~\$1,000~~) (**\$2,000**) imposed by the department;

24 (b) is subject to the remedies provided in IC 24-4.5-5-202;

25 (c) commits a deceptive act under IC 24-5-0.5 and is subject to the  
26 penalties listed in IC 24-5-0.5;

27 (d) has no right to collect, receive, or retain any principal, interest,  
28 or other charges from a small loan; however, this subdivision does  
29 not apply if the violation is the result of an accident or bona fide  
30 error of computation; and

31 (e) is liable to the ~~consumer borrower~~ for actual damages,  
32 statutory damages of ~~one two~~ thousand dollars (~~\$1,000~~) (**\$2,000**)  
33 per violation, costs, and attorney's fees; however, this subdivision  
34 does not apply if the violation is the result of an accident or bona  
35 fide error of computation.

36 (5) The department may sue:

37 (a) to enjoin any conduct that constitutes or will constitute a  
38 violation of this chapter; and

39 (b) for other equitable relief.

40 (6) The remedies provided in this section are cumulative but are not  
41 intended to be the exclusive remedies available to a ~~consumer~~  
42 **borrower**. A ~~consumer borrower~~ is not required to exhaust any  
43 administrative remedies under this section or any other applicable law.

44 SECTION 31. IC 24-4.5-7-410, AS ADDED BY P.L.38-2002,  
45 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
46 UPON PASSAGE]: Sec. 410. A lender making small loans shall not  
47 commit nor cause to be committed any of the following acts:

48 (a) Threatening to use or using the criminal process in any state to  
49 collect on a small loan.

- 1 (b) Threatening to take action against a ~~consumer borrower~~ that is  
 2 prohibited by this chapter.
- 3 (c) Making a misleading or deceptive statement regarding a small  
 4 loan or a consequence of taking a small loan.
- 5 (d) Contracting for and collecting attorney's fees on small loans  
 6 made under this chapter.
- 7 (e) Altering the date or any other information on a check **or an**  
 8 **authorization to debit the borrower's account** held as security.
- 9 (f) Using a device or agreement that **the department determines**  
 10 would have the effect of charging or collecting more fees, charges,  
 11 or interest than allowed by this chapter, including, but not limited  
 12 to:
- 13 (i) entering a different type of transaction with the ~~consumer~~  
 14 **borrower;**
- 15 (ii) entering into a sales/leaseback arrangement;
- 16 (iii) catalog sales; ~~or~~
- 17 (iv) **entering into transactions in which a customer receives**  
 18 **a purported cash rebate that is advanced by someone**  
 19 **offering Internet content services, or some other product or**  
 20 **service, when the cash rebate does not represent a discount**  
 21 **or an adjustment of the purchase price for the product or**  
 22 **service; or**
- 23 (v) entering any other transaction with the ~~consumer borrower~~  
 24 that is designed to evade the applicability of this chapter.
- 25 (g) Engaging in unfair, deceptive, or fraudulent practices in the  
 26 making or collecting of a small loan.
- 27 (h) Charging to cash a check representing the proceeds of a small  
 28 loan.
- 29 (i) Except as otherwise provided in this chapter:
- 30 (i) accepting the proceeds of a new small loan as payment of an  
 31 existing small loan provided by the same lender; or
- 32 (ii) renewing, refinancing, or consolidating a small loan with the  
 33 proceeds of another small loan made by the same lender.
- 34 (j) Including any of the following provisions in a loan document:
- 35 (i) A hold harmless clause.
- 36 (ii) A confession of judgment clause.
- 37 (iii) A mandatory arbitration clause, unless the terms and  
 38 conditions of the arbitration have been approved by the director  
 39 of the department.
- 40 (iv) An assignment of or order for payment of wages or other  
 41 compensation for services.
- 42 (v) A provision in which the ~~consumer borrower~~ agrees not to  
 43 assert a claim or defense arising out of contract.
- 44 (vi) A waiver of any provision of this chapter.
- 45 (k) Selling insurance of any kind in connection with the making or  
 46 collecting of a small loan.
- 47 **(l) Entering into a renewal with a borrower.**

48 SECTION 32. IC 24-4.5-7-412, AS ADDED BY P.L.38-2002,  
 49 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

1 JULY 1, 2004]: Sec. 412. Upon the receipt of a check from a ~~consumer~~  
 2 **borrower** for a small loan, the lender shall immediately stamp the back  
 3 of the check with an endorsement that states:

4 "This check is being negotiated as part of a small loan under  
 5 IC 24-4.5, and any holder of this check takes it subject to the  
 6 claims and defenses of the maker."

7 SECTION 33. IC 24-9 IS ADDED TO THE INDIANA CODE AS A  
 8 **NEW ARTICLE TO READ AS FOLLOWS** [EFFECTIVE JANUARY  
 9 1, 2005]:

10 **ARTICLE 9. HOME LOAN PRACTICES**

11 **Chapter 1. Application**

12 **Sec. 1. Except for IC 24-9-3-7(3), this article does not apply to:**

13 **(1) a loan made or acquired by a person organized or chartered**  
 14 **under the laws of this state, any other state, or the United**  
 15 **States relating to banks, trust companies, savings**  
 16 **associations, savings banks, credit unions, or industrial loan**  
 17 **and investment companies; or**

18 **(2) a loan:**

19 **(A) that can be purchased by the Federal National Mortgage**  
 20 **Association, the Federal Home Loan Mortgage Association,**  
 21 **or the Federal Home Loan Bank;**

22 **(B) to be insured by the United States Department of**  
 23 **Housing and Urban Development;**

24 **(C) to be guaranteed by the United States Department of**  
 25 **Veterans Affairs;**

26 **(D) to be made or guaranteed by the United States**  
 27 **Department of Agriculture Rural Housing Service;**

28 **(E) to be funded by the Indiana housing finance authority;**  
 29 **or**

30 **(F) with a principal amount that exceeds the conforming**  
 31 **loan size limit for a single family dwelling as established by**  
 32 **the Federal National Mortgage Association.**

33 **Chapter 2. Definitions**

34 **Sec. 1. The definitions in this chapter apply throughout this**  
 35 **article.**

36 **Sec. 2. "Benchmark rate" means the interest rate established**  
 37 **under Section 152 of the Federal Home Ownership and Equity**  
 38 **Protection Act of 1994 (15 U.S.C. 1602 (aa)) and the regulations**  
 39 **adopted under that act by the Federal Reserve Board, including 12**  
 40 **CFR 226.32 and the Official Staff Commentary to the regulations**  
 41 **as amended.**

42 **Sec. 3. "Bona fide discount points" means loan discount points**  
 43 **that:**

44 **(1) are knowingly paid by the borrower;**

45 **(2) are paid for the express purpose of reducing the interest**  
 46 **rate applicable to the loan;**

47 **(3) reduce the interest rate from an interest rate that does**

1           not exceed the benchmark rate; and  
 2           (4) are recouped within the first four (4) years of the  
 3           scheduled loan payments;  
 4       if the reduction in the interest rate that is achieved by the  
 5       payment of the loan discount points reduces the interest charged  
 6       on the scheduled payments so that the borrower's dollar amount  
 7       of savings in interest during the first four (4) years of the loan is  
 8       equal to or greater than the dollar amount of loan discount points  
 9       paid by the borrower.

10       Sec. 4. "Borrower" means a person obligated to repay a home  
 11       loan, including a coborrower, cosigner, or guarantor.

12       Sec. 5. "Bridge loan" means temporary or short term financing  
 13       with a maturity of less than eighteen (18) months that requires  
 14       payments of interest only until the entire unpaid balance is due  
 15       and payable.

16       Sec. 6. (a) "Creditor" means:

17           (1) a person:

18               (A) who regularly extends consumer credit that is subject to  
 19               a finance charge or that is payable by written agreement in  
 20               more than four (4) installments; and

21               (B) to whom the debt arising from a home loan transaction  
 22               is initially payable; or

23           (2) a person who brokers a home loan, including a person who:

24               (A) directly or indirectly solicits, processes, places, or  
 25               negotiates home loans for others;

26               (B) offers to solicit, process, place, or negotiate home loans  
 27               for others; or

28               (C) closes home loans that may be in the person's own name  
 29               with funds provided by others and that are thereafter  
 30               assigned to the person providing funding for the loans.

31       (b) The term does not include:

32           (1) a servicer;

33           (2) a state or local housing finance authority;

34           (3) any other state or local governmental or  
 35           quasi-governmental entity; or

36           (4) an attorney providing legal services in association with the  
 37           closing of a home loan.

38       Sec. 7. (a) "Deceptive act" means an act or a practice as part of  
 39       a consumer credit mortgage transaction involving real property  
 40       located in Indiana in which a person at the time of the transaction  
 41       knowingly or intentionally:

42           (1) makes a material misrepresentation; or

43           (2) conceals material information regarding the terms or  
 44           conditions of the transaction.

45       (b) For purposes of this section, "knowingly" means having  
 46       actual knowledge at the time of the transaction.

47       Sec. 8. (a) "High cost home loan" means a home loan with:

1 (1) a trigger rate that exceeds the benchmark rate; or

2 (2) total points and fees that exceed:

3 (A) five percent (5%) of the loan principal for a home loan  
4 having a loan principal of at least forty thousand dollars  
5 (\$40,000); or

6 (B) six percent (6%) of the loan principal for a home loan  
7 having a loan principal of less than forty thousand dollars  
8 (\$40,000).

9 (b) Beginning July 1, 2006, the dollar amounts set forth in this  
10 section are subject to change at the times and according to the  
11 procedure set forth in the provisions of IC 24-4.5-1-106  
12 concerning the adjustment of dollar amounts in IC 24-4.5.

13 Sec. 9. "Home loan" means a loan, other than an open end  
14 credit plan or a reverse mortgage transaction, that is secured by  
15 a mortgage or deed of trust on real estate in Indiana on which  
16 there is located or will be located a structure or structures:

17 (1) designed primarily for occupancy of one (1) to four (4)  
18 families; and

19 (2) that is or will be occupied by a borrower as the borrower's  
20 principal dwelling.

21 Sec. 10. (a) Except as provided in subsection (b), "points and  
22 fees" means the total of the following:

23 (1) Points and fees (as defined in 12 CFR 226.32(b)(1) on  
24 January 1, 2004).

25 (2) All compensation paid directly or indirectly to a mortgage  
26 broker, including a broker that originates a loan in the  
27 broker's own name.

28 As used in subdivision (2), "compensation" does not include a  
29 payment included in subdivision (1).

30 (b) The term does not include the following:

31 (1) Bona fide discount points.

32 (2) An amount not to exceed one and one-half (1 1/2) points in  
33 indirect broker compensation, if the terms of the loan do not  
34 include a prepayment penalty that exceeds two percent (2%)  
35 of the home loan principle.

36 (3) Reasonable fees paid to an affiliate of the creditor.

37 (4) Interest prepaid by the borrower for the month in which  
38 the home loan is closed.

39 Sec. 11. "Political subdivision" means a municipality, school  
40 district, public library, local housing authority, fire protection  
41 district, public transportation corporation, local building authority,  
42 local hospital authority or corporation, local airport authority,  
43 special service district, special taxing district, or any other type of  
44 local governmental corporate entity.

45 Sec. 12. "Rate" means the interest rate charged on a home  
46 loan, based on an annual simple interest yield.

47 Sec. 13. "Total loan amount" means the principal of the home

1 loan minus the points and fees that are included in the principal  
2 amount of the loan.

3 **Sec. 14. "Trigger rate" means:**

4 (1) for fixed rate home loans in which the interest rate will not  
5 vary during the term of the loan, the rate as of the date of  
6 closing;

7 (2) for home loans in which the interest varies according to an  
8 index, the sum of the index rate as of the date of closing plus  
9 the maximum margin permitted at any time under the loan  
10 agreement; or

11 (3) for all other home loans in which the rate may vary at any  
12 time during the term of the loan, the maximum rate that may  
13 be charged during the term of the home loan.

14 **Chapter 3. Prohibited Lending Practices Generally**

15 **Sec. 1. (a) A creditor making a home loan may not finance,**  
16 **directly or indirectly, any:**

17 (1) credit life insurance;

18 (2) credit disability insurance;

19 (3) credit unemployment insurance;

20 (4) credit property insurance; or

21 (5) payments directly or indirectly for any cancellation  
22 suspension agreement or contract.

23 (b) Insurance premiums, debt cancellation fees, or suspension  
24 fees calculated and paid on a monthly basis are not considered to  
25 be financed by the creditor for purposes of this chapter.

26 **Sec. 2. (a) A creditor may not knowingly or intentionally replace**  
27 **or consolidate a zero (0) interest rate or other subsidized low rate**  
28 **loan made by a governmental or nonprofit lender with a high cost**  
29 **home loan within the first ten (10) years of the subsidized low rate**  
30 **loan unless the current holder of the loan consents in writing to**  
31 **the refinancing.**

32 (b) For purposes of this section, a "subsidized low rate loan" is  
33 a loan that carries a current interest rate of at least two (2)  
34 percentage points below the current yield on treasury securities  
35 with a comparable maturity. If the loan's current interest rate is  
36 either a discounted introductory rate or a rate that automatically  
37 steps up over time, the fully indexed rate or the fully stepped up  
38 rate, as appropriate, should be used instead of the current rate to  
39 determine whether a loan is a subsidized low rate loan.

40 (c) Each mortgage or deed of trust securing a zero (0) interest  
41 rate or other subsidized low rate loan executed after January 1,  
42 2005, must prominently display the following on the face of the  
43 instrument:

44 "This instrument secures a zero (0) interest rate or other  
45 subsidized low rate loan subject to IC 24-9-3-2."

46 (d) A creditor may reasonably rely on the presence or absence  
47 of the statement described in subsection (c) on the face of an

1 instrument executed after January 1, 2005, as conclusive proof of  
2 the existence or nonexistence of a zero (0) interest rate or other  
3 subsidized low rate loan.

4 **Sec. 3.** A creditor may not recommend or encourage default on  
5 an existing loan or other debt before and in connection with the  
6 closing or planned closing of a home loan that refinances all or  
7 part of the existing loan or debt.

8 **Sec. 4.** A creditor shall treat each payment made by a borrower  
9 in regard to a home loan as posted on the same business day as  
10 the payment was received by the creditor, servicer, or creditor's  
11 agent, or at the address provided to the borrower by the creditor,  
12 servicer, or creditor's agent for making payments.

13 **Sec. 5. (a)** A home loan agreement may not contain a provision  
14 that permits the creditor, in the creditor's sole discretion, to  
15 accelerate the indebtedness without material cause.

16 **(b)** This section does not prohibit acceleration of a home loan in  
17 good faith due to the borrower's failure to abide by the material  
18 terms of the loan.

19 **Sec. 6. (a)** A creditor may not charge a fee for informing or  
20 transmitting to a person the balance due to pay off a home loan or  
21 to provide a written release upon prepayment. A creditor must  
22 provide a payoff balance not later than ten (10) business days  
23 after the request is received by the creditor.

24 **(b)** For purposes of this section, "fee" does not include actual  
25 charges incurred by a creditor for express or priority delivery  
26 requested by the borrower of home loan documents to the  
27 borrower.

28 **Sec. 7.** A person may not:

29 (1) divide a loan transaction into separate parts with the  
30 intent of evading a provision of this article;

31 (2) structure a home loan transaction as an open-end loan  
32 with the intent of evading the provisions of this article if the  
33 loan would be a high cost home loan if the home loan had been  
34 structured as a closed-end loan; or

35 (3) engage in a deceptive act in connection with a home loan.

36 **Sec. 8.** A person seeking to enforce section 7(3) of this chapter,  
37 may not knowingly or intentionally intimidate, coerce, or harass  
38 another person.

39 **Sec. 9.** It is unlawful for a creditor to discriminate against any  
40 applicant with respect to any aspect of a credit transaction on the  
41 basis of race, color, religion, national origin, sex, marital status,  
42 or age, if the applicant has the ability to contract.

43 **Chapter 4. Additional Prohibitions for High Cost Home Loans**

44 **Sec. 1.** The following additional limitations and prohibited  
45 practices apply to a high cost home loan:

46 (1) A creditor making a high cost home loan may not directly  
47 or indirectly finance any points and fees.



1           (2) Prepayment fees or penalties may not be included in the  
2           loan documents for a high cost home loan or charged to the  
3           borrower if the fees or penalties exceed in total two percent  
4           (2%) of the high cost home loan amount prepaid during the  
5           first twenty-four (24) months after the high cost home loan  
6           closing.

7           (3) A prepayment penalty may not be contracted for after the  
8           second year following the high cost home loan closing.

9           (4) A creditor may not include a prepayment penalty fee in a  
10          high cost home loan unless the creditor offers the borrower  
11          the option of choosing a loan product without a prepayment  
12          fee. The terms of the offer must be made in writing and must  
13          be initialed by the borrower. The document containing the  
14          offer must be clearly labeled in large bold type and must  
15          include the following disclosure:

16                "LOAN PRODUCT CHOICE

17                I was provided with an offer to accept a product both with  
18                and without a prepayment penalty provision. I have chosen  
19                to accept the product with a prepayment penalty."

20          (5) A creditor shall not sell or otherwise assign a high cost  
21          home loan without furnishing the following statement to the  
22          purchaser or assignee:

23                "NOTICE: This is a loan subject to special rules under  
24                IC 24-9. Purchasers or assignees may be liable for all claims  
25                and defenses with respect to the loan that the borrower  
26                could assert against the lender."

27          (6) A mortgage or deed of trust that secures a high cost home  
28          loan at the time the mortgage or deed of trust is recorded  
29          must prominently display the following on the face of the  
30          instrument:

31                "This instrument secures a high cost home loan as defined  
32                in IC 24-9-2-8."

33          (7) A creditor making a high cost home loan may not finance,  
34          directly or indirectly, any life or health insurance.

35          Sec. 2. A creditor may not knowingly or intentionally:

36                (1) refinance a high cost home loan by charging points and  
37                fees on the part of the proceeds of the new high cost home  
38                loan that is used to refinance the existing high cost loan  
39                within four (4) years of the origination of the existing high  
40                cost home loan; or

41                (2) divide a home loan transaction into multiple transactions  
42                with the effect of evading this article. Where multiple  
43                transactions are involved, the total points and fees charged in  
44                all transactions shall be considered when determining whether  
45                the protections of this section apply.

46          Sec. 3. Notwithstanding IC 24-4.5-3-402, a high cost home loan  
47          agreement may not require a scheduled payment that is more

1 than twice as large as the average of earlier scheduled monthly  
2 payments under the high cost home loan agreement unless the  
3 payment becomes due and payable at least one hundred twenty  
4 (120) months after the date of the high cost home loan. This  
5 prohibition does not apply if:

6 (1) the payment schedule is adjusted to account for the  
7 seasonal or irregular income of the borrower; or

8 (2) the loan is a bridge loan connected with or related to the  
9 acquisition or construction of a dwelling intended to become  
10 the borrower's principal dwelling.

11 Sec. 4. (a) Except as provided in subsection (b), a high cost home  
12 loan may not include payment terms under which the outstanding  
13 principal balance will increase at any time over the course of the  
14 high cost home loan because the regular periodic payments do not  
15 cover the full amount of interest due.

16 (b) This section does not apply to a temporary forbearance that  
17 is requested by a borrower regarding a high cost home loan.

18 Sec. 5. A high cost home loan may not contain a provision that  
19 increases the interest rate after default. However, this section  
20 does not apply to interest rate changes in a variable rate loan  
21 otherwise consistent with the provisions of the high cost home  
22 loan documents if the change in the interest rate is not triggered  
23 by the event of default or the acceleration of the indebtedness.

24 Sec. 6. A high cost home loan may not include terms under  
25 which more than two (2) periodic payments required under the  
26 high cost home loan are consolidated and paid in advance from the  
27 high cost home loan proceeds provided to the borrower.

28 Sec. 7. A creditor may not make a high cost home loan without  
29 first providing the borrower information to facilitate contact with  
30 a nonprofit counseling agency certified by:

31 (1) the United States Department of Housing and Urban  
32 Development; or

33 (2) the department of commerce under IC 4-4-3-8(b)(15);  
34 at the same time as the good faith estimates are provided to the  
35 borrower in accordance with the requirements of the federal Real  
36 Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) as  
37 amended.

38 Sec. 8. (a) A creditor may not make a high cost home loan  
39 without regard to repayment ability.

40 (b) If a creditor presents evidence that the creditor followed  
41 commercially reasonable practices in determining the borrower's  
42 debt to income ratio, there is a rebuttable presumption that the  
43 creditor made the high cost home loan with due regard to  
44 repayment ability. For purposes of this section, there is a  
45 rebuttable presumption that the borrower's statement of income  
46 provided to the creditor is true and complete.

47 (c) Commercially reasonable practices include the use of:

1 (1) the debt to income ratio:

2 (A) listed in 38 CFR 36.4337(c)(1); and

3 (B) defined in 38 CFR 36.4337(d); and

4 (2) the residual income guidelines established under:

5 (A) 38 CFR 36.4337(e); and

6 (B) United States Department of Veterans Affairs form  
7 26-6393.

8 **Sec. 9. A creditor may not pay a contractor under a home**  
9 **improvement contract from the proceeds of a high cost home loan**  
10 **unless:**

11 (1) the creditor is presented with a signed and dated  
12 completion certificate showing that the home improvements  
13 have been completed; and

14 (2) the instrument is payable to the borrower or jointly to the  
15 borrower and the contractor or, at the election of the  
16 borrower, through a third party escrow agent under a written  
17 agreement signed by the borrower, the creditor, and the  
18 contractor before the disbursement.

19 **Sec. 10. A creditor may not charge a borrower any fees or other**  
20 **charges to modify, renew, extend, or amend a high cost home loan**  
21 **or to defer a payment due under the terms of a high cost home**  
22 **loan.**

23 **Sec. 11. A creditor may not make a high cost home loan unless**  
24 **the creditor has given the following notice, in writing, to the**  
25 **borrower not later than the time that notice is required under 12**  
26 **CFR 226.31(c):**

27 **"NOTICE TO BORROWER**

28 **YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO**  
29 **OBTAIN A LOAN AT A LOWER COST. YOU SHOULD**  
30 **COMPARE LOAN RATES, COSTS, AND FEES. MORTGAGE**  
31 **LOAN RATES AND CLOSING COSTS AND FEES VARY**  
32 **BASED ON MANY FACTORS, INCLUDING YOUR**  
33 **PARTICULAR CREDIT AND FINANCIAL**  
34 **CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE**  
35 **LOAN-TO-VALUE REQUESTED, AND THE TYPE OF**  
36 **PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN**  
37 **RATE, COSTS, AND FEES COULD ALSO VARY BASED ON**  
38 **WHICH CREDITOR OR BROKER YOU SELECT.**

39 **IF YOU ACCEPT THE TERMS OF THIS LOAN, THE**  
40 **CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR**  
41 **HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY**  
42 **YOU HAVE PAID IF YOU DO NOT MEET YOUR PAYMENT**  
43 **OBLIGATIONS UNDER THE LOAN.**

44 **YOU SHOULD CONSULT AN ATTORNEY AND A**  
45 **QUALIFIED INDEPENDENT CREDIT COUNSELOR OR**  
46 **OTHER EXPERIENCED FINANCIAL ADVISER REGARDING**  
47 **THE RATE, FEES, AND PROVISIONS OF THIS MORTGAGE**

1           **LOAN BEFORE YOU PROCEED. A LIST OF QUALIFIED**  
 2           **COUNSELORS IS AVAILABLE FROM THE INDIANA**  
 3           **DEPARTMENT OF COMMERCE.**  
 4           **YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN**  
 5           **AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED**  
 6           **THIS DISCLOSURE OR HAVE SIGNED A LOAN**  
 7           **APPLICATION. REMEMBER, PROPERTY TAXES AND**  
 8           **HOMEOWNER'S INSURANCE ARE YOUR**  
 9           **RESPONSIBILITY. NOT ALL CREDITORS PROVIDE**  
 10           **ESCROW SERVICES FOR THESE PAYMENTS. YOU**  
 11           **SHOULD ASK YOUR CREDITOR ABOUT THESE SERVICES.**  
 12           **ALSO, YOUR PAYMENTS ON EXISTING DEBTS**  
 13           **CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD**  
 14           **NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR**  
 15           **PAYMENTS TO YOUR EXISTING CREDITORS."**

16           **Sec. 12. Without regard to whether a borrower is acting**  
 17           **individually or on behalf of others similarly situated, a provision**  
 18           **of a high cost home loan agreement that:**

- 19           **(1) requires arbitration of a claim or defense;**  
 20           **(2) allows a party to require a borrower to assert a claim or**  
 21           **defense in a forum that is:**  
 22           **(A) less convenient;**  
 23           **(B) more costly; or**  
 24           **(C) more dilatory;**  
 25           **for the resolution of the dispute than an Indiana court in**  
 26           **which the borrower may otherwise bring a claim or defense;**  
 27           **or**  
 28           **(3) limits in any way any claim or defense the borrower may**  
 29           **have;**

30           **is unconscionable and void.**

31           **Chapter 5. Claims, Defenses, Remedies**

32           **Sec. 1. (a) A person who purchases or is otherwise assigned a**  
 33           **high cost home loan is subject to all affirmative claims and any**  
 34           **defenses with respect to the high cost home loan that the**  
 35           **borrower could assert against a creditor or broker of the high cost**  
 36           **home loan. However, this section does not apply if the purchaser**  
 37           **or assignee demonstrates by a preponderance of the evidence that**  
 38           **a reasonable person exercising ordinary due diligence could not**  
 39           **determine that the loan was a high cost home loan. A purchaser**  
 40           **or an assignee is presumed to have exercised reasonable due**  
 41           **diligence if the purchaser or assignee:**

- 42           **(1) has in place at the time of the purchase or assignment of**  
 43           **the subject loans, policies that expressly prohibit the purchase**  
 44           **or acceptance of the assignment of any high cost home loans;**  
 45           **(2) requires by contract that a seller or an assignor of home**  
 46           **loans to the purchaser or assignee represents and warrants to**  
 47           **the purchaser or assignee that either:**

- 1           **(A) the seller or assignor will not sell or reassign any high**  
 2           **cost home loans to the purchaser or assignee; or**  
 3           **(B) the seller or assignor is a beneficiary of a representation**  
 4           **and warranty from a previous seller or assignor to that**  
 5           **effect;**
- 6           **(3) exercises reasonable due diligence:**  
 7           **(A) at the time of purchase or assignment of home loans; or**  
 8           **(B) within a reasonable period after the purchase or**  
 9           **assignment of home loans;**  
 10          **intended by the purchaser or assignee to prevent the**  
 11          **purchaser or assignee from purchasing or taking assignment**  
 12          **of any high cost home loans; or**
- 13          **(4) satisfies the requirements of subdivisions (1) and (2) and**  
 14          **establishes that a reasonable person exercising ordinary due**  
 15          **diligence could not determine that the loan was a high cost**  
 16          **home loan based on the:**  
 17               **(A) documentation required by the federal Truth in Lending**  
 18               **Act (15 U.S.C. 1601 et seq.); and**  
 19               **(B) itemization of the amount financed and other**  
 20               **disbursement disclosures.**
- 21          **(b) A borrower acting only in an individual capacity may assert**  
 22          **against the creditor or any subsequent holder or assignee of a**  
 23          **high cost home loan:**  
 24               **(1) a violation of IC 24-9-4-2 as a defense, claim, or**  
 25               **counterclaim, after:**  
 26                   **(A) an action to enjoin foreclosure or to preserve or obtain**  
 27                   **possession of the dwelling that secures the loan is initiated;**  
 28                   **(B) an action to collect on the loan or foreclose on the**  
 29                   **collateral securing the loan is initiated; or**  
 30                   **(C) the loan is more than sixty (60) days in default;**  
 31          **within three (3) years after the closing of a home loan;**  
 32               **(2) a violation of this article in connection to the high cost**  
 33               **home loan as a defense, claim, or counterclaim in an original**  
 34               **action within five (5) years after the closing of a high cost**  
 35               **home loan; and**  
 36               **(3) any defense, claim, counterclaim, or action to enjoin**  
 37               **foreclosure or preserve or obtain possession of the home that**  
 38               **secures the loan, including a violation of this article after:**  
 39                   **(A) an action to collect on the loan or foreclose on the**  
 40                   **collateral securing the loan is initiated;**  
 41                   **(B) the debt arising from the loan is accelerated; or**  
 42                   **(C) the loan is more than sixty (60) days in default;**  
 43               **at any time during the term of a high cost home loan.**
- 44          **(c) In an action, a claim, or a counterclaim brought under**  
 45          **subsection (b), the borrower may recover only amounts required**  
 46          **to reduce or extinguish the borrower's liability under a home loan**  
 47          **plus amounts required to recover costs, including reasonable**

1 attorney's fees.

2 (d) The provisions of this section are effective notwithstanding  
3 any other provision of law. This section shall not be construed to  
4 limit the substantive rights, remedies, or procedural rights  
5 available to a borrower against any creditor, assignee, or holder  
6 under any other law. The rights conferred on borrowers by  
7 subsections (a) and (b) are independent of each other and do not  
8 limit each other.

9 Sec. 2. (a) If a creditor asserts that grounds for acceleration  
10 under the terms of a high cost home loan exist and requires the  
11 payment in full of all sums secured by the security instrument,  
12 the borrower or a person authorized to act on the borrower's  
13 behalf at any time before the title is transferred by means of  
14 foreclosure, judicial proceeding and sale, or otherwise may cure  
15 the default and reinstate the high cost home loan by tendering the  
16 amount or performance as specified in the security instrument.

17 (b) If the borrower cures the default on a high cost home loan,  
18 the original loan terms shall be reinstated, and any acceleration  
19 of any obligation under the security instrument or note arising  
20 from the default is nullified as of the date of the cure.

21 Sec. 3. (a) A creditor making a high cost home loan that has the  
22 right to foreclose must use the judicial foreclosure procedures of  
23 the state in which the property securing the high cost home loan  
24 is located. The borrower has the right to assert in the proceeding  
25 the nonexistence of a default and any other claim or defense to  
26 acceleration and foreclosure, including any claim or defense based  
27 on any violations of this article.

28 (b) This section is not intended and shall not be construed to  
29 allow any claim or defense otherwise barred by any statute of  
30 limitation or repose.

31 Sec. 4. (a) A person who violates this article is liable to a person  
32 who is a party to the home loan transaction that gave rise to the  
33 violation for the following:

34 (1) Actual damages, including consequential damages. A  
35 person is not required to demonstrate reliance in order to  
36 receive actual damages.

37 (2) Statutory damages equal to two (2) times the finance  
38 charges agreed to in the home loan agreement.

39 (3) Costs and reasonable attorney's fees.

40 (b) A person may be granted injunctive, declaratory, and other  
41 equitable relief as the court determines appropriate in an action  
42 to enforce compliance with this chapter.

43 (c) The right of rescission granted under 15 U.S.C. 1601 et seq.  
44 for a violation of law is available to a person acting only in an  
45 individual capacity by way of recoupment as a defense against a  
46 party foreclosing on a home loan at any time during the term of  
47 the loan. Any recoupment claim asserted under this provision is

1 limited to the amount required to reduce or extinguish the  
 2 person's liability under the home loan plus amounts required to  
 3 recover costs, including reasonable attorney's fees. This article  
 4 shall not be construed to limit the recoupment rights available to  
 5 a person under any other law.

6 (d) The remedies provided in this section are cumulative but are  
 7 not intended to be the exclusive remedies available to a person.  
 8 Except as provided in subsection (e), a person is not required to  
 9 exhaust any administrative remedies under this article or under  
 10 any other applicable law.

11 (e) Before bringing an action regarding an alleged deceptive act  
 12 under this chapter, a person must:

13 (1) notify the homeowner protection unit established by  
 14 IC 4-6-12-2 of the alleged violation giving rise to the action;  
 15 and

16 (2) allow the homeowner protection unit at least ninety (90)  
 17 days to institute appropriate administrative and civil action to  
 18 redress a violation.

19 (f) An action under this chapter must be brought within five (5)  
 20 years after the date that the person knew, or by the exercise of  
 21 reasonable diligence should have known, of the violation of this  
 22 article.

23 (g) An award of damages under subsection (a) has priority over  
 24 a civil penalty imposed under this article.

25 Sec. 5. (a) If the creditor or an assignee establishes by a  
 26 preponderance of evidence that a violation of this article is  
 27 unintentional or the result of a bona fide error of law or fact  
 28 notwithstanding the maintenance of procedures reasonably  
 29 adopted to avoid any such violation or error, the validity of the  
 30 transaction is not affected, and no liability is imposed under  
 31 section 4 of this chapter except in the case of a refusal to make a  
 32 refund.

33 (b) Except as provided in subsection (c), a creditor in a high cost  
 34 home loan who in good faith fails to comply with this article is not  
 35 considered to have violated this article if the creditor does the  
 36 following before receiving notice of the failure from the borrower:

37 (1) Not later than ninety (90) days after the date of the loan  
 38 closing:

39 (A) makes appropriate restitution to the borrower of any  
 40 amounts collected in error; and

41 (B) takes necessary action to make all appropriate  
 42 adjustments to the loan to correct the error.

43 (2) Not later than one hundred twenty (120) days after the  
 44 date of the loan closing, notifies the borrower of:

45 (A) the error; and

46 (B) the amount of the required restitution or adjustment.

47 (c) Subsection (b) does not apply unless the creditor establishes

1 that the compliance failure was not intentional and resulted from  
 2 a bona fide error of fact or law, notwithstanding the maintenance  
 3 of procedures reasonably adopted to avoid the errors.

4 **Sec. 6. The rights conferred by this article are in addition to**  
 5 **rights granted under any other law.**

6 **Chapter 6. Reporting Requirements**

7 **Sec. 1. (a) A servicer of a high cost home loan shall report at**  
 8 **least once each calendar quarter to a nationally recognized**  
 9 **consumer credit reporting agency both the favorable and**  
 10 **unfavorable payment history information of the borrower on**  
 11 **payments due to the creditor on a high cost home loan.**

12 **(b) This section does not prohibit a servicer from agreeing with**  
 13 **the borrower not to report specified payment history information**  
 14 **in the event of a resolved or an unresolved dispute with a**  
 15 **borrower and does not apply to high cost home loans held or**  
 16 **serviced by a lender for less than ninety (90) days.**

17 **Chapter 7. State Power to Regulate Lending**

18 **Sec. 1. The state is the sole regulator of the business of**  
 19 **originating, granting, servicing, and collecting loans and other**  
 20 **forms of credit in Indiana and the manner in which the business**  
 21 **is conducted. This regulation preempts all other regulation of**  
 22 **these activities by any political subdivision.**

23 **Sec. 2. Political subdivisions may not:**

24 **(1) enact, issue, or enforce ordinances, resolutions,**  
 25 **regulations, orders, requests for proposals, or requests for**  
 26 **bids pertaining to financial or lending activities, including**  
 27 **ordinances, resolutions, and rules that disqualify persons from**  
 28 **doing business with a municipality and that are based upon**  
 29 **lending terms or practices; or**

30 **(2) impose reporting requirements or any other obligations**  
 31 **upon persons regarding financial services or lending practices**  
 32 **or upon subsidiaries or affiliates that:**

33 **(A) are subject to the jurisdiction of the department of**  
 34 **financial institutions;**

35 **(B) are subject to the jurisdiction or regulatory supervision**  
 36 **of the Board of Governors of the Federal Reserve System,**  
 37 **the Office of the Comptroller of the Currency, the Office of**  
 38 **Thrift Supervision, the National Credit Union**  
 39 **Administration, the Federal Deposit Insurance Corporation,**  
 40 **the Federal Trade Commission, or the United States**  
 41 **Department of Housing and Urban Development;**

42 **(C) are chartered by the United States Congress to engage**  
 43 **in secondary market mortgage transactions;**

44 **(D) are created by the Indiana housing finance authority; or**

45 **(E) originate, purchase, sell, assign, securitize, or service**  
 46 **property interests or obligations created by financial**  
 47 **transactions or loans made, executed, originated, or**



1 purchased by persons referred to in clauses (A), (B), (C), or  
2 (D).

3 **Chapter 8. Penalties and Enforcement**

4 **Sec. 1. A person who knowingly or intentionally violates this**  
5 **article commits:**

6 (1) a Class A misdemeanor; and

7 (2) an act that is actionable by the attorney general under  
8 IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

9 **Sec. 2. (a) Beginning July 1, 2005, the attorney general and the**  
10 **attorney general's homeowner protection unit established under**  
11 **IC 4-6-12 shall enforce this article for any violation occurring**  
12 **within five (5) years after the making of a home loan.**

13 (b) The attorney general may refer a matter under section 1 of  
14 this chapter to a prosecuting attorney for enforcement.

15 **Sec. 3. (a) The attorney general may bring an action to enjoin a**  
16 **violation of this article. A court in which the action is brought**  
17 **may:**

18 (1) issue an injunction;

19 (2) order a person to make restitution;

20 (3) order a person to reimburse the state for reasonable costs  
21 of the attorney general's investigation and prosecution of the  
22 violation of this article; and

23 (4) impose a civil penalty of not more than ten thousand  
24 dollars (\$10,000) per violation.

25 (b) A person who violates an injunction under this section is  
26 subject to a civil penalty of not more than ten thousand dollars  
27 (\$10,000) per violation.

28 (c) The court that issues an injunction retains jurisdiction over  
29 a proceeding seeking the imposition of a civil penalty under this  
30 section.

31 **Sec. 4. The attorney general may file complaints with any of the**  
32 **agencies listed in IC 4-6-12-4 to implement this chapter.**

33 **Chapter 9. Fees**

34 **Sec. 1. The county recorder shall assess a fee of three dollars**  
35 **(\$3) under IC 36-2-7-10(b)(11) for each mortgage recorded. The**  
36 **fee shall be paid to the county treasurer at the end of each**  
37 **calendar month as provided in IC 36-2-7-10(a).**

38 **Sec. 2. The county auditor shall credit fifty cents (\$0.50) of the**  
39 **fee collected under IC 36-2-7-10(b)(11) for each mortgage**  
40 **recorded to the county recorder's records perpetuation fund**  
41 **established under IC 36-2-7-10(c).**

42 **Sec. 3. On or before June 20 and December 20 of each year,**  
43 **after completing an audit of the county treasurer's monthly**  
44 **reports required by IC 36-2-10-16, the county auditor shall**  
45 **distribute to the auditor of state two dollars and fifty cents (\$2.50)**  
46 **of the mortgage recording fee collected under IC 36-2-7-10(b)(11)**  
47 **for each mortgage recorded by the county recorder. The auditor**

1 of state shall deposit the money in the state general fund to be  
2 distributed as described in section 4 of this chapter.

3 **Sec. 4. On or before June 30 and December 31 of each year the**  
4 **auditor of state shall distribute one dollar and twenty-five cents**  
5 **(\$1.25) of the mortgage recording fee to the home ownership**  
6 **education account established by IC 4-4-3-23 and one dollar and**  
7 **twenty-five cents (\$1.25) of the mortgage recording fee to the**  
8 **homeowner protection unit account established by IC 4-6-12-9.**

9 SECTION 34. IC 28-1-11-3.2 IS AMENDED TO READ AS  
10 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3.2. (a) As used in this  
11 section, "rights and privileges" means the power:

12 (1) to:

13 ~~(1)~~ (A) create;

14 ~~(2)~~ (B) deliver;

15 ~~(3)~~ (C) acquire; or

16 ~~(4)~~ (D) sell;

17 a product, a service, or an investment that is available to or offered  
18 by; or

19 (2) to engage in other activities authorized for;

20 national banks domiciled in Indiana.

21 (b) A bank that intends to exercise any rights and privileges that are:

22 (1) granted to national banks; but

23 (2) not authorized for banks under the Indiana Code (except for  
24 this section) or any rule adopted under the Indiana Code;

25 shall submit a letter to the department describing in detail the requested  
26 rights and privileges granted to national banks that the bank intends to  
27 exercise. If available, copies of relevant federal law, regulations, and  
28 interpretive letters must be attached to the letter submitted by the bank.

29 (c) The department shall promptly notify the requesting bank of the  
30 department's receipt of the letter submitted under subsection (b).  
31 Except as provided in subsection (e), the bank may exercise the  
32 requested rights and privileges sixty (60) days after the date on which  
33 the department receives the letter unless otherwise notified by the  
34 department.

35 (d) The department, through its members, may prohibit the bank  
36 from exercising the requested rights and privileges only if the members  
37 find that:

38 (1) national banks domiciled in Indiana do not possess the  
39 requested rights and privileges; or

40 (2) the exercise of the requested rights and privileges by the bank  
41 would adversely affect the safety and soundness of the bank.

42 (e) The sixty (60) day period referred to in subsection (c) may be  
43 extended by the department based on a determination that the bank's  
44 letter raised issues requiring additional information or additional time for  
45 analysis. If the sixty (60) day period is extended under this subsection,  
46 the bank may exercise the requested rights and privileges only if the  
47 bank receives prior written approval from the department. However:

48 (1) the members must:

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

1 (B) convene a hearing;  
 2 not later than sixty (60) days after the department receives the  
 3 bank's letter; and

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

7 (f) The exercise of rights and privileges by a bank in compliance with  
 8 and in the manner authorized by this section is not a violation of any  
 9 provision of the Indiana Code or rules adopted under IC 4-22-2.

10 (g) Whenever, in compliance with this section, a bank exercises  
 11 rights and privileges granted to national banks domiciled in Indiana, all  
 12 banks may exercise the same rights and privileges if the department by  
 13 order determines that the exercise of the rights and privileges by all  
 14 banks would not adversely affect their safety and soundness.

15 (h) If the department denies the request of a bank under this section  
 16 to exercise any rights and privileges that are granted to national banks,  
 17 the bank may appeal the decision of the department to the circuit court  
 18 with jurisdiction in the county in which the principal office of the bank  
 19 is located. In an appeal under this section, the court shall determine the  
 20 matter de novo.

21 SECTION 35. IC 28-1-20-4, AS AMENDED BY P.L.258-2003,  
 22 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 23 UPON PASSAGE]: Sec. 4. (a) Except as provided in subsections (c),  
 24 (d), (g), and (k), it is unlawful for any person, firm, limited liability  
 25 company, or corporation (other than a bank or trust company, a bank  
 26 holding company, **a subsidiary of a bank or trust company, a**  
 27 **subsidiary of a bank holding company, a subsidiary of a savings**  
 28 **bank, a subsidiary of a savings association, or a corporate fiduciary**  
 29 organized or reorganized under IC 28 or statutes in effect at the time of  
 30 organization or reorganization or under the laws of the United States):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (l) A person, firm, limited liability company, or corporation may not  
46 use the name of an existing bank or bank holding company or a name  
47 confusingly similar to that of an existing bank or bank holding company  
48 when marketing to or soliciting business from a customer or  
49 prospective customer if the reference to the existing bank or bank  
50 holding company is:

1 (1) without the consent of the existing bank or bank holding  
2 company; and

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

5 (A) originated from;

6 (B) is endorsed by; or

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

8 the existing bank or bank holding company.

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

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

26 (1) originated from;

27 (2) is endorsed by; or

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

29 the existing bank or bank holding company.

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

32 SECTION 36. IC 28-7-1-9, AS AMENDED BY P.L.258-2003,  
33 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
34 JULY 1, 2004]: 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:

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

46 (B) upon the making of the loan, the aggregate amount of loans  
47 outstanding under this subdivision will not exceed twenty percent  
48 (20%) of the unimpaired capital and surplus of the credit union;

49 (C) the loan is approved by the credit committee or loan officer;  
50 and

- 1 (D) the borrower takes no part in the consideration of or vote on  
2 the application.
- 3 (4) To invest in any of the following:
- 4 (A) Bonds, notes, or certificates that are the direct or indirect  
5 obligations of the United States, or of the state, or the direct  
6 obligations of a county, township, city, town, or other taxing  
7 district or municipality or instrumentality of Indiana and that are  
8 not in default.
- 9 (B) Bonds or debentures issued by the Federal Home Loan Bank  
10 Act (12 U.S.C. 1421 through 1449) or the Home Owners' Loan  
11 Act (12 U.S.C. 1461 through 1468).
- 12 (C) Interest-bearing obligations of the FSLIC Resolution Fund  
13 and obligations of national mortgage associations issued under the  
14 authority of the National Housing Act.
- 15 (D) Mortgages on real estate situated in Indiana which are fully  
16 insured under Title 2 of the National Housing Act (12 U.S.C.  
17 1707 through 1715z).
- 18 (E) Obligations issued by farm credit banks and banks for  
19 cooperatives under the Farm Credit Act of 1971 (12 U.S.C. 2001  
20 through 2279aa-14).
- 21 (F) In savings and loan associations, other credit unions that are  
22 insured under IC 28-7-1-31.5 and certificates of indebtedness or  
23 investment of an industrial loan and investment company if the  
24 association or company is federally insured. Not more than  
25 twenty percent (20%) of the assets of a credit union may be  
26 invested in the shares or certificates of an association or  
27 company; nor more than forty percent (40%) in all such  
28 associations and companies.
- 29 (G) Corporate credit unions.
- 30 (H) Federal funds or similar types of daily funds transactions  
31 with other financial institutions.
- 32 (I) Mutual funds created and controlled by credit unions, credit  
33 union associations, or their subsidiaries. Mutual funds referred to  
34 in this clause may invest only in instruments that are approved  
35 for credit union purchase under this chapter.
- 36 (J) Shares, stocks, or obligations of any credit union service  
37 organization (as defined in Section 712 of the Rules and  
38 Regulations of the National Credit Union Administration) with the  
39 approval of the department. Not more than five percent (5%) of  
40 the total paid in and unimpaired capital of the credit union may be  
41 invested under this clause.
- 42 (5) To deposit its funds into:
- 43 (A) depository institutions that are federally insured; or  
44 (B) state chartered credit unions that are privately insured by an  
45 insurer approved by the department.
- 46 (6) To purchase, hold, own, or convey real estate as may be  
47 conveyed to the credit union in satisfaction of debts previously  
48 contracted or in exchange for real estate conveyed to the credit  
49 union.
- 50 (7) To own, hold, or convey real estate as may be purchased by

- 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 for  
9 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 union  
20 shall not consider the payment of dividends on the transferred  
21 account.
- 22 (11) To invest in fixed assets with the funds of the credit union. An  
23 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 interest  
29 paid during the dividend period by borrowers who are members at  
30 the end of the dividend period.
- 31 (14) To purchase life savings and loan protection insurance for the  
32 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 union,  
41 with written approval from the department, at prices agreed upon  
42 by the boards of directors of both the liquidating and the  
43 purchasing credit unions. However, the aggregate of the unpaid  
44 balances of all notes of liquidating credit unions purchased by any  
45 one (1) credit union shall not exceed ten percent (10%) of its  
46 unimpaired capital and surplus unless special written authorization  
47 has been granted by the department.
- 48 (17) To exercise such incidental powers necessary or requisite to  
49 enable it to carry on effectively the business for which it is  
50 incorporated.

- 1 (18) To act as a custodian or trustee of any trust created or  
 2 organized in the United States and forming part of a stock bonus,  
 3 pension, or profit sharing plan which qualifies or qualified for  
 4 specific tax treatment under Section 408(a) or Section 401(d) of  
 5 the Internal Revenue Code, if the funds of the trust are invested  
 6 only in share accounts or insured certificates of the credit union.
- 7 (19) To issue shares of its capital stock or insured certificates to a  
 8 trustee or custodian of a pension plan, profit sharing plan, or stock  
 9 bonus plan which qualifies for specific tax treatment under  
 10 Sections 401(d) or 408(a) of the Internal Revenue Code.
- 11 (20) A credit union may exercise any rights and privileges that are:  
 12 (A) granted to federal credit unions; but  
 13 (B) not authorized for credit unions under the Indiana Code  
 14 (except for this section) or any rule adopted under the Indiana  
 15 Code;  
 16 if the credit union complies with section 9.2 of this chapter.
- 17 (21) To sell, pledge, or discount any of its assets. However, a  
 18 credit union may not pledge any of its assets as security for the  
 19 safekeeping and prompt payment of any money deposited, except  
 20 that a credit union may, for the safekeeping and prompt payment  
 21 of money deposited, give security as authorized by federal law.
- 22 (22) To purchase assets of another credit union and to assume the  
 23 liabilities of the selling credit union.
- 24 (23) To act as a fiscal agent of the United States and to receive  
 25 deposits from nonmember units of the federal, state, or county  
 26 governments, from political subdivisions, and from other credit  
 27 unions upon which the credit union may pay varying interest rates  
 28 at varying maturities subject to terms, rates, and conditions that are  
 29 established by the board of directors. However, the total amount of  
 30 public funds received from units of state and county governments  
 31 and political subdivisions that a credit union may have on deposit  
 32 may not exceed ~~ten~~ **twenty** percent (~~10%~~) (**20%**) of the total  
 33 assets of that credit union, excluding those public funds.
- 34 (24) To join the National Credit Union Administration Central  
 35 Liquidity Facility.
- 36 (25) To participate in community investment initiatives under the  
 37 administration of organizations:  
 38 (A) exempt from taxation under Section 501(c)(3) of the Internal  
 39 Revenue Code; and  
 40 (B) located or conducting activities in communities in which the  
 41 credit union does business.
- 42 Participation may be in the form of either charitable contributions  
 43 or participation loans. In either case, disbursement of funds  
 44 through the administering organization is not required to be limited  
 45 to members of the credit union. Total contributions or participation  
 46 loans may not exceed one tenth of one percent (0.001) of total  
 47 assets of the credit union. A recipient of a contribution or loan is  
 48 not considered qualified for credit union membership. A  
 49 contribution or participation loan made under this subdivision must  
 50 be approved by the board of directors.



1 (26) To establish and operate an automated teller machine (ATM):  
 2 (A) at any location within Indiana; or  
 3 (B) as permitted by the laws of the state in which the automated  
 4 teller machine is to be located.

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

8 (A) reasonable compensation, or compensation as fixed by  
 9 agreement of the parties;

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

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

14 (28) Subject to any restrictions the department may impose, to  
 15 become the owner or lessor of personal property acquired upon the  
 16 request and for the use of a member and to incur additional  
 17 obligations as may be incident to becoming an owner or lessor of  
 18 such property.

19 SECTION 37. IC 28-7-1-9.2, AS ADDED BY P.L.134-2001,  
 20 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 21 JULY 1, 2004]: Sec. 9.2. (a) As used in this section, "rights and  
 22 privileges" means the power:

23 (1) to:

24 ~~(1)~~ (A) create;

25 ~~(2)~~ (B) deliver;

26 ~~(3)~~ (C) acquire; or

27 ~~(4)~~ (D) sell;

28 a product, a service, or an investment that is available to or offered  
 29 by; **or**

30 **(2) to engage in other activities authorized for;**

31 federal credit unions domiciled in Indiana.

32 (b) A credit union that intends to exercise any rights and privileges  
 33 that are:

34 (1) granted to federal credit unions; but

35 (2) not authorized for credit unions under the Indiana Code (except  
 36 for this section) or any rule adopted under the Indiana Code;

37 shall submit a letter to the department describing in detail the requested  
 38 rights and privileges granted to federal credit unions that the credit  
 39 union intends to exercise. If available, copies of relevant federal law,  
 40 regulations, and interpretive letters must be attached to the letter  
 41 submitted by the credit union.

42 (c) The department shall promptly notify the requesting credit union  
 43 of the department's receipt of the letter submitted under subsection (b).  
 44 Except as provided in subsection (e), the credit union may exercise the  
 45 requested rights and privileges sixty (60) days after the date on which  
 46 the department receives the letter unless otherwise notified by the  
 47 department.

48 (d) The department, through its members, may prohibit the credit  
 49 union from exercising the requested rights and privileges only if the

1 members find that:

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

4 (2) the exercise of the requested rights and privileges by the credit  
5 union would adversely affect the safety and soundness of the credit  
6 union.

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

14 (1) the members must:

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

16 (B) convene a hearing;

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

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

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

26 (g) Whenever, in compliance with this section, a credit union  
27 exercises rights and privileges granted to federal credit unions domiciled  
28 in Indiana, all credit unions may exercise the same rights and privileges  
29 if the department by order determines that the exercise of the rights and  
30 privileges by all credit unions would not adversely affect their safety  
31 and soundness.

32 (h) If the department denies the request of a credit union under this  
33 section to exercise any rights and privileges that are granted to federal  
34 credit unions, the credit union may appeal the decision of the  
35 department to the circuit court with jurisdiction in the county in which  
36 the principal office of the credit union is located. In an appeal under this  
37 section, the court shall determine the matter de novo.

38 SECTION 38. IC 28-8-4-27 IS AMENDED TO READ AS  
39 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 27. (a) Except as  
40 provided in section 29 of this chapter, an application must be  
41 accompanied by a security device that secures the faithful performance  
42 of the obligations of the licensee to receive, handle, transmit, and pay  
43 money in connection with the:

44 (1) sale and issuance of payment instruments; or

45 (2) transmission of money.

46 (b) The security device required under subsection (a) must:

47 (1) be in an amount as provided under subsection (c);

48 (2) run to the state; and

49 (3) be in a form acceptable to the director.

50 (c) The security device must be in an amount calculated as follows:

1 STEP ONE: Subtract one (1) from the number of locations where  
2 the applicant proposes to engage in business under the license.

3 STEP TWO: Multiply the difference determined under STEP ONE  
4 by ten thousand dollars (\$10,000).

5 STEP THREE: Add ~~one two~~ hundred thousand dollars ~~(\$100,000)~~  
6 **(\$200,000)** to the product determined under STEP TWO.

7 STEP FOUR: Pay the amount that is the lesser of:

8 (1) the sum determined in STEP THREE; or

9 (2) ~~two three~~ hundred thousand dollars ~~(\$200,000)~~; **(\$300,000)**.

10 (d) If the security device filed is a bond, the aggregate liability of the  
11 surety shall not exceed the principal sum of the bond.

12 SECTION 39. IC 28-8-4-33 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 33. (a) A license granted  
14 under this chapter permits a licensee to conduct business:

15 (1) at one (1) or more locations directly or indirectly owned by the  
16 licensee; or

17 (2) through one (1) or more authorized delegates.

18 (b) Each licensee shall maintain a policy of insurance issued by a  
19 insurer authorized to do business in Indiana that insures the applicant  
20 against loss by a criminal act or act of dishonesty. The principal sum of  
21 the policy shall be equivalent to ~~one-half (1/2)~~ **the amount** of the  
22 required security device required under section 27 of this chapter or  
23 deposit required under section 29 of this chapter.

24 (c) Except as provided in subsection (d), a licensee must at all times  
25 possess permissible investments with an aggregate market value  
26 calculated in accordance with generally accepted accounting principles  
27 of not less than the aggregate face amount of all outstanding payment  
28 instruments issued or sold by the licensee or an authorized delegate of  
29 the licensee in the United States.

30 (d) The director may waive the permissible investments requirement  
31 in subsection (c) if the dollar volume of a licensee's outstanding  
32 payment instruments does not exceed:

33 (1) the security device posted by the licensee under section 27 of  
34 this chapter; or

35 (2) the deposit made by the licensee under section 29 of this  
36 chapter.

37 (e) A licensee that is a corporation must at all times be in good  
38 standing with the secretary of state of the state in which the licensee  
39 was incorporated.

40 SECTION 40. IC 28-10-1-1, AS AMENDED BY P.L.258-2003,  
41 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
42 JANUARY 1, 2004 (RETROACTIVE)]: Sec. 1. A reference to a federal  
43 law or federal regulation in IC 28 is a reference to the law or regulation  
44 in effect January 1, ~~2003~~; **2004**.

45 SECTION 41. IC 28-11-3-6 IS ADDED TO THE INDIANA CODE  
46 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY  
47 1, 2004]: **Sec. 6. (a) As used in this section:**

48 **(1) "federally chartered" means an entity organized or**  
49 **reorganized under the law of the United States; and**

1           (2) "state chartered" means an entity organized or  
2           reorganized under the law of Indiana or another state.

3           (b) If the department determines that federal law has  
4 preempted a provision of IC 24, IC 26, IC 28, IC 29, or IC 30, the  
5 provision of IC 24, IC 26, IC 28, IC 29, or IC 30 applies to a state  
6 chartered entity only to the same extent that the department  
7 determines the provision is applicable to the:

8           (1) same; or

9           (2) functionally equivalent;  
10 type of federally chartered entity.

11           (c) A state chartered entity seeking an exemption from a  
12 provision of IC 24, IC 26, IC 28, IC 29, or IC 30 based on the  
13 preemption of the provision as applied to a federally chartered  
14 entity shall submit a letter to the department:

15           (1) describing in detail; and

16           (2) documenting the federal preemption of;  
17 the provisions from which it seeks exemption. If available, copies  
18 of relevant federal law, regulations, and interpretive letters must  
19 be attached to the letter submitted by the requesting entity.

20           (d) The department shall notify the requesting entity within ten  
21 (10) business days after the department's receipt of a letter  
22 described in subsection (c). Except as provided in subsection (e),  
23 upon receipt of the notification, the requesting entity may operate  
24 as if it is exempt from the provision of IC 24, IC 26, IC 28, IC 29,  
25 or IC 30 for ninety (90) days after the date on which the  
26 department receives the letter, unless otherwise notified by the  
27 department. This period may be extended if the department  
28 determines that the requesting entity's letter raises issues  
29 requiring additional information or additional time for analysis. If  
30 the department extends the period, the requesting entity may  
31 operate as if the requesting entity is exempt from a provision of  
32 IC 24, IC 26, IC 28, IC 29, or IC 30 only if the requesting entity  
33 receives prior written approval from the department. However:

34           (1) the department must:

35           (A) approve or deny the requested exemption; or

36           (B) convene a hearing;

37           not later than ninety (90) days after the department receives  
38 the requesting entity's letter; and

39           (2) if a hearing is convened, the department must approve or  
40 deny the requested exemption not later than ninety (90) days  
41 after the hearing is concluded.

42           (e) The department may refuse to exempt a requesting entity  
43 from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 if the  
44 department finds that any of the following conditions apply:

45           (1) The department determines that a described provision of  
46 IC 24, IC 26, IC 28, IC 29, or IC 30 is not preempted for a  
47 federally chartered entity of the:

- 1           **(A) same; or**  
 2           **(B) functionally equivalent;**  
 3           **type.**  
 4           **(2) The extension of the federal preemption in the form of an**  
 5           **exemption from a provision of IC 24, IC 26, IC 28, IC 29, or**  
 6           **IC 30 to the requesting entity would:**  
 7           **(A) adversely affect the safety and soundness of the**  
 8           **requesting entity; or**  
 9           **(B) result in an unacceptable curtailment of consumer**  
 10           **protection provisions.**  
 11           **(3) The failure of the department to provide for the exemption**  
 12           **from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 will**  
 13           **not result in a competitive disadvantage to the requesting**  
 14           **entity.**  
 15           **(f) The operation of a financial institution in a manner**  
 16           **consistent with exemption from a provision of IC 24, IC 26, IC 28,**  
 17           **IC 29, or IC 30 under this section is not a violation of any**  
 18           **provision of the Indiana Code or rules adopted under IC 4-22-2.**  
 19           **(g) If a financial institution is exempted from the provisions of**  
 20           **IC 24, IC 26, IC 28, IC 29, or IC 30 in compliance with this**  
 21           **section, the department shall do the following:**  
 22           **(1) Determine whether the exemption shall apply to all**  
 23           **financial institutions that, in the opinion of the department,**  
 24           **possess a charter that is:**  
 25           **(A) the same as; or**  
 26           **(B) functionally the equivalent of;**  
 27           **the charter of the exempt institution.**  
 28           **(2) For purposes of the determination required under**  
 29           **subdivision (1), ensure that applying the exemption to the**  
 30           **financial institutions described in subdivision (1) will not:**  
 31           **(A) adversely affect the safety and soundness of the**  
 32           **financial institutions; or**  
 33           **(B) unduly constrain Indiana consumer protection**  
 34           **provisions.**  
 35           **(3) Issue an order published in the Indiana Register that**  
 36           **specifies whether the exemption applies to the financial**  
 37           **institutions described in subdivision (1).**  
 38           **(h) If the department denies the request of a financial**  
 39           **institution under this section for exemption from Indiana Code**  
 40           **provisions that are preempted for federally chartered institutions,**  
 41           **the requesting institution may appeal the decision of the**  
 42           **department to the circuit court of the county in which the**  
 43           **principal office of the requesting institution is located.**  
 44           **SECTION 42. IC 28-13-16-4, AS AMENDED BY P.L.258-2003,**  
 45           **SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**  
 46           **JULY 1, 2004]: Sec. 4. (a) A financial institution or any of its**  
 47           **subsidiaries may acquire or establish a qualifying subsidiary by**

1 providing the department with written notice before acquiring or  
 2 establishing the subsidiary. The department shall notify the requesting  
 3 financial institution of the department's receipt of the notice.

4 (b) A subsidiary may exercise a power or engage in an activity  
 5 permitted to be performed by a financial institution under the same  
 6 conditions and restrictions as if the power or activity is performed by  
 7 the financial institution itself, or the activity has been authorized ~~by as~~  
 8 **"activity eligible for notice" procedures under 12 CFR**  
 9 ~~5.34(e)(2)(ii).~~ **5.34(e).**

10 (c) The qualified subsidiary may exercise or engage in the activity  
 11 thirty (30) days after the date on which the department receives the  
 12 notification unless otherwise notified by the department.

13 SECTION 43. IC 28-13-16-5, AS ADDED BY P.L.215-1999,  
 14 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 15 JULY 1, 2004]: Sec. 5. A financial institution may acquire or establish  
 16 a nonqualifying subsidiary by submitting an application to the  
 17 department containing:

- 18 (1) a complete description of the financial institution's investment  
 19 in the subsidiary;
- 20 (2) the activity to be conducted; and
- 21 (3) a representation that the activity:
  - 22 (A) could be performed by a financial institution under statutory  
 23 authority of this title;
  - 24 (B) is a part of or incidental to the business of banking as  
 25 determined by the director; or
  - 26 (C) has been authorized ~~by as~~ **"activity eligible for notice"**  
 27 **procedures under 12 CFR** ~~5.34(e)(2)(ii).~~ **5.34(e).**

28 The department shall notify the requesting financial institution of the  
 29 department's receipt of the application.

30 SECTION 44. IC 28-15-2-2 IS AMENDED TO READ AS  
 31 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) As used in this  
 32 section, "rights and privileges" means the power:

- 33 (1) to:
    - 34 ~~(1)~~ (A) create;
    - 35 ~~(2)~~ (B) deliver;
    - 36 ~~(3)~~ (C) acquire; or
    - 37 ~~(4)~~ (D) sell;
- 38 a ~~product or service product, a service, or an investment~~ that is  
 39 available to or offered by; or

40 (2) to engage in other activities authorized for;  
 41 federal savings associations **domiciled in Indiana.**  
 42 (b) Subject to this section, savings associations may exercise the  
 43 rights and privileges that are granted to federal savings associations.

44 (c) A savings association that intends to exercise any rights and  
 45 privileges that are:

- 46 (1) granted to federal savings associations; but
- 47 (2) not authorized for savings associations under:
  - 48 (A) the Indiana Code (except for this section); or
  - 49 (B) a rule adopted under IC 4-22-2;

1 shall submit a letter to the department, describing in detail the requested  
 2 rights and privileges granted to federal savings associations that the  
 3 savings association intends to exercise. If available, copies of relevant  
 4 federal law, regulations, and interpretive letters must be attached to the  
 5 letter.

6 (d) The department shall promptly notify the requesting savings  
 7 association of its receipt of the letter submitted under subsection (c).  
 8 Except as provided in subsection (f), the savings association may  
 9 exercise the requested rights and privileges sixty (60) days after the date  
 10 on which the department receives the letter unless otherwise notified by  
 11 the department.

12 (e) The department, through its members, may prohibit the savings  
 13 association from exercising the requested rights and privileges only if  
 14 the members find that:

15 (1) federal savings associations in Indiana do not possess the  
 16 requested rights and privileges; or

17 (2) the exercise of the requested rights and privileges by the  
 18 savings association would adversely affect the safety and  
 19 soundness of the savings association.

20 (f) The sixty (60) day period referred to in subsection (d) may be  
 21 extended by the department based on a determination that the savings  
 22 association letter raises issues requiring additional information or  
 23 additional time for analysis. If the sixty (60) day period is extended  
 24 under this subsection, the savings association may exercise the  
 25 requested rights and privileges only if the savings association receives  
 26 prior written approval from the department. However:

27 (1) the members must:

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

29 (B) convene a hearing;

30 not later than sixty (60) days after the department receives the  
 31 savings association's letter; and

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

35 (g) The exercise of rights and privileges by a savings association in  
 36 compliance with and in the manner authorized by this section does not  
 37 constitute a violation of any provision of the Indiana Code or rules  
 38 adopted under IC 4-22-2.

39 (h) Whenever, in compliance with this section, a savings association  
 40 exercises rights and privileges granted to national savings associations  
 41 domiciled in Indiana, all savings associations may exercise the same  
 42 rights and privileges if the department by order determines that the  
 43 exercise of the rights and privileges by all savings associations would  
 44 not adversely affect their safety and soundness.

45 SECTION 45. IC 32-29-1-2.5 IS ADDED TO THE INDIANA CODE  
 46 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 47 1, 2004]: **Sec. 2.5. A mortgagee or a mortgagee's assignee or  
 48 representative may not require a mortgagor, as a condition of  
 49 receiving or maintaining a mortgage, to obtain hazard insurance  
 50 coverage against risks to improvements on the mortgaged**

1 **property in an amount exceeding the replacement value of the**  
 2 **improvements.**

3 SECTION 46. IC 34-7-4-2, AS AMENDED BY SEA 263-2004,  
 4 SECTION 120, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 5 JANUARY 1, 2005]: Sec. 2. Statutes outside IC 34 providing causes of  
 6 action or procedures include the following:

7 (1) IC 4-21.5-5 (Judicial review of administrative agency actions).

8 (2) IC 22-3-4 (Worker's compensation administration and  
 9 procedures).

10 (3) IC 22-4-17 (Unemployment compensation system, employee's  
 11 claims for benefits).

12 (4) IC 22-4-32 (Unemployment compensation system, employer's  
 13 appeal process).

14 (5) IC 22-9 (Civil rights actions).

15 (6) **IC 24-9 (Home loans).**

16 (7) IC 31-14 (Paternity).

17 ~~(7)~~ (8) IC 31-15 (Dissolution of marriage and legal separation).

18 ~~(8)~~ (9) IC 31-16 (Support of children and other dependants).

19 ~~(9)~~ (10) IC 31-17 (Custody and visitation).

20 ~~(10)~~ (11) IC 31-19 (Adoption).

21 ~~(11)~~ (12) IC 32-27-2, IC 32-30-1, IC 32-30-2, ~~IC 32-30-2.1,~~  
 22 ~~IC 32-30-2,~~ IC 32-30-4, IC 32-30-9, IC 32-30-10, IC 32-30-12,  
 23 IC 32-30-13, and IC 32-30-14 (Real property).

24 ~~(12)~~ (13) IC 33-43-4 (Attorney liens).

25 SECTION 47. IC 36-2-7-10, AS AMENDED BY P.L.2-2003,  
 26 SECTION 101, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 27 JANUARY 1, 2005]: Sec. 10. (a) The county recorder shall tax and  
 28 collect the fees prescribed by this section for recording, filing, copying,  
 29 and other services the recorder renders, and shall pay them into the  
 30 county treasury at the end of each calendar month. The fees prescribed  
 31 and collected under this section supersede all other recording fees  
 32 required by law to be charged for services rendered by the county  
 33 recorder.

34 (b) The county recorder shall charge the following:

35 (1) Six dollars (\$6) for the first page and two dollars (\$2) for each  
 36 additional page of any document the recorder records if the pages  
 37 are not larger than eight and one-half (8 1/2) inches by fourteen  
 38 (14) inches.

39 (2) Fifteen dollars (\$15) for the first page and five dollars (\$5) for  
 40 each additional page of any document the recorder records, if the  
 41 pages are larger than eight and one-half (8 1/2) inches by fourteen  
 42 (14) inches.

43 (3) For attesting to the release, partial release, or assignment of any  
 44 mortgage, judgment, lien, or oil and gas lease contained on a  
 45 multiple transaction document, the fee for each transaction after the  
 46 first is the amount provided in subdivision (1) plus the amount  
 47 provided in subdivision (4) and one dollar (\$1) for marginal  
 48 mortgage assignments or marginal mortgage releases.

49 (4) One dollar (\$1) for each cross-reference of a recorded



- 1 document.
- 2 (5) One dollar (\$1) per page not larger than eight and one-half (8  
3 1/2) inches by fourteen (14) inches for furnishing copies of  
4 records produced by a photographic process, and two dollars (\$2)  
5 per page that is larger than eight and one-half (8 1/2) inches by  
6 fourteen (14) inches.
- 7 (6) Five dollars (\$5) for acknowledging or certifying to a  
8 document.
- 9 (7) Five dollars (\$5) for each deed the recorder records, in addition  
10 to other fees for deeds, for the county surveyor's corner  
11 perpetuation fund for use as provided in IC 32-19-4-3 or  
12 IC 36-2-12-11(e).
- 13 (8) A fee in an amount authorized under IC 5-14-3-8 for  
14 transmitting a copy of a document by facsimile machine.
- 15 (9) A fee in an amount authorized by an ordinance adopted by the  
16 county legislative body for duplicating a computer tape, a computer  
17 disk, an optical disk, microfilm, or similar media. This fee may not  
18 cover making a handwritten copy or a photocopy or using  
19 xerography or a duplicating machine.
- 20 (10) A supplemental fee of three dollars (\$3) for recording a  
21 document that is paid at the time of recording. The fee under this  
22 subdivision is in addition to other fees provided by law for  
23 recording a document.
- 24 **(11) Three dollars (\$3) for each mortgage on real estate**  
25 **recorded, in addition to other fees required by this section,**  
26 **distributed as follows:**
- 27 **(A) Fifty cents (\$0.50) is to be deposited in the recorder's**  
28 **record perpetuation fund.**
- 29 **(B) Two dollars and fifty cents (\$2.50) is to be distributed to**  
30 **the auditor of state on or before June 20 and December 20**  
31 **of each year as provided in IC 24-9-9-3.**
- 32 (c) The county treasurer shall establish a recorder's records  
33 perpetuation fund. All revenue received under subsection (b)(5), (b)(8),  
34 (b)(9), and (b)(10), **and fifty cents (\$0.50) from revenue received**  
35 **under subsection (b)(11)**, shall be deposited in this fund. The county  
36 recorder may use any money in this fund without appropriation for the  
37 preservation of records and the improvement of record keeping systems  
38 and equipment.
- 39 (d) As used in this section, "record" or "recording" includes the  
40 functions of recording, filing, and filing for record.
- 41 (e) The county recorder shall post the fees set forth in subsection (b)  
42 in a prominent place within the county recorder's office where the fee  
43 schedule will be readily accessible to the public.
- 44 (f) The county recorder may not tax or collect any fee for:  
45 (1) recording an official bond of a public officer, a deputy, an  
46 appointee, or an employee; or  
47 (2) performing any service under any of the following:  
48 (A) IC 6-1.1-22-2(c).  
49 (B) IC 8-23-7.

- 1 (C) IC 8-23-23.
- 2 (D) IC 10-17-2-3.
- 3 (E) IC 10-17-3-2.
- 4 (F) IC 12-14-13.
- 5 (G) IC 12-14-16.

6 (g) The state and its agencies and instrumentalities are required to pay  
7 the recording fees and charges that this section prescribes.

8 SECTION 48. THE FOLLOWING ARE REPEALED [EFFECTIVE  
9 JULY 1, 2004]: IC 24-4.5-7-407; IC 24-4.5-7-408.

10 SECTION 49. [EFFECTIVE UPON PASSAGE] (a) **Notwithstanding**  
11 **IC 4-4-3-8(b)(15), as added by this act, the department of**  
12 **commerce shall carry out the duties imposed on it under**  
13 **IC 4-4-3-8(b)(15), as added by this act, under interim written**  
14 **guidelines approved by the executive director of the department**  
15 **of commerce.**

16 (b) **This SECTION expires on the earlier of the following:**

17 (1) **The date rules are adopted under IC 4-4-3-8(b)(15), as**  
18 **added by this act.**

19 (2) **July 1, 2005.**

20 SECTION 50. [EFFECTIVE UPON PASSAGE] **Notwithstanding**  
21 **IC 24-9-3 and IC 24-9-4, both as added by this act, a person is not**  
22 **subject to a prohibition or requirement of IC 24-9-3 and IC 24-9-4,**  
23 **both as added by this act, with respect to a loan made before**  
24 **January 1, 2005.**

25 SECTION 51. **An emergency is declared for this act.**

(Reference is to EHB 1229 as reprinted February 26, 2004.)

**Conference Committee Report**  
on  
**Engrossed House Bill 1229**

**S**igned by:

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Representative Bardon  
Chairperson

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Senator Bray

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Representative Burton

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Senator Lanane

**House Conferees**

**Senate Conferees**