

Adopted Rejected

COMMITTEE REPORT

YES: 9
NO: 0

MR. SPEAKER:

Your Committee on Financial Institutions, to which was referred House Bill 1179, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 financial institutions.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 24-4.5-1-102 IS AMENDED TO READ AS
- 6 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 102. Purposes;
- 7 Rules of Construction—(1) This article shall be liberally construed and
- 8 applied to promote its underlying purposes and policies.
- 9 (2) The underlying purposes and policies of this article are:
- 10 (a) to simplify, clarify, and modernize the law governing retail
- 11 installment sales, consumer credit, small loans, and usury;
- 12 (b) to provide rate ceilings to assure an adequate supply of credit
- 13 to consumers;
- 14 (c) to further consumer understanding of the terms of credit
- 15 transactions and to foster competition among suppliers of
- 16 consumer credit so that consumers may obtain credit at reasonable

- 1 cost;
- 2 (d) to protect consumer buyers, lessees, and borrowers against
- 3 unfair practices by some suppliers of consumer credit, having due
- 4 regard for the interests of legitimate and scrupulous creditors;
- 5 (e) to permit and encourage the development of fair and
- 6 economically sound consumer credit practices;
- 7 (f) to conform the regulation of consumer credit transactions to the
- 8 policies of the Federal Consumer Credit Protection Act; and
- 9 (g) to make uniform the law including administrative rules among
- 10 the various jurisdictions.

11 (3) A reference to a requirement imposed by this article includes

12 reference to a related rule of the department adopted pursuant to this

13 article.

14 (4) A reference to a federal law in IC 24-4.5 is a reference to the law

15 in effect December 31, ~~2003~~ **2004**.

16 SECTION 2. IC 24-4.5-4-107 IS AMENDED TO READ AS

17 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 107. Maximum

18 Charge by Creditor for Insurance - (1) Except as provided in subsection

19 (2), if a creditor contracts for or receives a separate charge for

20 insurance, the amount charged to the debtor for the insurance may not

21 exceed the premium to be charged by the insurer, as computed at the

22 time the charge to the debtor is determined, conforming to any rate

23 filings required by law and made by the insurer with the Insurance

24 Commissioner.

25 (2) A creditor who provides consumer credit insurance in relation to

26 a revolving charge account (IC 24-4.5-2-108) or revolving loan account

27 (IC 24-4.5-3-108) may calculate the charge to the debtor in each billing

28 cycle by applying the current premium rate to:

- 29 (a) the average daily unpaid balance of the debt in the cycle;
- 30 (b) the unpaid balance of the debt or a median amount within a
- 31 specified range of unpaid balances of debt on approximately the same
- 32 day of the cycle. The day of the cycle need not be the day used in
- 33 calculating the credit service charge (IC 24-4.5-2-207) or loan finance
- 34 charge (IC 24-4.5-3-201 and IC 24-4.5-3-508), but the specified range
- 35 shall be the range used for that purpose; ~~or~~
- 36 (c) the unpaid balances of principal calculated according to the
- 37 actuarial method; ~~or~~
- 38 **(d) the amount of the insurance benefit for the cycle.**

1 SECTION 3. IC 24-4.5-7-201 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 201. (1) Finance
3 charges on the first two hundred fifty dollars (\$250) of a small loan are
4 limited to fifteen percent (15%) of the principal.

5 (2) Finance charges on the amount of a small loan greater than two
6 hundred fifty dollars (\$250) and less than or equal to four hundred
7 dollars (\$400) are limited to thirteen percent (13%) of the amount over
8 two hundred fifty dollars (\$250) and less than **or equal to** four hundred
9 dollars (\$400).

10 (3) Finance charges on the amount of the small loan greater than
11 four hundred dollars (\$400) and less than or equal to five hundred
12 dollars (\$500) are limited to ten percent (10%) of the amount over four
13 hundred dollars (\$400) and less than **or equal to** five hundred dollars
14 (\$500).

15 SECTION 4. IC 28-1-13-1.8 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1.8. (a) Loans and
17 extensions of credit secured by shipping documents or instruments
18 transferring or securing title covering livestock or giving a lien on
19 livestock when the market value of the livestock securing the obligation
20 is not at any time less than one hundred fifteen percent (115%) of the
21 face amount of the note covered are subject under this section,
22 notwithstanding the collateral requirements set forth in section ~~1-2~~
23 **1.5(b)** of this chapter, to a maximum limitation equal to twenty-five
24 percent (25%) of the capital and surplus.

25 (b) Loans and extensions of credit that arise from the discount by
26 dealers in dairy cattle of paper given in payment for dairy cattle, which
27 paper carries a full recourse endorsement or unconditional guarantee of
28 the seller and that are secured by the cattle being sold, are subject under
29 this section, notwithstanding the collateral requirements set forth in
30 section ~~1-2~~ **1.5(b)** of this chapter, to a limitation of twenty-five percent
31 (25%) of the capital and surplus.

32 SECTION 5. IC 28-1-18.2-5 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) For purposes of
34 this section, a bank or trust company that is not a member of the
35 Federal Reserve System is subject to Sections 23A and 23B of the
36 Federal Reserve Act (12 U.S.C. 371c or 371c-1) **and Federal Reserve**
37 **Regulation W (12 CFR 223)**, to the same extent and in the same
38 manner as though it were a member of the Federal Reserve System.

1 (b) A violation of Section 23A or 23B of the Federal Reserve Act
 2 (12 U.S.C. 371c or 371c-1) **or Federal Reserve Regulation W (12**
 3 **CFR 223)**, by a bank or trust company or a subsidiary of either
 4 constitutes a violation of this section.

5 SECTION 6. IC 28-5-1-4 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) As used in this
 7 section:

8 "Automated teller facility" means electronic or mechanical
 9 equipment that performs routine transactions for the public at locations
 10 off premises of the principal office or branch office of a company that
 11 holds a certificate to engage in business under this chapter and that is
 12 authorized to issue, negotiate, and sell certificates of investment or
 13 indebtedness.

14 "Branch" means any office, agency, mobile unit, messenger service,
 15 or other place of business at which:

- 16 (1) payments into certificates of investment or indebtedness are
 17 received;
 18 (2) checks, negotiable or transferable instruments or orders, or
 19 similar instruments are paid; or
 20 (3) money is lent.

21 However, the term does not include the principal office of a company
 22 or an automated teller facility.

23 "Financial institution" has the same meaning as in IC 28-1-1-3.

24 (b) Any domestic corporation organized under the general
 25 corporation laws of Indiana may engage in business as an industrial
 26 loan and investment company subject to the limitations and restrictions
 27 set forth in this chapter. The department may issue a certificate
 28 authorizing a corporation to engage in business under this chapter if
 29 **after** the department ~~determines after a hearing that a public necessity~~
 30 ~~exists in the particular city for the type of industrial loan and investment~~
 31 ~~company for which application is made. However, no certificate may~~
 32 ~~be issued to engage in business under this chapter in a city having a~~
 33 ~~population of less than thirty thousand (30,000) inhabitants, and with~~
 34 ~~respect to cities having a population of thirty thousand (30,000) or more~~
 35 ~~inhabitants, not more than one (1) certificate may be issued for each~~
 36 ~~thirty thousand (30,000) inhabitants of the city. **considers and**~~
 37 **investigates all the following:**

- 38 (1) **The financial standing and character of the incorporators,**

1 **organizers, directors, principal shareholders, or controlling**
 2 **corporations.**

3 **(2) The character, qualifications, and experience of the**
 4 **officers and directors of the corporation.**

5 **(3) The future earnings prospects for the proposed**
 6 **corporation in the community in which the corporation will be**
 7 **located.**

8 **(4) The adequacy of the corporation's capital.**

9 **If the department determines any of the factors described in**
 10 **subdivisions (1) through (4) unfavorably, the department may not**
 11 **issue a certificate authorizing the corporation to engage in business**
 12 **under this chapter.** Certificates issued under this section must state
 13 whether the corporation is authorized to issue, negotiate, and sell
 14 certificates of investment or indebtedness, and, if not, must provide that
 15 the corporation may do business under this article only as restricted by
 16 section 21 of this chapter.

17 (c) Any company that is authorized to issue, negotiate, and sell
 18 certificates of investment or indebtedness and that holds a certificate to
 19 engage in business under this chapter is entitled to establish one (1) or
 20 more branches de novo and one (1) or more branches by acquisition in
 21 any location or locations within Indiana, at which any business of the
 22 company may be transacted to the same extent as at the principal office
 23 of the company.

24 (d) As a condition to the establishment and operation of a branch or
 25 branches under this section, the company must:

- 26 (1) obtain prior written approval of the department;
 27 (2) operate each branch under the correct name of the company
 28 and its name must contain in addition the word "branch"; and
 29 (3) demonstrate that the applicant company will have adequate
 30 capital, sound management, and adequate future earnings
 31 prospects after the establishment of the branch.

32 (e) The location of **the principal office or** any branch established
 33 under this section may be changed at any time when authorized by the
 34 board of directors of the company and approved by the department.

35 (f) Any company desiring to open or establish one (1) or more
 36 branches or change location of an existing branch **or the principal**
 37 **office** must file a written application therefor, in such form and
 38 containing such information as may be prescribed by the department.

1 If the department determines that the requirements of subsection (d)
 2 have been satisfied, the department may in its discretion approve the
 3 application.

4 (g) A company is entitled to open or establish an automated teller
 5 facility in any location within Indiana or as permitted by the laws of the
 6 state in which the automated teller machine is to be located. An
 7 automated teller facility may be owned or operated individually by any
 8 company or jointly on a cost sharing or fee basis.

9 (h) A branch by acquisition may be established under this section
 10 only if done in compliance with applicable provisions of IC 28-1-7 or
 11 IC 28-1-8.

12 **(i) A company that is authorized to issue, negotiate, and sell**
 13 **certificates of investment or indebtedness and that holds a**
 14 **certificate to engage in business under this chapter is entitled to**
 15 **establish one (1) or more branches de novo and one (1) or more**
 16 **branches by acquisition in any location outside Indiana. Any**
 17 **business of the company may be transacted at a branch established**
 18 **under this subsection to the same extent as at the principal office of**
 19 **the company, subject to IC 28-2-18-19.**

20 SECTION 7. IC 28-6.1-9-8 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) Loans and
 22 extensions of credit secured by shipping documents or instruments
 23 transferring or securing title covering livestock or giving a lien on
 24 livestock when the market value of the livestock securing the obligation
 25 is not at any time less than one hundred fifteen percent (115%) of the
 26 face amount of the note covered are subject to a maximum limitation
 27 equal to twenty-five percent (25%) of the capital and surplus,
 28 notwithstanding the collateral requirements of section ~~2~~ **5(b)** of this
 29 chapter.

30 (b) Loans and extensions of credit that arise from the discount by
 31 dealers in dairy cattle of paper given in payment for dairy cattle, which
 32 paper carries a full recourse endorsement or unconditional guarantee of
 33 the seller and that are secured by the cattle being sold, are subject to a
 34 limitation of twenty-five percent (25%) of the capital and surplus,
 35 notwithstanding the collateral requirements of section ~~2~~ **5(b)** of this
 36 chapter.

37 SECTION 8. IC 28-7-1-0.5 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 0.5. The following

1 definitions apply throughout this chapter:

2 (1) "Automated teller machine" (ATM) means a piece of
3 unmanned electronic or mechanical equipment that performs
4 routine financial transactions for authorized individuals.

5 (2) "Branch office" means an office, agency, or other place of
6 business at which deposits are received, share drafts are paid, or
7 money is lent to members of a credit union. The term does not
8 include:

9 (A) the principal office of a credit union;

10 (B) the principal office of a credit union affiliate;

11 (C) a branch office of a credit union affiliate;

12 (D) an automated teller machine; or

13 (E) a night depository.

14 (3) "Credit union" is a cooperative, nonprofit association,
15 incorporated under this chapter, for the purposes of educating its
16 members in the concepts of thrift and to encourage savings among
17 its members. A credit union should provide a source of credit at
18 a fair and reasonable rate of interest and provide an opportunity
19 for its members to use and control their own money in order to
20 improve their economic and social condition.

21 (4) "Department" refers to the department of financial institutions.

22 (5) "Surplus" means the credit balance of undivided earnings after
23 losses. The term does not include statutory reserves.

24 (6) "Unimpaired shares" means paid in shares less any losses for
25 which no reserve exists and for which there is no charge against
26 undivided earnings.

27 (7) "Related credit union service organization" means, in
28 reference to a credit union, a credit union service organization in
29 which the credit union has invested under section 9(4)(J) of this
30 chapter.

31 (8) "Premises" means any office, branch office, suboffice, service
32 center, parking lot, real estate, or other facility where the credit
33 union transacts or will transact business.

34 (9) "Furniture, fixtures, and equipment" means office furnishings,
35 office machines, computer hardware, computer software,
36 automated terminals, and heating and cooling equipment.

37 (10) "Fixed assets" means:

38 (A) premises; and

- 1 (B) furniture, fixtures, and equipment.
- 2 (11) "Audit period" means a twelve (12) month period designated
- 3 by the board of directors of a credit union.
- 4 (12) "Community" means:
- 5 (A) a second class city;
- 6 (B) a third class city;
- 7 (C) a town;
- 8 (D) a county other than a county containing a consolidated
- 9 city;
- 10 (E) a census tract;
- 11 (F) a township; or
- 12 (G) any other municipal corporation (as defined in
- 13 IC 36-1-2-10).
- 14 **(13) "Control of a related interest" refers to a situation in**
- 15 **which an individual directly or indirectly, or through or in**
- 16 **concert with one (1) or more other individuals, possesses any**
- 17 **of the following:**
- 18 **(A) The ownership of, control of, or power to vote at least**
- 19 **twenty-five percent (25%) of any class of voting securities**
- 20 **of the related interest.**
- 21 **(B) The control in any manner of the election of a majority**
- 22 **of the directors of the related interest.**
- 23 **(C) The power to exercise a controlling influence over the**
- 24 **management or policies of the related interest. For**
- 25 **purposes of this clause, an individual is presumed to have**
- 26 **control, including the power to exercise a controlling**
- 27 **influence over the management or policies of a related**
- 28 **interest, if the individual:**
- 29 **(i) is an executive officer or a director of the related**
- 30 **interest and directly or indirectly owns, controls, or has**
- 31 **the power to vote more than ten percent (10%) of any**
- 32 **class of voting securities of the related interest; or**
- 33 **(ii) directly or indirectly owns, controls, or has the power**
- 34 **to vote more than ten percent (10%) of any class of**
- 35 **voting securities of the related interest and no other**
- 36 **person owns, controls, or has the power to vote a greater**
- 37 **percentage of that class of voting securities.**
- 38 **(14) "Executive officer" includes any of the following officers**

1 **of a credit union:**

2 **(A) The chairman of the board of directors.**

3 **(B) The president.**

4 **(C) A vice president.**

5 **(D) The cashier.**

6 **(E) The secretary.**

7 **(F) The treasurer.**

8 **(15) "Immediate family" means the spouse of an individual,**
 9 **the individual's minor children, and any of the individual's**
 10 **children, including adults, residing in the individual's home.**

11 **(16) "Officer" means any individual who participates or has**
 12 **the authority to participate in major policymaking functions**
 13 **of a credit union, regardless of whether:**

14 **(A) the individual has an official title;**

15 **(B) the individual's title designates the individual as an**
 16 **assistant; or**

17 **(C) the individual is serving without salary or other**
 18 **compensation.**

19 **(17) "Related interest", with respect to an individual, means:**

20 **(A) a partnership, a corporation, or another business**
 21 **organization that is controlled by the individual; or**

22 **(B) a political campaign committee:**

23 **(i) controlled by the individual; or**

24 **(ii) the funds or services of which benefit the individual.**

25 **(18) "Unimpaired capital and unimpaired surplus" means the**
 26 **sum of:**

27 **(A) undivided profits;**

28 **(B) reserve for contingencies;**

29 **(C) regular reserve; and**

30 **(D) allowance for loan and lease losses.**

31 SECTION 9. IC 28-7-1-8 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. **(a)** The use of any
 33 name or title ~~which~~ **that** contains the words "credit union", **or that**
 34 **means "credit union" in any language**, is unlawful unless the name
 35 is used by:

36 (1) a corporation authorized to use the words "credit union" under
 37 Indiana or United States law; or

38 (2) the Indiana Credit Union League, Inc., and its affiliates.

1 **(b) The department is authorized to exercise the powers under**
 2 **IC 28-11-4 against a person, firm, limited liability company, or**
 3 **corporation that improperly holds itself out as a credit union.**

4 **(c) A person, firm, limited liability company, or corporation that**
 5 **violates this section is subject to a penalty of five hundred dollars**
 6 **(\$500) per day for each day during which the violation continues.**
 7 **The penalty imposed shall be recovered in the name of the state on**
 8 **relation of the department and, when recovered, shall be paid into**
 9 **the financial institutions fund established by IC 28-11-2-9.**

10 SECTION 10. IC 28-7-1-9 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. A credit union has
 12 the following powers:

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

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

19 ~~(3) (2) To make loans to officers, directors, or committee members~~
 20 ~~but only if:~~

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

24 ~~(B) upon the making of the loan, the aggregate amount of loans~~
 25 ~~outstanding under this subdivision will not exceed twenty~~
 26 ~~percent (20%) of the unimpaired capital and surplus of the~~
 27 ~~credit union;~~

28 ~~(C) the loan is approved by the credit committee or loan~~
 29 ~~officer; and~~

30 ~~(D) the borrower takes no part in the consideration of or vote~~
 31 ~~on the application: **under section 17.1 of this chapter.**~~

32 ~~(4) (3) To invest in any of the following:~~

33 (A) Bonds, notes, or certificates that are the direct or indirect
 34 obligations of the United States, or of the state, or the direct
 35 obligations of a county, township, city, town, or other taxing
 36 district or municipality or instrumentality of Indiana and that
 37 are not in default.

38 (B) Bonds or debentures issued by the Federal Home Loan

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

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

- 1 personally benefits, directly or indirectly, from the sale or
2 purchase of the coverage.
- 3 ~~(15)~~ **(14)** To sell and cash negotiable checks, travelers checks, and
4 money orders for members.
- 5 ~~(16)~~ **(15)** To purchase members' notes from any liquidating credit
6 union, with written approval from the department, at prices agreed
7 upon by the boards of directors of both the liquidating and the
8 purchasing credit unions. However, the aggregate of the unpaid
9 balances of all notes of liquidating credit unions purchased by any
10 one (1) credit union shall not exceed ten percent (10%) of its
11 unimpaired capital and surplus unless special written authorization
12 has been granted by the department.
- 13 ~~(17)~~ **(16)** To exercise such incidental powers necessary or
14 requisite to enable it to carry on effectively the business for which
15 it is incorporated.
- 16 ~~(18)~~ **(17)** To act as a custodian or trustee of any trust created or
17 organized in the United States and forming part of a ~~stock bonus;~~
18 ~~pension;~~ or ~~profit sharing tax advantaged savings~~ plan which
19 qualifies or qualified for specific tax treatment under Section
20 ~~408(a) or 223, Section~~ 401(d), ~~408, 408A, or 530~~ of the Internal
21 Revenue Code, if the funds of the trust are invested only in share
22 accounts or insured certificates of the credit union.
- 23 ~~(19)~~ **(18)** To issue shares of its capital stock or insured certificates
24 to a trustee or custodian of a pension plan, profit sharing plan, or
25 stock bonus plan which qualifies for specific tax treatment under
26 Sections 401(d) or 408(a) of the Internal Revenue Code.
- 27 ~~(20)~~ **(19)** A credit union may exercise any rights and privileges
28 that are:
- 29 (A) granted to federal credit unions; but
- 30 (B) not authorized for credit unions under the Indiana Code
31 (except for this section) or any rule adopted under the Indiana
32 Code;
- 33 if the credit union complies with section 9.2 of this chapter.
- 34 ~~(21)~~ **(20)** To sell, pledge, or discount any of its assets. However,
35 a credit union may not pledge any of its assets as security for the
36 safekeeping and prompt payment of any money deposited, except
37 that a credit union may, for the safekeeping and prompt payment
38 of money deposited, give security as authorized by federal law.

- 1 ~~(22)~~ **(21)** To purchase assets of another credit union and to assume
 2 the liabilities of the selling credit union.
- 3 ~~(23)~~ **(22)** To act as a fiscal agent of the United States and to
 4 receive deposits from nonmember units of the federal, state, or
 5 county governments, from political subdivisions, and from other
 6 credit unions upon which the credit union may pay varying
 7 interest rates at varying maturities subject to terms, rates, and
 8 conditions that are established by the board of directors. However,
 9 the total amount of public funds received from units of state and
 10 county governments and political subdivisions that a credit union
 11 may have on deposit may not exceed twenty percent (20%) of the
 12 total assets of that credit union, excluding those public funds.
- 13 ~~(24)~~ **(23)** To join the National Credit Union Administration
 14 Central Liquidity Facility.
- 15 ~~(25)~~ **(24)** To participate in community investment initiatives under
 16 the administration of organizations:
- 17 (A) exempt from taxation under Section 501(c)(3) of the
 18 Internal Revenue Code; and
- 19 (B) located or conducting activities in communities in which
 20 the credit union does business.
- 21 Participation may be in the form of either charitable contributions
 22 or participation loans. In either case, disbursement of funds
 23 through the administering organization is not required to be
 24 limited to members of the credit union. Total contributions or
 25 participation loans may not exceed one tenth of one percent
 26 (0.001) of total assets of the credit union. A recipient of a
 27 contribution or loan is not considered qualified for credit union
 28 membership. A contribution or participation loan made under this
 29 subdivision must be approved by the board of directors.
- 30 ~~(26)~~ **(25)** To establish and operate an automated teller machine
 31 (ATM):
- 32 (A) at any location within Indiana; or
- 33 (B) as permitted by the laws of the state in which the
 34 automated teller machine is to be located.
- 35 ~~(27)~~ **(26)** To demand and receive, for the faithful performance and
 36 discharge of services performed under the powers vested in the
 37 credit union by this article:
- 38 (A) reasonable compensation, or compensation as fixed by

- 1 agreement of the parties;
- 2 (B) all advances necessarily paid out and expended in the
- 3 discharge and performance of its duties; and
- 4 (C) unless otherwise agreed upon, interest at the legal rate on
- 5 the advances referred to in clause (B).
- 6 ~~(28)~~ (27) Subject to any restrictions the department may impose,
- 7 to become the owner or lessor of personal property acquired upon
- 8 the request and for the use of a member and to incur additional
- 9 obligations as may be incident to becoming an owner or lessor of
- 10 such property.

11 SECTION 11. IC 28-7-1-11 IS AMENDED TO READ AS

12 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. Each credit union

13 shall make a call report of its condition to the department, at least

14 ~~semiannually, on or before January 31 and July 31 of each year,~~

15 **quarterly** on forms approved by the director. Reports in addition to the

16 regular reports may be required. A credit union that fails to comply

17 with this section may be required by the department to pay a civil

18 penalty of one hundred dollars (\$100) for each day of noncompliance.

19 Money paid under this section as determined by the department shall

20 be deposited into the financial institutions fund established by

21 IC 28-11-2-9. Except as specified in IC 28-11-3-3 concerning

22 individual depositors, any information contained in call reports made

23 by credit unions to the department must be made available to any

24 person upon request.

25 SECTION 12. IC 28-7-1-16 IS AMENDED TO READ AS

26 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) Not more than

27 thirty (30) business days after the conclusion of the annual meeting, the

28 board of directors shall elect from its own members:

- 29 (1) a chairperson;
- 30 (2) a vice chairperson or vice chairpersons;
- 31 (3) a secretary; and
- 32 (4) a treasurer.
- 33 (b) The board may appoint officers of the credit union.
- 34 (c) The office of secretary and treasurer may be held by the same
- 35 person. The board may appoint:
- 36 (1) an assistant secretary;
- 37 (2) an assistant treasurer; or
- 38 (3) both an assistant secretary and an assistant treasurer.

1 (d) The board of directors shall have the general management of the
2 affairs, funds, and records of the credit union and shall meet at least
3 monthly.

4 (e) The board may appoint an executive committee to exercise
5 authority delegated to it by the board. All actions taken by the
6 executive committee shall be subject to ratification by the board.

7 (f) Unless the bylaws provide otherwise, it is the duty of the
8 directors to do the following:

9 (1) To act upon all applications for membership unless the board
10 has appointed a membership officer. The board shall receive the
11 report of the membership officer monthly and shall act upon all
12 those applications for membership not approved by the
13 membership officer.

14 (2) To determine rates of interest on loans.

15 (3) To determine:

16 (A) the maximum number of shares which may be held by a
17 member; and

18 (B) the maximum amount which may be loaned to a member.

19 (4) To declare dividends.

20 (5) To amend the bylaws, provided that the qualifications for
21 membership in the credit union are principally defined in the
22 articles of incorporation.

23 (6) To fill vacancies on the board and the credit committee until
24 the next election.

25 (7) To invest the funds of the credit union or to delegate the
26 authority for investments to an executive committee or manager.
27 However, the board of directors shall review all investments made
28 by the executive committee or manager at least monthly.

29 (8) To set the compensation of members of the board, credit
30 committee, or supervisory committee.

31 **(9) To establish and annually review written lending policies**
32 **and maintain the policies on file in the credit union.**

33 (g) The board may appoint loan officers. Each loan officer shall
34 furnish to the credit committee or to the board a record of each loan
35 approved or denied at its next meeting. A loan officer, including the
36 treasurer or assistant treasurer, shall not have authority to disburse
37 funds of the credit union for any loan which has been approved by the
38 loan officer. Not more than one (1) member of the credit committee

1 may be appointed as loan officer.

2 SECTION 13. IC 28-7-1-17 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. (a) Every loan
4 application shall be submitted on a form approved by the board of
5 directors. When making an application, a member shall state the
6 security offered. Loans may be dispersed upon written approval by a
7 majority of the credit committee or a loan officer. If the credit
8 committee or loan officer fails to approve an application for a loan, the
9 applicant may appeal to the board of directors, providing such appeal
10 is authorized by the bylaws.

11 (b) Loans to members may be made only under the following terms
12 and conditions:

13 (1) All loans shall be evidenced by notes signed by the borrowing
14 member. ~~A loan shall not be made to a member if it would cause~~
15 ~~the member to become indebted to the credit union in an~~
16 ~~aggregate amount in excess of ten percent (10%) of the total~~
17 ~~unimpaired shares and surplus.~~

18 (2) ~~Unsecured loans shall not exceed five percent (5%) of the~~
19 ~~current assets of the credit union. The board of directors shall~~
20 ~~establish written lending policies and maintain such policies on~~
21 ~~file in the credit union. For the purposes of this section, an~~
22 ~~assignment of shares or the endorsement of a note is considered~~
23 ~~security.~~

24 ~~(3)~~ (2) Except as otherwise provided in this section, the terms of
25 any loan to a member with a maturity of more than six (6) months
26 shall provide for principal and interest payments that will amortize
27 the obligation in full within the terms of the loan contract. If the
28 income of the borrowing member is seasonal, the terms of the loan
29 contract may provide for seasonal amortization.

30 ~~(4)~~ (3) Loans may be made upon the security of improved or
31 unimproved real estate. Except as otherwise specified in this
32 section, such loans must be secured by a first lien upon real estate
33 prior to all other liens, except for taxes and assessments not
34 delinquent, and may be made with repayment terms other than as
35 provided in subdivision ~~(3)~~: (2). When the amount of a loan is at
36 least two hundred fifty thousand dollars (\$250,000), the fair cash
37 value of real estate security shall be determined by a written
38 appraisal made by one (1) or more qualified state licensed or

1 certified appraisers designated by the board of directors. The
 2 credit union loan folder for real estate mortgage loans shall
 3 include, when applicable:

- 4 (A) the loan application;
- 5 (B) the mortgage instrument;
- 6 (C) the note;
- 7 (D) the disclosure statement;
- 8 (E) the documentations of property insurance;
- 9 (F) an appraisal on the real estate for which the loan is made;
- 10 and
- 11 (G) the attorney's opinion of titles or a certificate of title
- 12 insurance on the real estate upon which the mortgage loan is
- 13 made.

14 ~~(5)~~ **(4)** The total unpaid balance of all loans authorized by this
 15 subdivision shall, at no time, exceed thirty-three and one-third
 16 percent (33 1/3%) of the total assets of the credit union at the time
 17 the loans are granted. This section does not limit unpaid balances
 18 secured by adjustable rate mortgages or loans with a remaining
 19 maturity of five (5) years or less. Loans made upon security of
 20 real estate are subject to the following restrictions:

- 21 (A) Real estate loans in which no principal amortization is
- 22 required shall provide for the payment of interest at least
- 23 annually and shall mature within five (5) years of the date of
- 24 the loan unless extended and shall not exceed fifty percent
- 25 (50%) of the fair cash value of the real estate used as security.
- 26 (B) Real estate loans on improved real estate, except for
- 27 variable rate mortgage loans and rollover mortgage loans
- 28 provided for in subdivision ~~(6)~~; **(5)**, shall require substantially
- 29 equal payments at successive intervals of not more than one (1)
- 30 year, shall mature within thirty (30) years, and shall not exceed
- 31 ninety percent (90%) of the fair cash value of the real estate
- 32 used as security, unless the excess of any loan over the
- 33 authorized percentage of fair cash value is guaranteed or
- 34 insured by a government agency or a private insurer authorized
- 35 to engage in such business in Indiana.
- 36 (C) Real estate loans on unimproved real estate may be made.
- 37 The terms of the loan shall:
- 38 (i) require substantially equal payments of interest and

- 1 principal at successive intervals of one (1) year or less;
- 2 (ii) mature within ten (10) years; and
- 3 (iii) not exceed eighty-five percent (85%) of the fair cash
- 4 value of the real estate used as security.
- 5 (D) Loans primarily secured by a mortgage which constitutes
- 6 a second lien on improved real estate may be made only if the
- 7 aggregate amount of all loans on the real estate does not
- 8 exceed one hundred percent (100%) of the fair cash value of
- 9 the real estate after such loan is made. Repayment terms shall
- 10 be in accordance with subdivision ~~(3)~~: **(2)**.
- 11 (E) Real estate loans may be made for the construction of
- 12 improvements to real property. Funds borrowed may be
- 13 advanced as work on the improvements progresses. Repayment
- 14 terms must comply with subdivision ~~(3)~~: **(2)**.
- 15 ~~(6)~~ **(5)** Subject to the limitations of subdivision ~~(4)~~: **(3)**, variable
- 16 rate mortgage loans and rollover mortgage loans may be made
- 17 under the same limitations and rights provided state chartered
- 18 savings associations under IC 28-1-21.5 (before its repeal) or
- 19 IC 28-15 or federal credit unions.
- 20 ~~(7)~~ **(6)** A credit union may participate with other financial
- 21 institutions in making loans to credit union members and may sell
- 22 a participating interest in any of its loans. However, the credit
- 23 union may not sell more than ninety percent (90%) of the
- 24 principal of participating loans outstanding at the time of sale.
- 25 **(7) Notwithstanding subdivisions (1) through (6), a credit**
- 26 **union may make any of the following:**
- 27 **(A) Any loan that may be made by a federal credit union.**
- 28 **However, IC 24-4.5 applies to any loan that is:**
- 29 **(i) made under this clause; and**
- 30 **(ii) within the scope of IC 24-4.5.**
- 31 **Any provision of federal law that is in conflict with**
- 32 **IC 24-4.5 does not apply to a loan made under this clause.**
- 33 **(B) Subject to subdivision (3), any alternative mortgage**
- 34 **loan (as defined in IC 28-15-11-2) that may be made by a**
- 35 **savings association (as defined in IC 28-15-1-11) under**
- 36 **IC 28-15-11. A loan made under this clause by a credit**
- 37 **union is subject to the same terms, conditions, exceptions,**
- 38 **and limitations that apply to an alternative mortgage loan**

1 **made by a savings association under IC 28-15-11.**
 2 **(8) A credit union may make a loan under either:**
 3 **(i) subdivisions (2) through (6); or**
 4 **(ii) subdivision (7);**
 5 **but not both. A credit union shall make an initial**
 6 **determination as to whether to make a loan under**
 7 **subdivisions (2) through (6) or under subdivision (7). If the**
 8 **credit union determines that a loan or category of loans is to**
 9 **be made under subdivision (7), the written loan policies of the**
 10 **credit union must include that determination. A credit union**
 11 **may not combine the terms and conditions that apply to a loan**
 12 **made under subdivisions (2) through (6) with the terms and**
 13 **conditions that apply to a loan made under subdivision (7) to**
 14 **make a loan not expressly described and authorized either**
 15 **under subdivisions (2) through (6) or under subdivision (7).**

16 (c) Nothing in this section prevents any credit union from taking an
 17 indemnifying or second mortgage on real estate as additional security.

18 SECTION 14. IC 28-7-1-17.1 IS ADDED TO THE INDIANA
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS
 20 [EFFECTIVE JULY 1, 2005]: **Sec. 17.1. (a) Subject to subsection (b),**
 21 **a credit union may make a loan to the credit union's individual**
 22 **officers, directors, and committee members under the following**
 23 **terms and conditions:**

24 **(1) The loan must comply with all requirements under this**
 25 **chapter that apply to loans made to other borrowers.**

26 **(2) The loan may not be on terms more favorable than those**
 27 **extended to other borrowers.**

28 **(3) The borrower may not:**

29 **(A) take part in the consideration of; or**

30 **(B) vote on;**

31 **the borrower's loan application.**

32 **(4) Except as provided in subsection (b), a credit union may**
 33 **not make a loan under this section to an individual, the**
 34 **individual's immediate family, or the individual's related**
 35 **interests if the amount of the loan, either by itself or when**
 36 **added to the amounts of all other loans made under this**
 37 **section to the individual, the individual's immediate family, or**
 38 **the individual's related interests, exceeds the greater of:**

- 1 **(A) five percent (5%) of the credit union's unimpaired**
 2 **capital and surplus; or**
 3 **(B) twenty-five thousand dollars (\$25,000);**
 4 **unless the loan is first approved by the credit union's board of**
 5 **directors.**
 6 **(5) A credit union may not make a loan under this section to**
 7 **an individual, the individual's immediate family, or the**
 8 **individual's related interests if the amount of the loan, either**
 9 **by itself or when added to the amounts of all other loans made**
 10 **under this section to the individual, the individual's immediate**
 11 **family, or the individual's related interests, exceeds the**
 12 **lending limits set forth in IC 28-7-1-39.**
 13 **(6) Subject to subsection (b), the total amount of all loans**
 14 **made under this section may not exceed the credit union's**
 15 **unimpaired capital and surplus.**
 16 **(b) The limits set forth in subsections (a)(4) and (a)(6) do not**
 17 **apply to any of the following:**
 18 **(1) An extension of credit made under a line of credit**
 19 **approved under subsection (a)(4) if the extension of credit is**
 20 **made not later than fourteen (14) months after the line of**
 21 **credit was approved.**
 22 **(2) A loan, in any amount, to finance the education of an**
 23 **individual's child.**
 24 **(3) A loan, in any amount, to finance or refinance the**
 25 **purchase, construction, maintenance, or improvement of a**
 26 **residence of the individual, if:**
 27 **(A) the loan is secured by a first lien on the residence and**
 28 **the residence is owned, or will be owned after the loan is**
 29 **made, by the individual; and**
 30 **(B) in the case of a refinancing, the loan includes only the**
 31 **amount used to repay the original loan, plus any closing**
 32 **costs and any additional amount used for any purpose**
 33 **described in this subdivision.**
 34 **(4) A loan, in any amount, secured by a perfected security**
 35 **interest in bonds, notes, certificates of indebtedness, or**
 36 **treasury bills of the United States or in other obligations fully**
 37 **guaranteed as to principal and interest by the United States.**
 38 **(5) A loan, in any amount, secured by a perfected security**

1 **interest in a segregated deposit account in the lending credit**
 2 **union.**

3 **(6) A loan made to an individual, the individual's immediate**
 4 **family, or the individual's related interests, for any other**
 5 **purpose, if the total amount of loans to the individual, the**
 6 **individual's immediate family, or the individual's related**
 7 **interests under this section does not exceed, at any given time,**
 8 **the greater of:**

9 **(A) two and one-half percent (2.5%) of the credit union's**
 10 **unimpaired capital and unimpaired surplus; or**

11 **(B) twenty-five thousand dollars (\$25,000);**

12 **but in no event more than one hundred thousand dollars**
 13 **(\$100,000).**

14 **(c) At least quarterly, the president or manager shall prepare**
 15 **and deliver to the board of directors a report listing the**
 16 **outstanding indebtedness of all officers, directors, and committee**
 17 **members. A report prepared under this subsection must be**
 18 **retained at the credit union for three (3) years and shall not be filed**
 19 **with the department unless specifically requested. A report**
 20 **required by this subsection must include:**

21 **(1) the amount of each indebtedness; and**

22 **(2) a description of the terms and conditions of each loan,**
 23 **including:**

24 **(A) the interest rate;**

25 **(B) the original amount and date of the loan;**

26 **(C) the maturity date;**

27 **(D) payment terms;**

28 **(E) security, if any; and**

29 **(F) any unusual term or condition of a particular extension**
 30 **of credit.**

31 **(d) The department may apply the provisions of 12 CFR 215**
 32 **(Regulation O) in applying and administering this section.**

33 SECTION 15. IC 28-7-1-39 IS ADDED TO THE INDIANA CODE
 34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2005]: **Sec. 39. (a) As used in this section, "loans and**
 36 **extensions of credit" includes all direct or indirect advances of**
 37 **funds made to a member on the basis of:**

38 **(1) an obligation of the member to repay the funds; or**

1 **(2) a pledge of specific property by or on behalf of the member**
2 **and from which the funds advanced are repayable.**

3 **The term includes any contractual liability of a credit union to**
4 **advance funds to or on behalf of member, to the extent specified by**
5 **the department.**

6 **(b) As used in this section, "member" includes an individual, a**
7 **sole proprietorship, a partnership, a joint venture, an association,**
8 **a trust, an estate, a business trust, a limited liability company, a**
9 **corporation, a sovereign government, or an agency,**
10 **instrumentality, or political subdivision of a sovereign government,**
11 **or any similar entity or organization.**

12 **(c) Except as provided in subsection (e), the total loans and**
13 **extensions of credit by a credit union to a member outstanding at**
14 **any given time and not fully secured, as determined in a manner**
15 **consistent with subsection (d), by collateral with a market value at**
16 **least equal to the amount of the loan or extension of credit may not**
17 **exceed fifteen percent (15%) of the unimpaired capital and**
18 **unimpaired surplus of the credit union.**

19 **(d) Except as provided in subsection (e), the total loans and**
20 **extensions of credit by a credit union to a member outstanding at**
21 **any given time and fully secured by readily marketable collateral**
22 **having a market value, as determined by reliable and continuously**
23 **available price quotations, at least equal to the amount of funds**
24 **outstanding may not exceed ten percent (10%) of the unimpaired**
25 **capital and unimpaired surplus of the credit union. The limitation**
26 **in this subsection is separate from and in addition to the limitation**
27 **set forth in subsection (c).**

28 **(e) The limitations set forth in subsections (c) and (d) are subject**
29 **to the following exceptions:**

30 **(1) Loans or extensions of credit arising from the discount of**
31 **commercial or business paper evidencing an obligation to the**
32 **member negotiating it with recourse are not subject to any**
33 **limitation based on capital and surplus.**

34 **(2) The purchase of bankers' acceptances of the kind**
35 **described in 12 U.S.C. 372 and issued by a financial institution**
36 **organized or reorganized under the laws of Indiana or any**
37 **other state or the United States are not subject to any**
38 **limitation based on capital and surplus.**

1 **(3) Loans or extensions of credit secured by bills of lading,**
2 **warehouse receipts, or similar documents transferring or**
3 **securing title to readily marketable staples are subject to a**
4 **limitation of thirty-five percent (35%) of capital and surplus**
5 **in addition to the general limitations if the market value of the**
6 **staples securing each additional loan or extension of credit at**
7 **all times equals or exceeds one hundred fifteen percent**
8 **(115%) of the outstanding amount of the loan or extension of**
9 **credit. The staples shall be fully covered by insurance**
10 **whenever it is customary to insure such staples.**

11 **(4) Loans or extensions of credit secured by bonds, notes,**
12 **certificates of indebtedness, or Treasury bills of the United**
13 **States or by any other obligation fully guaranteed as to**
14 **principal and interest by the United States are not subject to**
15 **any limitation based on capital and surplus.**

16 **(5) Loans or extensions of credit to or secured by**
17 **unconditional takeout commitment or guarantees of any**
18 **department, agency, bureau, board, commission, or**
19 **establishment of the United States or any corporation wholly**
20 **owned directly or indirectly by the United States are not**
21 **subject to any limitation based on capital and surplus.**

22 **(6) Loans or extensions of credit secured by a segregated**
23 **deposit account in the lending credit union are not subject to**
24 **any limitation based on capital and surplus.**

25 **(7) Loans or extensions of credit to any credit union, when the**
26 **loans or extensions of credit are approved by the director of**
27 **the department, are not subject to any limitation based on**
28 **capital and surplus.**

29 **(8) Loans or extensions of credit to the Student Loan**
30 **Marketing Association are not subject to any limitation based**
31 **on capital and surplus.**

32 **(f) Loans or extensions of credit arising from the discount of**
33 **negotiable or nonnegotiable installment consumer paper that**
34 **carries a full recourse endorsement or unconditional guarantee by**
35 **the member transferring the paper is subject under this section to**
36 **a maximum limitation equal to twenty-five percent (25%) of the**
37 **capital and surplus, notwithstanding the collateral requirements set**
38 **forth in subsection (d).**

1 (g) If the credit union's files or the knowledge of the credit
2 union's officers of the financial condition of each maker of
3 consumer paper described in subsection (f) is reasonably adequate,
4 and an officer of the credit union designated for that purpose by
5 the board of directors of the credit union certifies in writing that
6 the credit union is relying primarily upon the responsibility of each
7 maker for payment of the loans or extensions of credit and not
8 upon any full or partial recourse endorsement or guarantee by the
9 transferor, the limitations of this section as to the loans or
10 extensions of credit of each maker shall be the sole applicable loan
11 limitations.

12 (h) Loans or extensions of credit secured by shipping documents
13 or instruments transferring or securing title covering livestock or
14 giving a lien on livestock when the market value of the livestock
15 securing the obligation is not at any time less than one hundred
16 fifteen percent (115%) of the face amount of the note covered are
17 subject under this section, notwithstanding the collateral
18 requirements set forth in subsection (d), to a maximum limitation
19 equal to twenty-five percent (25%) of the capital and surplus.

20 (i) Loans or extensions of credit that arise from the discount by
21 dealers in dairy cattle of paper given in payment for dairy cattle,
22 which paper carries a full recourse endorsement or unconditional
23 guarantee of the seller and that are secured by the cattle being sold,
24 are subject under this section, notwithstanding the collateral
25 requirements set forth in subsection (d), to a limitation of
26 twenty-five percent (25%) of the capital and surplus.

27 (j) Except as otherwise provided, an officer, director, employee,
28 or attorney of a credit union who stipulates for, receives, or
29 consents or agrees to receive, any fee, commission, gift, or thing of
30 value, from any person, for the purpose of procuring or
31 endeavoring to procure for any member any loan from or the
32 purchase or discount of any paper, note, draft, check, or bill of
33 exchange by the credit union, commits a Class A misdemeanor.

34 (k) Except as otherwise provided in this chapter, any credit
35 union that holds obligations of indebtedness in violation of the
36 limitations prescribed in this section shall, not later than July 1,
37 2006, cause the amount of the obligations to conform to the
38 limitations prescribed by this chapter and by the provisions of this

1 **section. The department may, in its discretion, extend the time for**
 2 **effecting this conformity, in individual instances, if the interests of**
 3 **the depositors will be protected and served by an extension. Upon**
 4 **the failure of a credit union to comply with the limitations, in**
 5 **accordance with this section or in accordance with any order of the**
 6 **department concerning the limitations, the department may**
 7 **declare that the credit union is conducting its business in an**
 8 **unauthorized or unsafe manner and proceed in accordance with**
 9 **IC 28-1-3.1-2.**

10 **(l) The department may apply the provisions of 12 CFR 32 in**
 11 **the application and administration of this chapter.**

12 SECTION 16. IC 28-10-1-1 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. A reference to
 14 a federal law or federal regulation in IC 28 is a reference to the law or
 15 regulation in effect January 1, ~~2004~~ **2005**.

16 SECTION 17. IC 28-11-2-3 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. The director, on
 18 behalf of the department, shall employ qualified individuals as
 19 assistants, deputies, supervisors, and other necessary employees. The
 20 technical or professional qualification of an applicant shall be
 21 determined by examination, by professional rating, or as the director
 22 determines. **The director may retain the services of a qualified**
 23 **independent contractor to assist the department in the examination**
 24 **process under this article. Contracts executed under this section**
 25 **must comply with state contracting laws and the contracting**
 26 **policies and procedures of the Indiana department of**
 27 **administration.**

28 SECTION 18. IC 28-11-3-6 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) As used in this
 30 section:

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

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

35 (b) If the department determines that federal law has preempted a
 36 provision of IC 24, IC 26, IC 28, IC 29, or IC 30, the provision of
 37 IC 24, IC 26, IC 28, IC 29, or IC 30 applies to a state chartered entity
 38 only to the same extent that the department determines the provision is

1 applicable to the:

2 (1) same; or

3 (2) functionally equivalent;

4 type of federally chartered entity.

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

9 (1) describing in detail; and

10 (2) documenting the federal preemption of;

11 the provisions from which it seeks exemption. If available, copies of
12 relevant federal law, regulations, and interpretive letters must be
13 attached to the letter submitted by the requesting entity.

14 (d) The department shall notify the requesting entity ~~within of the~~
15 **department's receipt of the request not later than** ten (10) business
16 days after the department's receipt of a letter described in subsection
17 (c). Except as provided in subsection (e), upon receipt of the
18 notification, the requesting entity may operate as if it is exempt from
19 the provision of IC 24, IC 26, IC 28, IC 29, or IC 30 ~~for~~ ninety (90)
20 days after the date on which the department receives the letter, unless
21 otherwise notified by the department. This period may be extended **for**
22 **an additional ninety (90) days** if the department determines that the
23 requesting entity's letter raises issues requiring additional information
24 or additional time for analysis. If the department extends the period **for**
25 **the department's review of the request**, the requesting entity may
26 operate as if the requesting entity is exempt from a provision of IC 24,
27 IC 26, IC 28, IC 29, or IC 30 **during the extended period of review**
28 only if the requesting entity receives prior written approval from the
29 department. However:

30 (1) the department must:

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

32 (B) convene a hearing;

33 not later than ninety (90) days after the department receives the
34 requesting entity's letter, **unless the department has extended**
35 **the period for the department's review under this subsection;**
36 and

37 (2) if a hearing is convened, the department must approve or deny
38 the requested exemption not later than ninety (90) days after the

1 hearing is concluded.

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

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

8 (A) same; or

9 (B) functionally equivalent;

10 type.

11 (2) The extension of the federal preemption in the form of an
12 exemption from a provision of IC 24, IC 26, IC 28, IC 29, or
13 IC 30 to the requesting entity would:

14 (A) adversely affect the safety and soundness of the requesting
15 entity; or

16 (B) result in an unacceptable curtailment of consumer
17 protection provisions.

18 (3) The failure of the department to provide for the exemption
19 from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 will not
20 result in a competitive disadvantage to the requesting entity.

21 (f) The operation of a financial institution in a manner consistent
22 with exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30
23 under this section is not a violation of any provision of the Indiana
24 Code or rules adopted under IC 4-22-2.

25 (g) If a financial institution is exempted from the provisions of
26 IC 24, IC 26, IC 28, IC 29, or IC 30 in compliance with this section, the
27 department shall do the following:

28 (1) Determine whether the exemption shall apply to all financial
29 institutions that, in the opinion of the department, possess a
30 charter that is:

31 (A) the same as; or

32 (B) functionally the equivalent of;

33 the charter of the exempt institution.

34 (2) For purposes of the determination required under subdivision
35 (1), ensure that applying the exemption to the financial institutions
36 described in subdivision (1) will not:

37 (A) adversely affect the safety and soundness of the financial
38 institutions; or

1 (B) unduly constrain Indiana consumer protection provisions.
 2 (3) Issue an order published in the Indiana Register that specifies
 3 whether the exemption applies to the financial institutions
 4 described in subdivision (1).

5 (h) If the department denies the request of a financial institution
 6 under this section for exemption from Indiana Code provisions that are
 7 preempted for federally chartered institutions, the requesting institution
 8 may appeal the decision of the department to the circuit court of the
 9 county in which the principal office of the requesting institution is
 10 located.

11 **(i) If the department determines that federal law has preempted**
 12 **a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 as the provision**
 13 **applies to an operating subsidiary of a federally chartered entity,**
 14 **the provision of IC 24, IC 26, IC 28, IC 29, or IC 30 applies to a**
 15 **qualifying subsidiary (as defined in IC 28-13-16-1) of a state**
 16 **chartered entity only to the same extent that the department**
 17 **determines the provision applies to the operating subsidiary of:**

18 (1) the same; or

19 (2) the functionally equivalent;

20 **type of federally chartered entity. In determining whether to**
 21 **extend the exemption from a provision of IC 24, IC 26, IC 28,**
 22 **IC 29, or IC 30 to a qualifying subsidiary (as defined in**
 23 **IC 28-13-16-1) of a state chartered entity under this subsection, the**
 24 **department shall use the procedures and undertake the**
 25 **considerations described in this section for a preemption**
 26 **determination with respect to a state chartered entity.**

27 SECTION 19. IC 28-11-4-2 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. If the director has
 29 reasonable cause to believe that a financial institution:

30 (1) has engaged, is engaging, or will engage in an unsafe or
 31 unsound practice in conducting the business of the financial
 32 institution; or

33 (2) has violated, is violating, or will violate a:

34 (A) statute;

35 (B) rule;

36 (C) condition imposed in writing by the director in connection
 37 with the granting of an application or other request by the
 38 financial institution; or

1 (D) written agreement entered into with the department;
 2 the director may issue and serve upon the financial institution a notice
 3 of charges of the practice or violation. **The department may, when**
 4 **appropriate, exercise enforcement powers under this chapter**
 5 **jointly with a financial institution's primary federal regulator.**

6 SECTION 20. IC 28-11-4-5 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. If the **director of the**
 8 department enters into a consent to a final order under section 7 of this
 9 chapter with a financial institution, director, officer, or employee, the
 10 director is not required to issue and serve a notice of charges upon the
 11 financial institution, director, or officer under section 2 or 3 of this
 12 chapter. A consent agreement may be negotiated and entered into
 13 before or after the issuance of a notice of charges.

14 SECTION 21. IC 28-12-2-1 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. The articles of
 16 incorporation must set forth the following:

- 17 (1) A corporate name for the corporation that satisfies the
 18 requirements of IC 28-12-3.
- 19 (2) The number of shares the corporation is authorized to issue.
- 20 (3) The street address of the corporation's principal office in
 21 Indiana.
- 22 (4) The name and address of each incorporator, unless the articles
 23 of incorporation are articles of conversion **or articles of**
 24 **restatement under IC 28-13-14-14.**
- 25 (5) The amount of capital with which the corporation will begin
 26 business.
- 27 (6) The names and addresses of the individuals who are to serve
 28 as the initial directors.
- 29 (7) The maximum number of directors.
- 30 (8) The purpose or purposes for which the corporation is
 31 organized.
- 32 (9) The effective date of the articles of incorporation.

33 SECTION 22. IC 28-13-9-9 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) Unless the
 35 articles of incorporation provide otherwise, if a vacancy occurs on a
 36 board of directors, including a vacancy resulting from an increase in the
 37 number of directors:

- 38 (1) the board of directors may fill the vacancy; or

1 (2) if the directors remaining in office constitute fewer than a
 2 quorum of the board, the directors may fill the vacancy by the
 3 affirmative vote of a majority of all the directors remaining in
 4 office.

5 (b) If the vacant office was held by a director elected by a voting
 6 group of shareholders, only the holders of shares of that voting group
 7 are entitled to vote to fill the vacancy if it is filled by the shareholders.

8 (c) A vacancy that will occur at a specific later date by reason of a
 9 resignation effective at a later date under section 7(b) of this chapter or
 10 otherwise may be filled before the vacancy occurs. However, the new
 11 director may not take office until the vacancy occurs.

12 **(d) If a vacancy is not filled through a corporation's normal**
 13 **process for filing vacancies within a time considered reasonable by**
 14 **the department, the director of the department may make a**
 15 **temporary appointment to the board of directors to fill the**
 16 **vacancy. The director of the department shall appoint a person**
 17 **whom the director considers capable of providing competent**
 18 **leadership and decision making ability. A person appointed to a**
 19 **board of directors under this subsection shall serve on the board**
 20 **until the corporation fills the position through the corporation's**
 21 **normal process for filing vacancies on the board. However, a**
 22 **person appointed to a board of directors by the director of the**
 23 **department under this subsection may not serve on the board for**
 24 **more than two (2) years, unless the person is selected to fill the**
 25 **vacancy through the corporation's normal process for filling**
 26 **vacancies. For purposes of this subsection, in determining whether**
 27 **a corporation has had a reasonable period in which to fill a**
 28 **vacancy, the department shall consider the following:**

29 **(1) The financial condition of the corporation.**

30 **(2) The number of remaining board members.**

31 **(3) The potential harm to the corporation that could result**
 32 **without an appointment under this subsection.**

33 SECTION 23. IC 28-13-14-14 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) A corporation's
 35 board of directors or, if the board of directors has not been selected, the
 36 incorporators may restate the corporation's articles of incorporation at
 37 any time with or without shareholder action.

38 (b) The restatement may include at least one (1) amendment to the

1 articles. If the restatement includes an amendment requiring shareholder
 2 approval, the amendment must be adopted as provided in sections 3
 3 through 7 of this chapter.

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

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

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

13 (d) A corporation restating the corporation's articles of incorporation
 14 shall prepare articles of restatement setting forth the name of the
 15 corporation and the text of the restated articles of incorporation together
 16 with a certificate setting forth:

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

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

23 **Notwithstanding IC 28-12-2-1(4), the corporation is not required**
 24 **to include in the articles of restatement the name and address of**
 25 **each incorporator.**

26 (e) **The following do not constitute an amendment to a**
 27 **corporation's articles of incorporation:**

28 (1) **A reordering or renumbering of the articles or sections of**
 29 **the articles.**

30 (2) **The correction of grammatical or spelling errors.**

31 SECTION 24. IC 32-17-9-6 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. As used in this
 33 chapter, "security account" means:

34 (1) a reinvestment account associated with a security, a securities
 35 account with a broker, a cash balance in a brokerage account,
 36 cash, interest, earnings, or dividends earned or declared on a
 37 security in an account, a reinvestment account, or a brokerage
 38 account, whether or not credited to the account before the owner's

1 death; or
 2 **(2) an investment management account or custody account**
 3 **with a corporate fiduciary or with a bank, savings bank, or**
 4 **savings association with trust powers, including securities in**
 5 **the account, a cash balance in the account, and cash, cash**
 6 **equivalents, interest, earnings, or dividends earned or**
 7 **declared on a security in the account, whether or not credited**
 8 **to the account before the owner's death; or**
 9 ~~(2)~~ **(3) a cash balance or other property held for or due to the**
 10 **owner of a security as a replacement for or product of an account**
 11 **security, regardless of whether the cash was credited to the**
 12 **account before the owner's death.**

13 SECTION 25. [EFFECTIVE UPON PASSAGE] **(a) As used in this**
 14 **SECTION, "department" refers to the department of financial**
 15 **institutions established by IC 28-11-1-1.**

16 **(b) The department shall, in consultation with appropriate**
 17 **industry associations and other interested parties, consider**
 18 **appropriate language for proposed legislation intended to**
 19 **modernize IC 28 to incorporate provisions concerning emerging**
 20 **technology and electronic banking.**

21 **(c) Not later than November 1, 2005, the department shall**
 22 **submit to the general assembly a report that:**

- 23 **(1) includes recommendations for proposed legislation**
 24 **concerning electronic banking in Indiana; and**
 25 **(2) is based on the department's consultations under**
 26 **subsection (b).**

27 **A report submitted under this subsection must be in an electronic**
 28 **format under IC 5-14-6.**

29 **(d) This SECTION expires January 1, 2006.**

30 SECTION 26. **An emergency is declared for this act.**

(Reference is to HB 1179 as introduced.)

and when so amended that said bill do pass.

Representative Burton