

IC 23-2

ARTICLE 2. SECURITIES AND FRANCHISES

IC 23-2-1

Repealed

(Repealed by P.L.27-2007, SEC.37.)

IC 23-2-2

Repealed

(Repealed by Acts 1975, P.L.261, SEC.17.)

IC 23-2-2.5

Chapter 2.5. Franchises

IC 23-2-2.5-1

Definitions

Sec. 1. As used in this chapter:

(a) "Franchise" means a contract by which:

(1) a franchisee is granted the right to engage in the business of dispensing goods or services, under a marketing plan or system prescribed in substantial part by a franchisor;

(2) the operation of the franchisee's business pursuant to such a plan is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and

(3) the person granted the right to engage in this business is required to pay a franchise fee.

"Franchise" includes a contract whereby the franchisee is granted the right to sell franchises on behalf of the franchisor. The term as defined in subdivisions (1), (2), and (3) does not include a contract where the franchisee, or any of its officers or directors at the time the contract is signed, has been in the type of business represented by the franchise or a similar business for at least two (2) years, and the parties to the contract anticipated, or should have anticipated, at the time the contract was entered into that the franchisee's gross sales derived from the franchised business during the first year of operations would not exceed twenty percent (20%) of the gross sales of all the franchisee's business operations.

(b) "Franchisee" means a person to whom a franchise is granted.

(c) "Franchisor" means a person who grants a franchise.

(d) "Sale" or "sell" includes every contract or agreement of sale of, contract to sell, or disposition of, a franchise or interest in a franchise for value.

(e) "State" includes a territory or possession of the United States, the District of Columbia, and Puerto Rico.

(f) "Fraud" and "deceit" includes any misrepresentation in any manner of a material fact, any promise or representation or prediction as to the future not made honestly or in good faith, or the failure or omission to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading.

(g) "Offer" or "offer to sell" does not include the renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business by the franchisee.

(h) "Publish" means to issue or circulate by newspaper, mail, radio, or television, or otherwise disseminate to the public.

(i) "Franchise fee" means any fee that a franchisee is required to pay directly or indirectly for the right to conduct a business to sell, resell, or distribute goods, services, or franchises under a contract agreement, including, but not limited to, any such payment for goods

or services. "Franchise fee" does not include:

- (1) the payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring the credit card;
- (2) amounts paid to a trading stamp company by a person issuing trading stamps in connection with the retail sale of goods or services; or
- (3) the purchase or agreement to purchase goods at a bona fide wholesale price.

(j) "Disclosure statement" means the document provided for in section 13 of this chapter and all amendments to such document.

(k) "Write" or "written" includes printed, lithographed, or produced by any other means of graphic communication.

(l) "Advertisement" means any published communication which offers any franchise for sale.

(m) "Affiliate" means any person who, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with, the person to whom affiliation is attributed.

(n) "Commissioner" means the Indiana securities commissioner under IC 23-19-6-1(a).

(o) "Service station franchisee" means a person who is granted by an oil company, refiner, jobber, or other franchisor a supply franchise agreement or a lease franchise agreement, or both, to sell gasoline at retail by a metered pump in Indiana.

(p) "Designated family member" means any person named in a franchise agreement by a service station franchisee as the person entitled to fulfill the terms of the agreement on behalf of the franchisee if the franchisee dies before the term of the franchise has ended. Only the following are eligible to be named as designated family members:

- (1) The spouse of the franchisee.
- (2) A natural or adopted child of the franchisee.
- (3) A stepchild of the franchisee.
- (4) The guardian of the franchisee's child or stepchild.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.241-1983, SEC.1; P.L.206-1993, SEC.1; P.L.27-2007, SEC.10.

IC 23-2-2.5-2

Application of chapter

Sec. 2. This chapter applies to an offer or franchise if:

- (a) the offeree or franchisee is an Indiana resident; or
- (b) the franchised business contemplated by the offer or franchise will be or is operated in Indiana.

An offer to sell is not made in this state because the franchisor circulates or there is circulated on his behalf in Indiana an advertisement in: (1) a bona fide newspaper or other publication of general, regular and paid circulation which has had more than two-thirds (2/3) of its circulation outside this state during the past twelve (12) months; or (2) a radio or television program originating

outside this state which is received in Indiana.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-3

Exempt franchisors

Sec. 3. Sections 9 through 25 of this chapter do not apply to the offer or sale of a franchise if the franchisor either sells no more than one (1) franchise in any twenty-four (24) month period or the franchisor:

(a) has a net worth:

(1) on a consolidated basis according to current financial statements certified by independent certified public accountants, of not less than five million dollars (\$5,000,000); or

(2) according to current financial statements certified by independent certified public accountants of not less than one million dollars (\$1,000,000) and is at least eighty percent (80%) owned by a corporation which has a net worth on a consolidated basis, according to current financial statements certified by independent certified public accountants, of not less than five million dollars (\$5,000,000);

(b) has:

(1) had at least twenty-five (25) franchisees conducting business at all times during the five (5) year period immediately preceding the offer or sale; or

(2) conducted the business which is the subject of the franchise continuously for not less than five (5) years preceding the offer or sale;

or if any corporation which owns at least eighty percent (80%) of the franchisor has had at least twenty-five (25) franchisees conducting business at all times during the five (5) year period immediately preceding the offer or sale, or such corporation has conducted the business which is the subject of the franchise continuously for not less than five (5) years preceding the offer or sale; and

(c) discloses in writing to each prospective franchisee, at least ten (10) days prior to the execution by the prospective franchisee of a binding franchise or other agreement, or at least ten (10) days prior to the receipt of any consideration, whichever first occurs, the following information:

(1) The name of the franchisor, the name under which the franchisor is doing or intends to do business, and the name of any affiliate that will engage in business transactions with franchisees.

(2) The franchisor's principal business address and the name and address of its agent in Indiana authorized to receive service of process.

(3) The business form of the franchisor and the jurisdiction under which it was organized.

(4) The business experience of the franchisor, including the

length of time the franchisor:

- (i) has conducted a business of the type to be operated by the franchisee;
 - (ii) has granted franchises for that business; and
 - (iii) has granted franchises in other lines of business.
- (5) A copy of the franchise contract proposed for use or in use in Indiana.
- (6) A statement of the franchise fee charged, the proposed application of the proceeds of such fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not the same in all cases.
- (7) A statement describing any payments other than franchise fees that the franchisee is required to pay to the franchisor or affiliated persons, including royalties or payments which the franchisor or affiliated persons collect in whole or in part on behalf of a third party or parties.
- (8) A statement of the conditions under which the franchise may be terminated, renewal refused, or repurchased.
- (9) A statement as to whether the franchisee is required to purchase from the franchisor or affiliates or their designee services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchised business, together with a description thereof.
- (10) A statement as to whether the franchisee is limited in the goods or services offered by him to his customers.
- (11) A statement of the terms and conditions of any financing agreements.
- (12) A statement of any past or present practice or of any intent of the franchisor to transfer to a third party any note, contract, or other obligation of the franchisee in whole or in part.
- (13) If any financial statement concerning estimated profits or earnings is used, the data upon which the estimate is based.
- (14) A statement as to whether the franchisee will receive an exclusive area or territory.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.233-1985, SEC.1.

IC 23-2-2.5-4

Exempt franchisees

Sec. 4. The offer of sale of a franchise by a franchisee who is not an affiliate of the franchisor for his own account is exempt from section 9 if the offer or sale is not effected by or through a franchisor. A sale is not effected by or through a franchisor if a franchisor is entitled to approve or disapprove a different franchisee.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-5

Sales exempted by commissioner

Sec. 5. Section 9 does not apply to an offer or sale which the commissioner, by rule or order, exempts as not being comprehended within the purposes of this law and the registration of which he finds is not necessary or appropriate in the public interest or for the protection of investors.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-6

Denial or revocation of exemptions; grounds

Sec. 6. The commissioner may, without a hearing, issue a stop order denying or revoking any exemption specified in sections 3, 4, or 5 with respect to an offer or sale if he finds that it is in the public interest and either:

(a) that there has been a failure to comply with any of the provisions of this chapter; or

(b) that the offer or sale would constitute misrepresentation to, or deceit or fraud on, the purchaser or offeree.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-7

Notice of denial or revocation of exemptions; hearing

Sec. 7. (a) Upon the entry of a stop order under section 6 of this chapter, the commissioner shall notify the franchisor:

(1) of the entry of the stop order;

(2) of the reasons for the stop order; and

(3) that, upon receipt of a written request, the matter will be set down for hearing to commence within fifteen (15) days after receipt of such request, unless the franchisor consents to a later date.

(b) If no hearing is requested or none is ordered by the commissioner, the stop order is effective until it is modified or vacated by the commissioner.

(c) If a hearing is requested or ordered, the commissioner, after notice and hearing, may modify or vacate the stop order.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.1.

IC 23-2-2.5-8

Determination of exemption; request; fee; notice; hearing; order

Sec. 8. The commissioner may determine whether any proposed offer or sale is entitled to an exemption. However, the commissioner may decline to exercise that authority as to any such offer or sale. Any interested party desiring the commissioner to exercise that authority shall submit to the commissioner a verified statement of all material facts relating to the proposed offer or sale, which verified statement shall be accompanied by a request for a ruling as to the particular exemption claimed, together with a filing fee of fifty dollars (\$50.00). After such notice to interested parties as the commissioner deems proper and after a hearing, if any, the commissioner may enter an order finding the proposed offer or sale

entitled or not entitled to the exemption claimed. Any order so entered, unless an appeal be taken therefrom in the manner prescribed in this chapter is binding upon the commissioner and upon all interested parties if the proposed offer or sale of a franchise when consummated or issued conforms in every relevant and material particular with the facts set forth in the verified statement submitted.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-9

Offer or sale of franchise; requisites; disclosure statement

Sec. 9. No person may offer or sell any franchise:

- (1) unless the franchise is registered under this chapter or is exempt from such registration under sections 3 through 5 of this chapter; and
- (2) without first providing to the prospective franchisee at least ten (10) days prior to the execution by the prospective franchisee of a binding franchise or at least ten (10) days prior to the receipt by the franchisor of any consideration, whichever first occurs, a disclosure statement together with a copy of all proposed contracts relating to the sale of a franchise.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.233-1985, SEC.2.

IC 23-2-2.5-10

Repealed

(Repealed by P.L.168-2001, SEC.16.)

IC 23-2-2.5-10.5

Registration of franchise; notification form

Sec. 10.5. (a) A person who wants to offer for sale a franchise in Indiana and who is not exempt under sections 3 through 5 of this chapter shall register the franchise by notification to the commissioner on a notification form prescribed by the commissioner. The notification shall include the following:

- (1) The name of the franchisor.
- (2) The name or names under which the franchisor intends to do business.
- (3) The franchisor's principal business address.
- (b) The following items shall be filed with the notification:
 - (1) One (1) copy of the disclosure statement required under section 13 of this chapter.
 - (2) The consent to service of process required under section 24 of this chapter, unless consent has previously been filed by the person.
 - (3) The registration fee required under section 43 of this chapter.

(c) A franchisor may register only one (1) franchise for each notification.

(d) The registration of a franchise under this section is effective upon the commissioner's receipt of the notification. The notification

is effective for one (1) year from the date of the commissioner's receipt of the notification.

(e) During the one (1) year registration period, a person is not required to file with the commissioner any supplemental information, including any amendments to the disclosure statement, unless the commissioner, acting under the commissioner's authority to suspend or revoke a registration under section 14 of this chapter, requests the information.

As added by P.L.168-2001, SEC.2.

IC 23-2-2.5-11

Signatures and verifications

Sec. 11. Registration notification forms, registration renewal forms, and amendments thereto, shall be signed and verified by the franchisor.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.3.

IC 23-2-2.5-12

Escrow or impoundment of franchise fees; inadequate funding

Sec. 12. If the commissioner finds that:

- (1) the franchisor has failed to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training, or other items included in the offering; and
- (2) the escrow or impoundment of franchise fees is necessary and appropriate to protect prospective franchisees;

the commissioner may by order require the escrow or impoundment of franchise fees and other funds paid by the franchisee until no later than the time of opening of the business of the franchisee.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.4.

IC 23-2-2.5-13

Disclosure statements

Sec. 13. A registration notification form filed under section 10.5 of this chapter shall be accompanied by the fee prescribed in section 43 of this chapter and by one (1) copy of a disclosure statement. The disclosure statement shall be in a form prescribed by the commissioner or in a form permitted under 16 CFR 436, as amended.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.5.

IC 23-2-2.5-14

Stop orders; descriptions of charges

Sec. 14. (a) The commissioner may, without a hearing, issue a stop order denying the effectiveness of or suspending or revoking the effectiveness of a registration if the commissioner finds that the issuance of the order is in the public interest and also finds that:

- (1) there has been a failure to comply with this chapter or the

rules or orders of the commissioner pertaining to this chapter;
(2) the offer or sale of the franchise would constitute misrepresentation to, or deceit or fraud on, the purchasers or offerees;

(3) the franchisor has failed to comply with any rule promulgated or order issued pursuant to section 12 of this chapter; or

(4) the franchisor, or the franchisor's predecessor, or any of the franchisor's directors, trustees, general partners, chief executives, financial officers, accounting officers, franchise sales officers, or other principal officers, or, if the franchisor is a limited liability company, any member or manager of the franchisor:

(A) during the ten (10) year period immediately preceding the date of registration, has:

(i) been convicted of a felony;

(ii) pleaded nolo contendere to a felony charge; or

(iii) been held liable in a civil action by final judgment;

if the felony or civil action involved fraud, embezzlement, misappropriation of property, or the violation of any state or federal statute involving the offer or sale of securities or franchises;

(B) is subject to any currently effective order affecting the franchise resulting from a proceeding or pending action brought by any individual or public agency or department;

(C) is a defendant in any pending criminal or material civil proceeding;

(D) during the ten (10) year period immediately preceding the date of registration, has been the defendant against whom a final judgment was entered in any material civil action; or

(E) is the franchisor or a principal executive officer or general partner of the franchisor and has, during the ten (10) year period immediately preceding the date of registration, reorganized due to insolvency or been adjudicated as a bankrupt.

(b) An order issued under this section based on a finding by the commissioner under subsection (a)(4)(A) must include a description of the charge, violation, or judgment referred to in subsection (a)(4)(A). An order issued under this section based on a finding by the commissioner under subsection (a)(4)(B) must include a copy of the order referred to in subsection (a)(4)(B). An order issued under this section based on a finding by the commissioner under subsection (a)(4)(D) must include a description of the judgment referred to in subsection (a)(4)(D). An order issued under this section based on a finding by the commissioner under subsection (a)(4)(E) must include a description of the insolvency or adjudication referred to in subsection (a)(4)(E).

(c) Before issuing a stop order under subsection (a)(4), such an order must be based on a finding by the commissioner that involvement of a person referred to in subsection (a)(4) creates an

unreasonable risk to prospective franchisees.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.6; P.L.30-2002, SEC.1; P.L.1-2003, SEC.73.

IC 23-2-2.5-15

Notice of stop order

Sec. 15. (a) Upon the entry of a stop order under section 14 of this chapter, the commissioner shall notify the franchisor:

- (1) of the entry of the stop order;
- (2) of the reasons for the stop order; and
- (3) that, upon receipt of a written request, the matter will be set down for hearing to commence within fifteen (15) days after receipt of such request, unless the franchisor consents to a later date.

(b) If no hearing is requested or none is ordered by the commissioner, the stop order is effective until it is modified or vacated by the commissioner.

(c) If a hearing is requested or ordered, the commissioner, after notice and hearing, may modify or vacate the stop order.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.7.

IC 23-2-2.5-16

Stop orders; vacating or modifying

Sec. 16. The commissioner may vacate or modify a stop order if he finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-17

Effectiveness of registration

Sec. 17. If no stop order under section 14 of this chapter is in effect, registration by notification takes effect upon the commissioner's receipt of the notification form. A registration by notification is effective for a period of one (1) year.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.8.

IC 23-2-2.5-18

Renewal of registration; period

Sec. 18. A registration by notification may be renewed by submitting to the commissioner a registration renewal form not later than the date the registration is due to expire. If no stop order or other order under section 14 of this chapter is in effect, registration of the offer is renewed at the time the registration would have expired. A renewal is effective for a period of one (1) year unless the commissioner specified a shorter period.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.9; P.L.48-2006, SEC.6.

IC 23-2-2.5-19**Renewal forms**

Sec. 19. A registration renewal form shall be in the form and contain the content prescribed by the commissioner and shall be accompanied by one (1) copy of the proposed disclosure statement. Each such registration renewal form shall be accompanied by the fee prescribed in section 43 of this chapter.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.10.

IC 23-2-2.5-20**Repealed**

(Repealed by P.L.30-2002, SEC.3.)

IC 23-2-2.5-21**Records of sales**

Sec. 21. Every franchisor offering franchises for sale shall maintain a complete set of books, records, and accounts of those sales.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-22**Experts**

Sec. 22. The commissioner may accept and act upon the opinions, appraisals, or reports of any experts which may be presented by a franchisor or any interested party, on any question of fact concerning the franchises proposed to be offered or sold. The commissioner may also have any or all matters concerning those franchises investigated, appraised, passed upon or certified to the commissioner by any experts selected by the commissioner, at the expense of the franchisor.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.11.

IC 23-2-2.5-23**Registration or filing not considered finding upon merits**

Sec. 23. (a) Neither:

(1) the fact that a registration renewal form has been filed or a registration notification form has been submitted to the commissioner under section 10.5 of this chapter; nor

(2) the fact that such registration has become effective;

constitutes a finding by the commissioner that any document filed under this chapter is true, complete, or not misleading. Neither any such fact nor the fact that an exemption is available for a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, franchise or transaction.

(b) A person may not make or cause to be made to any prospective purchaser or offeree any representation inconsistent with subsection (a).

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.12.

IC 23-2-2.5-24

Consent to service of process on secretary of state

Sec. 24. Before a person may offer to sell franchises under this chapter, the person shall file with the commissioner, in the form that the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state or any successor secretary of state to be the person's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the person or the person's successor, executor, or administrator that arises under this chapter or any rule or order under this chapter after the consent has been filed with the same force as if served personally on the person filing the consent. A person who has filed a consent with the commissioner for a previous registration or exemption under this chapter is not required to file another consent. The person's previous consent shall remain effective for all subsequent registrations or exemptions filed by the person under this chapter. Service shall be made in accordance with the Indiana Rules of Civil Procedure.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.1-1991, SEC.159; P.L.168-2001, SEC.13.

IC 23-2-2.5-25

Repealed

(Repealed by P.L.30-2002, SEC.3.)

IC 23-2-2.5-26

Advertisements containing false statements; notification; hearing

Sec. 26. No person shall publish or cause to be published any advertisement concerning any franchise in Indiana after the commissioner finds that the advertisement contains any statement that is false, is misleading or omits to make any statement necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading and so notifies the person in writing. Such notification may be given without notice of hearing. At any time after the issuance of a notification under this section, the person desiring to use the advertisement may request in writing that the order be rescinded. Upon the receipt of such written request, the matter shall be set down for hearing to commence within fifteen (15) days after receipt of the request unless the person making that request consents to a later date.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-27

Fraud or deceit unlawful

Sec. 27. It is unlawful for any person in connection with the offer, sale or purchase of any franchise, or in any filing made with the commissioner, directly or indirectly: (1) to employ any device, scheme or artifice to defraud; (2) to make any untrue statements of

a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading; or (3) to engage in any act which operates or would operate as a fraud or deceit upon any person.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-28

Violations; judgment; damages; interest; attorney's fees

Sec. 28. A person who recovers judgment for a violation of this chapter may recover, as part of that judgment: (1) any consequential damages; (2) interest at eight percent (8%) on the judgment; and (3) reasonable attorney's fees; unless the defendant proves that the plaintiff knew the facts concerning the violation, or that the defendant exercised reasonable care and did not know, or, if he had exercised reasonable care, would not have known, of the facts concerning the violation.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-29

Aiders and abettors in violations; joint and several liability

Sec. 29. Every person who materially aids or abets in an act or transaction constituting a violation of this chapter is also liable jointly and severally to the same extent as the person whom he aided and abetted, unless the person who aided and abetted had no knowledge of or reasonable grounds to believe in the existence of the facts by reason of which the liability is alleged to exist.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-30

Limitation of actions

Sec. 30. A person may not maintain an action to enforce any liability created under this chapter unless brought before the expiration of three (3) years after discovery by the plaintiff of the facts constituting the violation.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-31

Survival of actions

Sec. 31. Every civil action under this chapter survives the death of any person who might have been a plaintiff or defendant.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-32

Remedies

Sec. 32. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, he may in his discretion bring an action in the appropriate circuit or superior court to enjoin the acts or practices, to enforce compliance with this chapter, or to obtain any other appropriate

remedy. Upon proper showing, a permanent or preliminary injunction, restraining order, declaratory judgment or other appropriate remedy shall be granted and, in addition to and independent of any other remedy granted herein, a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond. *(Formerly: Acts 1975, P.L.262, SEC.1.)*

IC 23-2-2.5-33

Investigations; proceedings; powers; self-incrimination

Sec. 33. (a) The commissioner may in his discretion make such investigations as he deems necessary to determine whether any person has violated or is about to violate any provision of this chapter.

(b) For the purpose of any investigation or proceeding under this chapter, the commissioner or his representative may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems material to the inquiry.

(c) Upon order of the commissioner or his representative in any hearing, depositions may be taken of any witness, to be taken in the manner prescribed by law for depositions in civil actions, and made returnable to the commissioner or his representative.

(d) In case of failure by any person to obey a subpoena, the circuit or superior court, upon application by the commissioner, may issue to the person an order requiring him to appear before the commissioner, or his representative, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation.

(e) No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner, or his representative, or in any proceeding instituted by the commissioner, on the grounds that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no person may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after validly claiming his privilege against self-incrimination, to testify or produce evidence documentary or otherwise.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-34

Violations; orders and notices; hearing; costs; civil penalties; enforcement action

Sec. 34. (a) If it appears to the commissioner that:

(1) the offer of any franchise is subject to registration under this chapter and it is being, or it has been, offered for sale without such offer first being registered; or

(2) a person has engaged in or is about to engage in an act, a practice, or a course of business constituting a violation of this chapter or a rule or an order under this chapter;

the commissioner may investigate and may issue, with or without a prior hearing, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and an opportunity for hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter. In addition to all other remedies, the commissioner may bring an action in the name of and on behalf of the state against any person participating in or about to participate in a violation of this chapter, to enjoin the person from continuing or doing an act furthering a violation of this chapter and may obtain the appointment of a receiver or conservator. Upon a proper showing by the commissioner, the court shall enter an order of the commissioner directing rescission, restitution, or disgorgement against a person who has violated this chapter or a rule or order under this chapter.

(b) Upon the issuance of an order or a notice by the commissioner under subsection (a), the commissioner shall promptly notify the respondent of the following:

- (1) That the order or notice has been issued.
- (2) The reasons the order or notice has been issued.
- (3) That upon the receipt of a written request the matter will be set for a hearing to commence not later than forty-five (45) business days after the commissioner receives the request, unless the respondent consents to a later date.

If the respondent does not request a hearing and the commissioner does not order a hearing, the order or notice will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after giving notice of the hearing, may modify or vacate the order or extend it until final determination.

(c) In a final order, the commissioner may charge the costs of an investigation or a proceeding conducted in connection with a violation of:

- (1) this chapter; or
- (2) a rule or an order adopted or issued under this chapter;

to be paid as directed by the commissioner in the order.

(d) In a proceeding in a circuit or superior court under this section, the commissioner is entitled to recover all costs and expenses of investigation to which the commissioner would be entitled in an administrative proceeding, and the court shall include the costs in its final judgment.

(e) If the commissioner determines, after notice and opportunity for a hearing, that a person has violated this chapter, the commissioner may, in addition to or instead of all other remedies, impose a civil penalty upon the person in an amount not to exceed ten thousand dollars (\$10,000) for each violation. An appeal from the

decision of the commissioner imposing a civil penalty under this subsection may be taken by an aggrieved party under section 44 of this chapter.

(f) The commissioner may bring an action in the circuit or superior court of Marion County to enforce payment of any penalty imposed under subsection (e).

(g) Penalties collected under this section shall be deposited in the securities division enforcement account established under IC 23-19-6-1(f).

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.230-2007, SEC.5; P.L.1-2009, SEC.129.

IC 23-2-2.5-35

Offer of franchise exempt from registration without compliance with IC 23-2-2.5-3 and IC 23-2-2.5-27; cease and desist order; hearing

Sec. 35. If, in the opinion of the commissioner, the offer of any franchise exempt from registration under this chapter is being or has been offered for sale without complying with sections 3 and 27, the commissioner may order the franchisor or offeror of such franchise to cease and desist from the further offer or sale of such franchise unless and until such offer is made in compliance with this chapter. If, after such an order has been made, a request for a hearing is filed in writing by the person affected, a hearing shall be held to commence within fifteen (15) days after the request is made, unless the person affected consents to a later date.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-36

Prosecution of violations

Sec. 36. The commissioner may refer such evidence as is available concerning any violation of this chapter to the prosecuting attorney of the county in which the violation occurred, who may, with or without such a reference, institute appropriate criminal proceedings under this chapter. If evidence concerning violations of this chapter is referred to a prosecuting attorney, he shall within ninety (90) days file with the commissioner a written statement concerning any action taken or, if no action has been taken, the reasons therefor.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-37

Violations; felony

Sec. 37. A person who knowingly violates this chapter commits a Class C felony.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by Acts 1978, P.L.2, SEC.2307.

IC 23-2-2.5-38

Conduct equivalent to appointment of secretary of state for service

of process

Sec. 38. When any person engages in conduct prohibited by this chapter, whether or not he has filed a consent to service of process under section 24 and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the secretary of state or his successor in office to be his attorney to receive service of any lawful process in any civil action or proceeding against him or his successor or personal representative which grows out of that conduct and which is brought under this chapter, with the same force and validity as if served on him personally. Service shall be made in accordance with the Indiana Rules of Civil Procedure.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-39

Exemption or classification; burden of proof

Sec. 39. The burden of proof of the entitlement to any exemption or classification provided in this chapter, in any civil or criminal proceeding is on the party claiming the exemption or classification.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-40

Certificate of commissioner as evidence

Sec. 40. In any civil or criminal proceeding under this chapter a certificate duly signed by the commissioner showing compliance or noncompliance with this chapter respecting the franchise in question or respecting compliance or noncompliance with this chapter by any person constitutes prima facie evidence of such compliance or such noncompliance and is admissible in evidence in any such proceeding.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-41

Statements and documents filed with secretary of state as evidence

Sec. 41. Copies of any statements and documents filed in the office of the secretary of state and of any records of the secretary of state certified by the commissioner are admissible in any civil or criminal proceeding under this chapter to the same effect as the original of such statement, document or record would be if actually produced.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-42

Administration of chapter

Sec. 42. This chapter shall be administered by the office of the secretary of state of Indiana through the commissioner.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-43

Fees and funds; accounting; deposit; expenses

Sec. 43. (a) All fees and funds of whatever character accruing

from the administration of this chapter shall be:

- (1) accounted for by the secretary of state;
- (2) paid into the state treasury monthly; and
- (3) placed in the same account of the state general fund as established by IC 23-19-6-1(f), from which all compensation and expenses shall be paid for the administration of this chapter.

(b) The fee for filing a form for registration by notification of the sale of franchises under section 10.5 of this chapter is five hundred dollars (\$500).

(c) The fee for filing a registration renewal form under section 18 of this chapter is two hundred fifty dollars (\$250).

(d) When a registration notification form or registration renewal form is denied or withdrawn, the commissioner shall retain one hundred fifty dollars (\$150) of the fee.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.233-1985, SEC.4; P.L.168-2001, SEC.14; P.L.30-2002, SEC.2; P.L.27-2007, SEC.11.

IC 23-2-2.5-44

Appeal

Sec. 44. An appeal may be taken by any person from any final order of the commissioner affecting such person in the same manner as prescribed in IC 23-19-6-9.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.27-2007, SEC.12.

IC 23-2-2.5-45

Assistance of attorney general; expenses

Sec. 45. In connection with the administration and enforcement of the provisions of this chapter, it is hereby made the duty of the attorney general of Indiana to render all necessary assistance to the commissioner upon his request, and to that end the attorney general shall employ such legal and such other professional services as shall be necessary to adequately and fully perform such service under the direction of the commissioner as the demands of the securities division shall require, and any expenses so incurred by the attorney general for the purposes aforesaid shall be chargeable against and paid out of the securities division fund and if such fund is insufficient for the payment of such expenses and any expenses of the securities division incident to the administration of this chapter, then a sufficient sum of money for the payment of any such deficiency is hereby appropriated annually out of any money received by the secretary of state as fees for the incorporation and for the filing of the annual reports of corporations.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-46

Liability for performance of official duties

Sec. 46. Neither the secretary of state nor the commissioner, nor

any employee of the securities division shall be liable in their individual capacity, except to the state of Indiana, for any act done or omitted in connection with the performance of their respective duties under the provisions of this chapter.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-47

Construction and purpose of chapter

Sec. 47. All provisions of this chapter delegating and granting power to the secretary of state, the securities division and the commissioner shall be liberally construed to the end that the practice or commission of fraud may be prohibited and prevented, disclosure of sufficient and reliable information in order to afford reasonable opportunity for the exercise of independent judgment of the persons involved may be assured, in connection with the issuance, barter, sale, purchase, transfer or disposition of franchises in this state. It is the intent and purpose of this chapter to delegate and grant to and vest in the secretary of state, the securities division and the commissioner full and complete power to carry into effect and accomplish the purpose of this chapter and to charge them with full and complete responsibility for the effective administration thereof.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-48

Public records; inspection; disclosure or use of information restricted; copies; destruction

Sec. 48. (a) All registration notification forms, registration renewal forms, applications to amend registrations, reports, and other papers and documents filed with the commissioner under this chapter shall be open to public inspection. The commissioner may publish any information filed with or obtained by the commissioner. No provision of this chapter authorizes the commissioner or any of the commissioner's assistants, clerks, or deputies to disclose any information withheld from public inspection except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter or to other federal or state regulatory agencies. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of the commissioner's assistants, clerks, or deputies.

(b) It is unlawful for the commissioner or any of the commissioner's assistants, clerks, or deputies to use for personal benefit any information which is filed with or obtained by the commissioner and which is not then generally available to the public.

(c) Upon request, and at such reasonable charges as the commissioner prescribes by rule, the commissioner shall furnish to any person photostatic or other copies (certified by the commissioner if certification is requested) of any document which is retained as a matter of public record, except that the commissioner shall not

charge or collect any fee for photostatic or other copies of any document furnished to public officers for use in their official capacity.

(d) The commissioner may destroy any registration notification forms, together with the files and folders, as useless or obsolete, four (4) years after the date of registration; provided that a permanent record shall be maintained of any disciplinary action taken by the commissioner and of all orders issued under this chapter.

(e) Copies on microfilm or in other form which may be retained by the commissioner of any records destroyed under this section shall be accepted for all purposes as equivalent to the original when certified by the commissioner.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.15.

IC 23-2-2.5-49

Construction with other laws

Sec. 49. Nothing in this chapter shall be construed to relieve corporations or other business organizations from making reports now or hereafter required by law to be made to the secretary of state, or any other state officer, or paying the fees now or hereafter to be paid by corporations or other business organizations. This chapter shall not be construed to repeal any law now in force regulating the organization of corporations or other business organizations in Indiana, or the admission of any foreign corporation but the provisions of this chapter shall be construed to be additional to any provisions regulating the organization of a corporation or other business organization under the laws of Indiana, or the admission of a foreign corporation to do business in Indiana.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-50

Administrative orders and procedures

Sec. 50. IC 4-21.5 does not apply to proceedings under this chapter.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.7-1987, SEC.103.

IC 23-2-2.5-51

Service stations; succession to ownership by family member of deceased franchisee

Sec. 51. (a) Any designated family member of a deceased service station franchisee may succeed to the ownership of the existing agreement if all of the following conditions are met:

(1) The designated family member gives the service station franchisor written notice of the intention to succeed to the service station agreement within thirty (30) days of the service station franchisee's death.

(2) The designated family member agrees to be bound by all terms and conditions of the existing owner's franchise

agreement.

(3) There is no good cause for the service station franchisor to refuse to honor the succession.

For purposes of this subsection, the grounds for termination or nonrenewal of a franchise set out in the federal Petroleum Marketing Practices Act (15 U.S.C. 2801 et seq.) constitute good cause. Notification of the refusal must be submitted to the designated family member in writing within sixty (60) days after the date of the service station franchisee's death, and must specify the reasons for the refusal. The form of the written notice required under this subsection shall be prescribed in the terms of the agreement.

(b) This section does not apply to agreements between franchisors and service station franchisees entered into or renewed before July 1, 1983.

As added by P.L.241-1983, SEC.2.

IC 23-2-2.7

Chapter 2.7. Deceptive Franchise Practices

IC 23-2-2.7-1

Franchise agreement; unlawful provisions

Sec. 1. It is unlawful for any franchise agreement entered into between any franchisor and a franchisee who is either a resident of Indiana or a nonresident who will be operating a franchise in Indiana to contain any of the following provisions:

- (1) Requiring goods, supplies, inventories, or services to be purchased exclusively from the franchisor or sources designated by the franchisor where such goods, supplies, inventories, or services of comparable quality are available from sources other than those designated by the franchisor. However, the publication by the franchisor of a list of approved suppliers of goods, supplies, inventories, or service or the requirement that such goods, supplies, inventories, or services comply with specifications and standards prescribed by the franchisor does not constitute designation of a source nor does a reasonable right of the franchisor to disapprove a supplier constitute a designation. This subdivision does not apply to the principal goods, supplies, inventories, or services manufactured or trademarked by the franchisor.
- (2) Allowing the franchisor to establish a franchisor-owned outlet engaged in a substantially identical business to that of the franchisee within the exclusive territory granted the franchisee by the franchise agreement; or, if no exclusive territory is designated, permitting the franchisor to compete unfairly with the franchisee within a reasonable area.
- (3) Allowing substantial modification of the franchise agreement by the franchisor without the consent in writing of the franchisee.
- (4) Allowing the franchisor to obtain money, goods, services, or any other benefit from any other person with whom the franchisee does business, on account of, or in relation to, the transaction between the franchisee and the other person, other than for compensation for services rendered by the franchisor, unless the benefit is promptly accounted for, and transmitted to the franchisee.
- (5) Requiring the franchisee to prospectively assent to a release, assignment, novation, waiver, or estoppel which purports to relieve any person from liability to be imposed by this chapter or requiring any controversy between the franchisee and the franchisor to be referred to any person, if referral would be binding on the franchisee. This subdivision does not apply to arbitration before an independent arbitrator.
- (6) Allowing for an increase in prices of goods provided by the franchisor which the franchisee had ordered for private retail consumers prior to the franchisee's receipt of an official price increase notification. A sales contract signed by a private retail

consumer shall constitute evidence of each order. Price changes applicable to new models of a product at the time of introduction of such new models shall not be considered a price increase. Price increases caused by conformity to a state or federal law, or the revaluation of the United States dollar in the case of foreign-made goods, are not subject to this subdivision.

(7) Permitting unilateral termination of the franchise if such termination is without good cause or in bad faith. Good cause within the meaning of this subdivision includes any material violation of the franchise agreement.

(8) Permitting the franchisor to fail to renew a franchise without good cause or in bad faith. This chapter shall not prohibit a franchise agreement from providing that the agreement is not renewable upon expiration or that the agreement is renewable if the franchisee meets certain conditions specified in the agreement.

(9) Requiring a franchisee to covenant not to compete with the franchisor for a period longer than three (3) years or in an area greater than the exclusive area granted by the franchise agreement or, in absence of such a provision in the agreement, an area of reasonable size, upon termination of or failure to renew the franchise.

(10) Limiting litigation brought for breach of the agreement in any manner whatsoever.

(11) Requiring the franchisee to participate in any:

- (A) advertising campaign or contest;
- (B) promotional campaign;
- (C) promotional materials; or
- (D) display decorations or materials;

at an expense to the franchisee that is indeterminate, determined by a third party, or determined by a formula, unless the franchise agreement specifies the maximum percentage of gross monthly sales or the maximum absolute sum that the franchisee may be required to pay.

As added by Acts 1976, P.L.116, SEC.1. Amended by P.L.233-1985, SEC.5; P.L.11-1987, SEC.27.

IC 23-2-2.7-2

Franchise agreement; unlawful acts and practices

Sec. 2. It is unlawful for any franchisor who has entered into any franchise agreement with a franchisee who is either a resident of Indiana or a nonresident operating a franchise in Indiana to engage in any of the following acts and practices in relation to the agreement:

(1) Coercing the franchisee to:

- (i) order or accept delivery of any goods, supplies, inventories, or services which are neither necessary to the operation of the franchise, required by the franchise agreement, required by law, nor voluntarily ordered by the franchisee;

- (ii) order or accept delivery of any goods offered for sale by the franchisee which includes modifications or accessories which are not included in the base price of those goods as publicly advertised by the franchisor;
 - (iii) participate in an advertising campaign or contest, any promotional campaign, promotional materials, display decorations, or materials at an expense to the franchisee over and above the maximum percentage of gross monthly sales or the maximum absolute sum required to be spent by the franchisee provided for in the franchise agreement; in the absence of such provision for required advertising expenditures in the franchise agreement, no such participation may be required; or
 - (iv) enter into any agreement with the franchisor or any designee of the franchisor, or do any other act prejudicial to the franchisee, by threatening to cancel or fail to renew any agreement between the franchisee and the franchisor. Notice in good faith to any franchisee of the franchisee's violation of the terms or provisions of a franchise or agreement does not constitute a violation of this subdivision.
- (2) Refusing or failing to deliver in reasonable quantities and within a reasonable time after receipt of an order from a franchisee for any goods, supplies, inventories, or services which the franchisor has agreed to supply to the franchisee, unless the failure is caused by acts or causes beyond the control of the franchisor.
- (3) Denying the surviving spouse, heirs, or estate of a deceased franchisee the opportunity to participate in the ownership of the franchise under a valid franchise agreement for a reasonable time after the death of the franchisee, provided that the surviving spouse, heirs, or estate maintains all standards and obligations of the franchise.
- (4) Establishing a franchisor-owned outlet engaged in a substantially identical business to that of the franchisee within the exclusive territory granted the franchisee by the franchise agreement or, if no exclusive territory is designated, competing unfairly with the franchisee within a reasonable area. However, a franchisor shall not be considered to be competing when operating a business either temporarily for a reasonable period of time, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the business operation and can reasonably expect to acquire full ownership of such business on reasonable terms and conditions.
- (5) Discriminating unfairly among its franchisees or unreasonably failing or refusing to comply with any terms of a franchise agreement.
- (6) Obtaining money, goods, services, or any other benefit from any other person with whom the franchisee does business, on

account of, or in relation to, the transaction between the franchisee and the other person, other than compensation for services rendered by the franchisor, unless the benefit is promptly accounted for, and transmitted to the franchisee.

(7) Increasing prices of goods provided by the franchisor which the franchisee had ordered for retail consumers prior to the franchisee's receipt of a written official price increase notification. Price increases caused by conformity to a state or federal law, the revaluation of the United States dollar in the case of foreign-made goods or pursuant to the franchise agreement are not subject to this subdivision.

(8) Using deceptive advertising or engaging in deceptive acts in connection with the franchise or the franchisor's business.

As added by Acts 1976, P.L.116, SEC.1. Amended by P.L.233-1985, SEC.6.

IC 23-2-2.7-3

Termination or election not to renew franchise; notice

Sec. 3. Unless otherwise provided in the agreement, any termination of a franchise or election not to renew a franchise must be made on at least ninety (90) day's notice.

As added by Acts 1976, P.L.116, SEC.1.

IC 23-2-2.7-4

Action to recover damages or reform franchise agreement

Sec. 4. Any franchisee who is a party to a franchise agreement entered into or renewed after July 1, 1976 which contains any provision set forth in Section 1 of this chapter or who is injured by an unfair act or practice set forth in Section 2 of this chapter may bring an action to recover damages, or reform the franchise agreement.

As added by Acts 1976, P.L.116, SEC.1.

IC 23-2-2.7-5

Franchise defined

Sec. 5. For the purposes of this chapter, franchise means any franchise as defined in IC 23-2-2.5-1, clauses (a) (1) (2) and (3), and any agreement meeting the provisions of IC 23-2-2.5-1, clauses (a) (1) and (2) which relates to the business of selling automobiles and/or trucks and the business of selling gasoline and/or oil primarily for use in vehicles with or without the sale of accessory items.

As added by Acts 1976, P.L.116, SEC.1.

IC 23-2-2.7-6

Application of chapter

Sec. 6. The provisions of this chapter apply only to agreements entered into or renewed, or act or practice occurring after July 1, 1976.

As added by Acts 1976, P.L.116, SEC.1.

IC 23-2-2.7-7

Limitation of actions

Sec. 7. No action may be brought for a violation of this chapter more than two (2) years after the violation.

As added by Acts 1976, P.L.116, SEC.1.

IC 23-2-3

Repealed

(Repealed by Acts 1979, P.L.235, SEC.2.)

IC 23-2-3.1

Chapter 3.1. Takeover Offers

IC 23-2-3.1-0.5

Legislative finding; purpose

Sec. 0.5. (a) The general assembly finds that it is often difficult for corporate shareholders to obtain sufficient information to make an informed and timely decision when faced with the questions of accepting or rejecting a takeover offer. Moreover, there have emerged a number of practices which have resulted in shareholders of Indiana corporations losing the benefits of takeover offers because they lacked the sophistication and ability to secure those benefits. These practices have included multiple proration pools, two-step transactions and similar practices, and have resulted in relatively small shareholders losing both the advantages of the takeover offer and their equity positions in the corporation.

(b) By enacting this chapter, it is the intent and purpose of the general assembly to provide for full and fair disclosure of all material information concerning takeover offers to shareholders of Indiana corporations, so that the opportunity of each shareholder to make an informed and well-reasoned investment decision may be secured. It is also the purpose of the general assembly to protect shareholders of Indiana corporations from being disadvantaged by those practices described in subsection (a). Finally, it is the purpose of the general assembly to provide for adequate disclosure and that protection in a manner consistent with the Constitutions of the United States and of Indiana.

As added by Acts 1981, P.L.215, SEC.1. Amended by P.L.242-1983, SEC.1.

IC 23-2-3.1-1

Definitions

Sec. 1. As used in this chapter:

"Affiliate" means any person controlling, controlled by, or under the common control of another person.

"Beneficial owner of a security" means any person who, directly or indirectly, has the power to vote or direct the voting of all or part of the voting rights of the security, or has the power to dispose of or direct the disposition of the security.

"Commissioner" means the securities commissioner as defined in IC 23-19-1-2(4).

"Control" means possession, direct or indirect, of the power to direct or to cause the direction of the management and policies of a person, through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless that power is the result of an official position or corporate office. The term includes "controlling", "controlled by", and "under common control with." Control is presumed to exist if any person is the beneficial owner of ten percent (10%) or more of any class of the voting securities of any other person. This

presumption may be rebutted only by a showing that control does not exist in fact, at a hearing pursuant to section 9 of this chapter.

"Equity security" means:

- (1) any share or similar security carrying, at the time of the takeover offer, the right to vote on any matter by virtue of the articles of incorporation, bylaws, or governing instrument of the target company or the right to vote for directors or persons performing substantially similar functions by operation of law;
- (2) any security convertible into a security described in subdivision (1) or any warrant or right to purchase that security;
- or
- (3) any other security which, for the protection of investors, is an equity security pursuant to a regulation of the commissioner.

"Offeror" means a person who makes or in any way participates in making a takeover offer. The term includes all affiliates of that person and all persons who act jointly or in concert with that person for the purpose of acquiring, holding, or disposing of, or exercising any voting rights attached to, the equity securities of a target company. It also includes the target company with respect to acquisitions of its own equity securities and with respect to periods of time when it is controlled by or under common control with the offeror. It does not include a financial institution or broker-dealer loaning funds or extending credit to any offeror in the ordinary course of its business, or any accountant, attorney, financial institution, broker-dealer, newspaper or magazine of general circulation, consultant, or other person furnishing information, services, or advice to or performing ministerial or administrative duties for an offeror and not otherwise participating in the takeover offer.

"Offeree" means a record or beneficial owner of equity securities of the class which an offeror acquires or offers to acquire in connection with a takeover offer.

"Person" means an individual, corporation, limited liability company, association, partnership, trust, or other entity.

"Substantially equivalent terms" means terms under which the fair market value of the consideration offered any offeree of a class of equity securities of the target company (determined on a per share or a per unit basis) are equal to the highest consideration offered in connection with a takeover offer to any other offeree of that class (determined on a per share or per unit basis).

"Takeover offer" means an offer to acquire or an acquisition of any equity security of a target company, pursuant to a tender offer or request or invitation for tenders, if, after the acquisition, the offeror is directly or indirectly a record or beneficial owner of more than ten percent (10%) of any class of the outstanding equity securities of the target company.

"Target company" means an issuer of securities which is organized under the laws of this state, has its principal place of business in this state, and has substantial assets in this state. Target company does not include:

- (1) a financial institution subject to regulation by the department of financial institutions under IC 28, if the takeover offer is subject to approval by the department of financial institutions;
- (2) a corporation subject to regulation by the utility regulatory commission under IC 8, if the takeover offer is subject to approval of the commission; or
- (3) a public utility, public utility holding company, bank holding company, or savings association subject to regulation by a federal agency, if the takeover offer is subject to the approval by that federal agency.

As added by Acts 1979, P.L.235, SEC.1. Amended by Acts 1981, P.L.215, SEC.2; P.L.242-1983, SEC.2; P.L.23-1988, SEC.111; P.L.8-1993, SEC.311; P.L.79-1998, SEC.21; P.L.27-2007, SEC.13.

IC 23-2-3.1-2

Compliance with designated sections

Sec. 2. A person shall not make a takeover offer unless the offer is in compliance with sections 3, 4, 5.5, 6.5, 7, and 8 of this chapter.
As added by Acts 1979, P.L.235, SEC.1. Amended by Acts 1981, P.L.215, SEC.3; P.L.242-1983, SEC.3; P.L.229-1989, SEC.1.

IC 23-2-3.1-3

Statement; filing with commissioner; copy to target company

Sec. 3. Any offeror, before making a takeover offer, shall:

- (1) file any required statements with the commissioner in compliance with sections 5 and 5.5 of this chapter; and
- (2) not later than the filing date of the statements, deliver a copy of each statement to the president of the target company at its principal office.

As added by Acts 1979, P.L.235, SEC.1. Amended by P.L.229-1989, SEC.2.

IC 23-2-3.1-4

Statement; consent to service of process; filing fee

Sec. 4. Each statement required under section 5 or 5.5 of this chapter must be accompanied by:

- (1) a consent of the offeror to service of process specified in IC 23-19-6-11; and
- (2) a filing fee of seven hundred fifty dollars (\$750).

As added by Acts 1979, P.L.235, SEC.1. Amended by P.L.229-1989, SEC.3; P.L.27-2007, SEC.14.

IC 23-2-3.1-5

Contents of statement; document prepared under federal law

Sec. 5. (a) If the takeover offer is subject to any federal law, including the Securities Exchange Act of 1934 (15 U.S.C. 78), the statement must consist of one (1) copy of each document required to be filed with the Securities and Exchange Commission or any other federal agency.

(b) If the takeover offer is not subject to any requirement of federal law, the statement must be filed on forms prescribed by the commissioner and contain the following information:

(1) The identity of and material information concerning the offeror, including:

(A) if the offeror is a corporation:

- (i) information concerning its organization, including the year and jurisdiction of its organization;
- (ii) a description of each class of its capital stock and long-term debt;
- (iii) a description of the business done by the offeror and its affiliates and any material changes of its business during the past three (3) years;
- (iv) a description of the location and character of the principal properties of the offeror and its affiliates;
- (v) a description of any material pending legal or administrative proceedings in which the offeror or any of its affiliates is a party;
- (vi) the names of all directors and executive officers of the offeror and their material business activities and affiliations during the past three (3) years; and
- (vii) audited financial statements of the offeror and its affiliates for its three (3) most recent annual accounting periods and interim financial statements for any current period; and

(B) if the offeror is not a corporation:

- (i) information concerning the background of the person, including the person's material business activities and affiliations during the past three (3) years; and
- (ii) a description of any material pending legal or administrative proceeding in which the person is a party.

(2) The source and amount of funds or other consideration used or to be used in acquiring any equity security, including:

(A) a statement describing any securities being offered in exchange for the equity securities of the target company; and

(B) if any part of the acquisition price is or will be represented by borrowed funds or other consideration, a description of the transaction and the names of all the parties.

(3) If the purpose of the acquisition is to gain control of the target company, a statement of any plans or proposals or negotiations with respect to the acquisition which the offeror has upon gaining control to:

(A) liquidate the target company;

(B) sell its assets;

(C) effect its merger or consolidation; or

(D) make any other major change in its business, corporate structure, management or personnel.

(4) The number of shares or units of any equity security of the target company of which each offeror is the record or beneficial

owner or which the offeror has a right to acquire, directly or indirectly.

(5) Information as to any contracts, arrangements, understandings, or negotiations with any person concerning any equity security of the target company, including:

(A) transfers of any equity security, joint ventures, loan or option arrangements, puts and calls, guarantees of loan, guarantees against loss, guarantees of profits, division of losses or profits; or

(B) the giving or withholding of proxies;

naming the persons with whom those contracts, arrangements, or understandings have been entered into.

(6) Information as to any contracts, arrangements, understandings, or negotiations, with any officer, director, administrator, manager, executive employee, or record or beneficial owner of equity securities of the target company with respect to the tender of any equity securities of the target company, the purchase by the offeror of any equity securities owned by that person otherwise than pursuant to the takeover offer, the retention of any person in the person's present position or in any other management position or with respect to that person giving or withholding a favorable recommendation to the takeover offer.

(7) A description of the provisions made or to be made for providing all material information concerning the takeover offer to the offerees, including a description of the proposed takeover offer in the form proposed to be published or sent the offerees initially disclosing the takeover offer.

(8) Any other information which the commissioner prescribes by rule.

(c) In addition to information required under subsection (a) or (b), a statement filed under this section must include the following information:

(1) A description of any contract between the offeror and a government (other than the United States, a state of the United States, a commonwealth or possession of the United States, a government in free association with the United States, or a political subdivision of a state) executed during the three (3) years preceding the date of the filing of the statement.

(2) A description of any subsidy received by the offeror from a government described in subdivision (1) during the three (3) years preceding the date of the filing of the statement.

(3) A list of any offices or appointments held under a government described in subdivision (1) by the offeror if the offeror is an individual, or by a member of the board of directors or principal officer if the offeror is a corporation.

As added by Acts 1979, P.L.235, SEC.1. Amended by P.L.229-1989, SEC.4.

IC 23-2-3.1-5.5

Definitions; application of section

Sec. 5.5. (a) The definitions in IC 23-1-20 apply to this section, except to the extent of any conflict with section 1 of this chapter.

(b) This section applies to:

- (1) a foreign corporation incorporated under a law other than the law of the United States or any state of the United States (as defined in IC 1-1-4-1); or
- (2) a person who is not a citizen of the United States.

(c) This section does not apply to the initiation of a new business in Indiana by a person subject to this section.

(d) Notwithstanding any other provision of this title, a person subject to this section may not make a takeover offer unless the person files a statement with the commissioner under this subsection.

(e) The statement filed under subsection (d) must state the following:

- (1) The financial sources to be used by the person in the takeover offer.
- (2) The proposed consummation date of the takeover.

As added by P.L.229-1989, SEC.5.

IC 23-2-3.1-6**Repealed**

(Repealed by Acts 1981, P.L.215, SEC.11.)

IC 23-2-3.1-6.5**Terms of offer; requisites; number of offerees**

Sec. 6.5. No takeover offer may be made which is not made to all offerees holding the same class of equity securities of the target company on substantially equivalent terms. A takeover offer to purchase less than any or all equity securities of the same class of the outstanding equity securities of the target company is not considered as having been made to all offerees of that class on substantially equivalent terms if the pro rata portion of equity securities of that class tendered by any offeree which will be accepted by the offeror is not equal to the highest pro rata portion of equity securities of that class tendered by any other offeree which will be accepted by the offeror. A takeover offer permitting offerees to elect to receive one (1) or more differing kinds of consideration is not considered as having been made to all offerees holding the same class of equity securities of the target company on substantially equivalent terms if proration occurs and the pro rata share of any one (1) or more differing kinds of consideration which is allocable to any offeree is not equal to the highest pro rata share allocable to any other offeree.

As added by P.L.242-1983, SEC.4.

IC 23-2-3.1-7**Hearing; findings and order; notices; expenses; right to appear; insurance companies**

Sec. 7. (a) A hearing shall be held at any time within twenty (20) business days after the required statements under sections 5 and 5.5

of this chapter are filed. If, following the hearing, and within twenty (20) business days after a statement is filed, the commissioner finds by a preponderance of the evidence that:

(1) the takeover statement fails to provide full and fair disclosure to the offerees of all material information concerning the takeover offer; or

(2) the takeover offer is not made to all offerees of the same class of equity securities of the target company on substantially equivalent terms; the commissioner shall by order prohibit the purchase of shares tendered in response to the takeover offer or condition purchase upon changes or modifications.

(b) At least five (5) days notice shall be given to the target company, the offeror, and such other persons as the commissioner may designate that a hearing will be held under this section.

(c) The expenses, including the cost of transcripts, of all hearings held under this section shall be borne by the offeror. As security for the payment of the expenses, the offeror shall file with the commissioner an acceptable bond or other deposit in an amount determined by the commissioner.

(d) The target company, the offeror, any offeree, and any other person whose interests may be affected have the right to appear at any hearing held pursuant to this chapter and to become a party to the proceeding. Each such person has the right to present evidence, examine and cross-examine witnesses, offer oral written arguments and, in connection with the proceeding may conduct discovery proceedings in the manner provided in the Indiana Rules of Trial Procedure. The commissioner may employ any sanction or power granted courts in the Indiana Rules of Trial Procedure, excluding the power of contempt, to enforce the commissioner's discovery rulings or orders.

(e) In the case of a takeover offer subject to the approval of the insurance commissioner, the offeror within five (5) days after the statement is filed shall mail a notice to all offerees of the target company advising the offerees of the general terms and conditions of the takeover offer and the date of the hearing at which they may appear. No shares shall be tendered, or purchased by the offeror, until after approval by both the securities commissioner and the insurance commissioner. All expenses of notifying the offerees shall be borne by the offeror.

As added by Acts 1979, P.L.235, SEC.1. Amended by Acts 1981, P.L.215, SEC.4; P.L.242-1983, SEC.5; P.L.229-1989, SEC.6.

IC 23-2-3.1-8

Purchase of shares; prohibition

Sec. 8. No shares shall be purchased or paid for pursuant to a takeover offer within the first twenty (20) business days after the offer is made. No shares shall be purchased or paid for in violation of any order of the commissioner.

As added by Acts 1979, P.L.235, SEC.1. Amended by Acts 1981, P.L.215, SEC.5.

IC 23-2-3.1-8.4

Subsequent acquisition of equity securities by offeror; equivalent terms; limitation

Sec. 8.4. No offeror may acquire in any manner any equity security of any class of a target company at any time within two (2) years following the conclusion of a takeover offer with respect to that class, including but not limited to acquisitions made by purchase, exchange, merger, consolidation, partial or complete liquidation, redemption, reverse stock split, and any other recapitalization or reorganization, unless the holder of that equity security is also afforded, at the time of that acquisition, a reasonable opportunity to dispose of that security to the offeror upon substantially equivalent terms.

As added by P.L.242-1983, SEC.6.

IC 23-2-3.1-8.5

Statements of material fact; omissions; false or misleading statements; fraudulent, deceptive, or manipulative acts

Sec. 8.5. In connection with any takeover offer, or any solicitation of offerees in opposition to or in favor of any takeover offer, it is unlawful for any person to make any untrue statement of a material fact or to omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices.

As added by Acts 1981, P.L.215, SEC.6.

IC 23-2-3.1-8.6

Exempt acquisitions; notice and hearing to precede order

Sec. 8.6. (a) The provisions of sections 2 through 7 of this chapter do not apply to the following:

- (1) An acquisition by an offeror, if the instant transaction and all acquisitions of equity securities of the same class during the preceding twelve (12) months by the offeror or any of its affiliates do not exceed two percent (2%) of that class.
- (2) An acquisition of equity securities of a target company having seventy-five (75) or fewer holders of record of equity securities at the time of the takeover offer.
- (3) An acquisition determined by order of the commissioner to be a takeover offer that is not made for the purpose of, and not having the effect of, changing or influencing the control of a target company.

(b) An order may only be adopted under subsection (a)(3) of this section after a hearing. Not less than five (5) business days' notice of a hearing must be given to the target company, the offeror, and such other persons as the commissioner may designate.

(c) The burden of establishing entitlement to any exemption is on the offeror.

As added by Acts 1981, P.L.215, SEC.7. Amended by P.L.242-1983, SEC.7.

IC 23-2-3.1-9

Administration of chapter; regulations; immunity

Sec. 9. (a) This chapter shall be administered by the secretary of state of Indiana by and through the commissioner, who may exercise all powers granted to the commissioner under IC 23-19.

(b) Subject to the approval of the secretary of state, the commissioner may promulgate regulations necessary to carry out the purposes of this chapter under IC 4-22-2.

(c) Neither the secretary of state, nor the securities commissioner, nor any employee of the securities division, shall be liable in their individual capacity, except to the state of Indiana, for any act done or omitted in connection with the performance of their respective duties under the provisions of this chapter.

As added by Acts 1979, P.L.235, SEC.1. Amended by Acts 1981, P.L.215, SEC.8; P.L.27-2007, SEC.15.

IC 23-2-3.1-10

Cease and desist orders; injunctions; subpoenas; production of books and papers

Sec. 10. (a) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any regulation or order adopted under this chapter, the commissioner may investigate and issue orders and notices, including ex parte cease and desist orders without notice. In addition to all other remedies, he may bring an action in any circuit or superior court in the name and on behalf of the state of Indiana against any person or persons participating in or about to participate in a violation of this chapter to enjoin those persons from continuing or doing any act in violation of this chapter or to enforce compliance with this chapter. In any court proceedings, the commissioner may apply for and on due showing be entitled to have issued the court's subpoena requiring:

(1) the appearance of any defendant or his employees or agents to testify and give evidence concerning the acts or conduct or things complained of; or

(2) the production of documents, books and records;

as may appear necessary for the hearing of the petition.

(b) Whenever any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any regulation or order adopted under this chapter, the offeror, target company or any record or beneficial owner of an equity security of the target company may bring an action in the circuit or superior court of the county where the target company has its principal office or Marion County to enjoin that person from continuing or doing any act in violation of this chapter or to enforce compliance with this chapter.

(c) Upon a proper showing, the court may grant a permanent or preliminary injunction or temporary restraining order or may order rescission of any sales, tenders for sale, purchases or tenders for purchase of equity securities determined to be unlawful under this

chapter or any regulation or order of the commissioner. The court may not require the commissioner to post a bond.

As added by Acts 1979, P.L.235, SEC.1. Amended by Acts 1981, P.L.215, SEC.9.

IC 23-2-3.1-11

Appeal; notice; transcript; disposition on appeal

Sec. 11. An appeal may be taken by any offeror, target company, or other party to any proceeding before the commissioner from any final order of the commissioner to the court of appeals for errors of law under the same terms and conditions as govern appeals in ordinary civil actions, except as otherwise provided in this section. An assignment of errors that the decision, ruling, or order of the commissioner is contrary to law is sufficient to present both the sufficiency of the facts found to sustain the decision, ruling, or order, and the sufficiency of the evidence to sustain the findings of facts upon which it was rendered. Within twenty (20) days from the entry of an order, the commissioner shall be served with a written notice of the appeal which states the grounds upon which a reversal of the final order is sought and with a demand in writing for a certified transcript of the record and of all papers on file in the commissioner's office affecting or relating to that order. The commissioner shall within twenty (20) days after service of the notice of appeal make, certify, and deliver to the appellant the transcript. The appellant shall, within five (5) days after the receipt of the transcript, file the transcript and a copy of the notice of appeal with the clerk of the court. The notice of appeal shall stand as the appellant's assignment of errors. If the order of the commissioner is reversed, the court shall direct the commissioner's further action in the matter, including the making and entering of any order and the conditions, limitations, or restrictions to be contained in the order. However, the commissioner is not barred from later revoking or altering the order for any proper cause which may later accrue or be discovered. If the order is affirmed, the appellant may file a new disclosure statement after thirty (30) days from the ruling of the court of appeals if the disclosure statement is not otherwise barred or limited. The appeal does not suspend the operation of the order appealed from during the pendency of the appeal unless upon proper order of the court.

As added by Acts 1979, P.L.235, SEC.1. Amended by Acts 1981, P.L.215, SEC.10; P.L.3-1989, SEC.138.

IC 23-2-4

Chapter 4. Supervision of Continuing Care Contracts

IC 23-2-4-1

Definitions

Sec. 1. As used in this chapter, the term:

"Application fee" means the fee charged an individual, in addition to the entrance fee or any other fee, to cover the provider's reasonable costs in processing the individual's application to become a resident.

"Commissioner" means the securities commissioner as provided in IC 23-19-6-1(a).

"Continuing care agreement" means the following:

(1) For continuing care retirement communities registered before July 1, 2009, an agreement by a provider to furnish to an individual, for the payment of an entrance fee of at least twenty-five thousand dollars (\$25,000) and periodic charges:

- (A) accommodations in a living unit of a continuing care retirement community;
- (B) meals and related services;
- (C) nursing care services;
- (D) medical services;
- (E) other health related services; or
- (F) any combination of these services;

for the life of the individual or for more than one (1) month, unless the agreement is canceled.

(2) For continuing care retirement communities registered after June 30, 2009, an agreement by a provider to furnish to an individual, for the payment of an entrance fee of at least twenty-five thousand dollars (\$25,000) and periodic charges:

- (A) accommodations in a living unit of a continuing care retirement community;
- (B) meals and related services;
- (C) nursing care services;
- (D) medical services;
- (E) other health related services; or
- (F) any combination of these services;

for the life of the individual, unless the agreement is terminated as specified under this chapter.

"Continuing care retirement community" includes both of the following:

- (1) An independent living facility.
- (2) A health facility licensed under IC 16-28.

"Contracting party" means a person or persons who enter into a continuing care agreement with a provider.

"Entrance fee" means the sum of money or other property paid or transferred, or promised to be paid or transferred, to a provider in consideration for one (1) or more individuals becoming a resident of a continuing care retirement community under a continuing care agreement.

"Living unit" means a room, apartment, cottage, or other area within a continuing care retirement community set aside for the use of one (1) or more identified residents.

"Long term financing" means financing for a period in excess of one (1) year.

"Omission of a material fact" means the failure to state a material fact required to be stated in any disclosure statement or registration in order to make the disclosure statement or registration, in light of the circumstances under which they were made, not misleading.

"Person" means an individual, a corporation, a partnership, an association, a limited liability company, or other legal entity.

"Provider" means a person that agrees to provide care under a continuing care agreement.

"Refurbishment fee" means the fee charged an individual, in addition to the entrance fee or any other fee, to cover the provider's reasonable costs in refurbishing a previously occupied living unit specifically designated for occupancy by that individual.

"Resident" means an individual who is entitled to receive benefits under a continuing care agreement.

"Solicit" means any action of a provider in seeking to have an individual residing in Indiana pay an application fee and enter into a continuing care agreement, including:

- (1) personal, telephone, or mail communication or any other communication directed to and received by any individual in Indiana; and
- (2) advertising in any media distributed or communicated by any means to individuals residing in Indiana.

"Termination" refers to the cancellation of a continuing care agreement under this chapter.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.234-1985, SEC.1; P.L.177-1991, SEC.8; P.L.8-1993, SEC.312; P.L.27-2007, SEC.16; P.L.153-2009, SEC.3.

IC 23-2-4-2

Application of chapter

Sec. 2. This chapter applies to any person who:

- (1) enters into a continuing care agreement in Indiana to provide care at a continuing care retirement community located either inside Indiana or outside Indiana;
- (2) enters into a continuing care agreement outside Indiana to provide care at a continuing care retirement community located in Indiana;
- (3) extends the term of an existing continuing care agreement in Indiana to provide care at a continuing care retirement community located either inside Indiana or outside Indiana;
- (4) extends the term of an existing continuing care agreement outside Indiana to provide care at a continuing care retirement community located in Indiana; or
- (5) solicits the execution of a continuing care agreement by persons in Indiana.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.153-2009, SEC.4.

IC 23-2-4-3

Registration; application; order

Sec. 3. (a) A provider shall register each continuing care retirement community with the commissioner if:

(1) before opening the continuing care retirement community, the provider:

(A) enters into;

(B) extends; or

(C) solicits;

a continuing care agreement; or

(2) while operating the continuing care retirement community, the provider has entered into a continuing care agreement with at least twenty-five percent (25%) of the individuals living in the continuing care retirement community.

(b) If a provider fails to register a continuing care retirement community, the provider may not:

(1) enter into, or extend the term of, a continuing care agreement to provide continuing care to any person at that continuing care retirement community;

(2) provide services at that continuing care retirement community under a continuing care agreement; or

(3) solicit the execution, by persons residing within Indiana, of a continuing care agreement to provide continuing care at that continuing care retirement community.

(c) The provider's application for registration must be filed with the commissioner by the provider on forms prescribed by the commissioner, and must be accompanied by an application fee of two hundred fifty dollars (\$250). The application must contain the following information:

(1) an initial disclosure statement, as described in section 4 of this chapter; and

(2) any other information required by the commissioner under rules adopted under this chapter.

(d) The commissioner may accept, in lieu of the information required by subsection (c), any other registration, disclosure statement, or other document filed by the provider in Indiana, in any other state, or with the federal government if the commissioner determines that such document substantially complies with the requirements of this chapter.

(e) Upon receipt of the application for registration, the commissioner shall mark the application filed. Within sixty (60) days of the filing of the application, the commissioner shall enter an order registering the provider or rejecting the registration. If no order of rejection is entered within that sixty (60) day period, the provider shall be considered registered unless the provider has consented in writing to an extension of time; if no order of rejection is entered within the time period as extended by consent, the provider shall be

considered registered.

(f) If the commissioner determines that the application for registration complies with all of the requirements of this chapter, the commissioner shall enter an order registering the provider. If the commissioner determines that such requirements have not been met, the commissioner shall notify the provider of the deficiencies and shall inform the provider that it has sixty (60) days to correct them. If the deficiencies are not corrected within sixty (60) days, the commissioner shall enter an order rejecting the registration. The order rejecting the registration shall include the findings of fact upon which the order is based. The provider may petition for reconsideration, and is entitled to a hearing upon that petition.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.153-2009, SEC.5.

IC 23-2-4-4

Initial disclosure statement; contents

Sec. 4. The initial disclosure statement shall contain the following information:

- (1) The name and business address of the provider.
- (2) If the provider is a partnership, corporation, limited liability company, or association, the names and duties of its officers, directors, trustees, partners, members, or managers.
- (3) The name and business address of any person having a five percent (5%) or greater ownership interest in the provider or manager of the continuing care retirement community.
- (4) A description of the business experience of the provider and its officers, directors, trustees, partners, or managers.
- (5) A statement as to whether the provider or any of its officers, directors, trustees, partners, or managers, within ten (10) years prior to the date of the initial disclosure statement:
 - (A) was convicted of a crime;
 - (B) was a party to any civil action for fraud, embezzlement, fraudulent conversion, or misappropriation of property that resulted in a judgment against the provider or individual;
 - (C) had a prior discharge in bankruptcy or was found insolvent in any court action; or
 - (D) had any state or federal licenses or permits suspended or revoked in connection with any health care or continuing care activities, or related business activities.
- (6) The identity of any other continuing care retirement community currently or previously operated by the provider or manager of the continuing care retirement community.
- (7) The location and description of other properties, both existing and proposed, of the provider in which the provider owns a twenty-five percent (25%) ownership interest, and on which continuing care retirement communities are or are intended to be located.
- (8) A statement as to whether the provider is, or is affiliated with, a religious, charitable, or other nonprofit association, and

the extent to which the affiliate organization is responsible for the financial and contractual obligations of the provider.

(9) A description of all services to be provided by the provider under its continuing care agreements with contracting parties, and a description of all fees for those services, including conditions under which the fees may be adjusted.

(10) A description of the terms and conditions under which the continuing care agreement can be cancelled, or fees refunded.

(11) Financial statements of the provider prepared in accordance with generally accepted accounting principles applied on a consistent basis and certified by an independent certified or public accountant, including a balance sheet as of the end of the provider's last fiscal year and income statements for the last three (3) fiscal years, or such shorter period of time as the provider has been in operation.

(12) If the operation of the continuing care retirement community has not begun, a statement of the anticipated source and application of funds to be used in the purchase or construction of the continuing care retirement community, and an estimate of the funds, if any, which are anticipated to be necessary to pay for start-up losses.

(13) A copy of the forms of agreement for continuing care used by the provider.

(14) Any other information that the commissioner may require by rule or order.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.8-1993, SEC.313; P.L.153-2009, SEC.6.

IC 23-2-4-5

Annual disclosure statement; contents; fee

Sec. 5. (a) Each year after the initial year in which a continuing care retirement community is registered under section 3 of this chapter, the provider shall file with the commissioner within four (4) months after the end of the provider's fiscal year, unless otherwise extended by the written consent of the commissioner, an annual disclosure statement which shall consist of the financial information set forth in section 4(11) of this chapter.

(b) The annual disclosure statement required to be filed with the commissioner under this section shall be accompanied by an annual filing fee of one hundred dollars (\$100).

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.234-1985, SEC.2; P.L.153-2009, SEC.7.

IC 23-2-4-6

Disclosure statements; amendment

Sec. 6. (a) A provider shall amend its initial or annual disclosure statement filed with the commissioner under section 3 and section 5 of this chapter at any time if necessary to prevent the initial or annual disclosure statement from containing any material misstatement of fact or omission of a material fact.

(b) Upon the sale of a continuing care retirement community to a new provider, the new provider shall amend the currently filed disclosure statement to reflect the fact of sale and any other fact that would be required to be disclosed under section 4 of this chapter if the new provider were filing an initial disclosure statement.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.153-2009, SEC.8.

IC 23-2-4-7

Delivery of disclosure statements to persons executing agreements

Sec. 7. (a) Prior to the execution of a continuing care agreement, a provider shall deliver to the contracting party and the prospective resident a copy of the initial disclosure statement and the latest annual disclosure statement.

(b) After the execution of a continuing care agreement, a provider shall provide, upon request, a copy of the initial disclosure statement and the latest annual disclosure statement.

As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-4-7.5

Termination of contract

Sec. 7.5. (a) This section does not apply to a continuing care retirement community registered before July 1, 2009.

(b) A continuing care agreement may be terminated for any of the following reasons:

- (1) The provider has determined that the resident is inappropriate for living in the care setting.
- (2) The resident is unable to fully pay the periodic charges because the resident inappropriately divested the assets and income the resident identified at the time of admission to meet the ordinary and customary living expenses for the resident.
- (3) Providing assistance to the resident would jeopardize the financial solvency of the provider and the other residents being served by the provider.
- (4) The resident has requested a termination of the agreement as allowed under the agreement.

As added by P.L.153-2009, SEC.9.

IC 23-2-4-8

Sanctions against registration of providers or execution of new continuing care agreements; findings of fact; cease and desist order; notice and hearing

Sec. 8. (a) The commissioner may deny, revoke, or refuse to renew registration of a provider or prohibit the execution of new continuing care agreements if the commissioner finds that:

- (1) the provider willfully violated any provision of this chapter or any rule or order adopted under this chapter;
- (2) the provider failed to file an annual disclosure statement required by section 5 of this chapter;
- (3) the provider failed to deliver to a prospective resident or

contracting party a copy of the disclosure statements as required by section 7 of this chapter;

(4) the provider delivered to a prospective resident or contracting party a disclosure statement that contained a misstatement of material fact or omission of a material fact even though the provider, at the time of the delivery of the disclosure statement, had no actual knowledge of the misstatement or omission;

(5) the provider failed to comply with the terms of a cease and desist order of the commissioner; or

(6) according to rules adopted by the commissioner under IC 4-22-2, the provider is insolvent and the financial condition of the provider may jeopardize the care of the residents.

(b) Findings of fact in support of an order under this section, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(c) If the commissioner finds, after notice and hearing, that the provider has committed a violation for which revocation could be ordered, the commissioner may first issue a cease and desist order. If the cease and desist order is not effective in remedying the violation, the commissioner may, after notice and hearing, order that the registration be revoked.

(d) The commissioner may summarily prohibit the execution of new continuing care agreements pending final determination of any proceeding under this section. Upon the entry of the order, the commissioner shall promptly notify the provider that it has been entered and of the reasons for the order and that upon receipt of a written request the matter will be set down for hearing to commence within fifteen (15) business days after receipt of the request unless the provider consents to a later date. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to the provider, may modify, vacate, or extend the order until final determination.

(e) Except as provided in subsection (d), an order may not be entered under this section unless there has been:

- (1) appropriate prior notice to the provider;
- (2) opportunity for hearing; and
- (3) written findings of fact and conclusions of law.

(f) The commissioner may vacate or modify an order if the commissioner finds that the conditions that prompted entry have changed or that it is in the public interest to do so.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.131-1988, SEC.6; P.L.1-1992, SEC.114.

IC 23-2-4-9

Offense

Sec. 9. A person who knowingly or intentionally fails to comply with any of the registration or disclosure requirements of sections 3,

4, 5, 6, or 7 of this chapter commits a Class A infraction.
As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-4-10

Conditions of registration; deposit of entrance and refurbishment fees into escrow account; limitations

Sec. 10. (a) Except as provided by section 11 of this chapter, the commissioner shall require, as a condition of registration, that:

- (1) the provider establish an interest-bearing escrow account with a bank, trust company, or other escrow agent approved by the commissioner; and
- (2) any entrance fees received by the provider prior to the date the resident is permitted to occupy the living unit in the continuing care retirement community be placed in the escrow account, subject to release as provided by subsection (b).

(b) If the entrance fee gives the resident the right to occupy a living unit that has been previously occupied, the entrance fee and any income earned thereon shall be released to the provider when the living unit is first occupied by the new resident. If the entrance fee applies to a living unit that has not been previously occupied by any resident, the entrance fee and any income earned thereon shall be released to the provider when the commissioner is satisfied that:

- (1) aggregate entrance fees received or receivable by the provider pursuant to executed continuing care agreements, plus:
 - (A) anticipated proceeds of any first mortgage loan or other long term financing commitment; and
 - (B) funds from other sources in the actual possession of the provider;

are equal to at least fifty percent (50%) of the aggregate cost of constructing, purchasing, equipping, and furnishing the continuing care retirement community and equal to at least fifty percent (50%) of the estimate of funds necessary to fund startup losses of the continuing care retirement community, as reported under section 4(12) of this chapter; and

- (2) a commitment has been received by the provider for any permanent mortgage loan or other long term financing described in the statement of anticipated source and application of funds to be used in the purchase or construction of the continuing care retirement community under section 4(12) of this chapter, and any conditions of the commitment prior to disbursement of funds thereunder, other than completion of the construction or closing of the purchase of the continuing care retirement community, have been substantially satisfied.

(c) If the funds in an escrow account under this section and any interest earned thereon are not released within the time provided by this section or by rules adopted by the commissioner, then the funds shall be returned by the escrow agent to the persons who made the payment to the provider.

(d) An entrance fee held in escrow shall be returned by the escrow agent to the person who paid the fee in the following instances:

(1) At the election of the person who paid the fee, at any time before the fee is released to the provider under subsection (b).

(2) Upon receipt by the escrow agent of notice from the provider that the person is entitled to a refund of the entrance fee.

(e) This section does not require a provider to place a nonrefundable application fee charged to prospective residents in escrow.

(f) A provider is not required to place a refurbishment fee of a prospective resident in escrow if a continuing care agreement provides that the prospective resident:

(1) will occupy the living unit within sixty (60) days after the refurbishment fee is paid; and

(2) will receive a refund of any portion of the refurbishment fee not expended for refurbishment if the continuing care agreement is cancelled before occupancy.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.234-1985, SEC.3; P.L.153-2009, SEC.10.

IC 23-2-4-11

Letter of credit, negotiable securities, or bond instead of escrow account

Sec. 11. In lieu of establishing an escrow account under section 10 of this chapter, a provider may, with the commissioner's permission, post a letter of credit from a financial institution, negotiable securities, or a bond by a surety authorized to do business in Indiana. The letter of credit, negotiable securities, or bond must be:

(1) approved by the commissioner as to form;

(2) for an amount not to exceed the total amount of all entrance fees received by the provider before the date the resident is permitted to occupy the living unit; and

(3) executed in favor of the commissioner on behalf of individuals who may be found entitled to a refund of entrance fees.

As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-4-12

Entrance fees; use

Sec. 12. Any money or property received by a provider as an entrance fee to a continuing care retirement community constructed or purchased after August 31, 1982, or any income earned thereon, may be used by the provider only for purposes directly related to the construction, maintenance, or operation of that particular continuing care retirement community. A continuing care retirement community in operation on September 1, 1982, may not use the entrance fees or income earned thereon after August 31, 1982, for the construction, operation, or maintenance of another continuing care retirement community constructed or purchased after August 31, 1982.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.153-2009,

SEC.11.

IC 23-2-4-13

Retirement home guaranty fund; creation and expiration; purpose; levy

Sec. 13. (a) There is established the Indiana retirement home guaranty fund. The purpose of the fund is to provide a mechanism for protecting the financial interests of residents and contracting parties in the event of the bankruptcy of the provider.

(b) To create the fund, a guaranty association fund fee of one hundred dollars (\$100) shall be levied on each contracting party who enters into a continuing care agreement after August 31, 1982, and before July 1, 2009. The fee shall be collected by the provider and forwarded to the commissioner within thirty (30) days after occupancy by the resident. Failure of the provider to collect and forward such fee to the commissioner within that thirty (30) day period shall result in the imposition by the commissioner of a twenty-five dollar (\$25) penalty against the provider. In addition, interest payable by the provider shall accrue on the unpaid fee at the rate of two percent (2%) a month.

(c) Any money received by the commissioner under subsection (b) shall be forwarded to the treasurer of state. The fund, and any income from it, shall be held in trust, deposited in a segregated account, invested and reinvested by the treasurer of state in the same manner as provided in IC 20-49-3-10 for investment of the common school fund.

(d) All reasonable expenses of collecting and administering the fund shall be paid from the fund.

(e) Money in the fund at the end of the state's fiscal year shall remain in the fund and shall not revert to the general fund.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.2-2006, SEC.180; P.L.153-2009, SEC.12.

IC 23-2-4-14

Fund; board of directors; membership; compensation

Sec. 14. (a) There is established a board of directors to administer the fund. The board of directors of the fund shall consist of five (5) members to be appointed by the governor, from a list submitted by the secretary of state, as follows:

- (1) one (1) provider;
- (2) two (2) residents;
- (3) one (1) individual with expertise in insurance; and
- (4) one (1) individual with expertise in banking and finance.

In addition, the commissioner shall serve as an ex officio member of the board. Directors shall serve such terms as are established in the plan of operation under section 15 of this chapter.

(b) Members of the board of directors are not entitled to compensation for their services. However, each member is entitled to the following:

- (1) Reimbursement for traveling and other expenses incurred as

members of the board, as provided in the state travel policies and procedures, established by the Indiana department of administration and approved by the budget agency.

(2) Reimbursement for expenses related to one (1) meal provided each year in connection with the board's annual meeting.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.177-1991, SEC.9.

IC 23-2-4-15

Board; submission and approval of plan of operation; contents of plan; adoption of rules

Sec. 15. (a) The board of directors shall submit to the commissioner a plan of operation, and such subsequent amendments to the plan as are necessary to assure the fair, reasonable, and equitable administration of the fund. The plan of operation is effective upon the commissioner's approval, which must be in writing.

(b) If the board of directors fails to submit by September 1, 1983, a plan of operation considered suitable by the commissioner, or, if at any other time the board of directors fails to submit amendments to the plan considered necessary by the commissioner, the commissioner shall adopt rules under IC 4-22-2 necessary to carry out this chapter. The rules continue in force until modified by the commissioner or superseded by a plan submitted by the board of directors and approved by the commissioner.

(c) The plan of operation shall establish:

- (1) procedures for handling the assets of the fund;
- (2) the method of reimbursing members of the board of directors under section 14 of this chapter;
- (3) regular places and times for meetings of the board of directors;
- (4) recordkeeping procedures for all financial transactions relating to the fund and the board of directors; and
- (5) any additional provisions necessary for the execution of the powers and duties of the board of directors.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.3-2008, SEC.166.

IC 23-2-4-16

Termination of bankrupt home; payments to residents from fund; subrogation rights of board

Sec. 16. (a) If a continuing care retirement community is bankrupt and the operation of the continuing care retirement community is terminated, the board of directors shall, subject to the approval of the commissioner, distribute from the guaranty association fund established in section 13 to the living residents of the continuing care retirement community an aggregate amount not to exceed one-half (1/2) of the amount in the fund at the time of disbursement. The amount each living resident is entitled to receive shall be prorated,

based on the total amount paid on behalf of the resident by the contracting party under the continuing care agreement. In no event may the amount paid to an individual resident under this section exceed the total amount paid on behalf of that resident under the continuing care agreement, less the total value of services received under the agreement.

(b) Any living resident of the continuing care retirement community shall be eligible to receive distributions under subsection (a), regardless of whether any contribution to the guaranty association fund has been made on behalf of the resident.

(c) A resident compensated under this section assigns the resident's rights under the continuing care agreement, to the extent of compensation received under this section, to the board of directors on behalf of the fund. The board of directors may require an assignment of those rights by a resident to the board, on behalf of the fund, as a condition precedent to the receipt of compensation under this section. The board of directors, on behalf of the fund, is subrogated to these rights against the assets of a bankrupt or dissolved provider. Any monies or property collected by the board of directors under this subsection shall be deposited in the fund.

(d) The subrogation rights of the board of directors, on behalf of the fund, have the same priority against the assets of the bankrupt or dissolved provider as those possessed by the resident under the continuing care agreement.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.234-1985, SEC.4; P.L.153-2009, SEC.13.

IC 23-2-4-17

Fund; examination and regulation by commissioner; reports

Sec. 17. The fund is subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner before May 1 of each year:

(1) a financial report for the preceding calendar year, in a form approved by the commissioner; and

(2) a report of its activities during the preceding calendar year.

As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-4-18

Fund; exemption from certain fees and taxes

Sec. 18. The fund is exempt from payment of all fees and taxes levied by Indiana or any of its political subdivisions.

As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-4-19

Repealed

(Repealed by P.L.234-1985, SEC.5.)

IC 23-2-4-20

Disclosure statements; liability of provider

Sec. 20. (a) If:

(1) a provider enters into a continuing care agreement:
 (A) in violation of section 3 of this chapter; or
 (B) without having first delivered to the contracting party and the prospective resident the disclosure statements as required by section 7 of this chapter; or
(2) a provider delivers to the prospective resident and the contracting party a disclosure statement that makes an untrue or misleading statement of material fact or omits a material fact; the provider is liable to the individual who entered into the continuing care agreement for the repayment of all entrance fees, application fees, periodic charges, or other fees paid by that person to the provider less the reasonable value of care and lodging provided the resident until the untrue statement, misstatement, or omission was actually or should reasonably have been discovered by the resident or the contracting party, together with interest thereon at the legal rate for judgments, costs, and reasonable attorney's fees.

(b) Liability of the provider under this section for any untrue statement, misstatement, or omission in the disclosure statement shall exist only if the provider had actual knowledge of or, in the exercise of reasonable care, should have known of the untrue statement, misstatement, or omission.

(c) An action may not be maintained by any individual to enforce liability under this section unless commenced within:

- (1) two (2) years after the execution of the continuing care agreement that gave rise to the violation;
- (2) two (2) years after the failure to deliver the disclosure statement; or
- (3) two (2) years after the delivery of the disclosure statement containing an untrue statement, misstatement, or omission of a material fact;

whichever occurs later.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.16-1983, SEC.14.

IC 23-2-4-21

Commissioner; petition for appointment of receiver

Sec. 21. If the commissioner has reason to believe that a continuing care retirement community is insolvent, the commissioner may petition the superior or circuit court of the county in which the continuing care retirement community is located, or the superior or circuit court of Marion County, for the appointment of a receiver to assume the management and possession of the continuing care retirement community and its assets.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.153-2009, SEC.14.

IC 23-2-4-22

Commissioner; powers; hearings and investigations

Sec. 22. The commissioner, or his designated representative, may:

- (1) conduct under IC 4-21.5-3 hearings necessary to carry out

- this chapter;
- (2) hear evidence;
- (3) conduct investigations to determine whether any person has violated or is about to violate this chapter or a rule or order issued under this chapter; and
- (4) compel the production of any item relevant to an investigation under this chapter.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.7-1987, SEC.104.

IC 23-2-4-23

Violations; cease and desist orders; actions for injunctive relief

Sec. 23. (a) If the commissioner determines, after notice and hearing, that any person has violated any provision of this chapter or any rule or order issued under this chapter, the commissioner may issue an order requiring the person to cease and desist from the unlawful practice or to take such affirmative action as in the judgment of the commissioner will carry out the purposes of this chapter.

(b) If the commissioner makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing a cease and desist order, it may issue a temporary cease and desist order which shall include in its terms a provision that, upon request, a hearing shall be held within ten (10) days of such request to determine whether the order becomes permanent. A temporary cease and desist order shall be served on the person subject to it by certified mail, return receipt requested.

(c) If it appears that a person has engaged in an act or practice constituting a violation of any provision of this chapter or of a rule or order issued under this chapter, the commissioner may, with or without prior administrative proceedings, bring an action in the circuit court to enjoin such acts or practices or to enforce compliance with this chapter or any rule or order issued under this chapter. Upon proper showing, injunctive relief or temporary restraining orders shall be granted. The commissioner shall not be required to post a bond in any court proceeding.

As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-4-24

Rules

Sec. 24. The commissioner shall adopt under IC 4-22-2 rules necessary to carry out the provisions of this chapter.

As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-5

Chapter 5. Loan Brokers

IC 23-2-5-1

"Commissioner" defined

Sec. 1. As used in this chapter, "commissioner" refers to the securities commissioner appointed under IC 23-19-6-1(a).

As added by P.L.235-1985, SEC.1. Amended by P.L.27-2007, SEC.17.

IC 23-2-5-2

"Loan" defined

Sec. 2. As used in this chapter, "loan" means any agreement to advance money or property in return for the promise to make payments for the money or property.

As added by P.L.235-1985, SEC.1.

IC 23-2-5-3 Version a

Definitions

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

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

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

(c) As used in this chapter, "loan broker" means any person who, in return for any consideration from any source procures, attempts to procure, or assists in procuring, a residential mortgage loan from a third party or any other person, whether or not the person seeking the loan actually obtains the loan. "Loan broker" does not include:

- (1) any supervised financial organization (as defined in IC 26-1-4-102.5), including a bank, savings bank, trust company, savings association, or credit union;
- (2) any other financial institution that is:
 - (A) regulated by any agency of the United States or any state; and
 - (B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;
- (3) any insurance company;
- (4) any person arranging financing for the sale of the person's product; or
- (5) a creditor that is licensed under IC 24-4.4-2-402.

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

(e) As used in this chapter, "mortgage loan origination activities" means performing any of the following activities for compensation or gain in connection with a residential mortgage loan:

(1) Receiving or recording a borrower's or potential borrower's residential mortgage loan application information in any form for use in a credit decision by a creditor.

(2) Offering to negotiate or negotiating terms of a residential mortgage loan.

(f) As used in this chapter, "borrower's residential mortgage loan application information" means the address of the proposed residential real property to be mortgaged and borrower's essential personal and financial information necessary for an informed credit decision to be made on the borrower's mortgage loan application.

(g) As used in this chapter, "mortgage loan originator" means an individual engaged in mortgage loan origination activities. The term does not include a person who:

(1) performs purely administrative or clerical tasks on behalf of a mortgage loan originator or acts as a loan processor or underwriter;

(2) performs only real estate brokerage activities and is licensed in accordance with IC 25-34.1 or the applicable laws of another state, unless the person is compensated by a creditor, a loan broker, a mortgage loan originator, or any agent of a creditor, a loan broker, or a mortgage loan originator; or

(3) is involved only in extensions of credit relating to time share plans (as defined in 11 U.S.C. 101(53D)).

(h) As used in this chapter, "mortgage loan originator license" means a license issued by the commissioner authorizing an individual to act as a mortgage loan originator on behalf of a loan broker licensee.

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

(j) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls ten percent (10%) or more of the equity interest in a loan broker licensed or required to be licensed under this chapter, regardless of whether the person owns or controls the equity interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

(k) As used in this chapter, "principal manager" means an individual who:

(1) has at least three (3) years of experience:

(A) as a mortgage loan originator; or

(B) in financial services;

that is acceptable to the commissioner; and

(2) is principally responsible for the supervision and management of the employees and business affairs of a loan broker licensee.

(l) As used in this chapter, "principal manager license" means a license issued by the commissioner authorizing an individual to act as:

- (1) a principal manager; and
 - (2) a mortgage loan originator;
- on behalf of a loan broker licensee.

(m) As used in this chapter, "bona fide third party fee", with respect to a residential mortgage loan, includes any of the following:

- (1) Fees for real estate appraisals. However, if the residential mortgage loan is governed by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (12 U.S.C. 3331 through 3352), the fee for an appraisal performed in connection with the loan is not a bona fide third party fee unless the appraisal is performed by a person that is licensed or certified under IC 25-34.1-3-8.
- (2) Fees for title examination, abstract of title, title insurance, property surveys, or similar purposes.
- (3) Notary and credit report fees.
- (4) Fees for the services provided by a loan broker in procuring possible business for a creditor if the fees are paid by the creditor.

(n) As used in this chapter, "branch office" means any fixed physical location from which a loan broker licensee holds itself out as engaging in the loan brokerage business.

(o) As used in this chapter, "loan processor or underwriter" means an individual who:

- (1) is employed by a loan broker licensee and acts at the direction of, and subject to the supervision of, the loan broker licensee or a licensed principal manager employed by the loan broker licensee; and
- (2) performs solely clerical or support duties on behalf of the loan broker licensee, including any of the following activities with respect to a residential mortgage loan application received by the loan broker licensee:
 - (A) The receipt, collection, distribution, and analysis of information commonly used in the processing or underwriting of a residential mortgage loan.
 - (B) Communicating with a borrower or potential borrower to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include:
 - (i) offering or negotiating loan rates or terms; or
 - (ii) counseling borrowers or potential borrowers about residential mortgage loan rates or terms.

(p) As used in this chapter, "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including any of the following:

- (1) Acting as a real estate broker or salesperson for a buyer, seller, lessor, or lessee of real property.
- (2) Bringing together parties interested in the sale, lease, or exchange of real property.
- (3) Negotiating, on behalf of any party, any part of a contract concerning the sale, lease, or exchange of real property, other

than in connection with obtaining or providing financing for the transaction.

(4) Engaging in any activity for which the person performing the activity is required to be licensed under IC 25-34.1 or the applicable laws of another state.

(5) Offering to engage in any activity, or to act in any capacity with respect to any activity, described in subdivisions (1) through (4).

(q) As used in this chapter, "registered mortgage loan originator" means a mortgage loan originator who:

(1) is an employee of:

(A) a depository institution;

(B) a subsidiary that is:

(i) owned and controlled by a depository institution; and

(ii) regulated by a federal financial institution regulatory agency (as defined in 12 U.S.C. 3350(6)); or

(C) an institution regulated by the Farm Credit Administration; and

(2) is registered with and maintains a unique identifier with the Nationwide Mortgage Licensing System and Registry.

(r) As used in this chapter, "residential mortgage loan" means a loan that is or will be used primarily for personal, family, or household purposes and that is secured by a mortgage (or another equivalent consensual security interest) on a dwelling (as defined in Section 103(w) of the federal Truth in Lending Act (15 U.S.C. 1602(w)) or on residential real estate on which a dwelling is constructed or intended to be constructed.

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

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

(2) Any of the following data elements:

(A) A Social Security number.

(B) A driver's license number.

(C) A state identification card number.

(D) A credit card number.

(E) A financial account number or debit card number in combination with a security code, password, or access code that would permit access to the person's account.

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

(A) Address.

(B) Telephone number.

(C) Information concerning the individual's:

(i) income or other compensation;

(ii) credit history;

(iii) credit score;

(iv) assets;

(v) liabilities; or

(vi) employment history.

(t) As used in this chapter, personal information is "encrypted" if

the personal information:

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

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

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

- (1) a Social Security number;
- (2) a driver's license number;
- (3) a state identification number; or
- (4) an account number;

are accessible as part of the personal information.

(v) As used in this chapter, "depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(w) As used in this chapter, "state licensed mortgage loan originator" means any individual who:

- (1) is a mortgage loan originator;
- (2) is not an employee of:
 - (A) a depository institution;
 - (B) a subsidiary that is:
 - (i) owned and controlled by a depository institution; and
 - (ii) regulated by a federal financial institution regulatory agency (as defined in 12 U.S.C. 3350(6)); or
 - (C) an institution regulated by the Farm Credit Administration;
- (3) is licensed by a state or by the Secretary of the United States Department of Housing and Urban Development under Section 1508 of the S.A.F.E. Mortgage Licensing Act of 2008 (Title V of P.L.110-289); and
- (4) is registered as a mortgage loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(x) As used in this chapter, "unique identifier" means a number or other identifier that:

- (1) permanently identifies a mortgage loan originator; and
- (2) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the federal financial institution regulatory agencies to facilitate:
 - (A) the electronic tracking of mortgage loan originators; and
 - (B) the uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against mortgage loan originators.

(y) As used in this chapter, "residential real estate" means real property:

- (1) that is located in Indiana; and

(2) upon which a dwelling is constructed or intended to be constructed.

As added by P.L.235-1985, SEC.1. Amended by P.L.247-1987, SEC.1; P.L.1-1990, SEC.242; P.L.8-1993, SEC.314; P.L.79-1998, SEC.22; P.L.230-1999, SEC.1; P.L.14-2000, SEC.52; P.L.115-2001, SEC.1; P.L.73-2004, SEC.12; P.L.230-2007, SEC.6; P.L.145-2008, SEC.10; P.L.1-2009, SEC.130; P.L.156-2009, SEC.1; P.L.35-2010, SEC.4; P.L.85-2012, SEC.2.

IC 23-2-5-3 Version b

Definitions

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

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

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

(c) As used in this chapter, "loan broker" means any person who, in return for any consideration from any source procures, attempts to procure, or assists in procuring, a residential mortgage loan from a third party or any other person, whether or not the person seeking the loan actually obtains the loan. "Loan broker" does not include:

(1) any supervised financial organization (as defined in IC 26-1-4-102.5), including a bank, savings bank, trust company, savings association, or credit union;

(2) any other financial institution that is:

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

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

(3) any insurance company;

(4) any person arranging financing for the sale of the person's product; or

(5) a creditor that is licensed under IC 24-4.4-2-402.

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

(e) As used in this chapter, "mortgage loan origination activities" means performing any of the following activities for compensation or gain in connection with a residential mortgage loan:

(1) Receiving or recording a borrower's or potential borrower's residential mortgage loan application information in any form for use in a credit decision by a creditor.

(2) Offering to negotiate or negotiating terms of a residential mortgage loan.

(f) As used in this chapter, "borrower's residential mortgage loan application information" means the address of the proposed residential real property to be mortgaged and borrower's essential

personal and financial information necessary for an informed credit decision to be made on the borrower's mortgage loan application.

(g) As used in this chapter, "mortgage loan originator" means an individual engaged in mortgage loan origination activities. The term does not include a person who:

- (1) performs purely administrative or clerical tasks on behalf of a mortgage loan originator or acts as a loan processor or underwriter;
- (2) performs only real estate brokerage activities and is licensed in accordance with IC 25-34.1 or the applicable laws of another state, unless the person is compensated by a creditor, a loan broker, a mortgage loan originator, or any agent of a creditor, a loan broker, or a mortgage loan originator; or
- (3) is involved only in extensions of credit relating to time share plans (as defined in 11 U.S.C. 101(53D)).

(h) As used in this chapter, "mortgage loan originator license" means a license issued by the commissioner authorizing an individual to act as a mortgage loan originator on behalf of a loan broker licensee.

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

(j) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls ten percent (10%) or more of the equity interest in a loan broker licensed or required to be licensed under this chapter, regardless of whether the person owns or controls the equity interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

(k) As used in this chapter, "principal manager" means an individual who:

- (1) has at least three (3) years of experience:
 - (A) as a mortgage loan originator; or
 - (B) in financial services;that is acceptable to the commissioner; and
- (2) is principally responsible for the supervision and management of the employees and business affairs of a loan broker licensee.

(l) As used in this chapter, "principal manager license" means a license issued by the commissioner authorizing an individual to act as:

- (1) a principal manager; and
 - (2) a mortgage loan originator;
- on behalf of a loan broker licensee.

(m) As used in this chapter, "bona fide third party fee", with respect to a residential mortgage loan, includes any of the following:

- (1) Fees for real estate appraisals. However, if the residential mortgage loan is governed by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (12 U.S.C.

3331 through 3352), the fee for an appraisal performed in connection with the loan is not a bona fide third party fee unless the appraisal is performed by a person that is licensed or certified under IC 25-34.1-3-8.

(2) Fees for title examination, abstract of title, title insurance, property surveys, or similar purposes.

(3) Notary and credit report fees.

(4) Fees for the services provided by a loan broker in procuring possible business for a creditor if the fees are paid by the creditor.

(n) As used in this chapter, "branch office" means any fixed physical location from which a loan broker licensee holds itself out as engaging in the loan brokerage business.

(o) As used in this chapter, "loan processor or underwriter" means an individual who:

(1) is employed by a loan broker licensee and acts at the direction of, and subject to the supervision of, the loan broker licensee or a licensed principal manager employed by the loan broker licensee; and

(2) performs solely clerical or support duties on behalf of the loan broker licensee, including any of the following activities with respect to a residential mortgage loan application received by the loan broker licensee:

(A) The receipt, collection, distribution, and analysis of information commonly used in the processing or underwriting of a residential mortgage loan.

(B) Communicating with a borrower or potential borrower to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include:

(i) offering or negotiating loan rates or terms; or

(ii) counseling borrowers or potential borrowers about residential mortgage loan rates or terms.

(p) As used in this chapter, "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including any of the following:

(1) Acting as a real estate broker for a buyer, seller, lessor, or lessee of real property.

(2) Bringing together parties interested in the sale, lease, or exchange of real property.

(3) Negotiating, on behalf of any party, any part of a contract concerning the sale, lease, or exchange of real property, other than in connection with obtaining or providing financing for the transaction.

(4) Engaging in any activity for which the person performing the activity is required to be licensed under IC 25-34.1 or the applicable laws of another state.

(5) Offering to engage in any activity, or to act in any capacity with respect to any activity, described in subdivisions (1) through (4).

(q) As used in this chapter, "registered mortgage loan originator" means a mortgage loan originator who:

- (1) is an employee of:
 - (A) a depository institution;
 - (B) a subsidiary that is:
 - (i) owned and controlled by a depository institution; and
 - (ii) regulated by a federal financial institution regulatory agency (as defined in 12 U.S.C. 3350(6)); or
 - (C) an institution regulated by the Farm Credit Administration; and
- (2) is registered with and maintains a unique identifier with the Nationwide Mortgage Licensing System and Registry.

(r) As used in this chapter, "residential mortgage loan" means a loan that is or will be used primarily for personal, family, or household purposes and that is secured by a mortgage (or another equivalent consensual security interest) on a dwelling (as defined in Section 103(w) of the federal Truth in Lending Act (15 U.S.C. 1602(w)) or on residential real estate on which a dwelling is constructed or intended to be constructed.

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

- (1) An individual's first and last names or first initial and last name.
- (2) Any of the following data elements:
 - (A) A Social Security number.
 - (B) A driver's license number.
 - (C) A state identification card number.
 - (D) A credit card number.
 - (E) A financial account number or debit card number in combination with a security code, password, or access code that would permit access to the person's account.
- (3) With respect to an individual, any of the following:
 - (A) Address.
 - (B) Telephone number.
 - (C) Information concerning the individual's:
 - (i) income or other compensation;
 - (ii) credit history;
 - (iii) credit score;
 - (iv) assets;
 - (v) liabilities; or
 - (vi) employment history.

(t) As used in this chapter, personal information is "encrypted" if the personal information:

- (1) has been transformed through the use of an algorithmic process into a form in which there is a low probability of assigning meaning without use of a confidential process or key; or
- (2) is secured by another method that renders the personal information unreadable or unusable.

(u) As used in this chapter, personal information is "redacted" if

the personal information has been altered or truncated so that not more than the last four (4) digits of:

- (1) a Social Security number;
- (2) a driver's license number;
- (3) a state identification number; or
- (4) an account number;

are accessible as part of the personal information.

(v) As used in this chapter, "depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(w) As used in this chapter, "state licensed mortgage loan originator" means any individual who:

- (1) is a mortgage loan originator;
- (2) is not an employee of:
 - (A) a depository institution;
 - (B) a subsidiary that is:
 - (i) owned and controlled by a depository institution; and
 - (ii) regulated by a federal financial institution regulatory agency (as defined in 12 U.S.C. 3350(6)); or
 - (C) an institution regulated by the Farm Credit Administration;
- (3) is licensed by a state or by the Secretary of the United States Department of Housing and Urban Development under Section 1508 of the S.A.F.E. Mortgage Licensing Act of 2008 (Title V of P.L.110-289); and
- (4) is registered as a mortgage loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(x) As used in this chapter, "unique identifier" means a number or other identifier that:

- (1) permanently identifies a mortgage loan originator; and
- (2) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the federal financial institution regulatory agencies to facilitate:
 - (A) the electronic tracking of mortgage loan originators; and
 - (B) the uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against mortgage loan originators.

(y) As used in this chapter, "residential real estate" means real property:

- (1) that is located in Indiana; and
- (2) upon which a dwelling is constructed or intended to be constructed.

As added by P.L.235-1985, SEC.1. Amended by P.L.247-1987, SEC.1; P.L.1-1990, SEC.242; P.L.8-1993, SEC.314; P.L.79-1998, SEC.22; P.L.230-1999, SEC.1; P.L.14-2000, SEC.52; P.L.115-2001, SEC.1; P.L.73-2004, SEC.12; P.L.230-2007, SEC.6; P.L.145-2008, SEC.10; P.L.1-2009, SEC.130; P.L.156-2009, SEC.1; P.L.35-2010, SEC.4; P.L.85-2012, SEC.2; P.L.127-2012, SEC.3.

IC 23-2-5-4

License to engage in loan brokerage business required; license to act as mortgage loan originator or principal manager required; unique identifier required; evidence of compliance; criminal background check

Sec. 4. (a) A person may not engage in the loan brokerage business in Indiana unless the person first obtains a loan broker license from the commissioner. Any person desiring to engage or continue in the loan brokerage business shall apply to the commissioner for a loan broker license under this chapter.

(b) An individual may not act as a mortgage loan originator in Indiana on behalf of a person licensed or required to be licensed as a loan broker under this chapter unless the individual first obtains a unique identifier from the Nationwide Mortgage Licensing System and Registry and a mortgage loan originator license from the commissioner. An individual desiring to act as a mortgage loan originator on behalf of a person licensed or required to be licensed as a loan broker under this chapter shall apply to the commissioner for a mortgage loan originator license under this chapter.

(c) An individual may not act as a principal manager on behalf of a person licensed or required to be licensed as a loan broker under this chapter unless the individual first obtains a unique identifier from the Nationwide Mortgage Licensing System and Registry and a principal manager license from the commissioner. Any individual desiring to act as a principal manager on behalf of a person licensed or required to be licensed as a loan broker under this chapter shall apply to the commissioner for a principal manager license under this chapter.

(d) The commissioner may request evidence of compliance with this section at any of the following times:

- (1) The time of application for an initial license.
- (2) The time of renewal of a license.
- (3) Any other time considered necessary by the commissioner.

(e) For purposes of subsection (d), evidence of compliance with this section must include a criminal background check, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation.

(f) A unique identifier obtained by an individual from the Nationwide Mortgage Licensing System and Registry under subsection (b) or (c) may not be used for purposes other than those set forth in the S.A.F.E. Mortgage Licensing Act of 2008 (Title V of P.L.110-289).

As added by P.L.235-1985, SEC.1. Amended by P.L.230-1999, SEC.2; P.L.230-2007, SEC.7; P.L.145-2008, SEC.11; P.L.156-2009, SEC.2.

IC 23-2-5-5

Applications for licenses; contents; bond; expiration; service of process; criminal background checks; consumer reports; financial responsibility

Sec. 5. (a) An application for a loan broker license or renewal of a loan broker license must contain:

- (1) consent to service of process under subsection (g);
- (2) evidence of the bond required in subsection (d);
- (3) an application fee of two hundred dollars (\$200), plus one hundred dollars (\$100) for each ultimate equitable owner;
- (4) an affidavit affirming that none of the applicant's ultimate equitable owners, directors, managers, or officers have been convicted, in any jurisdiction, of:

(A) any felony within the previous seven (7) years; or

(B) an offense involving fraud or deception that is punishable by at least one (1) year of imprisonment;

unless such an affidavit is waived by the commissioner under subsection (h);

(5) evidence that the applicant, if the applicant is an individual, has completed the education requirements under section 21 of this chapter;

(6) the name and license number for each mortgage loan originator to be employed by the licensee;

(7) the name and license number for each principal manager; and

(8) for each ultimate equitable owner, the following information:

(A) The name of the ultimate equitable owner.

(B) The address of the ultimate equitable owner, including the home address of the ultimate equitable owner if the ultimate equitable owner is an individual.

(C) The telephone number of the ultimate equitable owner, including the home telephone number if the ultimate equitable owner is an individual.

(D) The ultimate equitable owner's Social Security number and date of birth, if the ultimate equitable owner is an individual.

(b) An application for licensure as a mortgage loan originator shall be made on a form prescribed by the commissioner. The application must include the following information for the individual that seeks to be licensed as a mortgage loan originator:

(1) The name of the individual.

(2) The home address of the individual.

(3) The home telephone number of the individual.

(4) The individual's Social Security number and date of birth.

(5) The name of the:

(A) loan broker licensee; or

(B) applicant for loan broker licensure;

for whom the individual seeks to be employed as a mortgage loan originator.

(6) Consent to service of process under subsection (g).

(7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.

(8) An application fee of fifty dollars (\$50).

(9) All:

(A) registration numbers previously issued to the individual under this chapter, if the applicant was registered as an originator or a principal manager under this chapter before July 1, 2009; and

(B) license numbers previously issued to the individual under this chapter, if applicable.

(c) An application for licensure as a principal manager shall be made on a form prescribed by the commissioner. The application must include the following information for the individual who seeks to be licensed as a principal manager:

(1) The name of the individual.

(2) The home address of the individual.

(3) The home telephone number of the individual.

(4) The individual's Social Security number and date of birth.

(5) The name of the:

(A) loan broker licensee; or

(B) applicant for loan broker licensure;

for whom the individual seeks to be employed as a principal manager.

(6) Consent to service of process under subsection (g).

(7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.

(8) Evidence that the individual has at least three (3) years of experience in the:

(A) loan brokerage; or

(B) financial services;

business.

(9) An application fee of one hundred dollars (\$100).

(10) All:

(A) registration numbers previously issued to the individual under this chapter, if the applicant was registered as an originator or a principal manager under this chapter before July 1, 2009; and

(B) license numbers previously issued to the individual under this chapter, if applicable.

(d) A loan broker licensee must maintain a bond satisfactory to the commissioner, which must cover the activities of each licensed mortgage loan originator and licensed principal manager employed by the loan broker licensee. The bond must be in one (1) of the following amounts, depending on the total amount of residential mortgage loans originated by the loan broker in the previous calendar year:

(1) Fifty thousand dollars (\$50,000) if the total amount of residential mortgage loans originated by the loan broker in the previous calendar year was not greater than five million dollars (\$5,000,000).

(2) Sixty thousand dollars (\$60,000) if the total amount of residential mortgage loans originated by the loan broker in the previous calendar year was greater than five million dollars

(\$5,000,000) but not greater than twenty million dollars (\$20,000,000).

(3) Seventy-five thousand dollars (\$75,000) if the total amount of residential mortgage loans originated by the loan broker in the previous calendar year was greater than twenty million dollars (\$20,000,000).

The bond shall be in favor of the state and shall secure payment of damages to any person aggrieved by any violation of this chapter by the licensee or any licensed mortgage loan originator or licensed principal manager employed by the licensee.

(e) The commissioner shall issue a license and license number to an applicant for a loan broker license, a mortgage loan originator license, or a principal manager license if the applicant meets the applicable licensure requirements set forth in this chapter.

(f) Licenses issued by the commissioner under this chapter expire on December 31 of the year in which they are issued.

(g) Every applicant for licensure or for renewal of a license shall file with the commissioner, in such form as the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this chapter. Service shall be made in accordance with the Indiana Rules of Trial Procedure.

(h) Upon good cause shown, the commissioner may waive the requirements of subsection (a)(4) for one (1) or more of an applicant's ultimate equitable owners, directors, managers, or officers.

(i) Whenever an initial or a renewal application for a license is denied or withdrawn, the commissioner shall retain the initial or renewal application fee paid.

(j) At the time of application for an initial license under this chapter, the commissioner shall require each:

(1) equitable owner, in the case of an applicant for a loan broker license;

(2) individual described in subsection (a)(4), in the case of an applicant for a loan broker license; and

(3) applicant for licensure as:

(A) a mortgage loan originator; or

(B) a principal manager;

to submit fingerprints for a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for use by the commissioner in determining whether the equitable owner, the individual described in subsection (a)(4), or the applicant should be denied licensure under this chapter for any reason set forth in section 10(c) or 10(d) of this chapter. The equitable owner, individual described in subsection (a)(4), or applicant shall pay any fees or costs associated with the fingerprints and background check required under this subsection. The commissioner may not release the results of a background check

described in this subsection to any private entity.

(k) Every three (3) years, beginning with the third calendar year following the calendar year in which an initial license is issued under this chapter, the commissioner shall require each:

- (1) equitable owner, in the case of a loan broker licensee;
- (2) individual described in subsection (a)(4), in the case of a loan broker licensee; and
- (3) licensed:
 - (A) mortgage loan originator; or
 - (B) principal manager;

to submit fingerprints for a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for use by the commissioner in determining whether the equitable owner, the individual described in subsection (a)(4), or the licensee should be denied continued licensure under this chapter for any reason set forth in section 10(c) of this chapter. The equitable owner, individual described in subsection (a)(4), or licensee shall pay any fees or costs associated with the fingerprints and background check required under this subsection. The commissioner may not release the results of a background check described in this subsection to any private entity.

(l) The commissioner shall require each applicant for licensure as:

- (1) a mortgage loan originator; or
- (2) a principal manager;

to submit written authorization for the commissioner or an agent of the commissioner to obtain a consumer report (as defined in IC 24-5-24-2) concerning the applicant.

(m) In reviewing a consumer report obtained under subsection (l), the commissioner may consider one (1) or more of the following in determining whether an individual described in subsection (l) has demonstrated financial responsibility:

- (1) Bankruptcies filed by the individual within the most recent ten (10) years.
- (2) Current outstanding civil judgments against the individual, except judgments resulting solely from medical expenses owed by the individual.
- (3) Current outstanding tax liens or other government liens or filings.
- (4) Foreclosure actions filed within the most recent three (3) years against property owned by the individual.
- (5) Any pattern of seriously delinquent accounts associated with the individual during the most recent three (3) years.

As added by P.L.235-1985, SEC.1. Amended by P.L.247-1987, SEC.2; P.L.113-1992, SEC.4; P.L.11-1996, SEC.18; P.L.230-1999, SEC.3; P.L.115-2001, SEC.2; P.L.230-2007, SEC.8; P.L.3-2008, SEC.167; P.L.145-2008, SEC.12; P.L.156-2009, SEC.3.

IC 23-2-5-5.5

Written examination; subject areas; passing and retaking examination

Sec. 5.5. (a) The commissioner shall require an applicant for licensure as:

(1) a mortgage loan originator under section 5(b) of this chapter; or

(2) a principal manager under section 5(c) of this chapter; to pass a written examination prepared and administered by the commissioner or an agent appointed by the commissioner and approved by the Nationwide Mortgage Licensing System and Registry.

(b) The written examination required by this section must measure the applicant's knowledge and comprehension in appropriate subject areas, including the following:

(1) Ethics.

(2) Federal laws and regulations concerning the origination of residential mortgage loans.

(3) State laws and rules concerning the origination of residential mortgage loans.

(c) An individual who answers at least seventy-five percent (75%) of the questions on the written examination correctly is considered to have passed the examination.

(d) An individual who does not pass the written examination may retake the examination up to two (2) additional times, with each subsequent attempt occurring at least thirty (30) days after the individual last sat for the examination. If an individual fails three (3) consecutive examinations, the individual must wait to retake the examination until at least six (6) months after the individual sat for the third examination.

(e) If an individual who has been issued a mortgage loan originator license or a principal manager license under this chapter:

(1) allows the individual's license to lapse; or

(2) otherwise does not maintain a valid license under this chapter;

for a period of at least five (5) years, the individual must retake the written examination required by this section.

As added by P.L.156-2009, SEC.4.

IC 23-2-5-6

Renewal of licenses

Sec. 6. A loan broker licensee may not continue engaging in the loan brokerage business unless the licensee's license is renewed annually. A mortgage loan originator licensee or a principal manager licensee may not continue acting as:

(1) a mortgage loan originator; or

(2) a principal manager;

unless the licensee's license is renewed annually. A licensee under this chapter shall renew its license by filing with the commissioner, at least thirty (30) days before the expiration of the license, an application containing any information the commissioner may require to indicate any material change from the information contained in the applicant's original application or any previous

application.

As added by P.L.235-1985, SEC.1. Amended by P.L.11-1996, SEC.19; P.L.230-1999, SEC.4; P.L.115-2001, SEC.3; P.L.145-2008, SEC.13; P.L.156-2009, SEC.5.

IC 23-2-5-7

Loan broker regulation account

Sec. 7. (a) The loan broker regulation account is created in the state general fund. The money in the loan broker regulation account may be used only for the regulation of loan brokers, mortgage loan originators, and principal managers under this chapter. The loan broker regulation account shall be administered by the treasurer of state. The money in the loan broker regulation account does not revert to any other account within the state general fund at the end of a state fiscal year.

(b) Except as provided in subsection (c), all fees and funds accruing from the administration of this chapter shall be accounted for by the commissioner and shall be deposited with the treasurer of state who shall deposit them in the loan broker regulation account in the state general fund.

(c) All expenses incurred in the administration of this chapter shall be paid from appropriations made from the state general fund. However, costs of investigations incurred under this chapter shall be paid from, and civil penalties recovered under this chapter shall be deposited in, the securities division enforcement account created under IC 23-19-6-1(f). The funds in the securities division enforcement account shall be available, with the approval of the budget agency, to augment and supplement the funds appropriated for the administration of this chapter.

As added by P.L.235-1985, SEC.1. Amended by P.L.115-2001, SEC.4; P.L.27-2007, SEC.18; P.L.156-2009, SEC.6.

IC 23-2-5-8

Repealed

(Repealed by P.L.113-1992, SEC.10.)

IC 23-2-5-9

Statute of frauds; required statement

Sec. 9. (a) To be enforceable, every contract for the services of a loan broker shall be in writing and signed by the contracting parties.

(b) At the time a contract for the services of a loan broker is signed, the loan broker shall provide a copy of the signed contract to each of the other parties to the contract.

(c) Every contract for the services of a loan broker must include the following statement:

"No statement or representation by a loan broker is valid or enforceable unless the statement or representation is in writing."

(d) This section does not apply to a contract that provides for the payment of referral fees by a lender or a third party.

As added by P.L.235-1985, SEC.1. Amended by P.L.113-1992,

SEC.5; P.L.230-2007, SEC.9.

IC 23-2-5-9.1

Real estate appraisals; improper influence; ownership interest in appraisal company

Sec. 9.1. (a) As used in this section, "appraisal company" means a business entity that:

- (1) performs real estate appraisals on a regular basis for compensation through one (1) or more owners, officers, employees, or agents; or
- (2) holds itself out to the public as performing real estate appraisals.

(b) As used in this section, "immediate family", with respect to an individual, refers to:

- (1) the individual's spouse who resides in the individual's household; and
- (2) any dependent child of the individual.

(c) As used in this section, "real estate appraiser" means a person who:

- (1) is licensed as a real estate broker under IC 25-34.1 and performs real estate appraisals within the scope of the person's license;
- (2) holds a real estate appraiser license or certificate issued under IC 25-34.1-3-8; or
- (3) otherwise performs real estate appraisals in Indiana.

(d) A person licensed under this chapter, or a person required to be licensed under this chapter, shall not knowingly bribe, coerce, or intimidate another person to corrupt or improperly influence the independent judgment of a real estate appraiser with respect to the value of any real estate offered as security for a residential mortgage loan.

(e) Except as provided in subsection (f):

- (1) a person licensed under this chapter, or a person required to be licensed under this chapter;
- (2) a member of the immediate family of:
 - (A) a person licensed under this chapter; or
 - (B) a person required to be licensed under this chapter; or
- (3) a person described in subdivision (1) or (2) in combination with one (1) or more other persons described in subdivision (1) or (2);

may not own or control a majority interest in an appraisal company.

(f) This subsection applies to a person or combination of persons described in subsection (e) who own or control a majority interest in an appraisal company on June 30, 2007. The prohibition set forth in subsection (e) does not apply to a person or combination of persons described in this subsection, subject to the following:

- (1) The interest in the appraisal company owned or controlled by the person or combination of persons described in subsection (e) shall not be increased after June 30, 2007.
- (2) The interest of a person licensed under this chapter, or of a

person required to be licensed under this chapter, shall not be transferred to a member of the person's immediate family.

(3) If the commissioner determines that any person or combination of persons described in subsection (e) has violated this chapter, the commissioner may order one (1) or more of the persons to divest their interest in the appraisal company. The commissioner may exercise the remedy provided by this subdivision in addition to, or as a substitute for, any other remedy available to the commissioner under this chapter.

As added by P.L.230-2007, SEC.10. Amended by P.L.156-2009, SEC.7.

IC 23-2-5-10

Violations; investigation by commissioner; orders and notices; hearing; denial, suspension, or revocation of license; censure; summary orders; transfer or termination of license; change of material fact or statement

Sec. 10. (a) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or a practice constituting a violation of this chapter or a rule or an order under this chapter, the commissioner may investigate and may issue, with a prior hearing if there exists no substantial threat of immediate irreparable harm or without a prior hearing, if there exists a substantial threat of immediate irreparable harm, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter.

(b) Upon the issuance of an order or notice without a prior hearing by the commissioner under subsection (a), the commissioner shall promptly notify the respondent and, if the subject of the order or notice is a mortgage loan originator licensee or a principal manager licensee, the loan broker licensee for whom the mortgage loan originator or principal manager is employed:

- (1) that the order or notice has been issued;
- (2) of the reasons the order or notice has been issued; and
- (3) that upon the receipt of a written request the matter will be set for a hearing to commence not later than fifteen (15) business days after receipt of the request if the original order issued by the commissioner was a summary suspension, summary revocation, or denial of a license and not later than forty-five (45) business days after receipt of the request for all other orders unless the respondent consents to a later date.

If a hearing is not requested and not ordered by the commissioner, an order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing, may modify or vacate the order or extend it until final determination.

(c) The commissioner may deny an application for an initial or a renewal license, and may suspend or revoke the license of a licensee if the applicant, the licensee, or an ultimate equitable owner of an applicant for a loan broker license or of a loan broker licensee:

(1) has, within the most recent ten (10) years:

(A) been the subject of an adjudication or a determination by:

(i) a court with jurisdiction; or

(ii) an agency or administrator that regulates securities, commodities, banking, financial services, insurance, real estate, or the real estate appraisal industry;

in Indiana or in any other jurisdiction; and

(B) been found, after notice and opportunity for hearing, to have violated the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal laws of Indiana or any other jurisdiction;

(2) except as provided in subsection (d)(1) with respect to the loan brokerage business, has:

(A) been denied the right to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry; or

(B) had the person's authority to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry revoked or suspended;

by Indiana or by any other state, federal, or foreign governmental agency or self regulatory organization;

(3) is insolvent;

(4) has violated any provision of this chapter;

(5) has knowingly filed with the commissioner any document or statement that:

(A) contains a false representation of a material fact;

(B) fails to state a material fact; or

(C) contains a representation that becomes false after the filing but during the term of a license as provided in subsection (j);

(6) has been convicted, within ten (10) years before the date of the application, renewal, or review, of any crime, other than a felony, involving fraud or deceit;

(7) if the person is a loan broker licensee or a principal manager, has failed to reasonably supervise the person's mortgage loan originators or employees to ensure their compliance with this chapter;

(8) is on the most recent tax warrant list supplied to the commissioner by the department of state revenue; or

(9) has engaged in dishonest or unethical practices in the loan brokerage business, as determined by the commissioner.

(d) The commissioner shall deny an application for an initial or a renewal license and shall revoke the license of a licensee if the applicant, the licensee, or an ultimate equitable owner of an applicant

for a loan broker license or of a loan broker licensee:

- (1) has had a:
 - (A) loan broker license issued under this chapter;
 - (B) mortgage loan originator license issued under this chapter;
 - (C) principal manager license issued under this chapter; or
 - (D) license that is:
 - (i) equivalent to a license described in clause (A), (B), or (C); and
 - (ii) issued by another jurisdiction;

revoked by the commissioner or the appropriate regulatory agency in another jurisdiction, whichever applies;

- (2) has been convicted of or pleaded guilty or nolo contendere to a felony in a domestic, foreign, or military court:

- (A) during the seven (7) year period immediately preceding the date of the application or review; or
 - (B) at any time preceding the date of the application or review if the felony involved an act of fraud or dishonesty, a breach of trust, or money laundering;

- (3) fails to maintain the bond required under section 5(d) of this chapter;

- (4) fails to demonstrate the financial responsibility, character, and general fitness necessary to:

- (A) command the confidence of the community in which the applicant or licensee engages or will engage in the loan brokerage business; and
 - (B) warrant a determination by the commissioner that the applicant or licensee will operate honestly, fairly, and efficiently within the purposes of this chapter;

- (5) has failed to meet the education requirements set forth in section 21 of this chapter;

- (6) has failed to pass the written examination required by section 5.5 of this chapter; or

- (7) fails to:

- (A) keep or maintain records in accordance with section 18 of this chapter; or
 - (B) allow the commissioner or an agent appointed by the commissioner to inspect or examine a loan broker licensee's books and records to determine compliance with section 18 of this chapter.

- (e) The commissioner may do either of the following:

- (1) Censure:
 - (A) a licensee;
 - (B) an officer, a director, or an ultimate equitable owner of a loan broker licensee; or
 - (C) any other person;

who violates or causes a violation of this chapter.

- (2) Permanently bar any person described in subdivision (1) from being:

- (A) licensed under this chapter; or

(B) employed by or affiliated with a person licensed under this chapter;

if the person violates or causes a violation of this chapter.

(f) The commissioner may not enter a final order:

(1) denying, suspending, or revoking the license of an applicant or a licensee; or

(2) imposing other sanctions;

without prior notice to all interested parties, opportunity for a hearing, and written findings of fact and conclusions of law. However, the commissioner may by summary order deny, suspend, or revoke a license pending final determination of any proceeding under this section or before any proceeding is initiated under this section. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that the summary order has been entered, of the reasons for the summary order, and that upon receipt by the commissioner of a written request from a party, the matter will be set for hearing to commence not later than forty-five (45) business days after receipt of the request. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order or extend it until final determination.

(g) IC 4-21.5 does not apply to a proceeding under this section.

(h) If a mortgage loan originator licensee or a principal manager licensee seeks to transfer the licensee's license to another loan broker licensee who desires to have the mortgage loan originator licensee or principal manager licensee act as a mortgage loan originator or as a principal manager, whichever applies, the mortgage loan originator licensee or principal manager licensee shall, before the mortgage loan originator licensee or principal manager licensee acts as a mortgage loan originator or as a principal manager for the new employer, submit to the commissioner, on a form prescribed by the commissioner, a license application, as required by section 5 of this chapter.

(i) If the employment of a mortgage loan originator licensee or principal manager licensee is terminated, whether:

(1) voluntarily by the mortgage loan originator licensee or principal manager licensee; or

(2) by the loan broker licensee employing the mortgage loan originator licensee or principal manager licensee;

the loan broker licensee that employed the mortgage loan originator licensee or principal manager licensee shall, not later than five (5) days after the termination, notify the commissioner of the termination and the reasons for the termination.

(j) If a material fact or statement included in an application under this chapter changes after the application has been submitted, the applicant shall provide written notice to the commissioner of the change. The commissioner may deny, revoke, or refuse to renew a

license applied for or held by any person who:

- (1) is required to submit a written notice under this subsection and fails to provide the required notice within two (2) business days after the person discovers or should have discovered the change; or
- (2) would not qualify for licensure under this chapter as a result of the change in a material fact or statement.

As added by P.L.235-1985, SEC.1. Amended by P.L.11-1996, SEC.20; P.L.230-1999, SEC.5; P.L.14-2000, SEC.53; P.L.270-2003, SEC.3; P.L.48-2006, SEC.7; P.L.230-2007, SEC.11; P.L.145-2008, SEC.14; P.L.156-2009, SEC.8.

IC 23-2-5-11

Powers and duties of commissioner; use immunity for witnesses; certificate of compliance or noncompliance; authority to compel compliance; multistate automated licensing system and repository

Sec. 11. (a) The commissioner may do the following:

- (1) Adopt rules under IC 4-22-2 to implement this chapter.
- (2) Make investigations and examinations:
 - (A) in connection with any application for licensure under this chapter or with any license already granted; or
 - (B) whenever it appears to the commissioner, upon the basis of a complaint or information, that reasonable grounds exist for the belief that an investigation or examination is necessary or advisable for the more complete protection of the interests of the public.
- (3) Charge as costs of investigation or examination all reasonable expenses, including a per diem prorated upon the salary of the commissioner or employee and actual traveling and hotel expenses. All reasonable expenses are to be paid by the party or parties under investigation or examination if the party has violated this chapter.
- (4) Issue notices and orders, including cease and desist notices and orders, after making an investigation or examination under subdivision (2). The commissioner shall notify the person that an order or notice has been issued, the reasons for it, and that a hearing will be set not later than fifteen (15) business days after the commissioner receives a written request from the person requesting a hearing if the original order issued by the commissioner was a summary suspension, summary revocation, or denial of a license and not later than forty-five (45) business days after the commissioner receives a written request from the person requesting a hearing for all other orders.
- (5) Sign all orders, official certifications, documents, or papers issued under this chapter or delegate the authority to sign any of those items to a deputy.
- (6) Hold and conduct hearings.
- (7) Hear evidence.
- (8) Conduct inquiries with or without hearings.
- (9) Receive reports of investigators or other officers or

employees of the state of Indiana or of any municipal corporation or governmental subdivision within the state.

(10) Administer oaths, or cause them to be administered.

(11) Subpoena witnesses, and compel them to attend and testify.

(12) Compel the production of books, records, and other documents.

(13) Order depositions to be taken of any witness residing within or without the state. The depositions shall be taken in the manner prescribed by law for depositions in civil actions and made returnable to the commissioner.

(14) Order that each witness appearing under the commissioner's order to testify before the commissioner shall receive the fees and mileage allowances provided for witnesses in civil cases.

(15) Provide interpretive opinions or issue determinations that the commissioner will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. The commissioner may adopt rules to establish fees for individuals requesting an interpretive opinion or a determination under this subdivision. A person may not request an interpretive opinion or a determination concerning an activity that:

(A) occurred before; or

(B) is occurring on;

the date the opinion or determination is requested.

(16) Subject to subsection (f), designate a multistate automated licensing system and repository, established and operated by a third party, to serve as the sole entity responsible for:

(A) processing applications for:

(i) licenses under this chapter; and

(ii) renewals of licenses under this chapter; and

(B) performing other services that the commissioner determines are necessary for the orderly administration of the division's licensing system.

A multistate automated licensing system and repository described in this subdivision may include the Nationwide Mortgage Licensing System and Registry established by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The commissioner may take any action necessary to allow the division to participate in a multistate automated licensing system and repository.

(b) If a witness, in any hearing, inquiry, or investigation conducted under this chapter, refuses to answer any question or produce any item, the commissioner may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item.

If the court determines that the witness, based upon the witness's privilege against self-incrimination, may properly refuse to answer or produce an item, the commissioner may make a written request that the court grant use immunity to the witness. Upon written request of the commissioner, the court shall grant use immunity to a witness. The court shall instruct the witness, by written order or in open court, that:

- (1) any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against that witness, unless the evidence is volunteered by the witness or is not responsive to a question; and
- (2) the witness must answer the questions asked and produce the items requested.

A grant of use immunity does not prohibit evidence that the witness gives in a hearing, investigation, or inquiry from being used in a prosecution for perjury under IC 35-44.1-2-1. If a witness refuses to give the evidence after the witness has been granted use immunity, the court may find the witness in contempt.

(c) In any prosecution, action, suit, or proceeding based upon or arising out of this chapter, the commissioner may sign a certificate showing compliance or noncompliance with this chapter by any person. This shall constitute prima facie evidence of compliance or noncompliance with this chapter and shall be admissible in evidence in any action at law or in equity to enforce this chapter.

(d) If:

- (1) a person disobeys any lawful:
 - (A) subpoena issued under this chapter; or
 - (B) order or demand requiring the production of any books, accounts, papers, records, documents, or other evidence or information as provided in this chapter; or
- (2) a witness refuses to:
 - (A) appear when subpoenaed;
 - (B) testify to any matter about which the witness may be lawfully interrogated; or
 - (C) take or subscribe to any oath required by this chapter;

the circuit or superior court of the county in which the hearing, inquiry, or investigation in question is held, if demand is made or if, upon written petition, the production is ordered to be made, or the commissioner or a hearing officer appointed by the commissioner, shall compel compliance with the lawful requirements of the subpoena, order, or demand, compel the production of the necessary or required books, papers, records, documents, and other evidence and information, and compel any witness to attend in any Indiana county and to testify to any matter about which the witness may lawfully be interrogated, and to take or subscribe to any oath required.

(e) If a person fails, refuses, or neglects to comply with a court order under this section, the person shall be punished for contempt of court.

(f) The commissioner's authority to designate a multistate

automated licensing system and repository under subsection (a)(16) is subject to the following:

(1) The commissioner may not require any person that is not required to be licensed under this chapter, or any employee or agent of a person that is not required to be licensed under this chapter, to:

(A) submit information to; or

(B) participate in;

the multistate automated licensing system and repository.

(2) The commissioner may require a person required under this chapter to submit information to the multistate automated licensing system and repository to pay a processing fee considered reasonable by the commissioner.

As added by P.L.235-1985, SEC.1. Amended by P.L.230-1999, SEC.6; P.L.48-2006, SEC.8; P.L.145-2008, SEC.15; P.L.156-2009, SEC.9; P.L.114-2010, SEC.6; P.L.126-2012, SEC.39.

IC 23-2-5-11.5

Authority of commissioner to bring civil action to enjoin violations and enforce compliance; remedies; bond not required; penalties

Sec. 11.5. (a) If the commissioner believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the commissioner may maintain an action in the circuit or superior court in the county where the investigation or inquiry in question is being conducted to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

(b) In an action under this section and on a proper showing, the court may:

(1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) order other appropriate or ancillary relief, which may include:

(A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator;

(B) ordering a receiver or conservator appointed under clause (A) to:

(i) take charge and control of a respondent's property, including investment accounts and accounts in a depository institution, rents, and profits;

(ii) collect debts; and

(iii) acquire and dispose of property;

(C) imposing a civil penalty of up to ten thousand dollars (\$10,000) per violation and an order of rescission,

restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter; and

(D) ordering the payment of prejudgment and postjudgment interest; or

(3) order such other relief as the court considers appropriate.

(c) The commissioner may not be required to post a bond in an action or proceeding under this chapter.

(d) Penalties collected under this section shall be deposited in the securities division enforcement account created under IC 23-19-6-1(f).

As added by P.L.114-2010, SEC.7.

IC 23-2-5-12

Certified copies of statements, documents, or records; admissibility

Sec. 12. Copies of any statement or document filed with the commissioner, and copies of any records of the commissioner, certified to by the commissioner or any deputy are admissible in any prosecution, action, suit, or proceeding based upon, or arising out of or under, the provisions of this chapter to the same effect as the original of the statement, document, or record would be if actually produced.

As added by P.L.235-1985, SEC.1.

IC 23-2-5-13

Court to compel obedience to subpoena, order, or demand

Sec. 13. Upon:

(1) disobedience on the part of any person to any lawful subpoena issued under this chapter, or to any lawful order or demand requiring the production of any books, accounts, papers, records, documents, or other evidence or information as provided in this chapter; or

(2) the refusal of any witness to appear when subpoenaed, to testify to any matter regarding which the witness may be lawfully interrogated, or to take or subscribe to any oath required by this chapter;

it shall be the duty of the circuit or superior court of the county in which the hearing or inquiry or investigation in question is being or is to be held, where demand is made, or where the production is ordered to be made, upon written petition of the commissioner, to compel obedience to the lawful requirements of the subpoena, order, or demand.

As added by P.L.235-1985, SEC.1. Amended by P.L.230-1999, SEC.7.

IC 23-2-5-14

Civil penalty; actions to enforce penalties

Sec. 14. (a) If the commissioner determines, after a hearing, that a person has violated this chapter, the commissioner may, in addition

to all other remedies, impose a civil penalty upon the person in an amount not to exceed ten thousand dollars (\$10,000) for each violation.

(b) The commissioner may bring an action in the circuit or superior court of Marion County to enforce payment of any penalty imposed under this section.

As added by P.L.235-1985, SEC.1. Amended by P.L.230-1999, SEC.8.

IC 23-2-5-15

Violation; liability for damages, interest, and attorney's fees; contract void

Sec. 15. Any person who violates this chapter or any rule or regulation adopted under this chapter, in connection with a contract for the services of a loan broker, is liable to any person damaged by the violation, for the amount of the actual damages suffered, interest at the legal rate, and attorney's fees. If a person violates any provision of this chapter, or any rule or regulation adopted under this chapter, in connection with a contract for loan brokering services, the contract is void, and the prospective borrower is entitled to receive from the loan broker all sums paid to the loan broker.

As added by P.L.235-1985, SEC.1. Amended by P.L.230-1999, SEC.9; P.L.230-2007, SEC.12.

IC 23-2-5-16

Violations; felonies

Sec. 16. (a) Except as provided in subsection (b), a person who knowingly violates this chapter commits a Class C felony.

(b) A person who knowingly violates this chapter commits a Class B felony if the person damaged by the violation is at least sixty (60) years of age.

(c) A person commits a Class C felony if the person knowingly makes or causes to be made:

- (1) in any document filed with or sent to the commissioner or the securities division; or
- (2) in any proceeding, investigation, or examination under this chapter;

any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

As added by P.L.235-1985, SEC.1. Amended by P.L.230-2007, SEC.13; P.L.156-2009, SEC.10.

IC 23-2-5-17

Rescission of transaction; limitations

Sec. 17. (a) If a transaction for which a loan broker has charged any fee is rescinded by any person under the provisions of the Truth-in-Lending Act (15 U.S.C. 1601-1667e) within twenty (20) calendar days after a notice of the rescission has been delivered to the creditor, the loan broker shall return to the person any consideration that has been given to the loan broker other than bona

fide third party fees.

(b) For purposes of calculating the time period during which a person may avoid a contract under IC 24-5-10-8 or IC 24-4.5-2-502, a contract with a loan broker shall be considered to be a sale of services that occurs on the date on which the person signs the written contract required by section 9 of this chapter.

As added by P.L.247-1987, SEC.4. Amended by P.L.3-1990, SEC.82; P.L.113-1992, SEC.6.

IC 23-2-5-18

Account numbers; records; retention; breach of security of records; disclosure requirements; disposal of personal information

Sec. 18. (a) Each loan broker agreement shall be given an account number. Each person licensed as a loan broker or required to be licensed as a loan broker under this chapter shall keep and maintain the following records or their electronic equivalent:

(1) A file for each borrower or proposed borrower that contains the following:

(A) The name and address of the borrower or any proposed borrower.

(B) A copy of the signed loan broker agreement.

(C) A copy of any other papers or instruments used in connection with the loan broker agreement and signed by the borrower or any proposed borrower.

(D) If a loan was obtained for the borrower, the name and address of the creditor.

(E) If a loan is accepted by the borrower, a copy of the loan agreement.

(F) The amount of the loan broker's fee that the borrower has paid. If there is an unpaid balance, the status of any collection efforts.

(2) All receipts from or for the account of borrowers or any proposed borrowers and all disbursements to or for the account of borrowers or any proposed borrowers, recorded so that the transactions are readily identifiable.

(3) A general ledger that shall be posted at least monthly, and a trial balance sheet and profit and loss statement prepared within thirty (30) days of the commissioner's request for the information.

(4) A sample of:

(A) all advertisements, pamphlets, circulars, letters, articles, or communications published in any newspaper, magazine, or periodical;

(B) scripts of any recording, radio, or television announcement; and

(C) any sales kits or literature;

to be used in solicitation of borrowers.

(5) A report that lists all residential mortgage loans, including pending loans and loans that were not closed, originated by the loan broker. The report required by this subdivision must be

searchable by, or organized according to, the borrower's last name and must include the following information for each residential mortgage loan listed:

- (A) The name and address of the borrower or potential borrower.
- (B) The name of the creditor.
- (C) The name of the mortgage loan originator.
- (D) The loan amount.
- (E) The status of the loan, including the date of closing or denial by the creditor.
- (F) The interest rate for the loan.

The report required by this subdivision may be prepared or produced by or through the loan broker's loan origination software or other software used by the loan broker in its loan brokerage business.

(b) The records listed in subsection (a) shall be kept for a period of two (2) years in the office of the loan broker in which the loan was originated and must be separate or readily identifiable from the records of any other business that is conducted in the office of the loan broker. If the office in which any records are required to be kept under this subsection is located outside Indiana, the records must be:

- (1) made available at a location that is:
 - (A) located in Indiana; and
 - (B) accessible to the securities division; or
 - (2) maintained electronically and made available to the securities division not later than ten (10) business days after a request by the securities division to inspect or examine the records.
- (c) If a breach of the security of any records:
- (1) maintained by a loan broker under this section; and
 - (2) containing the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers;

occurs, the loan broker is subject to the disclosure requirements under IC 24-4.9-3, unless the loan broker is exempt from the disclosure requirements under IC 24-4.9-3-4.

(d) A person who is licensed or required to be licensed under this chapter may not dispose of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers without first shredding, incinerating, mutilating, erasing, or otherwise rendering the information illegible or unusable.

As added by P.L.247-1987, SEC.5. Amended by P.L.113-1992, SEC.7; P.L.230-1999, SEC.10; P.L.145-2008, SEC.16; P.L.156-2009, SEC.11.

IC 23-2-5-18.5

Possession of funds belonging to others; duties to prospective borrower

Sec. 18.5. Whenever a person licensed under this chapter, or a person required to be licensed under this chapter, has possession of

funds belonging to others, including money received by or on behalf of a prospective borrower, the person licensed under this chapter, or required to be licensed under this chapter, shall:

- (1) upon request of the prospective borrower, account for any funds handled for the prospective borrower;
- (2) follow any reasonable and lawful instructions from the prospective borrower concerning the prospective borrower's funds; and
- (3) return any unspent funds of the prospective borrower to the prospective borrower in a timely manner.

As added by P.L.230-2007, SEC.14. Amended by P.L.156-2009, SEC.12.

IC 23-2-5-18.7

Reports of condition

Sec. 18.7. Each loan broker licensee shall submit, at such times as the commissioner may require, reports of condition to:

- (1) the commissioner; and
- (2) the Nationwide Mortgage Licensing System and Registry.

A report required by this section shall be in such form and contain such information as the commissioner may require.

As added by P.L.156-2009, SEC.13.

IC 23-2-5-19

Repealed

(Repealed by P.L.156-2009, SEC.25.)

Revisor's Note: See also P.L.230-2007, SEC.26, for the period beginning 7-1-2007, and ending 6-30-2008.

IC 23-2-5-20

Prohibited acts

Sec. 20. (a) A person shall not, in connection with a contract for the services of a loan broker, either directly or indirectly, do any of the following:

- (1) Employ any device, scheme, or artifice to defraud.
- (2) Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading.
- (3) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.
- (4) Collect or solicit any consideration, except a bona fide third party fee, in connection with a residential mortgage loan until the loan has been closed.
- (5) Receive any funds if the person knows that the funds were generated as a result of a fraudulent act.
- (6) File or cause to be filed with a county recorder any document that the person knows:
 - (A) contains:
 - (i) a misstatement; or

(ii) an untrue statement;
of a material fact; or

(B) omits a statement of a material fact that is necessary to make the statements that are made, in the light of circumstances under which they are made, not misleading.

(7) Knowingly release or disclose the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers, unless the personal information is used in an activity authorized by the borrower or prospective borrower under one (1) or more of the following circumstances:

(A) The personal information is:

- (i) included on an application form or another form; or
- (ii) transmitted as part of an application process or an enrollment process.

(B) The personal information is used to obtain a consumer report (as defined in IC 24-5-24-2) for an applicant for credit.

(C) The personal information is used to establish, amend, or terminate an account, a contract, or a policy, or to confirm the accuracy of the personal information.

However, personal information allowed to be disclosed under this subdivision may not be printed in whole or in part on a postcard or other mailer that does not require an envelope, or in a manner that makes the personal information visible on an envelope or a mailer without the envelope or mailer being opened.

(8) Engage in any reckless or negligent activity allowing the release or disclosure of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers. An activity described in this subdivision includes an action prohibited by section 18(d) of this chapter.

(9) Knowingly bribe, coerce, or intimidate another person to corrupt or improperly influence the independent judgment of a real estate appraiser with respect to the value of any real estate offered as security for a residential mortgage loan, as prohibited by section 9.1(d) of this chapter.

(10) Violate any of the following:

(A) The federal Truth in Lending Act (15 U.S.C. 1601 et seq.).

(B) The federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

(C) The federal Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.).

(D) Any other federal law or regulation concerning residential mortgage lending.

(b) A person who commits an act described in subsection (a) is subject to sections 10, 11.5, 14, 15, and 16 of this chapter.

As added by P.L.247-1987, SEC.7. Amended by P.L.113-1992, SEC.9; P.L.230-1999, SEC.12; P.L.115-2001, SEC.5; P.L.145-2008, SEC.18; P.L.156-2009, SEC.14; P.L.114-2010, SEC.8.

IC 23-2-5-20.5

Employment by loan broker; license required; licensed principal manager required at each location; supervision of employees; representation to the public

Sec. 20.5. (a) A person licensed or required to be licensed as a loan broker under this chapter shall not employ a person to act as a mortgage loan originator unless the person is licensed as a mortgage loan originator or a principal manager under this chapter. The license of a mortgage loan originator or a principal manager is not effective during any period in which the mortgage loan originator or principal manager is not employed by a loan broker licensed under this chapter.

(b) A person licensed or required to be licensed as a loan broker under this chapter shall not operate any principal or branch office of a loan brokerage business without employing a licensed principal manager at that location.

(c) The licensed principal manager employed at a principal or branch office of a loan brokerage business shall supervise all employees at that location. If a licensed mortgage loan originator works from a location that is not a principal or branch office of a loan brokerage business, the mortgage loan originator shall be supervised by the principal manager employed at the principal or branch office at which the mortgage loan originator's loan files are sent.

(d) An individual that acts solely as a loan processor or underwriter shall not represent to the public through:

- (1) advertising; or
- (2) other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items;

that the individual may or will perform mortgage loan origination activities or otherwise act as a mortgage loan originator.

As added by P.L.230-2007, SEC.16. Amended by P.L.156-2009, SEC.15.

IC 23-2-5-21

Academic instruction requirements

Sec. 21. (a) A person applying for an initial license must provide to the commissioner evidence that during the twenty-four (24) month period immediately preceding the application that the person completed at least twenty (20) hours of academic instruction, acceptable to the commissioner and approved by the Nationwide Mortgage Licensing System and Registry. The education hours required under this subsection must include the following:

- (1) Three (3) hours of federal law and regulations concerning residential mortgage lending.
- (2) Three (3) hours of ethics, including instruction on fraud, consumer protection, and fair lending practices.
- (3) Two (2) hours of training concerning lending standards for nontraditional residential mortgage loan products.

(4) Two (2) hours of state law and rules concerning residential mortgage lending.

(b) To maintain a license under this chapter, a person must provide to the commissioner evidence that the person has completed at least eight (8) hours of academic instruction that is acceptable to the commissioner, and approved by the Nationwide Mortgage Licensing System and Registry, during each calendar year after the year in which the license was initially issued. The education hours required under this subsection must include the following:

(1) Three (3) hours of federal law and regulations concerning residential mortgage lending.

(2) Two (2) hours of ethics, including instruction on fraud, consumer protection, and fair lending practices.

(3) Two (2) hours of training concerning lending standards for nontraditional residential mortgage loan products.

(c) In determining the acceptability of academic instruction the commissioner shall give consideration to approval of a licensee's internal academic instruction programs completed by employees.

(d) In determining the acceptability of an education course, the commissioner may require a fee, in an amount prescribed by the commissioner by rule or order, for the commissioner's review of the course.

As added by P.L.230-1999, SEC.13. Amended by P.L.230-2007, SEC.17; P.L.156-2009, SEC.16.

IC 23-2-5-22

Appeals; service on commissioner; transcript

Sec. 22. (a) An appeal may be taken by:

(1) any person whose application for an initial or a renewal license under this chapter is granted or denied, from any final order of the commissioner concerning the application;

(2) any applicant for initial or renewed licensure as a principal manager or a mortgage loan originator, from any final order of the commissioner affecting the application;

(3) any person against whom a civil penalty is imposed under section 14(a) of this chapter, from the final order of the commissioner imposing the civil penalty; or

(4) any person who is named as a respondent, from any final order issued by the commissioner under section 10 or 11 of this chapter;

to the Marion circuit court or to the circuit or superior court of the county where the person taking the appeal resides or maintains a place of business.

(b) Not later than twenty (20) days after the entry of the order, the commissioner shall be served with:

(1) a written notice of the appeal stating the court to which the appeal will be taken and the grounds upon which a reversal of the final order is sought;

(2) a demand in writing from the appellant for a certified transcript of the record and of all papers on file in the

commissioner's office affecting or relating to the order; and
(3) a bond in the penal sum of five hundred dollars (\$500) to the state of Indiana with sufficient surety to be approved by the commissioner, conditioned upon the faithful prosecution of the appeal to final judgment and the payment of all costs that are adjudged against the appellant.

(c) Not later than ten (10) days after the commissioner is served with the items listed in subsection (b), the commissioner shall make, certify, and deliver to the appellant the transcript, and the appellant shall, not later than five (5) days after the date the appellant receives the transcript, file the transcript and a copy of the notice of appeal with the clerk of the court. The notice of appeal serves as the appellant's complaint. The commissioner may appear and file any motion or pleading and form the issue. The cause shall be entered on the trial calendar for trial de novo and given precedence over all matters pending in the court.

(d) The court shall receive and consider any pertinent oral or written evidence concerning the order of the commissioner from which the appeal is taken. If the order of the commissioner is reversed, the court shall in its mandate specifically direct the commissioner as to the commissioner's further action in the matter. The commissioner is not barred from revoking or altering the order for any proper cause that accrues or is discovered after the order is entered. If the order is affirmed, the appellant is not barred after thirty (30) days from the date the order is affirmed from filing a new application if the application is not otherwise barred or limited. During the pendency of the appeal, the order from which the appeal is taken is not suspended but remains in effect unless otherwise ordered by the court. An appeal may be taken from the judgment of the court on the same terms and conditions as an appeal is taken in civil actions.

As added by P.L.48-2006, SEC.9. Amended by P.L.145-2008, SEC.19; P.L.156-2009, SEC.17.

IC 23-2-5-23

Documents; license number required

Sec. 23. A loan broker agreement that is delivered or required to be delivered by a person licensed or required to be licensed under this chapter to a borrower or prospective borrower must contain:

- (1) the license number of the loan broker; and
- (2) the license number of each:
 - (A) mortgage loan originator; or
 - (B) principal manager;who had contact with the file.

As added by P.L.230-2007, SEC.18. Amended by P.L.156-2009, SEC.18.

IC 23-2-5-24

Cooperation with department of financial institutions

Sec. 24. In the securities divisions' investigative, examination, and

regulatory activities related to licensees under this article, the securities division may cooperate with the Indiana department of financial institutions in the regulation of a licensee that conducts:

- (1) business under this article; and
- (2) business that requires licensure under IC 24-4.4.

As added by P.L.156-2009, SEC.19.

IC 23-2-5-25

Reporting by commissioner

Sec. 25. Subject to IC 5-14-3, the commissioner is required to regularly report:

- (1) violations of this chapter; and
 - (2) enforcement actions and other relevant information;
- to the Nationwide Mortgage Licensing System and Registry.

As added by P.L.156-2009, SEC.20.

IC 23-2-5-26

Process to challenge information reported

Sec. 26. The commissioner shall establish a process by which a mortgage loan originator may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the commissioner.

As added by P.L.156-2009, SEC.21.

IC 23-2-6

Chapter 6. Indiana Commodity Code

IC 23-2-6-1

"Board of trade" defined

Sec. 1. As used in this chapter, "board of trade" refers to a person or group of persons engaged in:

- (1) buying or selling a commodity; or
- (2) receiving a commodity for sale on consignment;

whether the person or group of persons is characterized as a board of trade, an exchange, or any other type of marketplace.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-2

"Commissioner" defined

Sec. 2. As used in this chapter, "commissioner" refers to the securities commissioner appointed under IC 23-19-6-1(a).

As added by P.L.177-1991, SEC.10. Amended by P.L.27-2007, SEC.20.

IC 23-2-6-3

"CFTC Rule" defined

Sec. 3. As used in this chapter, "CFTC Rule" means a rule, regulation, or order of the Commodity Futures Trading Commission that is in effect on July 1, 1991, and any subsequent amendment, addition, or revision to the rule, regulation, or order unless the commissioner disallows the application to this chapter of the amendment, addition, or revision not later than ten (10) days after the effective date of the amendment, addition, or revision.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-4

"Commodity" defined

Sec. 4. As used in this chapter, "commodity" means, except as otherwise specified by a rule, regulation, or order of the commissioner, any of the following:

- (1) An agricultural, a grain, or a livestock product or byproduct.
- (2) A metal or mineral, including a precious metal.
- (3) A gem or gemstone, whether the gem or gemstone is characterized as precious, semiprecious, or another characterization.
- (4) A fuel (whether liquid, gaseous, or otherwise).
- (5) Foreign currency.
- (6) All other goods, articles, products, or items of any kind, except the following:

- (A) A numismatic coin whose fair market value is at least

fifteen percent (15%) higher than the fair market value of the metal contained in the coin.

(B) Real property.

(C) Any timber, agricultural, or livestock product that is grown or raised on real property and that is offered or sold by the owner or lessee of the real property.

(D) A work of art that is offered or sold by art dealers, offered or sold at a public auction, or offered or sold through a private sale by the owner of the work of art.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-5

"Commodity broker-dealer" defined

Sec. 5. As used in this chapter, "commodity broker-dealer" means a person engaged in the business of executing transactions in commodity contracts or commodity options for:

(A) the account of others; or

(B) the person's own account.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-6

"Commodity contract" defined

Sec. 6. As used in this chapter, "commodity contract" means an account, an agreement, or a contract that:

(1) is for the purchase or sale of at least one (1) commodity;

(2) is primarily for speculation or investment purposes; and

(3) is not primarily for the use or consumption by the offeree or purchaser;

regardless of whether the account, agreement, or contract is for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. For purposes of this chapter, any commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes. The term does not include a contract or agreement that requires, and under which the purchaser receives, physical delivery of the total amount of each commodity to be purchased under the contract or agreement not later than twenty-eight (28) calendar days after payment in good funds of any portion of the purchase price.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-7

"Commodity Exchange Act" defined

Sec. 7. As used in this chapter, "Commodity Exchange Act" means the act of the United States Congress known as the Commodity Exchange Act (7 U.S.C. 1 et seq., as in effect June 30, 1991), and including all subsequent amendments, additions, or revisions to the act unless the commissioner by rule or order disallows the application of the amendments, additions, or revisions to this chapter or to any provision of this chapter not later than ten (10) days after the effective date of the amendment, addition, or revision.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-8

"Commodity Futures Trading Commission" defined

Sec. 8. As used in this chapter, "Commodity Futures Trading Commission" means the independent regulatory agency established to administer the Commodity Exchange Act.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-9

"Commodity merchant" defined

Sec. 9. As used in this chapter, "commodity merchant" means any of the following (as defined or described in the Commodity Exchange Act or in a CFTC rule):

- (1) A futures commission merchant.
- (2) A commodity pool operator.
- (3) A commodity trading advisor.
- (4) An introducing broker.
- (5) A leverage transaction merchant.
- (6) A person associated with a person described in subdivisions (1) through (5).
- (7) A floor broker.
- (8) Any other person, other than a futures association, that is required to register with the Commodity Futures Trading Commission.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-10

"Commodity option" defined

Sec. 10. As used in this chapter, "commodity option" means an account, an agreement, or a contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell:

- (1) at least one (1) commodity; or
 - (2) at least one (1) commodity contract;
- whether characterized as an option, privilege, indemnity, bid, offer,

put, call, advance guaranty, decline guaranty, or otherwise. However, the term does not include an option traded on a national securities exchange that is registered with the Securities and Exchange Commission.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-11

"Commodity sales representative" defined

Sec. 11. As used in this chapter, "commodity sales representative" means a person who:

- (1) is acting for a commodity broker-dealer in executing or attempting to execute a transaction in a commodity contract or a commodity option; and
- (2) is authorized to take those actions by the commodity broker-dealer.

As added by P.L.177-1991, SEC.10. Amended by P.L.1-1992, SEC.115.

IC 23-2-6-12

"Financial institution" defined

Sec. 12. As used in this chapter, "financial institution" means a bank, savings institution, or trust company that is organized or supervised under the laws of the United States or of any state.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-13

"Offer" defined

Sec. 13. As used in this chapter, "offer" means an offer to sell, offer to purchase, or offer to enter into a commodity contract or commodity option.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-14

"Person" defined

Sec. 14. (a) As used in this chapter, "person" means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(b) The term does not include a contract market designated by any of the following:

- (1) The Commodity Futures Trading Commission.
- (2) Any clearinghouse of the Commodity Futures Trading Commission.

(3) A national securities exchange that is registered with the Securities and Exchange Commission.

(4) An employee, an officer, or a director of a contract market designated clearinghouse or exchange who is acting solely in that capacity.

As added by P.L.177-1991, SEC.10. Amended by P.L.8-1993, SEC.315.

IC 23-2-6-15

"Precious metal" defined

Sec. 15. As used in this chapter, "precious metal" means the following in coin, bullion, or other form:

- (1) Silver.
- (2) Gold.
- (3) Platinum.
- (4) Palladium.
- (5) Copper.
- (6) Any other items specified by a rule, a regulation, or an order of the commissioner.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-16

"Sale" defined

Sec. 16. As used in this chapter, "sale" means any:

- (1) exchange;
- (2) contract of sale;
- (3) contract to sell; or
- (4) disposition;

for value.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-17

Limitations; commodity contracts or options

Sec. 17. Except as provided in sections 18 and 19 of this chapter, a person may not:

- (1) sell, purchase, or offer to sell or purchase a commodity under any commodity contract or under any commodity option; or
- (2) offer to enter into as seller or purchaser any commodity contract or any commodity option.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-18

Persons permitted to offer transactions under IC 23-2-6-17

Sec. 18. (a) The prohibitions set forth in section 17 of this chapter

do not apply to any transaction offered by any of the following persons (or any employee, officer, or director of the person who is acting solely in that capacity) if the person is the purchaser or seller in the transaction:

- (1) A person:
 - (A) who is registered with the Commodity Futures Trading Commission as a futures commission merchant, a leverage transaction merchant, an introducing broker, or an associated person of an introducing broker; and
 - (B) whose activities require that registration.
- (2) A person registered with the Securities and Exchange Commission as a broker-dealer whose activities require that registration.
- (3) A person:
 - (A) who is affiliated with; and
 - (B) whose obligations and liabilities under the transaction are guaranteed by;a person described in subdivision (1) or (2).
- (4) A person who is a member of a contract market designated by the Commodity Futures Trading Commission or any clearinghouse of the Commodity Futures Trading Commission.
- (5) A financial institution.
- (6) A person registered in Indiana as a securities broker-dealer whose activities require that registration.

(b) The exemption provided by subsection (a) does not apply to any transaction or activity that is prohibited by the Commodity Exchange Act or by a CFTC rule.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-19

Contracts or transactions permitted under IC 23-2-6-17

Sec. 19. (a) The prohibitions set forth in section 17 of this chapter do not apply to any of the following:

- (1) An account, an agreement, or a transaction that is within the exclusive jurisdiction of the Commodity Futures Trading Commission as provided under the Commodity Exchange Act.
- (2) A commodity contract:
 - (A) that is for the purchase of at least one (1) precious metal;
 - (B) that requires physical delivery of the quantity of the precious metals purchased not later than twenty-eight (28) calendar days after payment of any portion of the purchase price; and
 - (C) under which the purchaser receives physical delivery of the quantity of precious metals purchased not later than twenty-eight (28) calendar days after payment of any portion

of the purchase price.

(3) A commodity contract solely between persons engaged in producing, processing, using commercially, or handling as merchants:

(A) each commodity subject to the contract; or

(B) any byproduct of the commodity subject to the contract.

(4) A commodity contract under which the offeree or the purchaser is any of the following:

(A) A person described in section 18(a) of this chapter.

(B) An insurance company.

(C) An investment company (as defined in the Investment Company Act of 1940).

(b) For purposes of this section, physical delivery is considered to have occurred if both of the following occur:

(1) The quantity of precious metals purchased is delivered (in specifically segregated or fungible bulk form) within the twenty-eight (28) day period to the possession of a depository that:

(A) is not the seller; and

(B) is any of the following:

(i) A depository that issues warehouse receipts that are recognized for delivery purposes for any commodity on a contract market designated by the Commodity Futures Trading Commission.

(ii) A storage facility that is licensed or regulated by the United States or any agency of the United States.

(iii) A depository designated by the commissioner.

(2) The depository, any other person described in subdivision (1)(B), or a qualified seller issues and the purchaser receives a certificate, document of title, confirmation, or other instrument that evidences that the quantity of precious metals:

(A) has been delivered to the depository; and

(B) is held and will continue to be held:

(i) by the depository on the purchaser's behalf; and

(ii) free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses that have previously been disclosed to the purchaser.

(c) For the purposes of this section, a qualified seller is a person who meets the following conditions:

(1) Is a seller of precious metals.

(2) Has:

(A) a tangible net worth of at least five million dollars (\$5,000,000); or

(B) has an affiliate who:

- (i) has unconditionally guaranteed the obligations and liabilities of the person; and
- (ii) has a tangible net worth of at least five million dollars (\$5,000,000).

(3) Has stored precious metals with at least one (1) depository on behalf of customers for at least the preceding three (3) years.

(4) Before any offer, and annually after any offer, files with the commissioner a sworn notice of intent to act as a qualified seller under this section that contains the following:

- (A) The person's name and address.
- (B) The names of the person's directors, officers, controlling shareholders, partners, principals, and other controlling persons.
- (C) The address of the person's principal place of business.
- (D) The state and date of the person's incorporation or organization.
- (E) The name and address of the person's registered agent in Indiana.

(F) A statement that:

- (i) the person; or
- (ii) an affiliate of the person who has guaranteed the obligations and liabilities of the person;

has a tangible net worth of at least five million dollars (\$5,000,000).

(G) Depository information required by the commissioner, including the following:

- (i) The name and address of any depository that the person intends to use.
- (ii) The name and address of each depository in which the person has stored precious metals on behalf of customers at any time during the preceding three (3) years.
- (iii) Independent verification from each depository named in item (ii) that the person has in fact stored precious metals on behalf of the person's customers in the depository during the preceding three (3) years and a statement by each depository showing the total deposits made by the person during the three (3) years.

(H) A financial statement, audited by an independent certified public accountant, for:

- (i) the person; or
- (ii) an affiliate of the person who has guaranteed the obligations and liabilities of the person;

for the past three (3) years.

(I) The certified public accountant's audit report of the financial statement described in clause (H).

(J) A statement describing the details of any civil, criminal, or administrative proceedings currently pending or adversely resolved against the person or the person's directors, officers, controlling shareholders, partners, principals, or other controlling persons during the preceding ten (10) years, including the following:

- (i) Civil litigation and administrative proceedings involving securities or commodities violations or fraud.
- (ii) Criminal proceedings.
- (iii) Denials, suspensions, or revocations of securities or commodities licenses or registrations.
- (iv) Suspensions or expulsions from membership in or associations with a self-regulatory organization registered under the Securities Exchange Act of 1934 or the Commodities Exchange Act.

(K) A statement declaring that proceedings described in clause (J) have not occurred if there have been no proceedings of that type.

(5) Notifies the commissioner of any material changes in the information provided in the notice of intent under subdivision (4) not later than fifteen (15) days after the changes occur or are made.

(6) Annually furnishes to:

- (A) each purchaser for whom the seller is currently storing precious metals; and
- (B) the commissioner;

a report by an independent certified public accountant of the accountant's examination of the seller's precious metals storage program.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-20

Waiver of requirements; qualified sellers; limitation on authority to engage in business

Sec. 20. (a) The commissioner may unconditionally or conditionally waive any of the requirements under section 19(c) of this chapter that a person must otherwise satisfy to be considered a qualified seller.

(b) The commissioner may by order deny, suspend, revoke, or limit a person's authority to engage in business as a qualified seller under section 19 of this chapter if the commissioner determines that:

- (1) the order is in the public interest; and
- (2) the person, the person's officers, directors, partners, agents, servants, or employees, any person occupying a similar status or performing similar functions, any person who directly or

indirectly controls or is controlled by the person or other person listed in this subdivision, or the person's affiliates or subsidiaries meet any of the following conditions:

(A) Has filed a notice of intention under section 19(c) of this chapter that:

- (i) is incomplete in any material respect; or
- (ii) contains a statement that, under the circumstances in which the statement was made, is false or misleading with respect to a material fact.

(B) Has during the preceding ten (10) years:

- (i) pled guilty or nolo contendere to a crime; or
- (ii) been convicted of a crime;

indicating a lack of fitness to engage in the investment commodity business.

(C) Has been permanently enjoined or temporarily enjoined by a court from engaging in or continuing any conduct or practice that indicates a lack of fitness to engage in the investment commodities business.

(D) Is the subject of an order of the commissioner denying, suspending, or revoking the person's license as:

- (i) a securities broker-dealer;
- (ii) a sales representative; or
- (iii) an investment adviser.

(E) Is the subject of any of the following orders that are in effect and that were issued during the preceding five (5) years.

(i) An order by the commissioner, by a securities agency or the securities administrator of any other state, Canadian province, or territory, by the Securities and Exchange Commission, or by the Commodity Futures Trading Commission, that was entered after notice and opportunity for hearing and that denied, suspended, or revoked the person's registration as a futures commission merchant, commodity trading adviser, commodity pool operator, securities broker-dealer, sales representative, investment adviser, or any substantially similar occupation.

(ii) An order suspending or expelling the person from membership in or association with a self-regulatory organization registered under the Securities Exchange Act of 1934 or the Commodity Exchange Act.

(iii) A United States postal service fraud order.

(iv) A cease and desist order entered after notice and opportunity for hearing by a person described in item (i).

(v) An order entered by the Commodity Futures Trading Commission denying, suspending, or revoking registration

- under the Commodity Exchange Act.
- (F) Has engaged in an unethical or dishonest act or practice in the investment commodities or securities business.
- (G) Has failed to reasonably supervise sales representatives or employees.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-21

Summary denial or suspension of exemption; qualified sellers

Sec. 21. (a) To protect the public interest or to protect investors, the commissioner may by order summarily deny or suspend an exemption provided under section 19 of this chapter for a qualified seller. Upon the entry of an order denying or suspending an exemption for a qualified seller, the commissioner shall promptly notify the person claiming the exemption:

- (1) that an order has been entered;
- (2) of the reasons for the entry of the order; and
- (3) that a date for a hearing concerning the order will be determined not later than thirty (30) days after the commissioner receives a written request for a hearing.

(b) The provisions of sections 39 and 40 of this chapter apply to all subsequent proceedings after the entry of an order under this section.

(c) The commissioner may by order deny or revoke an exemption provided under section 19 of this chapter for a qualified seller if the commissioner finds that an applicant or qualified seller:

- (1) is no longer in existence;
- (2) has ceased to do business;
- (3) is subject to:
 - (A) an adjudication of mental incompetence; or
 - (B) the control of a committee, conservator, or guardian; or
- (4) cannot be located after reasonable search.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-22

Rules; orders

Sec. 22. The commissioner may adopt rules and issue orders to do the following:

- (1) Prescribe terms and conditions of all transactions and contracts that:
 - (A) are covered by this chapter; and
 - (B) are not within the exclusive jurisdiction of the Commodity Futures Trading Commission, as granted by the Commodity Exchange Act.
- (2) Exempt persons from this chapter.

- (3) Implement the provisions of this chapter for the protection of purchasers and sellers of commodities.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-23

Registration of commodity merchants; places for trading commodities or options

Sec. 23. (a) A person may not engage in the commodities trade or business or otherwise act as a commodity merchant unless the person:

- (1) is registered or temporarily licensed with the Commodity Futures Trading Commission for each activity causing the person to be considered a commodity merchant and the registration or temporary license has not expired or been revoked or suspended; or
- (2) is exempt from registration with the Commodity Futures Trading Commission under:
 - (A) the Commodity Exchange Act; or
 - (B) a CFTC rule.

(b) A board of trade may not trade or provide a place for the trading of any commodity contract or commodity option if the commodity contract or commodity option must be traded on a contract market or commodity market designated by the Commodity Futures Trading Commission or is subject to the rules of a contract market or commodity market designated by the Commodity Futures Trading Commission, unless:

- (1) the board of trade has been designated for the commodity contract or commodity option by the Commodity Futures Trading Commission; and
- (2) the designation has not been vacated, suspended, or revoked.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-24

Fraud

Sec. 24. A person may not directly or indirectly:

- (1) cheat or defraud or attempt to cheat or defraud any person;
- (2) employ any device, scheme, or artifice to defraud any person;
- (3) make a false report, enter a false record, or make an untrue statement of a material fact;
- (4) fail to state a material fact that is necessary to make a report, record, or statement made, under the circumstances in which the report, record, or statement was made, not misleading;
- (5) engage in a transaction, act, practice, or course of business, including any form of advertising or solicitation, that operates

or would operate as a fraud or deceit upon any person; or
(6) misappropriate or convert the funds, security, or property of any person;
in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into of, any commodity contract or commodity option subject to section 18, 19(a)(2), or 19(a)(4) of this chapter.
As added by P.L.177-1991, SEC.10.

IC 23-2-6-25

Liability; violation of chapter

Sec. 25. (a) The act, omission, or failure of any official, agent, or other person acting for an individual, an association, a partnership, a limited liability company, a corporation, or a trust within the scope of the official's, agent's, or person's employment or office constitutes the act, omission, or failure of both:

- (1) the individual, association, partnership, limited liability company, corporation, or trust; and
- (2) the official, agent, or person.

(b) Except as provided in subsection (c), the following are jointly and severally liable for the violation of this chapter by a person and are liable to the same extent as the person:

- (1) Each person who directly or indirectly controls the person who committed the violation.
- (2) Each partner, officer, and director of the person who committed the violation.
- (3) Each person occupying a similar status or performing a similar function as a partner, officer, or director described in subdivision (2).
- (4) Each person who:
 - (A) is an employee of the person who committed the violation; and
 - (B) materially aids in the violation.

(c) A person is not liable under subsection (b) if the person proves that the person:

- (1) did not know; and
- (2) in exercise of reasonable care could not have known;

of the existence of the facts on which the liability is alleged to exist.
As added by P.L.177-1991, SEC.10. Amended by P.L.8-1993, SEC.316.

IC 23-2-6-26

Effect of chapter on securities law

Sec. 26. This chapter does not impair, derogate, or otherwise affect any of the following:

- (1) The authority or powers of the commissioner under the Indiana securities law.
- (2) The application of any provision of the Indiana securities law to any person or transaction subject to the Indiana securities law.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-27

Construction and implementation of chapter

Sec. 27. (a) This chapter shall be construed and implemented to carry out the chapter's general purpose to do the following:

- (1) Protect investors.
- (2) Prevent and prosecute illegal and fraudulent schemes involving commodity contracts.
- (3) Maximize coordination with federal law and the law of other states and the administration and enforcement of those laws.

(b) This chapter does not create any rights or remedies upon which actions may be brought by private persons against persons who violate this chapter.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-28

Investigations; examinations; hearings; civil penalties

Sec. 28. (a) The commissioner may make investigations in or outside Indiana that the commissioner finds necessary or appropriate to:

- (1) determine whether any person has violated or is about to violate this chapter or any rule or order of the commissioner; or
- (2) aid in the enforcement of this chapter.

(b) The commissioner may charge as costs of an investigation or examination all reasonable expenses, including a per diem prorated on the salary of the commissioner or an employee. All reasonable expenses of investigation, examination, or hearing shall be paid by the party under investigation or examination.

(c) The commissioner may publish information concerning any violation of this chapter or any rule or order of the commissioner. The commissioner shall upon request make available for inspection and copying under IC 5-14-3 information concerning any violation of this chapter or any rule or order of the commissioner.

(d) For purposes of an investigation or a proceeding under this chapter, the commissioner or an officer or employee designated by rule or order may do any of the following:

- (1) Administer oaths and affirmations.
- (2) Subpoena witnesses and compel the attendance of witnesses.

(3) Take evidence.

(4) Require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner finds to be relevant or material to the investigation or proceeding.

(e) If a person does not give testimony or produce the documents required by the commissioner or the commissioner's designee under an administrative subpoena, the commissioner or the designee may petition for a court order compelling compliance with the subpoena or the giving of the required testimony.

(f) A petition for an order of compliance under subsection (e) may be filed in any of the following:

(1) The circuit or superior court of a county containing a consolidated city.

(2) The circuit or superior court where service may be obtained on the person refusing to comply with the subpoena if the person is within Indiana.

(3) The appropriate court of the state having jurisdiction over the person refusing to comply with the subpoena if the person is outside Indiana.

(g) Costs of investigations, examinations, and hearings and civil penalties recovered under this chapter shall be deposited in the securities division enforcement account established under IC 23-19-6-1(f). With the approval of the budget agency, the funds in the securities division enforcement account may be used to augment and supplement the funds appropriated for the administration of this chapter.

As added by P.L.177-1991, SEC.10. Amended by P.L.27-2007, SEC.21.

IC 23-2-6-29

Cease and desist orders; civil remedies

Sec. 29. (a) If the commissioner believes, whether or not based upon an investigation conducted under section 28 of this chapter, that a person has engaged or is about to engage in any act or practice that violates this chapter or any rule or order adopted or issued by the commissioner, the commissioner may do any of the following:

(1) Issue a cease and desist order.

(2) Issue an order imposing a civil penalty of not more than ten thousand dollars (\$10,000) for any single violation.

(3) Initiate any of the actions specified in subsection (b).

(b) In addition to any other legal or equitable remedies, the commissioner may bring any of the following actions in circuit or superior court or in the appropriate courts of another state:

(1) An action for declaratory judgment.

(2) An action for a prohibitory injunction or mandatory injunction to:

(A) enjoin any violation; and

(B) ensure compliance with this chapter or any rule or order adopted or issued by the commissioner.

(3) An action for disgorgement.

(4) An action for the appointment of a receiver or conservator for the defendant or the defendant's assets.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-30

Violations; special remedies

Sec. 30. (a) Upon a showing by the commissioner that a person has violated or is about to violate this chapter or any rule or order adopted or issued by the commissioner, a court may grant appropriate legal or equitable remedies.

(b) Upon a showing by the commissioner of a violation of this chapter or a rule or order adopted or issued by the commissioner, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may order the following special remedies:

(1) A civil penalty of not more than ten thousand dollars (\$10,000) for any single violation.

(2) Disgorgement.

(3) Declaratory judgment.

(4) Restitution to investors that request restitution.

(5) Appointment of a receiver or conservator for the defendant or the defendant's assets.

(c) If the commissioner shows only that a person is about to violate this chapter or a rule or order issued or adopted by the commissioner, appropriate remedies under this chapter are limited to the following:

(1) A temporary restraining order.

(2) A temporary injunction or permanent injunction.

(3) A writ of prohibition or writ of mandamus.

(4) An order appointing a receiver or conservator for the defendant or the defendant's assets.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-31

Commodity codes of other states; violations; remedies

Sec. 31. (a) Upon a showing by the commissioner or by a securities or commodity agency of another state that a person, other than a government or a governmental agency, has violated or is about

to violate the commodity code of that state or any rule or order of the securities commissioner or the securities agency or commodity agency of that state, the court may grant appropriate legal and equitable remedies.

(b) Upon a showing of a violation of the securities or commodity act of another foreign state or a rule or an order of the securities commissioner or securities agency or commodity agency of that state, a court, in addition to traditional legal or equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may order the following special remedies:

(1) Disgorgement.

(2) Appointment of a receiver, a conservator, or an ancillary receiver or conservator for the defendant or for the defendant's assets located in Indiana.

(c) If the commissioner shows only that a person is about to violate the securities act or commodities act of another state or a rule or order issued or adopted by the administrator of the securities act or commodities act of another state, appropriate remedies under this chapter are limited to the following:

(1) A temporary restraining order.

(2) A temporary injunction or permanent injunction.

(3) A writ of prohibition or writ of mandamus.

(4) An order appointing a receiver, a conservator, or an ancillary receiver or conservator for the defendant or for the defendant's assets located in Indiana.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-32

Bonds; official actions

Sec. 32. A court may not require the commissioner to post a bond in any official action under this chapter.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-33

Penalties

Sec. 33. (a) A person who knowingly violates:

(1) this chapter; or

(2) any rule or order issued or adopted by the commissioner under this chapter;

commits a Class C felony.

(b) A person who violates a rule or an order issued or adopted under this chapter may be assessed a civil penalty of up to ten thousand dollars (\$10,000).

(c) The commissioner may refer any evidence concerning

violations of this chapter or violations of any rule or order issued or adopted by the commissioner to any prosecuting attorney in Indiana.
As added by P.L.177-1991, SEC.10.

IC 23-2-6-34

Administration of chapter

Sec. 34. (a) The securities division of the office of the secretary of state shall administer this chapter.

(b) The commissioner and any employees of the commissioner may not do the following:

(1) Use for personal gain or benefit any information that:

(A) is filed with the commissioner or obtained by the commissioner; and

(B) is not public information.

(2) Conduct securities dealings or commodity dealings based on public or confidential information that is filed with the commissioner or obtained by the commissioner if there has not been a sufficient time for the securities markets or commodity markets to assimilate the information.

(c) Except as provided in subsection (d), all information that is collected, assembled, or maintained by the commissioner:

(1) is public information; and

(2) is available for inspection by the public.

(d) The following information is not public information and may not be made available by the commissioner for public inspection:

(1) Information obtained in private investigations under section 28(a) or 28(d) of this chapter.

(2) Information that:

(A) is obtained from a federal agency; and

(B) may not be disclosed under federal law.

(e) The commissioner shall have the discretion to disclose any information that is confidential under subsection (d)(1) to a person described in section 35(a) of this chapter.

(f) This chapter does not create or derogate any privilege that exists at common law, by statute, or otherwise, when any documentary evidence or other evidence is sought under subpoena directed to the commissioner or any employee of the commissioner.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-35

Cooperation with other authorities

Sec. 35. (a) In order to encourage uniform application and interpretation of this chapter and in order to encourage securities regulation and enforcement, the commissioner and the commissioner's employees may cooperate with any of the following:

- (1) A securities or commodities agency or the securities commissioner of any other jurisdiction, including any foreign jurisdiction.
 - (2) An agency administering any laws similar to this chapter.
 - (3) The Commodity Futures Trading Commission.
 - (4) The Securities and Exchange Commission.
 - (5) A self-regulatory organization established under the Commodity Exchange Act or the Securities Exchange Act of 1934.
 - (6) A national or international organization of commodities or securities officials or agencies.
 - (7) A governmental law enforcement agency.
- (b) The cooperation authorized by subsection (a) may include the following if the information sought would be subject to lawful subpoena for conduct occurring in Indiana:
- (1) Bearing the expense of any type of cooperation described in this subsection.
 - (2) Making joint examinations or investigations.
 - (3) Holding joint administrative hearings.
 - (4) Filing and prosecuting joint litigation.
 - (5) Sharing and exchanging personnel.
 - (6) Sharing and exchanging information and documents.
 - (7) Writing and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes, and releases.
 - (8) Issuing and enforcing subpoenas at the request of any of the following:
 - (A) An agency in another jurisdiction that administers a law similar to this chapter.
 - (B) A securities or commodities agency of another jurisdiction.
 - (C) The Commodity Futures Trading Commission.
 - (D) The Securities and Exchange Commission.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-36

Rules; forms; orders

Sec. 36. (a) In addition to specific authority granted under this chapter, the commissioner may make, amend, and rescind rules, forms, and orders necessary to carry out this chapter.

(b) Unless specifically provided in this chapter, a rule, a form, or an order may not be adopted, amended, or rescinded unless the commissioner finds that the action is:

- (1) necessary or appropriate for the public interest or for the protection of investors; and
- (2) consistent with the purposes fairly intended by the policy

and provisions of this chapter.

(c) All rules and forms of the commissioner must be published.

(d) A provision of this chapter imposing any liability does not apply to an act that is:

(1) committed or omitted in good faith; and

(2) in conformity with a rule, an order, or a form adopted or issued by the commissioner;

even if the rule, order, or form is later amended, rescinded, or is determined to be invalid for any reason by judicial authority or other authority.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-37

Service of process

Sec. 37. (a) If a person, including a person that is not a resident of Indiana, engages in conduct prohibited or made actionable by this chapter or any rule or order adopted or issued by the commissioner, the commissioner shall be considered the person's attorney for the purpose of receiving service of any lawful process in a noncriminal proceeding that is:

(1) brought against the person, a successor of the person, or a personal representative of the person;

(2) related to the prohibited or actionable conduct; and

(3) brought under this chapter or any rule or order issued or adopted by the commissioner.

(b) Process served on the commissioner under subsection (a) has the same force and validity as personal service on the person engaging in the prohibited or actionable conduct.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-38

Application of sections IC 23-2-6-17, IC 23-2-6-23, and IC 23-2-6-24

Sec. 38. (a) Sections 17, 23, and 24 of this chapter apply to a person who sells or offers to sell if:

(1) the offer to sell is made in Indiana; or

(2) an offer to buy is made and accepted in Indiana.

(b) Sections 17, 23, and 24 of this chapter apply to a person who buys or offers to buy if:

(1) the offer to buy is made in Indiana; or

(2) an offer to sell is made and accepted in Indiana.

(c) For purposes of this section:

(1) an offer to sell or an offer to buy is made in Indiana, whether or not any party is present in Indiana, if the offer:

(A) originates from Indiana; or

- (B) is directed by the offeror to Indiana and is received at:
 - (i) the place to which the offer is directed; or
 - (ii) any post office in Indiana, in the case of a mailed offer;and
- (2) an offer to sell or to buy is accepted in Indiana if the acceptance:
 - (A) is communicated to the offeror in Indiana; and
 - (B) has not previously been communicated to the offeror, orally or in writing, outside Indiana.
- (d) For purposes of this section, acceptance is communicated to an offeror in Indiana, whether or not any party is then present in Indiana, if:
 - (1) the offeree:
 - (A) directs the acceptance to the offeror in Indiana; and
 - (B) reasonably believes that the offeror is present in Indiana;and
 - (2) the acceptance is received at:
 - (A) the place to which the acceptance is directed; or
 - (B) any post office in Indiana, in the case of a mailed acceptance.
- (e) For purposes of this section, an offer to sell or to buy is not made in Indiana if:
 - (1) a publisher circulates in Indiana, or there is circulated in Indiana on the behalf of the publisher, a newspaper or other publication of general, regular, and paid circulation that:
 - (A) is not published in Indiana; or
 - (B) is published in Indiana, but has had more than two-thirds (2/3) of the newspaper's circulation outside Indiana during the past twelve (12) months; or
 - (2) a newspaper or a radio or television program originating outside Indiana is received in Indiana.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-39

Administrative proceedings

Sec. 39. (a) The commissioner shall initiate an administrative proceeding under this chapter by entering a notice of intent to take a specific act or by entering a summary order. The notice of intent or summary order:

- (1) may be entered without notice;
 - (2) may be entered without opportunity for a hearing;
 - (3) is not required to be supported by findings of fact or conclusions of law; and
 - (4) must be in writing.
- (b) After entering a notice of intent or summary order, the

commissioner shall promptly notify all interested parties that the notice of intent or summary order has been entered and of the reasons for the entry.

(c) If a proceeding is under a notice of intent, the commissioner shall inform all interested parties of the date, time, and place set for the hearing on the notice.

(d) If the proceeding is under a summary order, the commissioner shall inform all interested parties that:

(1) the parties have thirty (30) business days from the entry of the order to file with the commissioner a written request for a hearing on the matter; and

(2) a hearing will be scheduled to begin not later than thirty (30) business days after the receipt of a written request.

(e) If the proceeding is under a summary order, the commissioner may, by the commissioner's own motion, set a hearing for the proceeding, whether or not a written request for a hearing is received from an interested party.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-40

Summary orders; final orders

Sec. 40. (a) A summary order becomes a final order if:

(1) thirty (30) business days have passed since the summary order was entered; and

(2) a hearing on the order is not:

(A) requested under section 39(d) of this chapter; or

(B) ordered by the commissioner under section 39(e) of this chapter.

(b) If a hearing on an order is requested or ordered under section 39 of this chapter, the commissioner may modify, vacate, or extend the order until final determination after the commissioner has provided:

(1) a notice of a hearing to all interested persons; and

(2) an opportunity for a hearing by all interested persons.

(c) A final order or an order after a hearing may not be returned without:

(1) appropriate notice to all interested persons;

(2) opportunity for hearing by all interested persons; and

(3) entry of written findings of fact and conclusions of law.

(d) All hearings in an administrative proceeding under this chapter shall be subject to IC 5-14-1.5.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-41

Review; final orders of commissioner

Sec. 41. (a) Any person aggrieved by a final order of the commissioner may obtain a review of the order in a circuit or superior court of Marion County by filing in court, not later than sixty (60) days after the entry of the order, a written petition requesting the order to be modified or set aside in whole or in part. A copy of a petition for review shall be served on the commissioner.

(b) Except where the taking of additional evidence is ordered by a court under subsections (e) and (f), after the filing of a petition for review:

- (1) the court shall have exclusive jurisdiction of the matter; and
- (2) the commissioner may not modify or set aside the order, in whole or in part.

(c) Unless specifically ordered by the court:

- (1) the filing of a petition for review under subsection (a) does not operate as a stay of the commissioner's order; and
- (2) the commissioner may enforce or ask the court to enforce an order pending the outcome of the review proceedings.

(d) Upon receipt of a petition for review, the commissioner shall certify and file in the court a copy of the order and the transcript or record of the evidence upon which the order was based. If the order became final by operation of law under section 40(a) of this chapter, the commissioner shall certify and file in court:

- (1) a certified copy of the summary order;
- (2) evidence of service of the summary order on the parties to the order; and
- (3) an affidavit certifying that:
 - (A) a hearing on the summary order has not been held; and
 - (B) the summary order became final under section 40(a) of this chapter.

(e) The court may order additional evidence to be taken by the commissioner under conditions the court considers proper if an aggrieved party or the commissioner:

- (1) applies to the court for leave to enter additional evidence; and
- (2) shows to the satisfaction of the court that:
 - (A) there were reasonable grounds for failure to enter the evidence in the hearing before the commissioner; or
 - (B) good cause exists to allow the additional evidence to be taken.

(f) If the court orders new evidence to be taken, the commissioner:

- (1) may modify the findings and order by reason of the additional evidence; and
- (2) shall file in the court the additional evidence and any modified or new findings or order.

(g) The court shall review the petition based on the original record

before the commissioner and any additions or modifications under subsections (e) and (f). The commissioner's findings of facts are conclusive if those findings are supported by competent, material, and substantive evidence. Based on review under this subsection, the court may affirm, modify, enforce, or set aside the order, in whole or in part.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-42

Burden of proof; exemptions

Sec. 42. If a person claims an exemption in any complaint, information, indictment, writ, or proceeding under this chapter:

- (1) the commissioner is not required to disprove the exemption; and
- (2) the party claiming the exemption bears the burden of proof concerning the existence of the exemption.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-43

Failure to make physical delivery; defenses

Sec. 43. In any complaint, information, indictment, writ, or proceeding brought under this chapter that alleges a violation of section 17 of this chapter solely on the failure in an individual case to make physical delivery within the applicable time under section 19(a)(2) of this chapter, it is a defense if both of the following are shown:

- (1) Failure to make physical delivery was due solely to factors beyond the control of all of the following:
 - (A) The seller.
 - (B) Officers, directors, partners, agents, servants, or employees of the seller.
 - (C) Each person occupying a similar status or performing similar functions as a person described in clause (B).
 - (D) Each person who directly or indirectly controls or is controlled by the seller or by any person described in clause (B) or (C).
 - (E) The seller's affiliates, subsidiaries, and successors.
- (2) Physical delivery was completed within a reasonable time under the applicable circumstances.

As added by P.L.177-1991, SEC.10.