

IC 28-11

ARTICLE 11. DEPARTMENT OF FINANCIAL INSTITUTIONS

IC 28-11-1

Chapter 1. Establishment of the Department of Financial Institutions

IC 28-11-1-1

Department of financial institutions; establishment; expenses paid by fees; not subject to oversight; examination of funds, accounts, and financial affairs

Sec. 1. (a) The department of financial institutions is established.

(b) The department:

(1) is an independent agency in the executive branch of state government; and

(2) exercises essential public functions.

(c) The expenses of the department in administering the financial institutions subject to the department's oversight are paid by financial institutions through fees established by the department under IC 28-11-3-5.

(d) Subject to subsection (e), the department's regulatory and budgetary functions are not subject to oversight by the following:

(1) The office of management and budget (notwithstanding IC 4-3-22-14).

(2) The budget agency (notwithstanding IC 4-12-1).

(3) The state personnel department (notwithstanding IC 4-15-1.8).

(4) The Indiana department of administration (notwithstanding IC 4-13-1).

(5) The office of technology (notwithstanding IC 4-13.1).

(e) The department's funds, accounts, and financial affairs shall be examined biennially by the state board of accounts under IC 5-11-1-9(c).

As added by P.L.33-1991, SEC.56. Amended by P.L.213-2007, SEC.91; P.L.217-2007, SEC.89.

IC 28-11-1-2

Administration of Title 28

Sec. 2. The department shall administer this title.

As added by P.L.33-1991, SEC.56.

IC 28-11-1-3

Members of department

Sec. 3. (a) The ultimate authority for and the powers, duties, management, and control of the department are vested in the following seven (7) members:

(1) The director of the department, who serves as an ex officio, voting member.

(2) The following six (6) members appointed by the governor

as follows:

(A) Three (3) members must have practical experience at the executive level of a:

- (i) state chartered bank;
- (ii) state chartered savings association; or
- (iii) state chartered savings bank.

(B) One (1) member must have practical experience at the executive level as a lender licensed under IC 24-4.5.

(C) One (1) member must have practical experience at the executive level of a state chartered credit union.

(D) One (1) member must be appointed with due regard for the consumer, agricultural, industrial, and commercial interests of Indiana.

(b) Not more than three (3) members appointed by the governor under subsection (a)(2) after June 30, 2006, may be affiliated with the same political party.

As added by P.L.33-1991, SEC.56. Amended by P.L.262-1995, SEC.73; P.L.79-1998, SEC.85; P.L.10-2006, SEC.68 and P.L.57-2006, SEC.68; P.L.213-2007, SEC.92; P.L.217-2007, SEC.90.

IC 28-11-1-4

Oath of office; necessity

Sec. 4. An individual must take an oath of office before assuming office as a member.

As added by P.L.33-1991, SEC.56.

IC 28-11-1-5

Term of office; reappointment of a member; service to continue until successor appointed

Sec. 5. (a) A member appointed by the governor under section 3(a)(2) of this chapter serves a term of four (4) years but at the pleasure of the governor.

(b) The governor may reappoint a member appointed under section 3(a)(2) of this chapter.

(c) Notwithstanding the expiration of a member's term, the member continues to serve until a successor is appointed and qualified.

As added by P.L.33-1991, SEC.56. Amended by P.L.10-2006, SEC.69 and P.L.57-2006, SEC.69; P.L.35-2010, SEC.193.

IC 28-11-1-6

Chairman

Sec. 6. (a) The governor shall designate one (1) of the members as chairman. The governor may appoint the director as chairman under this section.

(b) The chairman has one (1) vote on all matters voted on by the members.

As added by P.L.33-1991, SEC.56. Amended by P.L.10-2006, SEC.70 and P.L.57-2006, SEC.70.

IC 28-11-1-7

Salary; expenses

Sec. 7. (a) Each member who is not a state officer or employee is entitled to receive an annual salary of four thousand dollars (\$4,000).

(b) Each member is entitled to receive actual and necessary travel and other expenses incurred in the performance of the member's duties.

As added by P.L.33-1991, SEC.56. Amended by P.L.10-2006, SEC.71 and P.L.57-2006, SEC.71.

IC 28-11-1-8

Officers; election; term of office

Sec. 8. (a) During the first meeting after June 30 of each year, the members shall elect the following officers:

(1) One (1) member as vice chairman.

(2) One (1) individual, who need not be a member, as secretary.

(3) Other officers considered necessary by the members.

(b) The officers elected under subsection (a) hold office for one (1) year and until their successors are elected and qualified.

As added by P.L.33-1991, SEC.56.

IC 28-11-1-9

Meetings

Sec. 9. Each year the members shall hold the following:

(1) Regular meetings at times specified by resolution of the members.

(2) Special meetings at the call of the chairman.

As added by P.L.33-1991, SEC.56.

IC 28-11-1-9.1

Remote participation in meeting of members; official action; meeting memoranda

Sec. 9.1. (a) This section applies to a meeting of the members at which at least four (4) members are physically present at the place where the meeting is conducted.

(b) A member may participate in a meeting of the members by using a means of communication that permits:

(1) all other members participating in the meeting; and

(2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member who participates in a meeting under subsection (b) is considered to be present at the meeting.

(d) A member who participates in a meeting under subsection (b) may act as a voting member on official action only if that official action is voted upon by at least four (4) members of the board physically present at the place where the meeting is conducted.

(e) The memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of each member who:

(1) was physically present at the place where the meeting was

conducted;

(2) participated in the meeting by using a means of communication described in subsection (b); and

(3) was absent.

(f) A member who participates in a meeting under subsection (b) may not cast the deciding vote on any official action.

As added by P.L.35-2010, SEC.194.

IC 28-11-1-10

Quorum; action by majority

Sec. 10. (a) Four (4) members constitute a quorum.

(b) Unless otherwise provided for in this title, if a quorum is present, a majority of the members present is sufficient for the department to take action.

As added by P.L.33-1991, SEC.56.

IC 28-11-1-11

Delegation of power

Sec. 11. The members may delegate a power or duty to:

(1) the director;

(2) an agent of the department; or

(3) an employee of the department;

by a rule of the department adopted under IC 4-22-2 or by a resolution of the members.

As added by P.L.33-1991, SEC.56.

IC 28-11-1-12

Adoption of rules

Sec. 12. The department may, by a majority vote of the members, adopt rules under IC 4-22-2 to implement this title.

As added by P.L.33-1991, SEC.56.

IC 28-11-1-13

Policies and procedures

Sec. 13. The members may by resolution establish policies and procedures in order to facilitate:

(1) the supervision of financial institutions by the department; and

(2) the licensing and regulation of persons and entities by the department under:

(A) this title; and

(B) IC 24.

As added by P.L.33-1991, SEC.56. Amended by P.L.262-1995, SEC.74; P.L.213-2007, SEC.93; P.L.217-2007, SEC.91.

IC 28-11-1-13.5

Payments by credit card, debit card, or charge card; discharge of liability; department's authority to contract with vendor; vendor transaction charge or discount fee

Sec. 13.5. (a) The department may accept payment of any of the

following by credit card, debit card, charge card, or similar method:

- (1) A fee established by the department under IC 28-11-3-5.
- (2) A penalty assessed by the department under this title or IC 24-4.5.
- (3) A fee assessed:
 - (A) in connection with the director's designation of an automated central licensing system and repository under IC 24-4.5-3-503(10); and
 - (B) for:
 - (i) processing applications and renewals for licenses under IC 24-4.5-3; or
 - (ii) performing other services that the director determines are necessary for the orderly administration of the department's licensing system under IC 24-4.5-3.

(b) If a fee or penalty described in subsection (a) is paid by credit card, debit card, charge card, or similar method, the liability is not finally discharged until the department receives payment or credit from the institution responsible for making the payment or credit.

(c) The department may contract with a bank or credit card vendor for acceptance of bank or credit cards. If there is a vendor transaction charge or discount fee, whether billed to the department or charged directly to the department's account, the department or the bank or credit card vendor may collect from the person using the bank or credit card a uniform fee that is determined by the department.

As added by P.L.90-2008, SEC.67.

IC 28-11-1-14

Assignments, deeds, and other documents; execution

Sec. 14. All assignments, deeds, instruments, notices, orders, rules, and other documents of the department shall be executed in the name of "The Department of Financial Institutions" by the director or, in case of the director's absence or disability, by:

- (1) the chairman;
- (2) an officer elected by the members; or
- (3) an employee of the department designated in writing by the director or the chairman.

As added by P.L.33-1991, SEC.56. Amended by P.L.213-2007, SEC.94; P.L.217-2007, SEC.92.

IC 28-11-1-15

Director's powers; state of emergency or governor's approval

Sec. 15. If the governor:

- (1) declares, under IC 10-14-3-12, a state of emergency in all or part of Indiana; or
- (2) in the absence of a declaration under subdivision (1), gives prior approval to the director;

the director is authorized to take necessary and appropriate action to establish or preserve safe and sound methods of banking and other action the director considers necessary under the circumstances to promote and safeguard the interests of depositors, debtors,

consumers, creditors, or the public.

As added by P.L.213-2007, SEC.95; P.L.217-2007, SEC.93.

Amended by P.L.35-2010, SEC.195.

IC 28-11-2

Chapter 2. Organization of Department

IC 28-11-2-1

Director; appointment; oath of office; term of office; salary; duties; expenses

Sec. 1. (a) The governor shall appoint a qualified individual to be the director of the department. The appointment must be without regard to political beliefs or affiliations.

(b) The director shall take an oath of office before assuming office.

(c) The term of the director is four (4) years. However, the director serves at the pleasure of the governor during the term.

(d) The governor may reappoint the director.

(e) The governor shall fix the director's salary.

(f) The director:

(1) is the chief executive and administrative officer of the department; and

(2) has general supervision of the work of the department and each of the divisions and employees of the department;

subject to the orders and under the direction of the members.

(g) The director is entitled to receive actual and necessary travel and other expenses incurred in the performance of the director's duties.

As added by P.L.33-1991, SEC.56.

IC 28-11-2-2

Organization of department; divisions

Sec. 2. (a) The director, with the approval of the members, shall organize the department.

(b) The department must consist of at least the following divisions:

(1) The division of banks and trust companies.

(2) The division of consumer credit.

(3) The division of credit unions.

As added by P.L.33-1991, SEC.56. Amended by P.L.90-2008, SEC.68.

IC 28-11-2-3

Employees; salaries and benefits; contractors to assist with examinations; contracts not subject to approval

Sec. 3. (a) The director, on behalf of the department, shall employ qualified individuals as assistants, deputies, supervisors, and other necessary employees. Individuals employed by the director are not subject to job classifications or compensation schedules established under IC 4-15. The technical or professional qualification of an applicant shall be determined by examination, by professional rating, or as the director determines. Salaries and benefits for employees of the department shall be:

(1) established by the members, upon recommendation of the

director; and

(2) paid from the financial institutions fund established by section 9 of this chapter.

In making a recommendation under subdivision (1), the director may recommend salaries and benefits substantially equivalent to those paid by the Federal Deposit Insurance Corporation or other federal agencies that supervise financial institutions.

(b) The director may enter into contracts, including contracts for the services of a qualified independent contractor to assist the department in the examination process under this article. Notwithstanding IC 4-13-2-14.1, contracts executed under this section are not subject to the approval of:

(1) the director of the budget agency; or

(2) the commissioner of the Indiana department of administration.

As added by P.L.33-1991, SEC.56. Amended by P.L.141-2005, SEC.20; P.L.213-2007, SEC.96; P.L.217-2007, SEC.94.

IC 28-11-2-4

Performance bonds and crime policies

Sec. 4. (a) The department may require that the members, the director, or specified classes of employees of the department be covered by bonds for faithful performance of their respective duties. A requirement for purchase of faithful performance bonds may be satisfied by the purchase of a blanket bond or a crime insurance policy endorsed to include faithful performance. The cost of a bond or crime insurance policy purchased under this section shall be paid from the fund.

(b) The commissioner of insurance shall prescribe the form of the bonds or crime policies required by this section.

As added by P.L.33-1991, SEC.56. Amended by P.L.49-1995, SEC.11.

IC 28-11-2-5

Discharge of employee for just cause; review; reinstatement

Sec. 5. (a) An employee of the department may be discharged at any time by the director for just cause.

(b) An employee discharged under subsection (a) may request the members to review the director's action. If an employee requests review under this subsection, the members shall review the discharge. The director shall not participate in the members' review under this subsection.

(c) If the members find that the discharge was not for just cause, the employee shall be reinstated and given other appropriate relief by the members.

As added by P.L.33-1991, SEC.56. Amended by P.L.10-2006, SEC.72 and P.L.57-2006, SEC.72.

IC 28-11-2-6

Conflicts of interest; adoption of policies

Sec. 6. (a) The department shall adopt policies defining conflicts of interest by the members, the director, and the employees of the department.

(b) The policies adopted under subsection (a) must include means by which conflicts of interest can be avoided.

As added by P.L.33-1991, SEC.56.

IC 28-11-2-6.1

Ethics rules and requirements; adopting additional rules

Sec. 6.1. (a) The members, the director, and the employees of the department are:

- (1) under the jurisdiction of, and subject to the rules adopted by, the state ethics commission; and
- (2) subject to all other ethics rules and requirements that apply to the executive branch of state government.

(b) The department may adopt additional ethics rules and requirements that:

- (1) apply to the members, the director, and the employees of the department;
- (2) are not less stringent than the rules adopted by the state ethics commission; and
- (3) are consistent with state law.

As added by P.L.213-2007, SEC.97; P.L.217-2007, SEC.95.

IC 28-11-2-6.2

Public meetings; transcribing and preserving damaged records

Sec. 6.2. Except as otherwise provided by law, the department is subject to the following:

- (1) IC 5-14-1.5.
- (2) IC 5-15-3.

As added by P.L.213-2007, SEC.98; P.L.217-2007, SEC.96.

IC 28-11-2-7

Liability for official acts

Sec. 7. The members, director, and employees of the department are not liable in an individual capacity except to the state for an act done or omitted in connection with the performance of their respective duties.

As added by P.L.33-1991, SEC.56.

IC 28-11-2-8

Powers of inquiry; administration of oaths; requiring production of books and records; refusal of person to comply with order or subpoena

Sec. 8. (a) A member, the director, or an employee of the department authorized by the director may do the following:

- (1) Administer oaths and require information for any purpose under this title from any of the persons to which this title applies.
- (2) Require the production of books, accounts, papers, records,

documents, and other evidence for any purpose under this title.

(b) If a person refuses to comply with an order or a subpoena or refuses to appear and testify to any matter regarding which the person may be interrogated, the department may petition an appropriate court for enforcement of the department's order or subpoena.

As added by P.L.33-1991, SEC.56.

IC 28-11-2-9

Financial institutions fund

Sec. 9. (a) The financial institutions fund is established.

(b) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the state general fund.

(c) All revenue accruing to the department shall be paid into the fund.

(d) All expenses incurred and all compensation paid by the department shall be paid out of the fund in the same manner as other state expenses and compensation are paid.

(e) Money in the fund at the end of a fiscal year does not revert to the state general fund.

As added by P.L.33-1991, SEC.56.

IC 28-11-3

Chapter 3. Supervision of Financial Institutions

IC 28-11-3-1

Examination of financial institutions; independent audit; report of condition; data processing services; use of report by Federal Home Loan Bank; unauthorized actions concerning reports; examination of vendors

Sec. 1. (a) The department shall examine the affairs of every financial institution as often as the department considers necessary. Examinations may be made without notice to the institution to be examined.

(b) In making an examination, the department may examine any of the officers or agents of the institution under oath.

(c) The department may require an independent audit by a certified public accountant, subject to the standards the department determines.

(d) The department, in the classification of assets, may disregard the amount of an asset in its analysis of capital adequacy of the financial institution until the amount of the asset is recovered.

(e) After the examiners complete the examination of a financial institution, the examiners:

(1) shall submit their written findings and recommendations to:

(A) the board of directors; and

(B) other parties authorized by the board of directors and approved by the director; and

(2) may confer with the parties listed in subdivision (1) on the findings and recommendations.

(f) Upon the conclusion of an examination, a full, true, and detailed report of the condition of the financial institution shall be made to the department by the examiners in the form prescribed by the department.

(g) A financial institution subject to examination by the department may not cause, by contract or otherwise, any data processing or other similar service to be performed, either on or off its premises, until written assurances are furnished to the department by the financial institution and the entity providing the service that the performance of the service will be subject to regulation and examination by the department to the same extent as if the service was being performed by the financial institution on its own premises. Entities that provide data processing or other similar services to more than one (1) financial institution need only file one (1) written assurance to cover all financial institutions to which the entity provides services.

(h) The report of an examination conducted under this section:

(1) is the exclusive property of the department; and

(2) except as provided in subsection (i), shall not be distributed, published, or duplicated without the prior authorization of the director.

(i) A financial institution that is or seeks to become a member of

the Federal Home Loan Bank System may provide a copy of a report of an examination conducted by the department to the Federal Home Loan Bank for the confidential use of the Federal Home Loan Bank if the director and the Federal Home Loan Bank have entered into a written agreement that provides that the report of the examination:

(1) remains the property of the department; and

(2) is not:

(A) subject to inspection under IC 5-14-3;

(B) subject to subpoena;

(C) subject to discovery; or

(D) admissible in evidence in any civil action.

(j) Except as provided in subsection (i), a person who knowingly or intentionally possesses, distributes, publishes, or duplicates a report of an examination conducted under this section without the prior authorization of the director commits a Class B misdemeanor.

(k) If a financial institution contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the financial institution and be subject to the department's routine examination procedures, the person that provides the service to the financial institution shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any financial institution that receives services from the person refusing the examination to:

(1) discontinue receiving one (1) or more services from the person; or

(2) otherwise cease conducting business with the person.

As added by P.L.33-1991, SEC.56. Amended by P.L.262-1995, SEC.75; P.L.90-2008, SEC.69; P.L.35-2010, SEC.196.

IC 28-11-3-2

Visitorial powers

Sec. 2. The department has visitorial powers with respect to any financial institution for the purpose of maintaining the safety and soundness of the financial institution.

As added by P.L.33-1991, SEC.56.

IC 28-11-3-3

Disclosure of confidential information; information sharing agreements

Sec. 3. (a) The director or the director's designee may disclose or make available to a:

(1) state, federal, or foreign law enforcement agency;

(2) state, federal, or foreign financial institution supervisory agency;

(3) state, federal, or foreign prosecutorial agency;

(4) state, federal, or foreign money services business

supervisory agency;

(5) private insurer of deposit accounts or share accounts of a financial institution;

(6) state, federal, or foreign agency responsible for licensing, registering, chartering, or supervising any regulated:

(A) business; or

(B) nonprofit activity; or

(7) the Federal Home Loan Bank;

confidential information described under IC 28-1-2-30 or pertaining to a regulated business or nonprofit activity.

(b) Confidential information provided by the director or the director's designee under this section is privileged by law, remains the property of the department, and is not:

(1) subject to inspection under IC 5-14-3;

(2) subject to subpoena;

(3) subject to discovery; or

(4) admissible in evidence in any civil action.

(c) The director may enter into information sharing agreements with parties authorized to receive information under this section.

As added by P.L.33-1991, SEC.56. Amended by P.L.213-2007, SEC.99; P.L.217-2007, SEC.97; P.L.90-2008, SEC.70.

IC 28-11-3-4

Documents, reports, and other papers; certified copies; prima facie evidence

Sec. 4. A copy of a document, report, or other paper received and filed by the department, when certified by the director, shall be received in all courts and places as prima facie evidence of the facts stated in the certified copy.

As added by P.L.33-1991, SEC.56.

IC 28-11-3-5

Schedule of fees; classification of assets; changes or modifications of fees; excess costs of examinations

Sec. 5. (a) As used in this section, "assets" means the assets of a financial institution as disclosed by a report made by the financial institution at the end of the year immediately preceding the fiscal year in which a fee is fixed under this section.

(b) The department shall fix and collect, on an annual basis, a schedule of fees for the services rendered and the duties performed by the department in the administration of financial institutions.

(c) The fees may not exceed the comparative cost to the department in the administration of financial institutions. In determining the costs, the department may classify the assets of financial institutions and fix fees at different rates for the examination, supervision, regulation, and liquidation of the classes of assets, based on the proportionate cost and expense incurred by the department in making examinations and in the administration of financial institutions.

(d) The fees shall be charged and collected until changed or

modified by the department. A change or modification of fees may not be adopted more often than one (1) time each state fiscal year. A modified schedule of fees is effective on the first day of the state fiscal year following the fiscal year in which the modification is adopted.

(e) Administrative charges included in the fee are in addition to charges collected under other statutes.

(f) If the reasonable costs of performing an examination of a financial institution exceed the fees established under this section, the financial institution shall pay the excess costs not later than thirty (30) days after receipt of an invoice from the department. The department may impose a fee, in an amount fixed by the department under this section, for each day that the excess costs are not paid, beginning on the first day after the thirty (30) day period described in this subsection.

As added by P.L.33-1991, SEC.56. Amended by P.L.10-2006, SEC.73 and P.L.57-2006, SEC.73; P.L.35-2010, SEC.197.

IC 28-11-3-6

Federal preemption; exemption of state chartered entities and subsidiaries from provisions of state law

Sec. 6. (a) As used in this section:

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

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

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

(1) same; or

(2) functionally equivalent;

type of federally chartered entity.

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

(1) describing in detail; and

(2) documenting the federal preemption of;

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

(d) The department shall notify the requesting entity of the department's receipt of the request not later than ten (10) business days after the department's receipt of a letter described in subsection (c). Except as provided in subsection (e), upon receipt of the notification, the requesting entity may operate as if it is exempt from the provision of IC 24, IC 26, IC 28, IC 29, or IC 30 ninety (90) days after the date on which the department receives the letter, unless

otherwise notified by the department. This period may be extended for an additional ninety (90) days if the department determines that the requesting entity's letter raises issues requiring additional information or additional time for analysis. If the department extends the period for the department's review of the request, the requesting entity may operate as if the requesting entity is exempt from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 during the extended period of review only if the requesting entity receives prior written approval from the department. However:

(1) the department must:

(A) approve or deny the requested exemption; or

(B) convene a hearing;

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

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

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

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

(A) same; or

(B) functionally equivalent;

type.

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

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

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

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

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

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

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

(A) the same as; or

(B) functionally the equivalent of;
the charter of the exempt institution.

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

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

(B) unduly constrain Indiana consumer protection provisions.

(3) Issue an order published in the Indiana Register that specifies whether the exemption applies to the financial institutions described in subdivision (1).

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

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

(1) the same; or

(2) the functionally equivalent;

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

As added by P.L.73-2004, SEC.41. Amended by P.L.141-2005, SEC.21.

IC 28-11-4

Chapter 4. Enforcement Powers of the Department

IC 28-11-4-1

Application of IC 4-21.5

Sec. 1. (a) Except as provided in subsection (b), IC 4-21.5 does not apply to a proceeding under this chapter.

(b) IC 4-21.5-5 applies to judicial review of a final order of the department under this chapter.

As added by P.L.33-1991, SEC.56.

IC 28-11-4-2

Unsafe or unsound practices or violations of law; notice of charges; joint exercise of enforcement powers with federal regulators

Sec. 2. If the director has reasonable cause to believe that a financial institution:

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

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

(A) statute;

(B) rule;

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

(D) written agreement entered into with the department;

the director may issue and serve upon the financial institution a notice of charges of the practice or violation. The department may, when appropriate, exercise enforcement powers under this chapter jointly with a financial institution's primary federal regulator.

As added by P.L.33-1991, SEC.56. Amended by P.L.141-2005, SEC.22.

IC 28-11-4-3

Violations by certain individuals; director's notice of intent to issue order; felonies; civil penalties

Sec. 3. (a) If the director determines that a current or former director, officer, or employee of a financial institution has:

(1) committed a violation of a statute, a rule, a final cease and desist order, any condition imposed in writing by the director in connection with the grant of any application or other request by the financial institution, or any written agreement between the financial institution and the director or the department;

(2) engaged or participated in an unsafe or unsound practice in connection with the financial institution;

(3) committed or engaged in an act, an omission, or a practice that constitutes a breach of fiduciary duty as director, officer, or employee; or

(4) been convicted of, has pleaded guilty or nolo contendere to, or is under indictment for, a felony involving fraud, deceit, or

misrepresentation under the laws of Indiana or any other jurisdiction;

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

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

(1) By reason of the violation, practice, or breach, the financial institution has suffered or will probably suffer substantial financial loss or other damage.

(2) The interests of the financial institution's depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty.

(3) The violation, practice, or breach involves personal dishonesty on the part of the officer, director, or employee involved.

(4) The violation, practice, or breach demonstrates a willful or continuing disregard by the officer, director, or employee for the safety and soundness of the financial institution.

(c) A person who:

(1) is under indictment for;

(2) has been convicted of; or

(3) has pleaded guilty or nolo contendere to;

a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction may not serve as a director, an officer, or an employee of a financial institution, or serve in any similar capacity, unless the person obtains the written consent of the director.

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

As added by P.L.33-1991, SEC.56. Amended by P.L.262-1995, SEC.76; P.L.258-2003, SEC.19; P.L.10-2006, SEC.74 and P.L.57-2006, SEC.74; P.L.213-2007, SEC.100; P.L.217-2007, SEC.98; P.L.35-2010, SEC.198.

IC 28-11-4-4

Director's notice of intent to issue order; contents; hearing; final order; removal of officer, director, or employee; suspension or prohibition pending final order; official record

Sec. 4. (a) A notice issued under this chapter must:

(1) contain a statement of the facts constituting the alleged practice, violation, or breach;

- (2) state the facts alleged in support of the violation, practice, or breach;
- (3) state the director's intention to enter an order under section 3(a) of this chapter;
- (4) be delivered to the board of directors of the financial institution;
- (5) be delivered to the officer, director, or employee concerned; and
- (6) specify the procedures that must be followed to initiate a hearing to contest the facts alleged.

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

- (1) a final order under section 7 of this chapter for the immediate removal of the officer, director, or employee affected;
- (2) a final order under section 7 of this chapter prohibiting further participation by the officer, director, or employee, in any manner, in the conduct of affairs of any financial institution;
- (3) a final order under section 7 of this chapter requiring the financial institution and its directors, officers, employees, and agents to:
 - (A) cease and desist from the practice or violation; or
 - (B) take affirmative action to correct the conditions resulting from the practice or violation;
- (4) a final order consisting of any combination of orders described in subdivisions (1) through (3);
- (5) a reprimand of the individuals, entities, or other persons concerned; or
- (6) a dismissal of the entire matter.

(c) If no hearing is requested within the time specified in subsection (b), the director may proceed to issue a final order described in subsection (b)(1), (b)(2), (b)(3), or (b)(4) on the basis of the facts set forth in the written notice.

(d) An officer, director, or employee who is removed from a position under a removal order that has become final may not participate in the conduct of the affairs of any financial institution without the approval of the director.

(e) The director may, for the protection of the financial institution or the interests of its depositors, suspend from office or prohibit from participation in the affairs of the financial institution an officer, a director, or an employee of a financial institution who is the subject of a written notice served by the director under section 3(a) of this chapter. A suspension or prohibition under this subsection becomes effective upon service of the notice. Unless stayed by a court in a proceeding authorized by subsection (f), the suspension or prohibition shall remain in effect pending completion of the

proceedings related to the written notice served under section 3(a) of this chapter and until the effective date of an order entered by the department under subsection (b) or the director under subsection (c). Copies of the notice shall also be served upon the financial institution or subsidiary of which the person is an officer, a director, or an employee.

(f) Not more than ten (10) days after an officer, a director, or an employee has been suspended from office or prohibited from participation in the conduct of the affairs of the financial institution or subsidiary under subsection (e), the officer, director, or employee may apply to a court having jurisdiction for a stay of the suspension or prohibition pending completion of the proceedings related to the notice served under section 3(a) of this chapter, and the court may stay the suspension or prohibition.

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

As added by P.L.33-1991, SEC.56. Amended by P.L.122-1994, SEC.109; P.L.258-2003, SEC.20; P.L.10-2006, SEC.75 and P.L.57-2006, SEC.75; P.L.35-2010, SEC.199.

IC 28-11-4-5

Consent to a final order

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

As added by P.L.33-1991, SEC.56. Amended by P.L.122-1994, SEC.110; P.L.262-1995, SEC.77; P.L.258-2003, SEC.21; P.L.141-2005, SEC.23.

IC 28-11-4-6

Temporary order

Sec. 6. (a) If the director determines that an alleged practice, a violation, or an act specified in a notice served under this chapter is likely to:

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

the director may issue a temporary order without a hearing.

(b) A temporary order may:

- (1) require the financial institution to cease and desist from the practice or violation;
 - (2) require the financial institution to take affirmative action to correct the conditions resulting from the practice or violation;
- or

(3) suspend or prohibit a director, an officer, or an employee from participating in the conduct of the affairs of the financial institution.

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

(1) The issuance of an injunction by a court under subsection (d).

(2) The dismissal of the charges by the department.

(3) The effective date of a final order under section 7 of this chapter.

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

As added by P.L.33-1991, SEC.56. Amended by P.L.258-2003, SEC.22; P.L.35-2010, SEC.200.

IC 28-11-4-7

Final order; remedies; consent presumed; confidentiality

Sec. 7. (a) If, after a hearing held under section 4(b) of this chapter, the department finds that the conditions specified in section 2 or 3 of this chapter have been established, the department may issue a final order. If a hearing is not requested within the time specified in section 4(b) of this chapter, the director may issue a final order on the basis of the facts set forth in the written notice served under section 3(a) of this chapter.

(b) Unless the director has entered into a consent agreement described in section 5 of this chapter, a final order must include separately stated findings of fact and conclusions of law for all aspects of the order.

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

(1) Require the financial institution and its directors, officers, employees, and agents to do any of the following:

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

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

(2) Suspend or prohibit a director, an officer, or an employee from participating in the affairs of a financial institution or subsidiary.

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

(d) A final order shall be issued in writing within ninety (90) days after conclusion of a hearing held under section 4(b) of this chapter, unless this period is waived or extended with the written consent of all parties or for good cause shown.

(e) If the financial institution, director, or officer does not appear individually or by a duly authorized representative at a hearing held under section 4(b) of this chapter, the financial institution, director, or officer is considered to have consented to the issuance of a final order.

(f) The director may keep a final order confidential if the director

determines that the immediate release of the order would endanger:

- (1) the stability of the financial institution; or
- (2) the security of depositors' funds.

However, after two (2) years after the date of its issuance, a final order is no longer confidential under IC 28-1-2-30.

As added by P.L.33-1991, SEC.56. Amended by P.L.258-2003, SEC.23; P.L.90-2008, SEC.71; P.L.35-2010, SEC.201.

IC 28-11-4-8

Effectiveness of final order; stay, modification, or vacation

Sec. 8. (a) A final order issued under this chapter is effective at the expiration of ten (10) days after service of the order. However, a final order issued upon consent under section 7(e) of this chapter is effective at the time specified in the order.

(b) A final order remains effective and enforceable as provided in the order.

(c) The department or a reviewing court may stay, modify, or vacate a final order.

As added by P.L.33-1991, SEC.56.

IC 28-11-4-9

Civil penalty

Sec. 9. (a) A civil penalty imposed on a director or an officer under section 7 of this chapter may not exceed fifteen thousand dollars (\$15,000) for each practice, violation, or act found to exist in the final order.

(b) In determining the amount of a civil penalty assessed under section 7 of this chapter, the following factors shall be considered:

- (1) The appropriateness of the civil penalty with respect to the financial resources and good faith of the individual charged.
- (2) The gravity of the practice, violation, or act.
- (3) The history of previous practices, violations, or acts.
- (4) The economic benefit derived by the individual from the practice, violation, or act.
- (5) Other factors that justice requires.

(c) A financial institution may not indemnify a director or an officer for a civil penalty imposed under section 7 of this chapter.

(d) Civil penalties shall be deposited in the fund.

As added by P.L.33-1991, SEC.56.

IC 28-11-4-10

Enforcement of orders, agreements, and conditions

Sec. 10. The director may enforce any of the following by applying for appropriate relief to a court having jurisdiction:

- (1) An order issued under this chapter.
- (2) A written agreement entered into by the department or the director and:
 - (A) a financial institution; or
 - (B) any director, officer, employee, or agent of the financial institution.

(3) Any condition imposed in writing by the department or the director on:

(A) a financial institution; or

(B) any director, officer, employee, or agent of the financial institution;

in connection with any application, notice, or request concerning the financial institution.

As added by P.L.33-1991, SEC.56. Amended by P.L.90-2008, SEC.72; P.L.35-2010, SEC.202.

IC 28-11-4-11

Persons suspended or prohibited from participation

Sec. 11. An individual who:

(1) is suspended or prohibited from participating in the conduct of the affairs of a financial institution under section 6 or 7 of this chapter; and

(2) after the suspension or prohibition knowingly or intentionally participates, directly or indirectly, in the management of the financial institution;

commits a Class D felony.

As added by P.L.33-1991, SEC.56. Amended by P.L.35-2010, SEC.203.

IC 28-11-4-12

Enforcement powers exercised against affiliate of financial institution

Sec. 12. (a) The director of the department may exercise the enforcement powers of this chapter against an affiliate of a financial institution, or against an officer, a director, or an employee of the affiliate, as if the affiliate were a financial institution if the director determines that a practice of the affiliate, or of the officer, director, or employee, could cause either:

(1) the financial institution to suffer substantial loss or other damage; or

(2) the interests of the financial institution's depositors to be seriously prejudiced by reason of a violation, practice, or breach of fiduciary duty.

(b) In exercising the director's enforcement powers under this chapter against an officer, a director, or an employee of an affiliate, the director may:

(1) remove the officer, director, or employee from the person's office, position, or employment;

(2) prohibit any participation by the officer, director, or employee in the conduct of the affairs of any financial institution; or

(3) take both of the actions set forth in subdivisions (1) and (2).

(c) The director of the department may issue and serve upon the officer, director, or employee of the affiliate a notice of charges of the practice, violation, or act.

(d) For purposes of this section, affiliate has the meaning set forth

in IC 28-1-18.2.

As added by P.L.215-1999, SEC.8. Amended by P.L.90-2008, SEC.73.

IC 28-11-5

Chapter 5. Department Oversight of Organization of a Financial Institution

IC 28-11-5-1

Application of chapter

Sec. 1. This chapter applies to the following financial institutions:

- (1) A bank.
- (2) A savings association.
- (3) A credit union.
- (4) A savings bank.
- (5) A trust company.
- (6) A corporate fiduciary.

As added by P.L.42-1993, SEC.91. Amended by P.L.262-1995, SEC.78; P.L.79-1998, SEC.86.

IC 28-11-5-2

Approval of articles of incorporation and organization and establishment of financial institutions

Sec. 2. (a) A financial institution may not be organized, incorporated, or engage in business in Indiana until the department has approved the following:

- (1) The articles of incorporation of the proposed financial institution.
- (2) The organization and establishment of the financial institution in the city or town in which the incorporators propose to establish the financial institution.

(b) A person who violates this section commits a Class A misdemeanor.

As added by P.L.42-1993, SEC.91.

IC 28-11-5-3

Applications to establish financial institutions

Sec. 3. (a) A request to establish a financial institution must be set forth in an application:

- (1) prescribed by the department; and
- (2) containing the information required by the department.

(b) Within twenty (20) business days after receiving an application under this section, the department shall:

- (1) accept the application for processing;
- (2) request additional information to complete the application;
- or
- (3) return the application if it is incomplete.

As added by P.L.42-1993, SEC.91. Amended by P.L.122-1994, SEC.111.

IC 28-11-5-4

Investigation of applicant; disapproval of application; submission of fingerprints

Sec. 4. (a) Upon the acceptance of an application under section 3

of this chapter, the department shall investigate and consider all of the following:

- (1) The financial standing and character of the incorporators, organizers, directors, principal shareholders, or controlling corporations.
- (2) The character, qualifications, and experience of the officers and directors of the proposed financial institution.
- (3) The future earnings prospects for the proposed financial institution.
- (4) The adequacy of the financial institution's proposed capital, if the financial institution is to be a bank, trust company, corporate fiduciary, or savings bank.

(b) The members of the department may disapprove the application if:

- (1) any of the factors listed in subsection (a) are determined to be unfavorable;
- (2) any of the incorporators, directors, principal shareholders, or officers of the proposed financial institution have been convicted of a felony under Indiana law, the laws of any other state, or the laws of the United States; or
- (3) the applicant has knowingly or intentionally submitted an application under this chapter that contains false information.

(c) The applicant shall submit to the department or to the Indiana state police, as appropriate, two (2) sets of fingerprints for each incorporator, director, principal shareholder, and officer, if requested by the department under section 4.5 of this chapter.

As added by P.L.42-1993, SEC.91. Amended by P.L.122-1994, SEC.112; P.L.262-1995, SEC.79; P.L.192-1997, SEC.24; P.L.90-2008, SEC.74.

IC 28-11-5-4.5

Background checks; fingerprints

Sec. 4.5. (a) To obtain additional information for the purposes of section 4 of this chapter, the director may require:

- (1) criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation;
- (2) credit histories; and
- (3) other background checks considered necessary by the director;

for any incorporator, director, principal shareholder, or officer of a proposed financial institution.

(b) If the director requests a national criminal history background check under subsection (a) for any individual described in subsection (a), the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate. The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. A national criminal history background check conducted under subsection (a) may be used by the department to:

- (1) conduct an investigation under section 4(a)(1) or 4(a)(2) of this chapter; or
- (2) disapprove an application under section 4(b)(2) of this chapter.

The director or the department may not release the results of the national criminal history background check to any private entity.

As added by P.L.192-1997, SEC.25. Amended by P.L.90-2008, SEC.75.

IC 28-11-5-5

Hearings on applications

Sec. 5. (a) The department may hold a hearing to determine whether to approve an application filed under section 3 of this chapter.

(b) A hearing may not be held until ten (10) days after the date of the publication of the notice required by section 6 of this chapter.

(c) If the department holds a hearing under this section, the hearing must be held within ninety (90) days after the application is accepted by the department for processing.

As added by P.L.42-1993, SEC.91. Amended by P.L.122-1994, SEC.113.

IC 28-11-5-6

Notice of applications subject to hearings

Sec. 6. (a) If a public hearing is held under section 5 of this chapter, the applicant shall give notice of the application by publication one (1) time in a newspaper of general circulation in the city or town in which the applicant proposes to establish the financial institution. If a newspaper is not published in the city or town, the notice shall be published in one (1) newspaper of general circulation published in the county in which the city or town is located.

(b) The notice required by this section must state the following:

- (1) The fact that the application has been filed.
- (2) The names of the applicants.
- (3) The place where the applicants propose to establish the financial institution.
- (4) The date and place of the hearing.
- (5) Other facts the department considers relevant.

As added by P.L.42-1993, SEC.91.

IC 28-11-5-7

Hearing procedures

Sec. 7. (a) This section applies only if the department holds a hearing under section 5 of this chapter.

(b) At the time and place designated in the notice, any of the following may conduct the hearing:

- (1) All the members of the department.
- (2) Any number of the members.
- (3) The director of the department.
- (4) A deputy director of the department.

(5) The supervisor in charge of the division of the department that would have jurisdiction of the financial institution, if it is established.

(c) Any person who is interested may appear and be heard, either in person or by the person's attorney.

(d) A report of the hearing, in the form and detail the department prescribes, shall be prepared and filed in the department.

As added by P.L.42-1993, SEC.91. Amended by P.L.122-1994, SEC.114.

IC 28-11-5-8

Approval or disapproval of applications

Sec. 8. Within a reasonable time after the application is accepted by the department for processing, but not more than one hundred twenty (120) days from the later of:

(1) the date on which the application is accepted by the department; or

(2) the date on which the hearing is held, if a hearing is held; the department shall either approve or disapprove the application.

As added by P.L.42-1993, SEC.91. Amended by P.L.122-1994, SEC.115.

IC 28-11-5-9

Payment of expenses

Sec. 9. (a) The applicants shall pay all expenses incurred by the department in performing its duty under this chapter.

(b) At the time of filing the application, the applicants shall deposit with the department the amount of money fixed by the department necessary to defray the expenses incurred by the department in implementing this chapter with respect to the application.

(c) The department shall return to the applicants any balance remaining after proceedings under this chapter are completed.

As added by P.L.42-1993, SEC.91.

IC 28-11-5-10

Financial institutions organized as limited liability companies; department's exclusive authority to regulate; treatment as bank organized in stock form; prior approval of department required

Sec. 10. (a) Subject to subsection (g), a financial institution subject to this chapter may:

(1) be organized as a limited liability company;

(2) convert to a limited liability company; or

(3) merge with or into a limited liability company;

under the laws of Indiana or the United States, including any rules or regulations adopted or promulgated under the laws of Indiana or the United States.

(b) A bank organized as a limited liability company is subject to:

(1) IC 23-18; and

(2) this title.

If a provision of IC 23-18 conflicts with a provision of this title or with any rule of the department, the provision of this title or the rule the department controls.

(c) Any filing required to be made under IC 23-18 shall be made in the same manner as for a bank that is organizing or is organized in stock form.

(d) The department may prescribe any requirements for:

(1) the articles of organization; and

(2) the operating agreement;

of a financial institution that is organized and operates as a limited liability company.

(e) The department has the exclusive authority under this title to regulate a financial institution organized as a limited liability company. A financial institution that is a limited liability company is subject to the department's authority in the same manner as a bank that is organized in stock form.

(f) A financial institution that is a limited liability company is subject to the provisions of this title that apply to banks, except for the provisions concerning corporate governance (IC 28-13), in the same manner as a financial institution that is organized in stock form, subject to the following:

(1) In the case of a manager managed limited liability company, "director" means a manager of the limited liability company.

(2) In the case of a member managed limited liability company, "director" means a member of the limited liability company.

(g) A financial institution may not:

(1) organize as;

(2) convert to; or

(3) merge with or into;

a limited liability company without the prior approval of the department under this title.

As added by P.L.90-2008, SEC.76.