

First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1447

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AN ACT to amend the Indiana Code concerning financial institutions.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 24-4.4-1-102, AS AMENDED BY P.L.69-2018, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 102. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

- (a) to permit and encourage the development of fair and economically sound first lien mortgage lending practices; and
- (b) to conform the regulation of first lien mortgage lending practices to applicable state and federal laws, rules, regulations, policies, and guidance.

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

(4) A reference to a federal law in this article is a reference to the law as in effect December 31, ~~2017~~. **2018**.

SECTION 2. IC 24-4.4-2-402, AS AMENDED BY P.L.27-2012, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 402. (1) The department shall receive and act on all applications for licenses to engage in first lien mortgage transactions. Applications must be made as prescribed by the director. If, at any time, the information or record contained in:

- (a) an application filed under this section; or

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(b) a renewal application filed under section 403 of this chapter; is or becomes inaccurate or incomplete in a material respect, the applicant shall promptly file a correcting amendment with the department.

(2) A license may not be issued unless the department finds that the professional training and experience, financial responsibility, character, and fitness of:

- (a) the applicant and any significant affiliate of the applicant;
- (b) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and
- (c) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant; are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

(3) The director is entitled to request evidence of compliance with this section at:

- (a) the time of application;
- (b) the time of renewal of a license; or
- (c) any other time considered necessary by the director.

(4) Evidence of compliance with this section must include:

- (a) criminal background checks, as described in section 402.1 of this chapter, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for any individual described in subsection (2);
- (b) credit histories as described in section 402.2 of this chapter;
- (c) surety bond requirements as described in section 402.3 of this chapter;
- (d) a review of licensure actions in Indiana and in other states; and
- (e) other background checks considered necessary by the director.

(5) For purposes of this section and in order to reduce the points of contact that the director has to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting and distributing information to and from any source as directed by the director.

(6) The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(7) Upon written request, the applicant is entitled to a hearing on the



question of the qualifications of the applicant for a license in the manner provided in IC 4-21.5.

(8) The applicant shall pay the following fees at the time designated by the department:

- (a) An initial license fee as established by the department under IC 28-11-3-5.
- (b) An annual renewal fee as established by the department under IC 28-11-3-5.
- (c) Examination fees as established by the department under IC 28-11-3-5.

(9) A fee as established by the department under IC 28-11-3-5 may be charged for each day a fee under subsection 8(b) or 8(c) is delinquent.

(10) Except in a transaction approved under section 406 of this chapter, a license issued under this section is not assignable or transferable.

**(11) If the department of state revenue notifies the department that a person is on the most recent tax warrant list, the department shall not issue or renew the person's license until:**

- (a) the person provides to the department a statement from the department of state revenue that the person's tax warrant has been satisfied; or**
- (b) the department receives a notice from the commissioner of the department of state revenue under IC 6-8.1-8-2(k).**

SECTION 3. IC 24-4.4-2-402.3, AS AMENDED BY P.L.69-2018, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 402.3. (1) Each:

- (a) creditor; and
- (b) person that is exempt (either under this article or under IC 24-4.5) from licensing to engage in mortgage loans and that:
  - (i) employs a licensed mortgage loan originator; or
  - (ii) sponsors under an exclusive written agreement, as permitted by IC 24-4.4-1-202(b)(6)(a), a licensed mortgage loan originator as an independent agent;

must be covered by a surety bond in accordance with this section.

(2) A surety bond must:

- (a) provide coverage for:
  - (i) a creditor; or
  - (ii) a person that is exempt from licensing and that employs a licensed mortgage loan originator, or that sponsors under an exclusive written agreement (as permitted by IC 24-4.4-1-202(b)(6)(a)) a licensed mortgage loan originator



- as an independent agent;
  - in an amount as prescribed in subsection (4);
  - (b) be in a form prescribed by the director;
  - (c) be in effect:
    - (i) during the term of the creditor's license; or
    - (ii) at any time during which the person exempt from licensing employs a licensed mortgage loan originator or sponsors under an exclusive written agreement (as permitted by IC 24-4.4-1-202(b)(6)(a)) a licensed mortgage loan originator as an independent agent;
  - as applicable;
  - (d) remain in effect during the two (2) years after:
    - (i) the creditor ceases offering financial services to individuals in Indiana; or
    - (ii) the person exempt from licensing ceases to employ a licensed mortgage loan originator, or ceases to sponsor under an exclusive written agreement (as permitted by IC 24-4.4-1-202(b)(6)(a)) a licensed mortgage loan originator as an independent agent, or to offer financial services to individuals in Indiana, whichever is later;
  - as applicable;
  - (e) be payable to the department for the benefit of:
    - (i) the state; and
    - (ii) individuals who reside in Indiana when they agree to receive financial services from the creditor or the person exempt from licensing, as applicable;
  - (f) be issued by a bonding, surety, or insurance company authorized to do business in Indiana and rated at least "A-" by at least one (1) nationally recognized investment rating service; and
  - (g) have payment conditioned upon:
    - (i) the creditor's or any of the creditor's licensed mortgage loan originators'; or
    - (ii) the exempt person's or any of the exempt person's licensed mortgage loan originators';
- noncompliance with or violation of this chapter, 750 IAC 9, or other federal or state laws or regulations applicable to mortgage lending.

(3) The director may adopt rules or guidance documents with respect to the requirements for a surety bond as necessary to accomplish the purposes of this article.

(4) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of mortgage transactions



originated as determined by the director. If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the creditor or exempt person for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in an amount set by the director. The amount of the new or additional bond set by the director must be at least the amount of the bond before payment of the claim or judgment.

(5) If for any reason a surety terminates a bond issued under this section, the creditor or the exempt person shall immediately notify the department and file a new surety bond in an amount determined by the director.

(6) Cancellation of a surety bond issued under this section does not affect any liability incurred or accrued during the period when the surety bond was in effect.

(7) The director may obtain satisfaction from a surety bond issued under this section if the director incurs expenses, issues a final order, or recovers a final judgment under this chapter.

(8) Notices required under this section must be **made** in writing and ~~delivered by certified mail, return receipt requested and postage prepaid, or by overnight delivery using a nationally recognized carrier:~~ **submitted through the NMLSR or any other electronic registration system that may be approved by the director.**

SECTION 4. IC 24-4.4-2-402.4, AS AMENDED BY P.L.69-2018, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 402.4. (1) Subject to subsection (6), the director shall designate the NMLSR to serve as the sole entity responsible for:

- (a) processing applications and renewals for mortgage licenses;
- (b) issuing unique identifiers for licensees and entities exempt from licensing that employ a licensed mortgage loan originator under this article; and
- (c) performing other services that the director determines are necessary for the orderly administration of the department's mortgage licensing system.

(2) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director ~~shall~~ **may** regularly report significant or recurring violations of this article to the NMLSR.

(3) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director may report complaints received regarding mortgage licensees to the NMLSR.

(4) The director may report publicly adjudicated licensure actions against a licensee to the NMLSR.



(5) The director shall establish a process in which licensees may challenge information reported to the NMLSR by the department.

(6) The director's authority to designate the NMLSR under subsection (1) is subject to the following:

(a) Information stored in the NMLSR is subject to the confidentiality provisions of IC 5-14-3 and IC 28-1-2-30. A person may not:

(i) obtain information from the NMLSR, unless the person is authorized to do so by statute;

(ii) initiate any civil action based on information obtained from the NMLSR if the information is not otherwise available to the person under any other state law; or

(iii) initiate any civil action based on information obtained from the NMLSR if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(b) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential under IC 28-1-2-30 and that are:

(i) furnished by the director, the director's designee, or a licensee; or

(ii) otherwise obtained by the NMLSR;

are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director may use the documents, materials, or other information available to the director in furtherance of any action brought in connection with the director's duties under this article.

(c) Disclosure of documents, materials, and information:

(i) to the director; or

(ii) by the director;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(d) Information provided to the NMLSR is subject to IC 4-1-11.

(e) This subsection does not limit or impair a person's right to:

(i) obtain information;

(ii) use information as evidence in a civil action or proceeding;

or

(iii) use information to initiate a civil action or proceeding;

if the information may be obtained from the director or the director's designee under any law.



(f) Except as otherwise provided in the federal Housing and Economic Recovery Act of 2008 (Public Law 110-289, Section 1512), the requirements under any federal law or IC 5-14-3 regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or IC 5-14-3.

(g) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies, as established by rule or order of the director.

(h) Information or material that is subject to a privilege or confidentiality under subdivision (f) is not subject to:

- (i) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or
- (ii) subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(i) Any provision of IC 5-14-3 that concerns the disclosure of:

- (i) confidential supervisory information; or
- (ii) any information or material described in subdivision (f);

and that is inconsistent with subdivision (f) is superseded by this section.

(j) This section does not apply with respect to information or material that concerns the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a person described in section 402(2) of this chapter and that is included in the NMLSR for access by the public.

(k) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered



reasonable by the director. In determining whether an NMLSR processing fee is reasonable, the director shall:

- (i) require review of; and
- (ii) make available;

the audited financial statements of the NMLSR.

(7) Notwithstanding any other provision of law, any:

- (a) application, renewal, or other form or document that:
  - (i) relates to mortgage licenses issued by the department; and
  - (ii) is made or produced in an electronic format;
- (b) document filed as an electronic record in a multistate automated repository established and operated for the licensing or registration of mortgage lenders, brokers, or loan originators; or
- (c) electronic record filed through the NMLSR;

is considered a valid original document when reproduced in paper form by the department.

SECTION 5. IC 24-4.4-2-404.1, AS AMENDED BY P.L.27-2012, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 404.1. (1) If the director determines that a **current or former** director, an officer, or ~~an employee~~ **a manager** of a creditor:

- (a) has 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 granting of any application or other request by the creditor, or any written agreement between the creditor and the director or the department;
- (b) has committed fraudulent or unconscionable conduct; or
- (c) has been convicted of a felony under the laws of Indiana or any other jurisdiction;

the director, subject to subsection (2), may issue and serve upon the officer, director, or ~~employee~~ **manager** 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 creditor, or an order both removing the person and prohibiting the person's participation.

(2) A violation, practice, or breach specified in subsection (1) is subject to the authority of the director under ~~subsection~~ **subsections (1) and (3)** if the director finds any of the following:

- (a) The interests of the creditor's customers could be seriously prejudiced by reason of the violation or practice.
- (b) The violation, practice, or breach involves ~~personal~~ **an act of fraud, dishonesty, theft, breach of trust, money laundering, or the wrongful taking of property** on the part of the officer, director, or ~~employee~~ **manager** involved.





(c) The violation, practice, or breach demonstrates a willful or continuing disregard by the officer, director, or **employee manager** for state and federal laws and regulations, and for the consumer protections contained in this article.

(3) A person who has been convicted of a felony under the laws of Indiana or any other jurisdiction may not serve as an officer, a director, or **an employee a manager** of a creditor, or serve in any similar capacity, unless the person obtains the written consent of the director.

(4) A creditor that willfully permits a person to serve the creditor in violation of subsection (3) is subject to a civil penalty of five hundred dollars (\$500) for each day the violation continues.

(5) A creditor shall give the department written notice of the resignation, discharge, or termination of an employee, independent contractor, or agent against whom allegations were made that accused the employee, independent contractor, or agent of:

- (a) violating this article or other laws, regulations, rules, or industry standards of conduct applicable to first lien mortgage transactions; or
- (b) fraud, dishonesty, theft, **breach of trust, money laundering,** or the wrongful taking of property.

The creditor shall provide the department the notice required under this subsection not later than thirty (30) days after the effective date of the resignation, discharge, or termination.

SECTION 6. IC 24-4.4-2-404.2, AS AMENDED BY P.L.69-2018, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 404.2. (1) A notice issued under this chapter must:

- (a) be in writing;
- (b) contain a statement of the facts constituting the alleged practice, violation, or breach;
- (c) state the facts alleged in support of the violation, practice, or breach;
- (d) state the director's intention to enter an order under section 404.4(1) of this chapter;
- (e) be delivered to the board of directors of the creditor;
- (f) be delivered to the officer, director, or **employee manager** concerned;
- (g) specify the procedures that must be followed to initiate a hearing to contest the facts alleged; and
- (h) if the director suspends or prohibits an officer, a director, or **an employee a manager** of the creditor from participating in the affairs of the creditor, as described in subsection (5), include a statement of the suspension or prohibition.



(2) If a hearing is requested not later than 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 a final order under section 404.4 of this chapter.

(3) If no hearing is requested within the time specified in subsection (2), the director may proceed to issue a final order under section 404.4 of this chapter on the basis of the facts set forth in the written notice.

(4) An officer, a director, or ~~employee~~ **a manager** 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 mortgage licensee without the approval of the director.

(5) The director may, for the protection of the creditor or the interests of its customers, suspend from office or prohibit from participation in the affairs of the creditor an officer, a director, or ~~an employee~~ **a manager** of a creditor who is the subject of a written notice served by the director under section 404.1(1) of this chapter. A suspension or prohibition under this subsection becomes effective upon service of the notice under section 404.1(1) of this chapter. Unless stayed by a court in a proceeding authorized by subsection (6), the suspension or prohibition remains in effect pending completion of the proceedings related to the notice served under section 404.1(1) of this chapter and until the effective date of an order entered by the department under subsection (2) or the director under subsection (3). Copies of the notice shall also be served upon the creditor or affiliate of which the person is an officer, a director, or ~~an employee.~~ **a manager.**

(6) Not more than fifteen (15) days after an officer, a director, or ~~an employee~~ **a manager** has been suspended from office or prohibited from participation in the conduct of the affairs of the creditor or affiliate under subsection (5), the officer, director, or ~~employee~~ **manager** may apply to a court having jurisdiction for a stay of the suspension or prohibition pending completion of the proceedings related to the written notice served under section 404.1(1) of this chapter, and the court may stay the suspension or prohibition.

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

SECTION 7. IC 24-4.4-2-404.3, AS ADDED BY P.L.35-2010, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 404.3. If the director enters into a consent to a final order under section 404.4 of this chapter with a creditor, a



director, an officer, or ~~an employee~~, **a manager**, the director is not required to issue and serve a notice of charges upon the creditor, director, ~~or officer~~, **or manager** under section 404.1 of this chapter. A consent agreement may be negotiated and entered into before or after the issuance of a notice of charges. The director shall provide a copy of the consent order to the board of directors of the creditor.

SECTION 8. IC 24-4.4-2-404.4, AS ADDED BY P.L.35-2010, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 404.4. (1) If, after a hearing described in section 404.2(2) of this chapter, the department finds that the conditions specified in section 404.1 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 404.2(2) 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 404.1(1) of this chapter.

(2) Unless the director has entered into a consent agreement described in section 404.3 of this chapter, a final order must include separately stated findings of fact and conclusions of law for all aspects of the order.

(3) In a final order under this section, the department or the director, as appropriate, may order one (1) or more of the following with respect to an officer, a director, or ~~an employee~~ **a manager** of a creditor:

- (a) The removal of the officer, director, or ~~employee~~ **manager** from the person's office, position, or employment.
- (b) A prohibition against any participation by the officer, director, or ~~employee~~ **manager** in the conduct of the affairs of any creditor.
- (c) If the subject of the order is an officer or a director of a creditor, and subject to section 404.6 of this chapter, the imposition of a civil penalty not to exceed fifteen thousand dollars (\$15,000) for each practice, violation, or act that:
  - (i) is described in section 404.1 of this chapter; and
  - (ii) is found to exist by the department or the director.

(4) A final order shall be issued in writing not later than ninety (90) days after conclusion of a hearing held under section 404.2(2) of this chapter, unless this period is waived or extended with the written consent of all parties or for good cause shown.

(5) If the officer, director, or ~~employee~~ **manager** does not appear individually or by an authorized representative at a hearing held under section 404.2(2) of this chapter, the officer, director, or ~~employee~~ **manager** is considered to have consented to the issuance of a final order.

(6) The remedies provided in this chapter are in addition to other



remedies contained in this article.

SECTION 9. IC 24-4.5-1-102, AS AMENDED BY P.L.69-2018, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 102. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

- (a) to simplify, clarify, and modernize the law governing retail installment sales, consumer credit, small loans, and usury;
- (b) to provide rate ceilings to assure an adequate supply of credit to consumers;
- (c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;
- (d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;
- (e) to permit and encourage the development of fair and economically sound consumer credit practices;
- (f) to conform the regulation of consumer credit transactions to the policies of the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) and to applicable state and federal laws, rules, regulations, policies, and guidance; and
- (g) to make uniform the law, including administrative rules among the various jurisdictions.

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

(4) A reference to a federal law in this article is a reference to the law as in effect December 31, ~~2017~~ **2018**.

(5) This article applies to a transaction if the director determines that the transaction:

- (a) is in substance a disguised consumer credit transaction; or
- (b) involves the application of subterfuge for the purpose of avoiding this article.

A determination by the director under this subsection must be in writing and shall be delivered to all parties to the transaction. IC 4-21.5-3 applies to a determination made under this subsection.

(6) The authority of this article remains in effect, whether a licensee, an individual, or a person subject to this article acts or claims to act under any licensing or registration law of this state, or claims to act without such authority.



(7) A violation of a state or federal law, regulation, or rule applicable to consumer credit transactions is a violation of this article.

(8) The department may enforce penalty provisions set forth in 15 U.S.C. 1640 for violations of disclosure requirements applicable to mortgage transactions.

SECTION 10. IC 24-4.5-1-201.1 IS REPEALED [EFFECTIVE JULY 1, 2019]. ~~Sec. 201.1. CPAP transactions, as defined in section 301.5 of this chapter, are subject to this article and to IC 24-12.~~

SECTION 11. IC 24-4.5-1-202, AS AMENDED BY P.L.186-2015, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 202. (a) As used in this section, "balloon payment", with respect to a mortgage transaction, means any payment that:

- (1) the creditor requires the debtor to make at any time during the term of the mortgage;
- (2) represents the entire amount of the outstanding balance with respect to the mortgage; and
- (3) the entire amount of which is due as of a specified date or at the end of a specified period;

if the aggregate amount of the minimum periodic payments required under the mortgage would not fully amortize the outstanding balance by the specified date or at the end of the specified period. The term does not include a payment required by a creditor under a due-on-sale clause (as defined in 12 U.S.C. 1701j-3(a)) or a payment required by a creditor under a provision in the mortgage that permits the creditor to accelerate the debt upon the debtor's default or failure to abide by the material terms of the mortgage.

(b) This article does not apply to the following:

- (1) Extensions of credit to **or by a** government or governmental agencies or instrumentalities.
- (2) The sale of insurance by an insurer, except as otherwise provided in the chapter on insurance (IC 24-4.5-4).
- (3) Transactions under public utility, municipal utility, or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.
- (4) The rates and charges and the disclosure of rates and charges of a licensed pawnbroker established in accordance with a statute or ordinance concerning these matters.
- (5) A sale of goods, services, or an interest in land in which the goods, services, or interest in land are purchased primarily for a



purpose other than a personal, family, or household purpose.

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

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

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

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

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

(11) Except for IC 24-4.5-3-502.1(4), IC 24-4.5-3-503.3, IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a loan made:

(A) in compliance with the requirements of; and

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

the Indiana housing and community development authority established by IC 5-20-1-3.

(12) Except for IC 24-4.5-3-502.1(4), IC 24-4.5-3-503.3, IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a subordinate lien mortgage transaction made by an entity that exclusively uses funds provided by the United States Department of Housing and Urban Development under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383, as amended (42 U.S.C. 5301 et seq.).

(13) The United States, any state or local government, or any agency or instrumentality of any governmental entity, including United States government sponsored enterprises **and state educational institutions (as defined in IC 21-7-13-32). For purposes of this subdivision, an "instrumentality" of a governmental entity includes a foundation, a corporate or nonprofit subsidiary, or an affiliate (as defined in IC 24-4.5-1-301.5(1)) of the governmental entity.**

(14) A bona fide nonprofit organization not operating in a commercial context, as determined by the director, if the following criteria are satisfied:

(A) Subject to clause (B), the organization originates only one

(1) or both of the following types of mortgage transactions:

(i) Zero (0) interest first lien mortgage transactions.



(ii) Zero (0) interest subordinate lien mortgage transactions.  
 (B) The organization does not require, under the terms of the mortgage or otherwise, balloon payments with respect to the mortgage transactions described in clause (A).

(C) The organization is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(D) The organization's primary purpose is to serve the public by helping low income individuals and families build, repair, and purchase housing.

(E) The organization uses only:

(i) unpaid volunteers; or

(ii) employees whose compensation is not based on the number or size of any mortgage transactions that the employees originate;

to originate the mortgage transactions described in clause (A).

(F) The organization does not charge loan origination fees in connection with the mortgage transactions described in clause (A).

(15) A bona fide nonprofit organization (as defined in section 301.5 of this chapter) if the following criteria are satisfied:

(A) For each calendar year that the organization seeks the exemption provided by this subdivision, the organization certifies, not later than December 31 of the preceding calendar year and on a form prescribed by the director and accompanied by such documentation as required by the director, that the organization is a bona fide nonprofit organization (as defined in section 301.5(45) of this chapter).

(B) The director determines that the organization originates only mortgage transactions that are favorable to the debtor. For purposes of this clause, a mortgage transaction is favorable to the debtor if the director determines that the terms of the mortgage transaction are consistent with terms of mortgage transactions made in a public or charitable context, rather than in a commercial context.

SECTION 12. IC 24-4.5-1-301.5, AS AMENDED BY P.L.69-2018, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 301.5. In addition to definitions appearing in subsequent chapters in this article, the following definitions apply throughout this article:

(1) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

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(a) controls;  
 (b) is controlled by; or  
 (c) is under common control with;  
 the person subject to this article.

(2) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(4) "Average daily balance" means the sum of each of the daily balances in a billing cycle divided by the number of days in the billing cycle, and if the billing cycle is a month, the creditor may elect to treat the number of days in each billing cycle as thirty (30).

(5) "Closing costs" with respect to a subordinate lien mortgage transaction includes:

- (a) fees or premiums for title examination, title insurance, or similar purposes, including surveys;
- (b) fees for preparation of a deed, settlement statement, or other documents;
- (c) escrows for future payments of taxes and insurance;
- (d) fees for notarizing deeds and other documents;
- (e) appraisal fees; and
- (f) fees for credit reports.

(6) "Conspicuous" refers to a term or clause when it is so written that a reasonable person against whom it is to operate ought to have noticed it.

(7) "Consumer credit" means credit offered or extended to a consumer primarily for a personal, family, or household purpose.

(8) "Consumer credit sale" is a sale of goods, services, or an interest in land in which:

- (a) credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;
- (b) the buyer is a person other than an organization;
- (c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;
- (d) either the debt is payable in installments or a credit service





charge is made; and

(e) with respect to a sale of goods or services, either:

(i) the amount of credit extended, the written credit limit, or the initial advance does not exceed the exempt threshold amount, as adjusted in accordance with the annual adjustment of the exempt threshold amount, specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); or

(ii) the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

Unless the sale is made subject to this article by agreement (IC 24-4.5-2-601), "consumer credit sale" does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement or, except as provided with respect to disclosure (IC 24-4.5-2-301), debtors' remedies (IC 24-4.5-5-201), providing payoff amounts (IC 24-4.5-2-209), and powers and functions of the department (IC 24-4.5-6), a sale of an interest in land which is a first lien mortgage transaction.

(9) "Consumer loan" means a loan made by a person regularly engaged in the business of making loans in which:

(a) the debtor is a person other than an organization;

(b) the debt is primarily for a personal, family, or household purpose;

(c) either the debt is payable in installments or a loan finance charge is made; and

(d) either:

(i) the amount of credit extended, the written credit limit, or the initial advance does not exceed the exempt threshold amount, as adjusted in accordance with the annual adjustment of the exempt threshold amount, specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); or

(ii) the debt is secured by an interest in land or by personal property used or expected to be used as the principal dwelling of the debtor.

Except as described in IC 24-4.5-3-105, the term does not include a first lien mortgage transaction.

(10) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(11) "Creditor" means a person:

(a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable by written agreement in more than four



- (4) installments (not including a down payment); and
- (b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.

(12) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(13) "Director" means the director of the department of financial institutions or the director's designee.

(14) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

- (a) condominium unit;
- (b) cooperative unit;
- (c) mobile home; or
- (d) trailer;

that is used as a residence.

(15) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program.

(16) "Employee" means an individual who is paid wages or other compensation by an employer required under federal income tax law to file Form W-2 on behalf of the individual.

(17) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(18) "First lien mortgage transaction" means:

- (a) a consumer loan; or
- (b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a first lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(19) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(20) "Individual" means a natural person.

(21) "Lender credit card or similar arrangement" means an



arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

- (a) by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;
- (b) by the lender's payment or agreement to pay the debtor's obligations; or
- (c) by the lender's purchase from the obligee of the debtor's obligations.

(22) "Licensee" means a person licensed as a creditor under this article.

(23) "Loan brokerage business" means any activity in which a person, in return for any consideration from any source, procures, attempts to procure, or assists in procuring, a mortgage transaction from a third party or any other person, whether or not the person seeking the mortgage transaction actually obtains the mortgage transaction.

(24) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed to engage in mortgage transactions or a person exempt from licensing. For purposes of this subsection, the term "clerical or support duties" may include, after the receipt of an application, the following:

- (a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction.
- (b) The communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:
  - (i) offering or negotiating loan rates or terms; or
  - (ii) counseling consumers about mortgage transaction rates or terms.

An individual engaging solely in loan processor or underwriter activities shall not represent to the public through advertising or 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 can or will perform any of the activities of a mortgage loan originator.

(25) "Mortgage loan originator" means an individual who, for compensation or gain, or in the expectation of compensation or gain, regularly engages in taking a mortgage transaction application or in



offering or negotiating the terms of a mortgage transaction that either is made under this article or under IC 24-4.4 or is made by an employee of a person licensed to engage in mortgage transactions or by an employee of a person that is exempt from licensing, while the employee is engaging in the loan brokerage business. The term does not include the following:

(a) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed to engage in mortgage transactions or as an employee of a person exempt from licensing.

(b) Unless the person or entity is compensated by:

(i) a creditor;

(ii) a loan broker;

(iii) another mortgage loan originator; or

(iv) any agent of the creditor, loan broker, or other mortgage loan originator described in items (i) through (iii);

a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law.

(c) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D)).

(26) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.

(27) "Mortgage transaction" means:

(a) a consumer loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(28) "Nationwide Multistate Licensing System and Registry" (or "Nationwide Mortgage Licensing System and Registry" or "NMLSR") means a multistate licensing system owned and operated by the State Regulatory Registry, LLC, or by any successor or affiliated entity, for the licensing and registration of creditors, mortgage loan originators, and other persons in the mortgage or financial services industries. The term includes any other name or acronym that may be assigned to the system by the State Regulatory Registry, LLC, or by any successor or affiliated entity.

(29) "Nontraditional mortgage product" means any mortgage



product other than a thirty (30) year fixed rate mortgage.

(30) "Official fees" means:

- (a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or
- (b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in subdivision (a) that would otherwise be payable.

(31) "Organization" means a corporation, a government or governmental subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated organization, or any other entity, however organized.

(32) "Payable in installments" means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(33) "Person" includes an individual or an organization.

(34) "Person related to" with respect to an individual means:

- (a) the spouse of the individual;
- (b) a brother, brother-in-law, sister, or sister-in-law of the individual;
- (c) an ancestor or lineal descendants of the individual or the individual's spouse; and
- (d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(35) "Person related to" with respect to an organization means:

- (a) a person directly or indirectly controlling, controlled by, or under common control with the organization;
- (b) a director, an executive officer, or a manager of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;
- (c) the spouse of a person related to the organization; and
- (d) a relative by blood or marriage of a person related to the organization who shares the same home with the person.

(36) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed, unless and until evidence is introduced that would support a finding of its nonexistence.

(37) "Real estate brokerage activity" means any activity that



involves offering or providing real estate brokerage services to the public, including the following:

- (a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.
- (b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.
- (c) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).
- (d) Engaging in any activity for which a person is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.
- (e) Offering to engage in any activity, or act in any capacity, described in this subsection.

(38) "Registered mortgage loan originator" means any individual who:

- (a) meets the definition of mortgage loan originator and is an employee of:
  - (i) a depository institution;
  - (ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or
  - (iii) an institution regulated by the Farm Credit Administration; and
- (b) is registered with, and maintains a unique identifier through, the NMLSR.

(39) "Regularly engaged", with respect to a person who extends consumer credit, refers to a person who:

- (a) extended consumer credit:
  - (i) more than twenty-five (25) times; or
  - (ii) more than five (5) times for a mortgage transaction secured by a dwelling;
 in the preceding calendar year; or
- (b) extends or will extend consumer credit:
  - (i) more than twenty-five (25) times; or
  - (ii) more than five (5) times for a mortgage transaction secured by a dwelling;
 in the current calendar year, if the person did not meet the numerical standards described in subdivision (a) in the preceding calendar year.

(40) "Residential real estate" means any real property that is located



in Indiana and on which there is located or intended to be constructed a dwelling.

(41) "Seller credit card" means an arrangement that gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or from that person and any other person. The term includes a card that is issued by a person, that is in the name of the seller, and that can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

(42) "Subordinate lien mortgage transaction" means:

- (a) a consumer loan; or
- (b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a subordinate lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(43) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

(44) "Land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.

(45) "Bona fide nonprofit organization" means an organization that does the following, as determined by the director under criteria established by the director:

- (a) Maintains tax exempt status under Section 501(c)(3) of the Internal Revenue Code.
- (b) Promotes affordable housing or provides home ownership education or similar services.
- (c) Conducts the organization's activities in a manner that serves public or charitable purposes.
- (d) Receives funding and revenue and charges fees in a manner that does not encourage the organization or the organization's employees to act other than in the best interests of the organization's clients.
- (e) Compensates the organization's employees in a manner that does not encourage employees to act other than in the best interests of the organization's clients.
- (f) Provides to, or identifies for, debtors mortgage transactions with terms that are favorable to the debtor (as described in section



202(b)(15) of this chapter) and comparable to mortgage transactions and housing assistance provided under government housing assistance programs.

(g) Maintains certification by the United States Department of Housing and Urban Development or employs counselors who are certified by the Indiana housing and community development authority.

(46) "Civil proceeding advance payment transaction", or "CPAP transaction", has the meaning set forth in IC 24-4.5-3-110.

(47) "Civil proceeding", with respect to a CPAP transaction, has the meaning set forth in IC 24-4.5-3-110.5.

(48) "Civil proceeding advance payment contract", or "CPAP contract", has the meaning set forth in IC 24-4.5-3-110.5.

(49) "Civil proceeding advance payment provider", or "CPAP provider", has the meaning set forth in IC 24-4.5-3-110.5.

(50) "Consumer claimant", with respect to a CPAP transaction, has the meaning set forth in IC 24-4.5-3-110.5.

(51) "Funded amount", with respect to a CPAP transaction, has the meaning set forth in IC 24-4.5-3-110.5.

SECTION 13. IC 24-4.5-2-407.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 407.5. The leasing of live domestic animals (as defined in IC 34-30-30-1) under this chapter is prohibited.**

SECTION 14. IC 24-4.5-3-110 IS REPEALED [EFFECTIVE JULY 1, 2019]. Sec. 110: (1) "Civil proceeding advance payment transaction", or "CPAP transaction", means a nonrecourse transaction in which a CPAP provider provides a funded amount to a consumer claimant to use for any purpose other than prosecuting the consumer claimant's civil proceeding, if the repayment of the funded amount is:

(a) required only if the consumer claimant prevails in the civil proceeding; and

(b) sourced from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.

(2) The term includes a transaction:

(a) that is termed or described as:

(i) a purchase; or

(ii) an assignment of an interest in a consumer claimant's civil proceeding, or in the proceeds of a consumer claimant's civil proceeding;

by the CPAP provider; or

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(b) with respect to which the CPAP provider sets forth in a CPAP contract, an agreement by:

(i) the CPAP provider to purchase from the consumer claimant; or

(ii) the consumer claimant to assign to the CPAP provider; a contingent right to receive a share of the potential proceeds of the consumer claimant's civil proceeding; whether the proceeds result from a judgment, a settlement; or some other resolution.

(3) Notwithstanding section 202(1)(i) of this chapter and section 502(6) of this chapter, a CPAP transaction is not a consumer loan.

SECTION 15. IC 24-4.5-3-110.5 IS REPEALED [EFFECTIVE JULY 1, 2019]. Sec. 110.5: (1) "Civil proceeding"; with respect to a CPAP transaction; means:

(a) a civil action;

(b) a mediation; an arbitration; or any other alternative dispute resolution proceeding; or

(c) an administrative proceeding before:

(i) an agency or instrumentality of the state; or

(ii) a political subdivision; or an agency or instrumentality of a political subdivision; of the state;

that is filed in; or is under the jurisdiction of; a court with jurisdiction in Indiana; a tribunal in Indiana; or an agency or instrumentality described in subdivision (c) in Indiana. The term includes all proceedings arising out of or relating to the proceeding; including any proceedings on appeal or remand; and any enforcement; ancillary; or parallel proceedings.

(2) "Civil proceeding advance payment contract"; or "CPAP contract"; means a contract for a CPAP transaction that a CPAP provider enters into; or offers to enter into; with a consumer claimant.

(3) "Civil proceeding advance payment provider"; or "CPAP provider"; means a person that:

(a) enters into; or offers to enter into; a CPAP transaction with a consumer claimant in connection with a civil proceeding; and

(b) notwithstanding section 110(3) of this chapter; and subject to IC 24-12-9; is licensed with the department in accordance with this chapter and IC 24-12-9.

(4) "Consumer claimant"; with respect to a CPAP transaction; means an individual:

(a) who is or may become a plaintiff; a claimant; or a demandant in a civil proceeding; and

(b) who:

(i) is offered a CPAP transaction by a CPAP provider; or



(ii) enters into a CPAP transaction with a CPAP provider; regardless of whether the individual is a resident of Indiana.

(5) "Funded amount", with respect to a CPAP transaction, means the amount of money:

(a) that is provided to the consumer claimant by the CPAP provider; and

(b) the repayment of which is:

(i) required only if the consumer claimant prevails in the consumer claimant's civil proceeding; and

(ii) sourced from the proceeds of the civil proceeding; whether the proceeds result from a judgment, a settlement, or some other resolution;

regardless of the term used by the CPAP provider in the CPAP contract to identify the amount.

SECTION 16. IC 24-4.5-3-202, AS AMENDED BY P.L.69-2018, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 202. (1) In addition to the loan finance charge permitted by this chapter, a lender may contract for and receive the following additional charges in connection with a consumer loan:

(a) Official fees and taxes.

(b) Charges for insurance as described in subsection (2).

(c) Annual participation fees assessed in connection with a revolving loan account. Annual participation fees must:

(i) be reasonable in amount;

(ii) bear a reasonable relationship to the lender's costs to maintain and monitor the loan account; and

(iii) not be assessed for the purpose of circumvention or evasion of this article, as determined by the department.

(d) With respect to a debt secured by an interest in land, the following closing costs, if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this article:

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

(ii) Fees for preparing deeds, mortgages, and reconveyance, settlement, and similar documents.

(iii) Notary and credit report fees.

(iv) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the loan finance charge.

(v) Appraisal fees.

(e) Notwithstanding provisions of the Consumer Credit Protection



Act (15 U.S.C. 1601 et seq.) concerning disclosure, charges for other benefits, including insurance, conferred on the debtor, if the benefits are of value to the debtor and if the charges are reasonable in relation to the benefits, and are excluded as permissible additional charges from the loan finance charge. With respect to any other additional charge not specifically provided for in this section to be a permitted charge under this subsection, the creditor must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit to the debtor. Supporting documents may be required by the department. The department shall determine whether the charge would be of benefit to the debtor and is reasonable in relation to the benefits.

(f) A charge not to exceed twenty-five dollars (\$25) for each returned payment by a bank or other depository institution of a dishonored check, electronic funds transfer, negotiable order of withdrawal, or share draft issued by the debtor.

(g) With respect to a revolving loan account, a fee not to exceed twenty-five dollars (\$25) in each billing cycle during which the balance due under the revolving loan account exceeds by more than one hundred dollars (\$100) the maximum credit limit for the account established by the lender.

(h) With respect to a revolving loan account, a transaction fee that may not exceed the lesser of the following:

- (i) Two percent (2%) of the amount of the transaction.
- (ii) Ten dollars (\$10).

(i) A charge not to exceed twenty-five dollars (\$25) for a skip-a-payment service, subject to the following:

(i) At the time of use of the service, the consumer must be given written notice of the amount of the charge and must acknowledge the amount in writing, including by electronic signature.

(ii) A charge for a skip-a-payment service may not be assessed with respect to a consumer loan subject to the provisions on rebate upon prepayment that are set forth in section 210 of this chapter.

(iii) A charge for a skip-a-payment service may not be assessed with respect to any payment for which a delinquency charge has been assessed under section 203.5 of this chapter.

(j) A charge not to exceed ten dollars (\$10) for an optional expedited payment service, subject to the following:

(i) The charge may be assessed only upon request by the



consumer to use the expedited payment service.

(ii) The amount of the charge must be disclosed to the consumer at the time of the consumer's request to use the expedited payment service.

(iii) The consumer must be informed that the consumer retains the option to make a payment by traditional means.

(iv) The charge may not be established in advance, through any agreement with the consumer, as the expected method of payment.

(v) The charge may not be assessed with respect to any payment for which a delinquency charge has been assessed under section 203.5 of this chapter.

**(k)** This subdivision applies to a CPAP transaction offered or entered into after June 30, 2016. With respect to a CPAP transaction, a CPAP provider may impose the following charges and fees:

(i) A fee calculated at an annual rate that does not exceed thirty-six percent (36%) of the funded amount.

(ii) A servicing charge calculated at an annual rate that does not exceed seven percent (7%) of the funded amount.

(iii) If the funded amount of the CPAP transaction is less than five thousand dollars (\$5,000), a one (1) time charge that does not exceed two hundred fifty dollars (\$250) for obtaining and preparing documents.

(iv) If the funded amount of the CPAP transaction is at least five thousand dollars (\$5,000), a one (1) time charge that does not exceed five hundred dollars (\$500) for obtaining and preparing documents.

A CPAP provider may not assess, or collect from the consumer claimant, any other fee or charge in connection with a CPAP transaction, including any finance charges under section 201 or 508 of this chapter.

**(l)** A charge for a GAP agreement, subject to subsection (3).

**(m)** **(l)** With respect to consumer loans made by a person exempt from licensing under IC 24-4.5-3-502(1), a charge for a debt cancellation agreement, subject to the following:

(i) A debt cancellation agreement or debt cancellation coverage may not be required by the lender, and that fact must be disclosed in writing to the consumer.

(ii) The charge for the initial term of coverage under the debt cancellation agreement must be disclosed in writing to the consumer. The charge may be disclosed on a unit-cost basis



only in the case of revolving loan accounts, closed-end credit transactions if the request for coverage is made by mail or telephone, and closed-end credit transactions if the debt cancellation agreement limits the total amount of indebtedness eligible for coverage.

(iii) If the term of coverage under the debt cancellation agreement is less than the term of the consumer loan, the term of coverage under the debt cancellation agreement must be disclosed in writing to the consumer.

(iv) The consumer must sign or initial an affirmative written request for coverage after receiving all required disclosures.

(v) If debt cancellation coverage for two (2) or more events is provided for in a single charge under a debt cancellation agreement, the entire charge may be excluded from the loan finance charge and imposed as an additional charge under this section if at least one (1) of the events is the loss of life, health, or income.

The additional charges provided for in subdivisions (f) through ~~(k)~~ (j) are not subject to refund or rebate.

(2) An additional charge may be made for insurance in connection with the loan, other than insurance protecting the lender against the debtor's default or other credit loss:

(a) with respect to insurance against loss of or damage to property or against liability, if the lender furnishes a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained from or through the lender and stating that the debtor may choose the person, subject to the lender's reasonable approval, through whom the insurance is to be obtained; and

(b) with respect to consumer credit insurance providing life, accident, unemployment or other loss of income, or health coverage, if the insurance coverage is not a factor in the approval by the lender of the extension of credit and this fact is clearly disclosed in writing to the debtor, and if, in order to obtain the insurance in connection with the extension of credit, the debtor gives specific affirmative written indication of the desire to do so after written disclosure of the cost of the insurance.

(3) An additional charge may be made for a GAP agreement, subject to the following:

(a) A GAP agreement or GAP coverage may not be required by the lender, and that fact must be disclosed in writing to the consumer.



- (b) The charge for the initial term of coverage under the GAP agreement must be disclosed in writing to the consumer. The charge may be disclosed on a unit-cost basis only in the case of the following transactions:
- (i) Revolving loan accounts.
  - (ii) Closed-end credit transactions, if the request for coverage is made by mail or telephone.
  - (iii) Closed-end credit transactions, if the GAP agreement limits the total amount of indebtedness eligible for coverage.
- (c) If the term of coverage under the GAP agreement is less than the term of the consumer loan, the term of coverage under the GAP agreement must be disclosed in writing to the consumer.
- (d) The consumer must sign or initial an affirmative written request for coverage after receiving all required disclosures.
- (e) The GAP agreement must include the following:
- (i) In the case of GAP coverage for a new motor vehicle, the manufacturer's suggested retail price (MSRP) for the motor vehicle.
  - (ii) In the case of GAP coverage for a used motor vehicle, the National Automobile Dealers Association (NADA) average retail value for the motor vehicle.
  - (iii) The name of the financing entity taking assignment of the agreement, as applicable.
  - (iv) The name and address of the consumer.
  - (v) The name of the lender selling the agreement.
  - (vi) Information advising the consumer that the consumer may be able to obtain similar coverage from the consumer's primary insurance carrier.
  - (vii) A coverage provision that includes a minimum deductible of five hundred dollars (\$500).
  - (viii) A provision providing for a minimum thirty (30) day trial period.
  - (ix) In the case of a consumer loan made with respect to a motor vehicle, a provision excluding the sale of GAP coverage if the amount financed under the consumer loan (not including the cost of the GAP agreement, the cost of any credit insurance, and the cost of any warranties or service agreements) is less than eighty percent (80%) of the manufacturer's suggested retail price (MSRP), in the case of a new motor vehicle, or **of** the National Automobile Dealers Association (NADA) average retail value, in the case of a used motor vehicle.



- (x) In the case of a GAP agreement in which the charge for the agreement exceeds four hundred dollars (\$400), specific instructions that may be used by the consumer to cancel the agreement and obtain a refund of the unearned GAP charge before prepayment in full, in accordance with the procedures, and subject to the conditions, set forth in subdivision (f).
- (f) If the charge for the GAP agreement exceeds four hundred dollars (\$400), the consumer is entitled to cancel the agreement and obtain a refund of the unearned GAP charge before prepayment in full. Refunds of unearned GAP charges shall be made subject to the following conditions:
- (i) A refund of the charge for a GAP agreement must be calculated using a method that is no less favorable to the consumer than a refund calculated on a pro rata basis.
  - (ii) The consumer is entitled to a refund of the unearned GAP agreement charge as outlined in the GAP agreement.
  - (iii) The seller of the GAP agreement, or the seller's assignee, is responsible for making a timely refund to the consumer of unearned GAP agreement charges under the terms and conditions of the GAP agreement.
- (g) Upon prepayment in full of the consumer loan:
- (i) the GAP coverage is automatically terminated; and
  - (ii) the seller of the GAP agreement must issue a refund in accordance with subdivision (f).
- (h) A lender that sells GAP agreements must:
- (i) insure its GAP agreement obligations under a contractual liability insurance policy issued by an insurer authorized to engage in the insurance business in Indiana; and
  - (ii) retain appropriate records, as required under this article, regarding GAP agreements sold, refunded, and expired.
- (4) As used in this section, "debt cancellation agreement" means an agreement that provides coverage for payment or satisfaction of all or part of a debt in the event of the loss of life, health, or income. The term does not include a GAP agreement.
- (5) As used in this section, "expedited payment service" means a service offered to a consumer to ensure that a payment made by the consumer with respect to a consumer loan will be reflected as paid and posted on an expedited basis.
- (6) As used in this section:
- (a) "guaranteed asset protection agreement";
  - (b) "guaranteed auto protection agreement"; or
  - (c) "GAP agreement";



means, with respect to consumer loans involving motor vehicles or other titled assets, an agreement in which the lender agrees to cancel or waive all or part of the outstanding debt after all property insurance benefits have been exhausted after the occurrence of a specified event.

(7) As used in this section, "skip-a-payment service" means a service that:

- (a) is offered by a lender to a consumer; and
- (b) permits the consumer to miss or skip a payment due under a consumer loan without resulting in default.

SECTION 17. IC 24-4.5-3-502, AS AMENDED BY P.L.153-2016, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 502. (1) A person that is a:

- (a) depository institution;
- (b) subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or
- (c) credit union service organization;

may engage in Indiana in the making of consumer loans (including small loans that are subject to IC 24-4.5-7) that are not mortgage transactions without obtaining a license under this article.

(2) A collection agency licensed under IC 25-11-1 may engage in:

- (a) taking assignments of consumer loans (including small loans that are subject to IC 24-4.5-7) that are not mortgage transactions; and
- (b) undertaking the direct collection of payments from or the enforcement of rights against debtors arising from consumer loans (including small loans that are subject to IC 24-4.5-7) that are not mortgage transactions;

in Indiana without obtaining a license under this article.

(3) A person that does not qualify under subsection (1) or (2) shall acquire and retain a license under this chapter in order to regularly engage in Indiana in the following actions with respect to consumer loans that are not small loans (as defined in IC 24-4.5-7-104) or mortgage transactions:

- (a) The making of consumer loans.
- (b) Taking assignments of consumer loans.
- (c) Undertaking the direct collection of payments from or the enforcement of rights against debtors arising from consumer loans.

(4) A separate license under this chapter is required for each legal entity that engages in Indiana in any activity described in subsection (3). However, a separate license under this chapter is not required for each branch of a legal entity licensed under this chapter to perform an





activity described in subsection (3).

(5) Except as otherwise provided in subsections (1) and (2), a separate license under IC 24-4.5-7 is required in order to regularly engage in Indiana in the following actions with respect to small loans (as defined in IC 24-4.5-7-104):

- (a) The making of small loans (as defined in IC 24-4.5-7-104).
- (b) Taking assignments of small loans (as defined in IC 24-4.5-7-104).
- (c) Undertaking the direct collection of payments from or the enforcement of rights against debtors arising from small loans (as defined in IC 24-4.5-7-104).

A person that seeks licensure under IC 24-4.5-7 in order to regularly engage in Indiana in the actions set forth in this subsection shall apply to the department for that license in the form and manner prescribed by the department, and is subject to the same licensure requirements and procedures as an applicant for a license to make consumer loans (other than small loans or mortgage transactions) under this section.

~~(6) A CPAP contract must comply with IC 24-12-2.~~

SECTION 18. IC 24-4.5-3-502.2, AS ADDED BY P.L.137-2014, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 502.2. (1) Subject to subsection (6), the director may designate the NMLSR to serve as the sole entity responsible for:

- (a) processing applications and renewals for licenses required under section 502 of this chapter;
- (b) issuing unique identifiers for licensees and entities exempt from licensing under section 502 of this chapter; and
- (c) performing other services that the director determines are necessary for the orderly administration of the department's licensing system under section 502 of this chapter.

(2) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director ~~shall~~ **may** regularly report to the NMLSR significant or recurring violations of this article related to consumer loans that are not mortgage transactions, including small loans under IC 24-4.5-7.

(3) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director may report to the NMLSR complaints received regarding licensees under section 502 of this chapter in connection with consumer loans that are not mortgage transactions, including small loans under IC 24-4.5-7.

(4) The director may report to the NMLSR publicly adjudicated licensure actions against licensees under section 502 of this chapter.

(5) The director shall establish a process in which persons licensed



in accordance with section 502 of this chapter may challenge information reported to the NMLSR by the department.

(6) The director's authority to designate the NMLSR under subsection (1) is subject to the following:

(a) Information stored in the NMLSR is subject to the confidentiality provisions of IC 28-1-2-30 and IC 5-14-3. A person may not:

- (i) obtain information from the NMLSR unless the person is authorized to do so by statute;
- (ii) initiate any civil action based on information obtained from the NMLSR if the information is not otherwise available to the person under any other state law; or
- (iii) initiate any civil action based on information obtained from the NMLSR if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(b) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential under IC 28-1-2-30 and that are:

- (i) furnished by the director, the director's designee, or a licensee; or
- (ii) otherwise obtained by the NMLSR;

are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director may use the documents, materials, or other information available to the director in furtherance of any action brought in connection with the director's duties under this article.

(c) Disclosure of documents, materials, and information:

- (i) to the director; or
- (ii) by the director;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(d) Information provided to the NMLSR is subject to IC 4-1-11.

(e) This subsection does not limit or impair a person's right to:

- (i) obtain information;
- (ii) use information as evidence in a civil action or proceeding;
- or
- (iii) use information to initiate a civil action or proceeding;

if the information may be obtained from the director or the director's designee under any law.



(f) The requirements under any federal law or IC 5-14-3 regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with financial services industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or IC 5-14-3.

(g) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, or other associations representing governmental agencies as established by rule or order of the director.

(h) Information or material that is subject to a privilege or confidentiality under subdivision (f) is not subject to:

- (i) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or
- (ii) subpoena, discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privileged information or material held by the NMLSR, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(i) Any provision of IC 5-14-3 that concerns the disclosure of:

(i) confidential supervisory information; or

(ii) any information or material described in subdivision (f);

and that is inconsistent with subdivision (f) is superseded by this section.

(j) This section does not apply with respect to information or material that concerns the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a person licensed in accordance with section 502 of this chapter and described in section 503(2) of this chapter and that is included in the NMLSR for access by the public.

(k) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered reasonable by the director. In determining whether an NMLSR processing fee is reasonable, the director shall:



- (i) require review of; and
  - (ii) make available;
- the audited financial statements of the NMLSR.
- (7) Notwithstanding any other provision of law, any:
- (a) application, renewal, or other form or document that:
    - (i) relates to licenses issued under section 502 of this chapter; and
    - (ii) is made or produced in an electronic format;
  - (b) document filed as an electronic record in a multistate automated repository established and operated for the licensing or registration of financial services entities and their employees; or
  - (c) electronic record filed through the NMLSR;

is considered a valid original document when reproduced in paper form by the department.

SECTION 19. IC 24-4.5-3-503, AS AMENDED BY P.L.27-2012, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 503. (1) The department shall receive and act on all applications for licenses to make consumer loans. Applications must be as prescribed by the director of the department of financial institutions. If, at any time, the information or record contained in:

- (a) an application filed under section 502 of this chapter or section 502.1 of this chapter; or
- (b) a renewal application filed under section 503.6 of this chapter;

is or becomes inaccurate or incomplete in a material respect, the applicant shall promptly file a correcting amendment with the department.

(2) A license shall not be issued unless the department finds that the professional training and experience, financial responsibility, character, and fitness of:

- (a) the applicant and any significant affiliate of the applicant;
- (b) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and
- (c) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant;

are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

(3) The director is entitled to request evidence of compliance with this section at:

- (a) the time of application;
- (b) the time of renewal of a license; or

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(c) any other time considered necessary by the director.

(4) Evidence of compliance with this section concerning a person licensed under section 502 of this chapter may include and for a person licensed under section 502.1 of this chapter must include:

- (a) criminal background checks as described in section 503.1 of this chapter, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for any individual described in subsection (2);
- (b) credit histories as described in section 503.2 of this chapter;
- (c) surety bond requirements as described in section 503.3 of this chapter;
- (d) a review of licensure actions in Indiana and other states; and
- (e) other background checks considered necessary by the director.

(5) For purposes of this section and in order to reduce the points of contact that the director may have to maintain under this section, the director may use the NMLSR as a channeling agent for requesting and distributing information to and from any source as directed by the director.

(6) The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(7) Upon written request, the applicant is entitled to a hearing on the question of the qualifications of the applicant for a license as provided in IC 4-21.5.

(8) The applicant shall pay the following fees at the time designated by the department:

- (a) An initial license fee as established by the department under IC 28-11-3-5.
- (b) Examination fees as established by the department under IC 28-11-3-5.
- (c) An annual renewal fee as established by the department under IC 28-11-3-5.

(9) A fee as established by the department under IC 28-11-3-5 may be charged for each day a fee under subsection (8)(b) or (8)(c) is delinquent.

(10) The licensee may deduct the fees required under subsection (8)(a) and (8)(c) from the filing fees paid under IC 24-4.5-6-203.

(11) Except in a transaction approved under section 515 of this chapter, a license issued under this section is not assignable or transferable.

**(12) If the department of state revenue notifies the department**



**that a person is on the most recent tax warrant list, the department shall not issue or renew the person's license until:**

- (a) the person provides to the department a statement from the department of state revenue that the person's tax warrant has been satisfied; or**
- (b) the department receives a notice from the commissioner of the department of state revenue under IC 6-8.1-8-2(k).**

SECTION 20. IC 24-4.5-3-503.3, AS AMENDED BY P.L.69-2018, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 503.3. (1) Each:

- (a) creditor licensed by the department to engage in mortgage transactions; and
- (b) person that is exempt (either under this article or under IC 24-4.4-1-202(b)(6)(a)) from licensing and that:
  - (i) employs a licensed mortgage loan originator; or
  - (ii) sponsors under an exclusive written agreement, as permitted by IC 24-4.4-1-202(b)(6)(a), a licensed mortgage loan originator as an independent agent;

must be covered by a surety bond in accordance with this section.

(2) A surety bond must:

- (a) provide coverage for:
  - (i) a creditor described in subsection (1)(a); and
  - (ii) an exempt person described in subsection (1)(b);
 in an amount as prescribed in subsection (4);
- (b) be in a form as prescribed by the director;
- (c) be in effect:
  - (i) during the term of the creditor's license; or
  - (ii) at any time during which the person exempt from licensing employs a licensed mortgage loan originator, or sponsors under an exclusive written agreement (as permitted by IC 24-4.4-1-202(b)(6)(a)) a licensed mortgage loan originator as an independent agent;
 as applicable;
- (d) remain in effect during the two (2) years after:
  - (i) the creditor ceases offering financial services to individuals in Indiana; or
  - (ii) the person exempt from licensing ceases to employ a licensed mortgage loan originator, or ceases to sponsor under an exclusive written agreement (as permitted by IC 24-4.4-1-202(b)(6)(a)) a licensed mortgage loan originator as an independent agent, or to offer financial services to individuals in Indiana, whichever is later;



as applicable;

(e) be payable to the department for the benefit of:

(i) the state; and

(ii) individuals who reside in Indiana when they agree to receive financial services from the creditor or the person exempt from licensing, as applicable;

(f) be issued by a bonding, surety, or insurance company authorized to do business in Indiana and rated at least "A-" by at least one (1) nationally recognized investment rating service; and

(g) have payment conditioned upon:

(i) the creditor's or any of the creditor's licensed mortgage loan originators'; or

(ii) the exempt person's or any of the exempt person's licensed mortgage loan originators';

noncompliance with or violation of this chapter, 750 IAC 9, or other federal or state laws or regulations applicable to mortgage lending.

(3) The director may adopt rules or guidance documents with respect to the requirements for surety bonds as necessary to accomplish the purposes of this article.

(4) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of mortgage transactions originated as determined by the director. If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the creditor or exempt person for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in an amount set by the director. The amount of the new or additional bond set by the director must be at least the amount of the bond before payment of the claim or judgment.

(5) If for any reason a surety terminates a bond issued under this section, the creditor or the exempt person shall immediately notify the department and file a new surety bond in an amount determined by the director.

(6) Cancellation of a surety bond issued under this section does not affect any liability incurred or accrued during the period when the surety bond was in effect.

(7) The director may obtain satisfaction from a surety bond issued under this section if the director incurs expenses, issues a final order, or recovers a final judgment under this chapter.

(8) Notices required under this section must be **made** in writing and ~~delivered by certified mail; return receipt requested and postage~~

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**prepaid, or by overnight delivery using a nationally recognized carrier, submitted through the NMLSR or any other electronic registration system that may be approved by the director.**

SECTION 21. IC 24-4.5-3-503.4, AS AMENDED BY P.L. 69-2018, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 503.4. (1) Subject to subsection (6), the director shall designate the NMLSR to serve as the sole entity responsible for:

- (a) processing applications and renewals for licenses under section 502.1 of this chapter;
- (b) issuing unique identifiers for licensees under section 502.1 of this chapter and for entities exempt from licensing under this article that employ licensed mortgage loan originators; and
- (c) performing other services that the director determines necessary for the orderly administration of the department's licensing system under section 502.1 of this chapter.

(2) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director ~~shall~~ **may** regularly report significant or recurring violations of this article related to subordinate lien mortgage transactions to the NMLSR.

(3) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director may report complaints received regarding licensees and relating to subordinate lien mortgage transactions to the NMLSR.

(4) The director may report publicly adjudicated licensure actions against licensees under section 502.1 of this chapter to the NMLSR.

(5) The director shall establish a process in which persons licensed in accordance with section 502.1 of this chapter may challenge information reported to the NMLSR by the department.

(6) The director's authority to designate the NMLSR under subsection (1) is subject to the following:

- (a) Information stored in the NMLSR is subject to the confidentiality provisions of IC 28-1-2-30 and IC 5-14-3. A person may not:
  - (i) obtain information from the NMLSR unless the person is authorized to do so by statute;
  - (ii) initiate any civil action based on information obtained from the NMLSR if the information is not otherwise available to the person under any other state law; or
  - (iii) initiate any civil action based on information obtained from the NMLSR if the person could not have initiated the action based on information otherwise available to the person under any other state law.





(b) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential under IC 28-1-2-30 and that are:

(i) furnished by the director, the director's designee, or a licensee; or

(ii) otherwise obtained by the NMLSR;

are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director may use the documents, materials, or other information available to the director in furtherance of any action brought in connection with the director's duties under this article.

(c) Disclosure of documents, materials, and information:

(i) to the director; or

(ii) by the director;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(d) Information provided to the NMLSR is subject to IC 4-1-11.

(e) This subsection does not limit or impair a person's right to:

(i) obtain information;

(ii) use information as evidence in a civil action or proceeding;

or

(iii) use information to initiate a civil action or proceeding;

if the information may be obtained from the director or the director's designee under any law.

(f) Except as otherwise provided in the federal Housing and Economic Recovery Act of 2008, Public Law 110-289, Section 1512, the requirements under any federal law or IC 5-14-3 regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or IC 5-14-3.

(g) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association



of Residential Mortgage Regulators, or other associations representing governmental agencies as established by rule or order of the director.

(h) Information or material that is subject to a privilege or confidentiality under subdivision (f) is not subject to:

- (i) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or
- (ii) subpoena, discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(i) Any provision of IC 5-14-3 that concerns the disclosure of:

- (i) confidential supervisory information; or
  - (ii) any information or material described in subdivision (f);
- and that is inconsistent with subdivision (f) is superseded by this section.

(j) This section does not apply with respect to information or material that concerns the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a person licensed in accordance with section 502.1 of this chapter and described in section 503(2) of this chapter and that is included in the NMLSR for access by the public.

(k) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered reasonable by the director. In determining whether an NMLSR processing fee is reasonable, the director shall:

- (i) require review of; and
- (ii) make available;

the audited financial statements of the NMLSR.

(7) Notwithstanding any other provision of law, any:

- (a) application, renewal, or other form or document that:
  - (i) relates to mortgage licenses issued by the department; and
  - (ii) is made or produced in an electronic format;
- (b) document filed as an electronic record in a multistate automated repository established and operated for the licensing or registration of mortgage lenders, brokers, or loan originators; or
- (c) electronic record filed through the NMLSR;

is considered a valid original document when reproduced in paper form by the department.



SECTION 22. IC 24-4.5-4-108, AS AMENDED BY P.L.90-2008, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 108. Refund or Credit Required; Amount — (1) Upon prepayment in full of a consumer credit sale or consumer loan by the proceeds of consumer credit insurance, the debtor or the debtor's estate is entitled to a refund of:

- (a) any portion of a separate charge for insurance which by reason of prepayment is retained by the creditor or returned to the creditor by the insurer unless the charge was computed from time to time on the basis of the balances of the debtor's account; and
- (b) any portion of an additional charge that is:
  - (i) assessed in accordance with IC 24-4.5-2-202(1)(c), **IC 24-4.5-2-202(1)(h), or IC 24-4.5-3-202(1)(e), or IC 24-4.5-3-202(1)(k);** and
  - (ii) subject to rebate upon prepayment.

(2) This chapter does not require a creditor to grant a refund or credit to the debtor if all refunds and credits due to the debtor under this chapter amount to less than one dollar (\$1), and except as provided in subsection (1) does not require the creditor to account to the debtor for any portion of a separate charge for insurance because:

- (a) the insurance is terminated by performance of the insurer's obligation;
- (b) the creditor pays or accounts for premiums to the insurer in amounts and at times determined by the agreement between them; or
- (c) the creditor receives directly or indirectly under any policy of insurance a gain or advantage not prohibited by law.

(3) Except as provided in subsection (2), the creditor or the creditor's assignee shall promptly make an appropriate refund or credit to the debtor for any separate charge made for insurance or for an additional charge described in subsection (1)(b) if:

- (a) the insurance is not provided or is provided for a term shorter than the term for which the charge to the debtor for insurance was computed; or
- (b) the insurance or the protection provided in exchange for the additional charge described in subsection (1)(b) terminates prior to the end of the scheduled term of the coverage because of prepayment in full or otherwise.

(4) An initial creditor, a subsequent creditor, or an assignee of an initial or a subsequent creditor, shall maintain documentation of any account that is subject to a refund or credit under this section. The information maintained under this subsection shall be made available



to the department as necessary to determine compliance with this section.

(5) A refund or credit required by subsection (3)(a) is appropriate as to amount if it is computed according to a method prescribed or approved by the insurance commissioner or a formula filed by the insurer with the insurance commissioner at least thirty (30) days before the debtor's right to a refund or credit becomes determinable, unless the method or formula is used after the insurance commissioner notifies the insurer that it is disapproved.

(6) If a refund or credit required by subsection (1) or (3) is not made to the debtor within sixty (60) days after the date the debt is terminated, due to prepayment in full or otherwise, the creditor shall pay to the debtor for each day after the sixty (60) day period has expired an amount equal to the daily interest at the contracted annual percentage rate on the amount of the refund required by subsection (1) due at the time of prepayment or termination. The director may impose an additional civil penalty of not greater than one thousand dollars (\$1,000) per occurrence if a creditor engages in a pattern or practice of failing to comply with this subsection.

SECTION 23. IC 24-4.5-6-119, AS AMENDED BY P.L.27-2012, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 119. (a) Subject to subsection (b), if the director determines that a director, an officer, or ~~an employee~~ **a manager** of a creditor:

- (1) has committed a violation of a statute, a rule, a final cease and desist order, a condition imposed in writing by the director in connection with the grant of an application or other request by the creditor, or a written agreement between the creditor and the director or the department;
- (2) has committed fraudulent or unconscionable conduct; or
- (3) has been convicted of a felony under the laws of Indiana or any other jurisdiction;

the director may issue and serve upon the person a notice of charges and of the director's intent to issue an order removing the person from the person's office or employment, an order prohibiting participation by the person in the conduct of the affairs of any creditor, or an order both removing the person and prohibiting the person's participation.

(b) A violation, practice, or breach described in subsection (a) is subject to the authority of the director under ~~subsection~~ **subsections (a) and (c)** if the director finds any of the following:

- (1) The interests of the creditor's customers could be seriously prejudiced by reason of the violation, practice, or breach.

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(2) The violation, practice, or breach involves ~~personal~~ **an act of fraud, dishonesty, theft, breach of trust, money laundering, or wrongful taking of property** on the part of the officer, director, or ~~employee~~ **manager** involved.

(3) The violation, practice, or breach demonstrates a willful or continuing disregard by the officer, director, or ~~employee~~ **manager** for state or federal law and regulations, and for the consumer protections contained in this article.

(c) **Subject to subsections (a) and (b)**, a person who has been convicted of a felony under the laws of Indiana or any other jurisdiction may not serve as an officer, a director, or ~~an employee a manager~~ of a creditor, or serve in any similar capacity, unless the person obtains the written consent of the director.

(d) A creditor that willfully permits a person to serve the creditor in violation of subsection (c) is subject to a civil penalty of five hundred dollars (\$500) for each day the violation occurs.

(e) A creditor shall give the department written notice of the resignation, discharge, or termination of an employee, independent contractor, or agent against whom allegations were made that accused the employee, independent contractor, or agent of:

- (1) violating this article or other laws, regulations, rules, or industry standards of conduct applicable to consumer credit transactions; or
- (2) fraud, dishonesty, theft, **breach of trust, money laundering,** or the wrongful taking of property.

The creditor shall provide the department the notice required under this subsection not later than thirty (30) days after the effective date of the resignation, discharge, or termination.

SECTION 24. IC 24-4.5-6-120, AS ADDED BY P.L.35-2010, SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 120. (a) A notice issued under section 119 of this chapter must:

- (1) be in writing;
- (2) contain a statement of:
  - (A) the facts constituting the alleged violation, practice, or breach;
  - (B) the facts alleged in support of the violation, practice, or breach; and
  - (C) the director's intention to issue an order under section 122(a) of this chapter;
- (3) be delivered to the board of directors of the creditor;
- (4) be delivered to the officer, director, or ~~employee~~ **manager** to



which the notice applies;

(5) specify the procedures that must be followed to initiate a hearing to contest the alleged violation, practice, or breach; and  
 (6) if the director suspends or prohibits the officer, director, or **employee manager** from participation in the affairs of the creditor as described under subsection (e), a statement of the suspension or prohibition.

(b) If a hearing is requested not later than ten (10) days after service of the notice described under subsection (a), the department shall hold a hearing concerning the alleged violation, practice, 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 a final order in accordance with section 122 of this chapter.

(c) If no hearing is requested within the period of time specified in subsection (b), the director may proceed to issue a final order under section 122 of this chapter on the basis of the facts set forth in the notice described under subsection (a).

(d) An officer, a director, or **employee a manager** of a creditor who is removed from a position under a removal order under section 122 of this chapter that has become final may not, without the approval of the director, participate in the conduct of the affairs of a licensee described under IC 24-4.5-3.

(e) The director may, for the protection of the creditor or the interests of the creditor's customers, suspend from office or prohibit from participation in the affairs of the creditor an officer, a director, or **an employee a manager** of a creditor who is the subject of a written notice served by the director under section 119(a) of this chapter. A suspension or prohibition under this subsection becomes effective upon service of the notice under section 119(a) of this chapter. Unless stayed by a court in a proceeding authorized by subsection (f), the suspension or prohibition remains in effect pending completion of the proceedings related to the notice served under section 119(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). If the director suspends or prohibits participation of an officer, a director, or **an employee a manager** under this subsection, copies of the notice shall also be served upon the creditor or affiliate of which the person is an officer, a director, or **an employee. a manager.**

(f) Not more than fifteen (15) days after an officer, a director, or **an employee a manager** has been suspended from office or prohibited from participation in the conduct of the affairs of the creditor or



affiliate under subsection (e), the officer, director, or **employee manager** 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 119(a) of this chapter. The court may stay a suspension or prohibition of the officer, director, or **employee manager**.

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

SECTION 25. IC 24-4.5-6-121, AS ADDED BY P.L.35-2010, SECTION 75, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 121. If the director enters into a consent to a final order with a director, an officer, or ~~an employee~~, **a manager**, the director is not required to issue and serve a notice of charges upon the director, officer, or **employee manager** under section 119 of this chapter. A consent agreement may be negotiated and entered into before or after the issuance of a notice of charges. The director shall provide a copy of the consent order to the board of directors of the creditor.

SECTION 26. IC 24-4.5-6-122, AS ADDED BY P.L.35-2010, SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 122. (a) Subject to section 120 of this chapter, if, after a hearing described in section 120(b) of this chapter, the department determines that a director, an officer, or ~~an employee~~ **a manager** of a creditor has committed an act described in section 119 of this chapter, the department may issue a final order. If a hearing is not requested within the time specified in section 120(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 119(a) of this chapter.

(b) Unless the director has entered into a consent agreement described in section 121 of this chapter, a final order must include separately stated findings of fact and conclusions of law for all aspects of the order.

(c) In a final order under this section, the department or the director, as appropriate, may order one (1) or more of the following with respect to an officer, a director, or ~~an employee~~ **a manager** of a creditor:

- (1) The removal of the officer, director, or **employee manager** from the person's office, position, or employment.
- (2) A prohibition against any participation by the officer, director, or **employee manager** in the conduct of the affairs of any creditor.
- (3) If the subject of the order is an officer or a director of a creditor, and subject to section 124 of this chapter, the imposition of a civil penalty not to exceed fifteen thousand dollars (\$15,000)



for each practice, violation, or act that:

(A) is described in section 119 of this chapter; and

(B) found to exist by the department or the director.

(d) A final order shall be issued in writing not later than ninety (90) days after conclusion of a hearing held under section 120(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 officer, director, or **employee manager** does not appear individually or by an authorized representative at a hearing held under section 120(b) of this chapter, the officer, director, or **employee manager** 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 the stability of the creditor. However, after two (2) years following the date that an order is issued, a final order is no longer confidential.

(g) The remedies provided in this chapter are in addition to other remedies contained in this article.

SECTION 27. IC 24-4.5-6-125, AS ADDED BY P.L.35-2010, SECTION 79, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 125. The director may enforce any of the following by applying for appropriate relief to a court having jurisdiction:

(1) An order issued under section 121 or 122 of this chapter.

(2) A written agreement entered into by the director or the department and a director, an officer, or **an employee a manager** of a creditor.

(3) Any condition imposed in writing by the director or the department on a director, an officer, or **an employee a manager** of a creditor.

SECTION 28. IC 24-7-1-5, AS AMENDED BY P.L.217-2007, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. (a) Rental purchase agreements involving:

(1) motor vehicles (as defined in IC 9-13-2-105(a)), **or including:**

**(A) component parts (as defined in IC 9-13-2-34);**

**(B) major component parts (as defined in IC 9-13-2-95);**

**and**

**(C) any other parts (as defined in IC 9-13-2-122) other**

**than:**

**(i) wheels;**

**(ii) rims; and**

**(iii) tires;**





necessary to operate a motor vehicle;  
 (2) other titled property; or  
 (3) live domestic animals (as defined in IC 34-30-30-1);  
 are prohibited under this article.

**(b) If the director determines that a transaction described in IC 24-7-2-9(a) involves the application of subterfuge for the purpose of avoiding the application of the Uniform Consumer Credit Code (IC 24-4.5), the director may treat the transaction as a disguised consumer credit sale that is subject to IC 24-4.5. A determination by the director under this subsection:**

- (1) must be in writing;**
- (2) shall be delivered to all parties in the transaction; and**
- (3) is subject to IC 4-21.5-3.**

SECTION 29. IC 24-7-2-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 3.5. "Initial rental payment" means any up-front payment:**

- (1) that is made by a lessee to a lessor, or to an agent acting on behalf of a lessor, for property under a rental purchase agreement;**
- (2) that includes a rental payment that permits the lessee's use of the property for the initial rental period;**
- (3) that may be in an amount that is larger than a regular rental payment due under the rental purchase agreement; and**
- (4) that may include one (1) or more of the following:**
  - (A) An amount intended to be paid toward the rental or ownership of the property that is the subject of the rental purchase agreement.**
  - (B) Additional charges permitted under IC 24-7-5, including any of the following:**
    - (i) A nonrefundable processing fee or a delivery charge.**
    - (ii) Sales and use taxes.**
    - (iii) Official fees.**
    - (iv) An optional liability waiver fee for the initial rental period.**
    - (v) A security deposit.**

SECTION 30. IC 24-7-2-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 8.5. "Regular rental payment" means a periodic payment in a fixed amount that permits a lessee's use of property under a rental purchase agreement for a specific time after the initial rental period.**



SECTION 31. IC 24-7-3-6, AS AMENDED BY P.L.69-2018, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. ~~Before any regular rental payment is due under the rental purchase agreement;~~ The lessor shall obtain the signature of the lessee on the writing containing the terms of the rental purchase agreement and shall furnish the lessee with a copy of the written and signed rental purchase agreement **at the time of consummation of the agreement.** If there is more than one (1) lessee in a rental purchase agreement, delivery of a copy of the rental purchase agreement to one (1) of the lessees is sufficient to comply with this section.

SECTION 32. IC 24-7-4-1, AS AMENDED BY P.L.69-2018, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. At any time after ~~the initial a rental payment purchase agreement is made;~~ **consummated,** the lessee may acquire ownership of the property under the terms specified in the rental purchase agreement.

SECTION 33. IC 24-7-4-1.5 IS REPEALED [EFFECTIVE JULY 1, 2019]. Sec. ~~1.5:~~ (a) ~~Any up-front payment made by the lessee at the time a rental purchase agreement is entered into must be treated by the lessor as an initial rental payment:~~

(b) ~~An initial rental payment:~~

(1) ~~is subject to the disclosure requirements of IC 24-7; and~~

(2) ~~may be in a sum larger than a regular rental payment due under the rental purchase agreement:~~

SECTION 34. IC 24-7-5-5, AS AMENDED BY P.L.69-2018, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. (a) The parties to a rental purchase agreement may contract for late charges or delinquency fees as follows:

(1) For agreements with monthly renewal dates, a late charge not exceeding eight dollars (\$8) may be assessed on any rental payment not made within five (5) days after:

(A) the renewal date for the agreement; or

(B) the return of the property is required under the rental purchase agreement.

(2) For agreements with weekly or biweekly renewal dates, a late charge not exceeding the amount specified in subsection (e) may be assessed on any rental payments not made within two (2) days after:

(A) the renewal date for the agreement; or

(B) the return of the property is required under the agreement.

(b) A late charge on a rental purchase agreement may be ~~collected~~ **assessed** only once on any accrued regular rental payment, no matter



how long it remains unpaid.

(c) A late charge may be collected at any time after it accrues.

(d) A late charge may not be assessed against a regular rental payment that is timely made, even though an earlier late charge has not been paid in full.

(e) The amount that may be assessed under subsection (a)(2) is as follows:

(1) Three dollars (\$3) for any payment not greater than twenty dollars (\$20).

(2) Five dollars (\$5) for any payment greater than twenty dollars (\$20).

SECTION 35. IC 24-7-6-2, AS AMENDED BY P.L.69-2018, SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) As a condition precedent to reinstatement of the rental purchase agreement, a lessor may charge:

(1) the outstanding balance of any accrued regular rental payments, returned payment ~~charges~~, **fees**, and delinquency charges;

(2) a reinstatement fee not exceeding the amount allowed under IC 24-7-5-6; and

(3) delivery charges not exceeding the amounts allowed under IC 24-7-5-3 if redelivery of the item is necessary.

(b) A reinstatement fee may not be charged under subsection (a)(2) unless the property has been returned to the lessor and is in the lessor's possession.

SECTION 36. IC 24-12-1-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 0.5. (a) As used in this article and subject to IC 24-12-6-2, "civil proceeding advance payment transaction", or "CPAP transaction", means a nonrecourse transaction in which a CPAP provider provides a funded amount to a consumer claimant to use for any purpose other than prosecuting the consumer claimant's civil proceeding, if the repayment of the funded amount is:**

**(1) required only if the consumer claimant prevails in the civil proceeding; and**

**(2) sourced from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.**

**(b) The term includes a transaction:**

**(1) that is termed or described as:**

**(A) a purchase; or**



**(B) an assignment of an interest in a consumer claimant's civil proceeding, or in the proceeds of a consumer claimant's civil proceeding;**

**by the CPAP provider; or**

**(2) with respect to which the CPAP provider sets forth in a CPAP contract, an agreement by:**

**(A) the CPAP provider to purchase from the consumer claimant; or**

**(B) the consumer claimant to assign to the CPAP provider; a contingent right to receive a share of the potential proceeds of the consumer claimant's civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.**

SECTION 37. IC 24-12-1-1, AS AMENDED BY P.L.85-2017, SECTION 96, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. The following definitions apply throughout this article:

(1) "Advertise" means publishing or disseminating any written, electronic, or printed communication, or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of inducing a consumer to enter into a CPAP transaction.

(2) "Charges" means the amount of money to be paid to a CPAP provider by or on behalf of a consumer claimant above the funded amount provided by or on behalf of the CPAP provider to a consumer claimant. The term includes all administrative, origination, underwriting, and other fees no matter how denominated.

(3) "Civil proceeding", with respect to a CPAP transaction, ~~has the meaning set forth in IC 24-4.5-3-110.5.~~ **means:**

**(A) a civil action;**

**(B) a mediation, an arbitration, or any other alternative dispute resolution proceeding; or**

**(C) an administrative proceeding before:**

**(i) an agency or instrumentality of the state; or**

**(ii) a political subdivision, or an agency or instrumentality of a political subdivision, of the state;**

**that is filed in, or is under the jurisdiction of, a court with jurisdiction in Indiana, a tribunal in Indiana, or an agency or**



**instrumentality described in clause (C) in Indiana. The term includes all proceedings arising out of or relating to the proceeding, including any proceedings on appeal or remand, and any enforcement, ancillary, or parallel proceedings.**

(4) "Civil proceeding advance payment contract", or "CPAP contract", has the meaning set forth in ~~IC 24-4.5-3-110.5~~: **means a contract for a CPAP transaction that a CPAP provider enters into, or offers to enter into, with a consumer claimant.**

(5) "Civil proceeding advance payment provider", or "CPAP provider", has the meaning set forth in ~~IC 24-4.5-3-110.5~~: **means a person that enters into, or offers to enter into, a CPAP transaction with a consumer claimant in connection with a civil proceeding.**

(6) "Civil proceeding advance payment transaction", or "CPAP transaction", has the meaning set forth in ~~IC 24-4.5-3-110~~: **section 0.5 of this chapter.**

(7) "Consumer claimant", with respect to a CPAP transaction, has the meaning set forth in ~~IC 24-4.5-3-110.5~~: **means an individual:**

**(A) who is or may become a plaintiff, a claimant, or a demandant in a civil proceeding; and**

**(B) who:**

**(i) is offered a CPAP transaction by a CPAP provider; or**

**(ii) enters into a CPAP transaction with a CPAP provider.**

(8) "Department" refers to the department of financial institutions established by IC 28-11-1-1.

(9) "Director" means the director of the department of financial institutions or the director's designee.

~~(8)~~ (10) "Funded amount", with respect to a CPAP transaction, has the meaning set forth in ~~IC 24-4.5-3-110.5~~: **means the amount of money:**

**(A) that is provided to the consumer claimant by the CPAP provider;**

**(B) the repayment of which is:**

**(i) required only if the consumer claimant prevails in the consumer claimant's civil proceeding; and**

**(ii) sourced from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution; and**

**(C) that under IC 24-12-4-1(1)(A) must be:**

**(i) set forth; and**

**(ii) designated by the term "funded amount";**



**by the CPAP provider in the CPAP contract.**

(9) **(11) "Funding date"** means the date on which the funded amount is transferred to the consumer claimant by the CPAP provider, by:

(A) personal delivery, wire, Automated Clearing House (ACH), or other electronic means; or

(B) insured, certified, or registered United States mail.

**(12) "Nationwide Multistate Licensing System and Registry" (or "Nationwide Mortgage Licensing System and Registry" or "NMLSR")** means a multistate licensing system owned and operated by the State Regulatory Registry, LLC, or by any successor or affiliated entity, for the licensing and registration of creditors, mortgage loan originators, and other persons in the mortgage or financial services industries. The term includes any other name or acronym that may be assigned to the system by the State Regulatory Registry, LLC, or by any successor or affiliated entity.

**(13) "Regularly engaged"**, with respect to a CPAP provider, refers to a CPAP provider that:

(A) entered into CPAP transactions with consumer claimants more than fifteen (15) times in the preceding calendar year; or

(B) enters into or will enter into CPAP transactions with consumer claimants more than fifteen (15) times in the current calendar year, if the CPAP provider did not meet the numerical standard described in clause (A) in the preceding calendar year.

(10) **(14) "Resolution date"** means the date the funded amount, plus the agreed upon charges, is delivered to the CPAP provider.

**(15) "Unique identifier"** means a number or other identifier assigned by protocols established by the NMLSR.

SECTION 38. IC 24-12-2-1, AS ADDED BY P.L.153-2016, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. Every CPAP transaction must meet the following requirements:

(1) The CPAP contract must be completely filled in when presented to the consumer claimant for signature.

(2) The CPAP contract must contain, in bold ~~and boxed type~~, **font contained within a box**, a right of rescission, allowing the consumer claimant to cancel the contract without penalty or further obligation if, not later than five (5) business days after the funding date, the consumer claimant either:



(A) returns to the CPAP provider the full amount of the disbursed funds by delivering the provider's uncashed check to the provider's office in person; or

(B) mails, by insured, certified, or registered United States mail, to the address specified in the contract, a notice of cancellation and includes in the mailing a return of the full amount of disbursed funds in the form of the provider's uncashed check or a registered or certified check or money order.

(3) The CPAP contract must contain the initials of the consumer claimant on each page.

(4) If the consumer claimant is represented by an attorney in the civil proceeding on which a CPAP transaction is based, the CPAP contract must contain a written acknowledgment by the attorney that attests to the following:

(A) That to the best of the attorney's knowledge, all costs and charges relating to the CPAP transaction have been disclosed to the consumer claimant.

(B) That the attorney is being paid by the consumer claimant on a contingency basis under a written fee agreement.

(C) That all proceeds of the civil proceeding will be disbursed through a trust account of the attorney, or through a settlement fund established to receive the proceeds of the civil proceeding on behalf of the consumer claimant.

(D) That the attorney is following the instructions of the consumer claimant with respect to the CPAP transaction.

(E) That the attorney has not received a referral fee or other consideration from the CPAP provider, and agrees not to receive a referral fee or other consideration from the CPAP provider at any time, in connection with the CPAP transaction.

If the attorney retained by the consumer claimant in the consumer claimant's civil proceeding does not complete the acknowledgment required by this subdivision, the CPAP contract, and the CPAP transaction to which it pertains, are void. However, the CPAP contract, and the CPAP transaction to which it pertains, remain valid and enforceable if the consumer claimant or the attorney terminates the representation.

SECTION 39. IC 24-12-4-1, AS ADDED BY P.L.153-2016, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. Each CPAP contract must contain the disclosures specified in this section, which are material terms of the contract. Unless otherwise specified, the disclosures must be in at least



a 12 point bold font and be placed clearly and conspicuously within the contract. The following disclosures are required:

(1) On the front page, under appropriate headings, language specifying:

(A) the funded amount, **designated by the term "funded amount"**, to be paid to the consumer claimant by the CPAP provider;

(B) an itemization of one (1) time charges;

(C) the total amount to be assigned by the consumer claimant to the CPAP provider, including the funded amount and all charges; and

(D) a payment schedule including the funded amount and all charges, listing all dates and the amount due at the end of each **one hundred eighty (180) day six (6) month** period, from the funding date until the date on which the maximum amount due to the CPAP provider by the consumer claimant occurs.

(2) A notice within the body of the contract stating the following: "Consumer Claimant's Right to Cancellation: You may cancel this contract without penalty or further obligation within five (5) business days after the funding date if you either:

(A) return to **(insert name of the CPAP provider)** the full amount of the disbursed funds by delivering the provider's uncashed check to the provider's office in person; or

(B) mail, by insured, certified, or registered United States mail, to **(insert name of the CPAP provider)** at the address specified in the contract, a notice of cancellation and include in the mailing a return of the full amount of disbursed funds in the form of the provider's uncashed check or a registered or certified check or money order."

(3) A notice informing the consumer claimant that the CPAP provider has no role in deciding whether, when, and how much the civil proceeding is settled for. However, the consumer claimant and consumer claimant's attorney must notify the CPAP provider of the outcome of the civil proceeding by settlement or adjudication before the resolution date. The CPAP provider may seek updated information about the status of the civil proceeding but in no event may the provider interfere with the independent professional judgment of the attorney in the handling of the civil proceeding or any settlement.

(4) Within the body of the contract, in all capital letters in at least a 12 point bold font contained within a box the following: "THE FUNDED AMOUNT AND AGREED UPON CHARGES SHALL





BE PAID ONLY FROM THE PROCEEDS OF YOUR CIVIL PROCEEDING, AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR CIVIL PROCEEDING. YOU WILL NOT OWE (INSERT NAME OF THE CIVIL PROCEEDING ADVANCE PAYMENT PROVIDER) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR CIVIL PROCEEDING, UNLESS YOU HAVE VIOLATED ANY MATERIAL TERM OF THIS CONTRACT OR YOU HAVE COMMITTED FRAUD AGAINST (INSERT NAME OF THE CIVIL PROCEEDING ADVANCE PAYMENT PROVIDER)."

(5) Located immediately above the place on the contract where the consumer claimant's signature is required, in at least a 12 point bold font the following: "Do not sign this contract before you read it completely or if the contract contains any blank spaces. You are entitled to a completely filled in copy of the contract. Before you sign this contract, you should obtain the advice of an attorney. Depending on the circumstances, you may want to consult a tax, public or private benefits planning, or financial professional. You acknowledge that your attorney in the civil proceeding has provided no tax, public or private benefit planning, or financial advice regarding this transaction."

SECTION 40. IC 24-12-4.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

**Chapter 4.5. Charges**

**Sec. 1. This chapter applies to a CPAP transaction offered or entered into after June 30, 2016.**

**Sec. 2. (a) With respect to a CPAP transaction, a CPAP provider may impose the following:**

**(1) A fee that is:**

- (A) calculated at an annual rate that does not exceed thirty-six percent (36%) of the funded amount; and**
- (B) earned at consummation and each year after consummation on the anniversary of the funding date, in the case of a CPAP transaction offered or entered into after June 30, 2019.**

**(2) A servicing charge that is:**

- (A) calculated at an annual rate that does not exceed seven percent (7%) of the funded amount; and**
- (B) earned at consummation and each year after consummation on the anniversary of the funding date, in**



the case of a CPAP transaction offered or entered into after June 30, 2019.

(3) With respect to any one (1) civil proceeding, total charges that do not exceed five hundred dollars (\$500) for obtaining and preparing documents, in the case of a CPAP transaction offered or entered into after June 30, 2019.

(4) The following with respect to a CPAP transaction offered or entered into after June 30, 2016, and before July 1, 2019:

(A) If the funded amount of the CPAP transaction is less than five thousand dollars (\$5,000), a one (1) time charge that does not exceed two hundred fifty dollars (\$250) for obtaining and preparing documents.

(B) If the funded amount of the CPAP transaction is at least five thousand dollars (\$5,000), a one (1) time charge that does not exceed five hundred dollars (\$500) for obtaining and preparing documents.

(b) A CPAP provider may not assess, or collect from the consumer claimant, any fee or charge not otherwise permitted under this chapter in connection with a CPAP transaction. The fees and charges permitted under this chapter are not subject to refund or rebate.

SECTION 41. IC 24-12-5-1, AS ADDED BY P.L.153-2016, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) The department of financial institutions may enforce this article.

(b) This article does not restrict the exercise of powers or the performance of the duties of the department of financial institutions. **With respect to CPAP transactions and CPAP providers, the department has all powers of administration, investigation, and enforcement set forth in:**

(1) IC 24-4.5-6; and

(2) IC 28-11-4;

**including the authority to levy a civil penalty.**

SECTION 42. IC 24-12-9-1, AS ADDED BY P.L.153-2016, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. After December 31, 2016, a person may not regularly engage (as determined in accordance with ~~the number of transactions set forth in IC 24-4.5-1-301.5(39)~~ **IC 24-12-1-1(13)**) in the business of making CPAP transactions in ~~Indiana~~ **with consumer claimants** unless the person obtains, and maintains on an annual basis, a CPAP license issued by the department under ~~IC 24-4.5-3~~ **this chapter.**



SECTION 43. IC 24-12-9-2 IS REPEALED [EFFECTIVE JULY 1, 2019]. Sec. 2: Every person shall, at the time of filing for licensure, file with the department of financial institutions, if required by the department, a bond satisfactory to the department in an amount not to exceed fifty thousand dollars (\$50,000). Instead of the bond, at the option of the person, the person may post an irrevocable letter of credit. The terms of the bond must run concurrently with the period during which the license will be in effect. The bond must provide that the person will faithfully follow the law.

SECTION 44. IC 24-12-9-3, AS ADDED BY P.L.153-2016, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. A CPAP transaction entered into before July 1, 2016, is not subject to this article. ~~or to IC 24-4-5.~~

SECTION 45. IC 24-12-9-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. **(a) Subject to subsection (f), the director may designate the NMLSR to serve as the sole entity responsible for:**

- (1) processing applications and renewals for licenses required under section 1 of this chapter;**
- (2) issuing unique identifiers for licensees under this chapter;**
- and**
- (3) performing other services that the director determines are necessary for the orderly administration of the department's licensing system under this chapter.**

**(b) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director may regularly report to the NMLSR significant or recurring violations of this article.**

**(c) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director may report to the NMLSR complaints received regarding licensees under this chapter.**

**(d) The director may report to the NMLSR publicly adjudicated licensure actions against licensees under this chapter.**

**(e) The director shall establish a process in which persons licensed in accordance with this chapter may challenge information reported to the NMLSR by the department.**

**(f) The director's authority to designate the NMLSR under subsection (a) is subject to the following:**

- (1) Information stored in the NMLSR is subject to the confidentiality provisions of IC 5-14-3 and IC 28-1-2-30. A person may not:**



- (A) obtain information from the NMLSR unless the person is authorized to do so by statute;
  - (B) initiate any civil action based on information obtained from the NMLSR if the information is not otherwise available to the person under any other state law; or
  - (C) initiate any civil action based on information obtained from the NMLSR if the person could not have initiated the action based on information otherwise available to the person under any other state law.
- (2) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential under IC 28-1-2-30 and that are:
- (A) furnished by the director, the director's designee, or a licensee; or
  - (B) otherwise obtained by the NMLSR;
- are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director may use the documents, materials, or other information available to the director in furtherance of any action brought in connection with the director's duties under this article.
- (3) Disclosure of documents, materials, and information:
- (A) to the director; or
  - (B) by the director;
- under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.
- (4) Information provided to the NMLSR is subject to IC 4-1-11.
- (5) This subsection does not limit or impair a person's right to:
- (A) obtain information;
  - (B) use information as evidence in a civil action or proceeding; or
  - (C) use information to initiate a civil action or proceeding; if the information may be obtained from the director or the director's designee under any law.
- (6) The requirements under any federal law or IC 5-14-3 regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal



or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with financial services industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or IC 5-14-3.

(7) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, or other associations representing governmental agencies as established by rule or order of the director.

(8) Information or material that is subject to a privilege or confidentiality under subdivision (6) is not subject to:

(A) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(B) subpoena, discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privileged information or material held by the NMLSR, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(9) Any provision of IC 5-14-3 that concerns the disclosure of:

(A) confidential supervisory information; or

(B) any information or material described in subdivision (6);

and that is inconsistent with subdivision (6) is superseded by this section.

(10) This section does not apply with respect to information or material that concerns the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a person licensed in accordance with this chapter and described in section 5(b) of this chapter and that is included in the NMLSR for access by the public.

(11) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered reasonable by the director. In determining whether an NMLSR processing fee is reasonable, the director shall:

(A) require review of; and



- (B) make available;  
the audited financial statements of the NMLSR.
- (g) Notwithstanding any other provision of law, any:
- (1) application, renewal, or other form or document that:
    - (A) relates to licenses issued under this chapter; and
    - (B) is made or produced in an electronic format;
  - (2) document filed as an electronic record in a multistate automated repository established and operated for the licensing or registration of financial services entities and their employees; or
  - (3) electronic record filed through the NMLSR;

is considered a valid original document when reproduced in paper form by the department.

SECTION 46. IC 24-12-9-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. (a) The department shall receive and act on all applications for licenses to regularly engage as a CPAP provider in CPAP transactions. Applications must be as prescribed by the director of the department of financial institutions. If, at any time, the information or record contained in:

- (1) an application; or
- (2) a renewal application;

filed under this chapter is or becomes inaccurate or incomplete in a material respect, the applicant shall promptly file a correcting amendment with the department.

(b) A license shall not be issued unless the department finds that the professional training and experience, financial responsibility, character, and fitness of:

- (1) the applicant and any significant affiliate of the applicant;
- (2) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and
- (3) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant;

are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

(c) The director is entitled to request evidence of compliance with this section at:

- (1) the time of application;
- (2) the time of renewal of a license; or



(3) any other time considered necessary by the director.

(d) Evidence of compliance with this section concerning a person licensed under this chapter may include:

- (1) criminal background checks as described in section 6 of this chapter, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for any individual described in subsection (b);
- (2) credit histories as described in section 7 of this chapter;
- (3) surety bond requirements as described in section 8 of this chapter;
- (4) a review of licensure actions in Indiana and other states; and
- (5) other background checks considered necessary by the director.

(e) For purposes of this section and in order to reduce the points of contact that the director may have to maintain under this section, the director may use the NMLSR as a channeling agent for requesting and distributing information to and from any source as directed by the director.

(f) The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(g) Upon written request, the applicant is entitled to a hearing on the question of the qualifications of the applicant for a license as provided in IC 4-21.5.

(h) The applicant shall pay the following fees at the time designated by the department:

- (1) An initial license fee as established by the department under IC 28-11-3-5.
- (2) Examination fees as established by the department under IC 28-11-3-5.
- (3) An annual renewal fee as established by the department under IC 28-11-3-5.

(i) A fee as established by the department under IC 28-11-3-5 may be charged for each day a fee under subsection (h)(2) or (h)(3) is delinquent.

(j) Except in a transaction approved under section 12 of this chapter, a license issued under this section is not assignable or transferable.

SECTION 47. IC 24-12-9-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY



1, 2019]: **Sec. 6. (a) When the director requests a national criminal history background check under section 5(d)(1) of this chapter for an individual described in section 5(b) of this chapter, the director shall require the individual to submit fingerprints to the department, state police department, or NMLSR, as directed, at the time evidence of compliance is requested under section 5(c) of this chapter. The individual to whom the request is made shall pay any fees or costs associated with processing and evaluating the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.**

**(b) For purposes of this section and in order to reduce the points of contact that the Federal Bureau of Investigation may have to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any governmental agency.**

SECTION 48. IC 24-12-9-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 7. (a) If the director requests a credit report for an individual described in section 5(b) of this chapter, the individual to whom the request is made shall pay any fees or costs associated with procuring the report.**

**(b) The individual must submit personal history and experience information in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR or the director to obtain an independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)).**

**(c) The director may consider one (1) or more of the following when determining if an individual has demonstrated financial responsibility:**

- (1) Bankruptcies filed within the last ten (10) years.**
- (2) Current outstanding judgments, except judgments solely as a result of medical expenses.**
- (3) Current outstanding tax liens or other government liens or filings.**
- (4) Foreclosures within the past three (3) years.**
- (5) A pattern of serious delinquent accounts within the past**





**three (3) years.**

SECTION 49. IC 24-12-9-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 8. (a) If required by the department, each CPAP provider licensed by the department under this article must be covered by a surety bond in accordance with this section in an amount not to exceed fifty thousand dollars (\$50,000).**

**(b) Any surety bond required under this section must:**

- (1) provide coverage for the CPAP provider in the amount set forth in subsection (d);**
- (2) be in a form prescribed by the director;**
- (3) be in effect during the term of the CPAP provider's license under this article;**
- (4) remain in effect during the two (2) years after the CPAP provider ceases offering CPAP transactions to individuals in Indiana;**
- (5) be payable to the department for the benefit of:**
  - (A) the state; and**
  - (B) individuals who reside in Indiana when they agree to enter into CPAP transactions with the CPAP provider;**
- (6) be issued by a bonding, surety, or insurance company authorized to do business in Indiana and rated at least "A-" by at least one (1) nationally recognized investment rating service; and**
- (7) have payment conditioned upon the CPAP provider's noncompliance with or violation of this chapter or other federal or state laws or regulations applicable to CPAP transactions.**

**(c) The director may adopt rules or guidance documents with respect to the requirements for a surety bond as necessary to accomplish the purposes of this article.**

**(d) The penal sum of the surety bond shall be maintained in an amount determined by the director. If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the CPAP provider for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in an amount set by the director. The amount of the new or additional bond set by the director must be at least the amount of the bond before payment of the claim or judgment.**

**(e) If for any reason a surety terminates a bond issued under**



this section, the CPAP provider shall immediately notify the department and file a new surety bond in an amount determined by the director.

(f) Cancellation of a surety bond issued under this section does not affect any liability incurred or accrued during the period when the surety bond was in effect.

(g) The director may obtain satisfaction from a surety bond issued under this section if the director incurs expenses, issues a final order, or recovers a final judgment under this chapter.

(h) Notices required under this section must be made in writing and submitted through the NMLSR or any other electronic registration system that may be approved by the director.

SECTION 50. IC 24-12-9-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 9. (a)** A license issued under this article must be renewed not later than December 31 of each calendar year. The minimum standards for license renewal for a CPAP provider include the following:

(1) Payment by the CPAP provider of all required fees for renewal of the license.

(2) The filing by the CPAP provider of all reports and information required by the director.

(b) A license issued by the department under this article may be revoked or suspended by the department if the person fails to:

(1) file any renewal form required by the department; or

(2) pay any license renewal fee described under section 5(h)(3) of this chapter;

not later than sixty (60) days after the due date.

(c) A person whose license is revoked or suspended under this section may do either of the following:

(1) Pay all delinquent fees and apply for reinstatement of the license.

(2) Appeal the revocation or suspension to the department for an administrative review under IC 4-21.5-3.

Pending the decision from a hearing under IC 4-21.5-3 concerning license revocation or suspension, a license remains in force.

(d) If, at any time, the information or record contained in:

(1) an original application for licensure filed under this chapter; or

(2) a renewal application filed under this chapter;

is or becomes inaccurate or incomplete in a material respect, the applicant shall promptly file a correcting amendment with the



**department.**

SECTION 51. IC 24-12-9-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 10. (a) The department may issue to a person licensed under this article an order to show cause why the license should not be revoked or suspended for a period determined by the department.**

**(b) An order issued under subsection (a) must:**

**(1) include:**

**(A) a statement of the place, date, and time for a meeting with the department, which date may not be less than ten (10) days from the date of the order;**

**(B) a description of the action contemplated by the department; and**

**(C) a statement of the facts or conduct supporting the issuance of the order; and**

**(2) be accompanied by a notice stating that the licensee is entitled to:**

**(A) a reasonable opportunity to be heard; and**

**(B) show the licensee's compliance with all lawful requirements for retention of the license;**

**at the meeting described in subdivision (1)(A).**

**(c) After the meeting described in subsection (b)(1)(A), the department may revoke or suspend the license if the department finds that:**

**(1) the licensee has repeatedly and willfully violated:**

**(A) this article or any applicable rule, order, or guidance document adopted or issued by the department; or**

**(B) any other Indiana or federal laws, rules, or regulations applicable to CPAP transactions;**

**(2) the licensee does not meet the licensing qualifications set forth in this chapter;**

**(3) the licensee obtained the license for the benefit of, or on behalf of, a person who does not qualify for the license;**

**(4) the licensee knowingly or intentionally made material misrepresentations to, or concealed material information from, the department; or**

**(5) facts or conditions exist that, had they existed at the time the licensee applied for the license, would have been grounds for the department to deny the issuance of the license.**

**(d) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and notify the**



licensee of:

- (1) the revocation or suspension;
- (2) if a suspension has been ordered, the duration of the suspension;
- (3) the procedure for appealing the revocation or suspension under IC 4-21.5-3-6; and
- (4) any other terms and conditions that apply to the revocation or suspension.

Not later than five (5) days after the entry of the order the department shall deliver to the licensee a copy of the order and the findings supporting the order.

(e) Any person holding a license to enter into CPAP transactions may relinquish the license by notifying the department in writing of the relinquishment, but the relinquishment does not affect the person's liability for acts previously committed and coming within the scope of this article.

(f) If the director determines it is in the public interest, the director may pursue revocation of a license of a licensee that has relinquished the license under subsection (e).

(g) If a person's license is revoked, suspended, or relinquished, the revocation, suspension, or relinquishment does not impair or affect any obligation owed by any person under any preexisting lawful contract.

(h) If the director has just cause to believe an emergency exists from which it is necessary to protect the interests of the public, the director may proceed with the revocation of a license through an emergency or another temporary order under IC 4-21.5-4.

SECTION 52. IC 24-12-9-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 11. (a) A CPAP provider required to be licensed under this article shall maintain records in conformity with United States generally accepted accounting principles and practices in a manner that will enable the department to determine whether the licensee is complying with the provisions of this article. The record keeping system of a licensee shall be sufficient if the licensee makes the required information reasonably available. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. The department shall be given free access to the records wherever located. The records concerning any CPAP transaction shall be retained for two (2) years after making the final entry relating to the CPAP**



transaction. A person licensed or required to be licensed under this article is subject to IC 28-1-2-30.5 with respect to any records maintained by the person.

(b) If the director designates under section 4 of this chapter the NMLSR as the sole entity responsible for performing any of the activities described in section 4(a) of this chapter, the unique identifier of any licensee must be clearly shown on all CPAP transaction documents furnished by the licensee to a consumer claimant and on any other documents as required by the director.

(c) If the director designates under section 4 of this chapter the NMLSR as the sole entity responsible for performing any of the activities described in section 4(a) of this chapter, a CPAP provider that is licensed by the department under this article and that engages in CPAP transactions shall submit to the NMLSR a call report, which must be in the form and contain information the NMLSR requires, if required by the director.

(d) A CPAP provider required to be licensed under this article shall file with the department a composite report as required by the department, but not more frequently than annually, in the form prescribed by the department relating to all CPAP transactions entered into by the licensee. The department shall consult with comparable officials in other states for the purpose of making the kinds of information required in the reports uniform among the states. Information contained in the reports shall be confidential and may be published only in composite form. The department may impose a fee in an amount fixed by the department under IC 28-11-3-5 for each day that a CPAP provider fails to file the report required by this subsection.

(e) A CPAP provider required to be licensed under this article shall file notification with the department if the CPAP provider:

- (1) has a change in name, address, or principals;
- (2) opens a new branch, closes an existing branch, or relocates an existing branch;
- (3) files for bankruptcy or reorganization; or
- (4) is subject to revocation or suspension proceedings by a state or governmental authority with regard to the licensee's activities;

not later than thirty (30) days after the date of the event described in this subsection.

(f) A licensee shall file notification with the department if the licensee or any director, executive officer, or manager of the licensee has been convicted of a felony under the laws of Indiana or



any other jurisdiction. The licensee shall file the notification required by this subsection not later than thirty (30) days after the date of the event described in this subsection.

SECTION 53. IC 24-12-9-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 12. (a) As used in this section, "control" means possession of the power directly or indirectly to:

- (1) direct or cause the direction of the management or policies of a CPAP provider, whether through the beneficial ownership of voting securities, by contract, or otherwise; or
- (2) vote at least twenty-five percent (25%) of the voting securities of a CPAP provider, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.

(b) An organization or an individual acting directly, indirectly, or through or in concert with one (1) or more other organizations or individuals may not acquire control of any CPAP provider unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days after receipt of an application to issue a notice approving the proposed change in control. The application must contain the name and address of the organization, individual, or individuals who propose to acquire control and any other information required by the director.

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

- (1) in the discretion of the director for an additional thirty (30) days; and
- (2) not more than two (2) additional times for not more than forty-five (45) days each time if:

- (A) the director determines that the organization, individual, or individuals who propose to acquire control have not submitted substantial evidence of the qualifications described in subsection (d);
- (B) the director determines that any material information submitted is substantially inaccurate; or
- (C) the director has been unable to complete the investigation of the organization, individual, or individuals who propose to acquire control because of any delay caused by or the inadequate cooperation of the organization, individual, or individuals.

(d) The department shall issue a notice approving the



application only after the department is satisfied that both of the following apply:

(1) The organization, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the CPAP provider in a legal and proper manner.

(2) The interests of the owners and creditors of the CPAP provider and the interests of the public generally will not be jeopardized by the proposed change in control.

(e) The director may determine, in the director's discretion, that subsection (b) does not apply to a transaction if the director determines that the direct or beneficial ownership of the CPAP provider will not change as a result of the transaction.

(f) The president or other chief executive officer of a CPAP provider shall report to the director any transfer or sale of securities of the CPAP provider that results in direct or indirect ownership by a holder or an affiliated group of holders of at least ten percent (10%) of the outstanding securities of the CPAP provider. The report required by this subsection must be made not later than ten (10) days after the transfer of the securities on the books of the CPAP provider.

(g) Depending on the circumstances of the transaction, the director may reserve the right to require the organization, individual, or individuals who propose to acquire control of a CPAP provider licensed under this article to apply for a new license under this chapter, instead of acquiring control of the licensee under this section.

SECTION 54. IC 28-1-2-6.5, AS AMENDED BY P.L.73-2016, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6.5. (a) A financial institution (as defined in IC 28-1-1-3(1)), except for a licensee under IC 24-4.4, IC 24-4.5, or 750 IAC 9, shall comply with ~~all state and federal money laundering statutes and regulations, including~~ the following:

(1) The Bank Secrecy Act (31 U.S.C. 5311 et seq.).

(2) The USA Patriot Act of 2001 (P.L. 107-56).

(3) Any regulations, policies, or reporting requirements established by the Financial Crimes Enforcement Network of the United States Department of the Treasury.

(4) **Subchapter II of Chapter 53 of Title 31 of the United States Code, including 31 U.S.C. 5318(l), and 31 CFR Chapter X, including 31 CFR 1020.220.**

~~(5)~~ (5) Any other state or federal money laundering statutes or



regulations that apply to a financial institution (as defined in IC 28-1-1-3(1)) other than a licensee under IC 24-4.4, IC 24-4.5, or 750 IAC 9.

(b) The department shall do the following:

(1) To the extent authorized or required by state law, investigate potential violations of, and enforce compliance with, state money laundering statutes or regulations.

(2) Investigate potential violations of federal money laundering statutes or regulations and, to the extent authorized or required by federal law:

(A) enforce compliance with the federal statutes or regulations; or

(B) refer suspected violations of the federal statutes or regulations to the appropriate federal regulatory agencies.

SECTION 55. IC 28-1-3.1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) The department may take possession of the business and property of any financial institution except a ~~consumer finance institution creditor~~ licensed to make supervised or regulated loans under IC 24-4.5, whenever it appears to the department that the financial institution:

(1) is insolvent or in imminent danger of insolvency;

(2) is in an unsafe or unsound condition;

(3) has refused to pay its deposits or obligations in accordance with the terms under which those deposits or obligations were incurred;

(4) has refused to submit its records and affairs for inspection or examination by the department or federal authorities;

(5) has violated any court order, statute, rule, or regulation of the department or its articles of incorporation and that continued control of its own affairs threatens injury to the public, the financial community, its depositors, or other creditors;

(6) requests through its board of directors that the department take possession for the benefit of depositors, other creditors, shareholders, or other persons;

(7) has an impairment of its capital (the capital of a bank or trust company shall, for the purpose of this subdivision, be considered to be unimpaired so long as the sound value of its assets over and above its liabilities, exclusive of liabilities for capital notes, debentures, and capital stock, as determined by the department, equals or exceeds the minimum capital or capital stock required by the department for a bank or trust company);

(8) has neglected or refused, for a period of thirty (30) days, to





comply with the terms of a duly issued order of the department, essential to preserve the solvency of the financial institution;  
 (9) has failed to pay the fees charged by the department under IC 28-11-3-5 after due notice of the amount of the fee has been given;  
 (10) has breached a fiduciary duty under IC 30-4-3-6; or  
 (11) has violated IC 30-4-3-7 in a way that has caused or may cause harm to fiduciary accounts.

(b) When the department makes a determination to take possession of the business and property of a financial institution under subsection (a), the department shall:

(1) make a finding to that effect and enter that finding on the records of the proceedings of the department; and  
 (2) cause a certified copy of the finding to be served on the president or other executive officer actively in charge of the financial institution and demand possession of the business, property, and records of the financial institution from the officer. The financial institution shall immediately surrender the possession to the department.

(c) The department or its receiver is not required to become the owner of any property to fulfill the liquidation requirements of this chapter.

SECTION 56. IC 28-1-29-5.5, AS AMENDED BY P.L.73-2016, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5.5. (a) As used in this section, "Nationwide Multistate Licensing System and Registry" (or "Nationwide Mortgage Licensing System and Registry" or "NMLSR") means a multistate licensing system owned and operated by the State Regulatory Registry, LLC, or by any successor or affiliated entity, for the licensing and registration of creditors, mortgage loan originators, and other mortgage or financial services entities and their employees and agents. The term includes any other name or acronym that may be assigned to the system by the State Regulatory Registry, LLC, or by any successor or affiliated entity.

(b) Subject to subsection (g), the director may designate the NMLSR to serve as the sole entity responsible for:

(1) processing applications and renewals for licenses under this chapter;  
 (2) issuing unique identifiers for licensees and entities exempt from licensing under this chapter; and  
 (3) performing other services that the director determines are necessary for the orderly administration of the department's



licensing system under this chapter.

(c) Subject to the confidentiality provisions contained in IC 5-14-3 and this section, the director ~~shall~~ **may** regularly report significant or recurring violations of this chapter to the NMLSR.

(d) Subject to the confidentiality provisions contained in IC 5-14-3 and this section, the director may report complaints received regarding licensees under this chapter to the NMLSR.

(e) The director may report publicly adjudicated licensure actions against a licensee to the NMLSR.

(f) The director shall establish a process by which licensees may challenge information reported to the NMLSR by the department.

(g) The director's authority to designate the NMLSR under subsection (b) is subject to the following:

(1) Information stored in the NMLSR is subject to the confidentiality provisions of IC 5-14-3. A person may not:

(A) obtain information from the NMLSR, unless the person is authorized to do so by statute;

(B) initiate any civil action based on information obtained from the NMLSR if the information is not otherwise available to the person under any other state law; or

(C) initiate any civil action based on information obtained from the NMLSR if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(2) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential under state or federal law and that are:

(A) furnished by the director, the director's designee, or a licensee; or

(B) otherwise obtained by the NMLSR;

are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director may use the documents, materials, or other information available to the director in furtherance of any action brought in connection with the director's duties under this chapter.

(3) Disclosure of documents, materials, and information:

(A) to the director; or

(B) by the director;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.



- (4) Information provided to the NMLSR is subject to IC 4-1-11.
- (5) This subsection does not limit or impair a person's right to:
- (A) obtain information;
  - (B) use information as evidence in a civil action or proceeding; or
  - (C) use information to initiate a civil action or proceeding;
- if the information may be obtained from the director or the director's designee under any law.
- (6) The requirements under any federal law or IC 5-14-3 regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with financial services industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or IC 5-14-3.
- (7) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, or other associations representing governmental agencies, as established by rule or order of the director.
- (8) Information or material that is subject to a privilege or confidentiality under subdivision (6) is not subject to:
- (A) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or
  - (B) subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to any privileged information or material held by the NMLSR, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.
- (9) Any provision of IC 5-14-3 that concerns the disclosure of:
- (A) confidential supervisory information; or
  - (B) any information or material described in subdivision (6);
- and that is inconsistent with subdivision (6) is superseded by this section.
- (10) This section does not apply with respect to information or material that concerns the employment history of, and publicly



adjudicated disciplinary and enforcement actions against, a person described in section 5(b)(2), 5(b)(3), or 5(b)(4) of this chapter and that is included in the NMLSR for access by the public.

(11) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered reasonable by the director. In determining whether the NMLSR processing fee is reasonable, the director shall:

- (A) require review of; and
- (B) make available;

the audited financial statements of the NMLSR.

(12) Notwithstanding any other provision of law, any:

(A) application, renewal, or other form or document that:

- (i) relates to licenses issued under this chapter; and
- (ii) is made or produced in an electronic format;

(B) document filed as an electronic record in a multistate automated repository established and operated for the licensing or registration of financial services entities and their employees; or

(C) electronic record filed through the NMLSR;

is considered a valid original document when reproduced in paper form by the department.

SECTION 57. IC 28-1-29-6, AS AMENDED BY P.L.216-2013, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) Each application for a license must be accompanied by proof that the applicant has executed a surety bond in accordance with this section.

(b) A surety bond issued under this section must:

- (1) be in a form prescribed by the director;
- (2) be in effect during the term of the license issued under this chapter;
- (3) remain in effect during the two (2) years after the licensee ceases offering debt management services to individuals in Indiana;
- (4) be payable to the department for the benefit of:
  - (A) the state; and
  - (B) individuals who reside in Indiana when they agree to receive debt management services from the licensee;
- (5) be in an amount equal to:
  - (A) fifty thousand dollars (\$50,000), in the case of an initial surety bond issued under this section; or
  - (B) the amount prescribed under subsection (d), beginning



with the first renewal of a license under this chapter;  
 (6) be issued by a bonding, surety, or insurance company authorized to do business in Indiana and rated at least "A-" by at least one (1) nationally recognized investment rating service; and  
 (7) have payment conditioned upon the licensee's or any of the licensee's employees' or agents' noncompliance with or violation of this chapter or other applicable federal or state laws or regulations.

(c) The director may adopt rules or guidance documents with respect to the requirements for a surety bond as necessary to accomplish the purposes of this chapter.

(d) Beginning with the first renewal of a license under this chapter, each year that a licensee continues to offer debt management services to individuals in Indiana, the licensee shall file a new or an additional surety bond in an amount that ensures that the licensee's surety bond under this section is equal to the greater of the following:

- (1) fifty thousand dollars (\$50,000); or
- (2) the average of the highest daily balance of funds held in trust for Indiana residents for each month during the licensee's most recently concluded fiscal year, not to exceed one hundred thousand dollars (\$100,000).

(e) If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the licensee for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in an amount set by the director. The amount of the new or additional bond set by the director must be at least the amount of the bond before payment of the claim or judgment.

(f) If for any reason a surety terminates a bond issued under this section, the licensee shall immediately notify the department and file a new surety bond in an amount as prescribed in subsection (b)(5).

(g) Cancellation of a surety bond issued under this section does not affect any liability incurred or accrued during the period when the surety bond was in effect.

(h) The director may obtain satisfaction from a surety bond issued under this section if the director incurs expenses, issues a final order, or recovers a final judgment under this chapter.

(i) Notices required under this section must be **made** in writing and **delivered by certified mail, return receipt requested and postage prepaid, or by overnight delivery using a nationally recognized carrier, submitted through the NMLSR or any other electronic registration**



**system that may be approved by the director.**

SECTION 58. IC 28-5-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. The capital stock of any company engaged in business under the provisions of this chapter:

- (1) shall be ~~not less than fifty thousand dollars (\$50,000); which said capital stock in an amount determined by the department based on the risk profile and business activity of the company during any application or approval process required by the department under this chapter;~~
- (2) shall be fully paid to the corporation in cash; and
- (3) shall not at any time thereafter be voluntarily reduced below the amount originally paid in.

**Ongoing capital requirements shall be risk-based, as determined by the department.** In the event the capital of any such company should for any reason become impaired, **as determined by the department**, the right to issue certificates of indebtedness or investment as provided in this chapter shall forthwith be suspended until said capital stock has been restored to ~~the an amount originally paid in: determined prudent by the department.~~

SECTION 59. IC 28-7-1-17, AS AMENDED BY P.L.69-2018, SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 17. (a) Every loan application shall be submitted on a form approved by the credit union. Loans may be ~~dispersed~~ **disbursed** upon written approval by a majority of the credit committee or a loan officer. If the credit committee or loan officer fails to approve an application for a loan, the applicant may appeal to the board of directors, if such appeal is authorized by the bylaws.

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

- (1) All loans shall be evidenced by notes signed by the borrowing member.
- (2) Except as otherwise provided in this section, the terms of any loan to a member with a maturity of more than six (6) months shall provide for principal and interest payments that will amortize the obligation in full within the terms of the loan contract. If the income of the borrowing member is seasonal, the terms of the loan contract may provide for seasonal amortization.
- (3) Loans may be made upon the security of improved or unimproved real estate. Except as otherwise specified in this section, such loans must be secured by a first lien upon real estate prior to all other liens, except for taxes and assessments not delinquent, and may be made with repayment terms other than as



provided in subdivision (2). The credit union loan folder for all real estate mortgage loans shall include the following:

- (A) The loan application.
  - (B) The mortgage instrument.
  - (C) The note.
  - (D) The disclosure statement.
  - (E) The documentation of property insurance.
  - (F) For the real estate for which the loan is made, a written appraisal, which must be performed by a state licensed or certified appraiser designated by the board of directors if the amount of the loan is at least two hundred fifty thousand dollars (\$250,000).
- (4) Loans made upon security of real estate are subject to the following restrictions:
- (A) Real estate loans in which no principal amortization is required shall provide for the payment of interest at least annually and shall mature within five (5) years of the date of the loan unless extended and shall not exceed fifty percent (50%) of the fair cash value of the real estate used as security.
  - (B) Real estate loans on improved real estate, except for variable rate mortgage loans and rollover mortgage loans provided for in subdivision (5), shall require substantially equal payments at successive intervals of not more than one (1) year, shall mature within thirty (30) years, and shall not exceed one hundred percent (100%) of the fair cash value of the real estate used as security.
  - (C) Loans primarily secured by a mortgage which constitutes a second lien on improved real estate may be made only if the aggregate amount of all loans on the real estate does not exceed one hundred percent (100%) of the fair cash value of the real estate after such loan is made. Repayment terms shall be in accordance with subdivision (2).
  - (D) Real estate loans may be made for the construction of improvements to real property. Funds borrowed may be advanced as work on the improvements progresses. Repayment terms must comply with subdivision (2).
- (5) Subject to the limitations of subdivision (3), variable rate mortgage loans and rollover mortgage loans may be made under the same limitations and rights provided state chartered savings associations under IC 28-1-21.5 (before its repeal) or IC 28-15 or federal credit unions.
- (6) As used in this subdivision, "originating lender" means the



participating lender with which the member contracts. A credit union may participate with other state and federal depository financial institutions (as defined in IC 28-1-1-6) or credit union service organizations in making loans to credit union members and may sell a participating interest in any of its loans under written participation loan policies established by the board of directors. However, the credit union may not sell more than ninety percent (90%) of the principal of participating loans outstanding at the time of sale. A participating credit union that is not the originating lender may participate only in loans made to the credit union's own members or to members of another participating state or federal credit union. A master participation agreement must be properly executed. The agreement must include provisions for identifying, either through documents incorporated by reference or directly in the agreement, the participation loan or loans before the sale of the loans.

(7) As an alternative to making any loan authorized by and under the conditions set forth in subdivisions (1) through (6), a credit union may make any of the following:

(A) Any loan that may be made by a federal credit union.

However, IC 24-4.5 applies to any loan that is:

- (i) made under this clause; and
- (ii) within the scope of IC 24-4.5.

Any provision of federal law that is in conflict with IC 24-4.5 does not apply to a loan made under this clause.

(B) Subject to subdivision (3), any alternative mortgage loan (as defined in IC 28-15-11-2) that may be made by a savings association (as defined in IC 28-15-1-11) under IC 28-15-11. A loan made under this clause by a credit union is subject to the same terms, conditions, exceptions, and limitations that apply to an alternative mortgage loan made by a savings association under IC 28-15-11.

(8) A credit union may make a loan under either:

- (A) subdivisions (2) through (6); or
- (B) subdivision (7);

but not both. A credit union shall make an initial determination as to whether to make a loan under subdivisions (2) through (6) or under subdivision (7). If the credit union determines that a loan or category of loans is to be made under subdivision (7), the written loan policies of the credit union must include that determination. A credit union may not combine the terms and conditions that apply to a loan made under subdivisions (2) through (6) with the





terms and conditions that apply to a loan made under subdivision (7) to make a loan not expressly described and authorized either under subdivisions (2) through (6) or under subdivision (7).

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

SECTION 60. IC 28-7-5-8, AS AMENDED BY P.L.89-2011, SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 8. (a) Upon an applicant's filing of the application required by section 4 of this chapter and payment of the license fee, if the department finds the financial standing, competence, business experience, and character of:

- (1) the applicant ~~any employee of the applicant~~, and any significant affiliate of the applicant;
- (2) each director, executive officer, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and
- (3) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant;

are such that the business will be operated honestly, fairly, and efficiently and that the convenience and needs of the public exist for the operation of the business in the community wherein the applicant proposes to operate, it shall issue and deliver a license to the applicant, which license shall authorize the applicant to engage in the business of pawnbroking.

(b) The director is entitled to request evidence of compliance with the requirements of this section by the licensee, including any affiliate or person described in subsection (a), at:

- (1) the time of issuance of the license;
- (2) the time of renewal of the license; or
- (3) any other time considered necessary by the director.

A license shall remain in effect until it is surrendered, revoked, or suspended. If the department denies the application, it shall notify the applicant of the denial. The department may hold a public hearing if the department considers the hearing necessary.

(c) The department may deny an application under this section if the director determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(d) If a licensee replaces a manager, the licensee shall give the department written notice of the replacement not later than thirty (30) days after engaging another person to serve as manager.

SECTION 61. IC 28-8-4-20.5, AS AMENDED BY P.L.159-2017,



SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 20.5. (a) As used in this section, "Nationwide Multistate Licensing System and Registry" (or "Nationwide Mortgage Licensing System and Registry" or "NMLSR") means a multistate licensing system owned and operated by the State Regulatory Registry, LLC, or by any successor or affiliated entity, for the licensing and registration of creditors, mortgage loan originators, and other financial services entities and their employees and agents. The term includes any other name or acronym that may be assigned to the system by the State Regulatory Registry, LLC, or by any successor or affiliated entity.

(b) Subject to subsection (g), the director may designate the NMLSR to serve as the sole entity responsible for:

- (1) processing applications and renewals for licenses under this chapter;
- (2) issuing unique identifiers for licensees and entities exempt from licensing under this chapter; and
- (3) performing other services that the director determines are necessary for the orderly administration of the department's licensing system under this chapter.

(c) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and section 47 of this chapter, the director ~~shall~~ **may** regularly report significant or recurring violations of this chapter to the NMLSR.

(d) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and section 47 of this chapter, the director may report complaints received regarding licensees under this chapter to the NMLSR.

(e) The director may report publicly adjudicated licensure actions against a licensee to the NMLSR.

(f) The director shall establish a process by which licensees may challenge information reported to the NMLSR by the department.

(g) The director's authority to designate the NMLSR under subsection (b) is subject to the following:

- (1) Information stored in the NMLSR is subject to the confidentiality provisions of IC 5-14-3 and section 47 of this chapter. A person may not:
  - (A) obtain information from the NMLSR, unless the person is authorized to do so by statute;
  - (B) initiate any civil action based on information obtained from the NMLSR if the information is not otherwise available to the person under any other state law; or
  - (C) initiate any civil action based on information obtained



from the NMLSR if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(2) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential under section 47 of this chapter and that are:

(A) furnished by the director, the director's designee, or a licensee; or

(B) otherwise obtained by the NMLSR;

are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director may use the documents, materials, or other information available to the director in furtherance of any action brought in connection with the director's duties under this chapter.

(3) Disclosure of documents, materials, and information:

(A) to the director; or

(B) by the director;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(4) Information provided to the NMLSR is subject to IC 4-1-11.

(5) This subsection does not limit or impair a person's right to:

(A) obtain information;

(B) use information as evidence in a civil action or proceeding; or

(C) use information to initiate a civil action or proceeding;

if the information may be obtained from the director or the director's designee under any law.

(6) The requirements under any federal law or IC 5-14-3 regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with financial services industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or IC 5-14-3.

(7) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the



Conference of State Bank Supervisors, the Money Transmitters Regulators Association, or other associations representing governmental agencies, as established by rule or order of the director.

(8) Information or material that is subject to a privilege or confidentiality under subdivision (6) is not subject to:

- (A) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or
- (B) subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(9) Any provision of IC 5-14-3 that concerns the disclosure of:

- (A) confidential supervisory information; or
- (B) any information or material described in subdivision (6);

and that is inconsistent with subdivision (6) is superseded by this section.

(10) This section does not apply with respect to information or material that concerns the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a person described in section 35(b)(2) or 35(b)(3) of this chapter and that is included in the NMLSR for access by the public.

(11) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered reasonable by the director. In determining whether the NMLSR processing fee is reasonable, the director shall:

- (A) require review of; and
- (B) make available;

the audited financial statements of the NMLSR.

(12) Notwithstanding any other provision of law, any:

- (A) application, renewal, or other form or document that:
  - (i) relates to licenses issued under this chapter; and
  - (ii) is made or produced in an electronic format;
- (B) document filed as an electronic record in a multistate automated repository established and operated for the licensing or registration of financial services entities and their employees; or
- (C) electronic record filed through the NMLSR;

is considered a valid original document when reproduced in paper



form by the department.

SECTION 62. IC 28-8-4-27, AS AMENDED BY P.L.216-2013, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 27. (a) An application for licensure under this chapter must be accompanied by a surety bond in accordance with this section.

(b) The surety bond required under subsection (a) must:

- (1) be in the amount of three hundred thousand dollars (\$300,000);
- (2) be in a form acceptable to the director;
- (3) be in effect during the term of the license issued under this chapter;
- (4) remain in effect during the five (5) years after the licensee ceases offering money transmission services in Indiana;
- (5) be payable to the department for the benefit of:

(A) the state;

(B) individuals who reside in Indiana when they agree to receive money transmission services from the licensee; and

(C) entities that do business in Indiana when they agree to receive money transmission services from the licensee;

- (6) be issued by a bonding, surety, or insurance company authorized to do business in Indiana and rated at least "A-" by at least one (1) nationally recognized investment rating service; and
- (7) have payment conditioned upon the licensee's or any of the licensee's employees' or agents' noncompliance with or violation of this chapter or other applicable federal or state laws or regulations.

(c) The director may adopt rules or guidance documents with respect to the requirements for a surety bond as necessary to accomplish the purposes of this chapter.

(d) If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the licensee for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in the amount needed to restore the amount of the surety bond to three hundred thousand dollars (\$300,000).

(e) If for any reason a surety terminates a bond issued under this section, the licensee shall immediately notify the department and file a new surety bond in the amount of three hundred thousand dollars (\$300,000).

(f) Cancellation of a surety bond issued under this section does not



affect any liability incurred or accrued during the period when the surety bond was in effect.

(g) The director may obtain satisfaction from a surety bond issued under this section if the director incurs expenses, issues a final order, or recovers a final judgment under this chapter.

(h) Notices required under this section must be **made** in writing and ~~delivered by certified mail, return receipt requested and postage prepaid, or by overnight delivery using a nationally recognized carrier.~~ **submitted through the NMLSR or any other electronic registration system that may be approved by the director.**

SECTION 63. IC 28-10-1-1, AS AMENDED BY P.L.69-2018, SECTION 68, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. A reference to a federal law or federal regulation in this title is a reference to the law or regulation as in effect December 31, ~~2017~~. **2018.**

SECTION 64. IC 28-14-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. "Clearing corporation" has the meaning set forth in ~~IC 26-1-8-102~~. **IC 26-1-8.1-102.**



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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

**HEA 1447 — Concur**

