



February 21, 2020

ENGROSSED HOUSE BILL No. 1049

DIGEST OF HB 1049 (Updated February 19, 2020 9:40 am - DI 128)

Citations Affected: IC 23-2; IC 23-19; IC 25-11.

Synopsis: Business associations. Amends the statute governing franchises as follows: (1) Specifies that the exemption from certain requirements of the statute that applies to a franchisor that sells no more than one franchise in any 24 month period applies with respect to the number of franchises sold by the franchisor in Indiana. (Current law does not specify where the franchise sales must have occurred in the 24 month period.) (2) Requires a person with a registered franchise to notify the securities commissioner (commissioner) of any material change in the information set forth in the person's required disclosure statement not later than 30 days after the occurrence of the event constituting the change, and sets forth specific events that constitute a material change. (3) Provides that the registration of a franchise with the commissioner is renewed at the time the registration would have expired unless the franchisor requests an earlier renewal date. (Current law does not allow for a franchisor to request an earlier renewal date.) (4) Provides that if a franchise registration form or registration renewal form is denied or withdrawn, the commissioner shall retain the amount
(Continued next page)

Effective: July 1, 2020.

**Heaton, Lehman, Ellington,
Hamilton**

(SENATE SPONSOR — HOLDMAN)

January 6, 2020, read first time and referred to Committee on Financial Institutions.
January 14, 2020, reported — Do Pass.
January 16, 2020, read second time, ordered engrossed. Engrossed.
January 21, 2020, read third time, passed. Yeas 97, nays 0.

SENATE ACTION

February 5, 2020, read first time and referred to Committee on Judiciary.
February 20, 2020, amended, reported favorably — Do Pass.

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Digest Continued

of the fee submitted in connection with the form. (Current law provides that the commissioner shall retain \$150 of the submitted fee.) Amends the statute governing continuing care contracts to provide that if a provider posts a letter of credit, negotiable securities, or a bond as an alternative to establishing an escrow account for the deposit of entrance fees, as otherwise required by the statute, the amount posted must be at least equal to the maximum amount of entrance fees reasonably anticipated by the provider to otherwise be subject to the escrow requirements. (Current law provides that the letter of credit, negotiable securities, or bond must be for an amount not to exceed the total amount of all entrance fees received by the provider before the date a resident is permitted to occupy a particular living unit.) Changes the term "interpretative" to "interpretive" in various provisions in the Indiana Uniform Securities Act (Act) with respect to opinions issued under the Act. Amends the statute concerning the licensing of collection agencies as follows: (1) Provides that the surety bond required to be submitted with a collection agency's original or renewal application for a collection agency license must be: (A) an electronic corporate surety bond that is: (i) filed by the applicant collection agency; (ii) satisfactory to the commissioner; and (iii) in an amount calculated to equal the sum of \$5,000 for each of the collection agency's Indiana offices; and (B) filed through the Nationwide Multistate Licensing System. (2) Adds to the list of qualifications that apply to: (A) individual applicants for collection agency licenses; and (B) individual officers or members who actively manage collection activities for corporate or other applicants for collection agency licenses. (3) Specifies that the secretary of state shall issue forms and orders and adopt and enforce rules and regulations as advisable or necessary to carry out the statute. (Current law does not specify that the secretary of state shall issue forms and orders.) Makes technical corrections.

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February 21, 2020

Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1049

A BILL FOR AN ACT to amend the Indiana Code concerning
business and other associations.

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

1 SECTION 1. IC 23-2-2.5-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 3. Sections 9 through
3 ~~25 24~~ of this chapter do not apply to the offer or sale of a franchise if
4 the franchisor either sells no more than one (1) franchise **in Indiana** in
5 any twenty-four (24) month period or the franchisor:
6 ~~(a)~~ **(1)** has a net worth:
7 ~~(1)~~ **(A)** on a consolidated basis according to current financial
8 statements certified by independent certified public
9 accountants, of not less than five million dollars (\$5,000,000);
10 or
11 ~~(2)~~ **(B)** according to current financial statements certified by
12 independent certified public accountants of not less than one
13 million dollars (\$1,000,000) and is at least eighty percent
14 (80%) owned by a corporation which has a net worth on a
15 consolidated basis, according to current financial statements

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- 1 certified by independent certified public accountants, of not
 2 less than five million dollars (\$5,000,000);
 3 **(b) (2)** has:
 4 **(1) (A)** had at least twenty-five (25) franchisees conducting
 5 business at all times during the five (5) year period
 6 immediately preceding the offer or sale; or
 7 **(2) (B)** conducted the business which is the subject of the
 8 franchise continuously for not less than five (5) years
 9 preceding the offer or sale;
 10 or if any corporation which owns at least eighty percent (80%) of
 11 the franchisor has had at least twenty-five (25) franchisees
 12 conducting business at all times during the five (5) year period
 13 immediately preceding the offer or sale, or such corporation has
 14 conducted the business which is the subject of the franchise
 15 continuously for not less than five (5) years preceding the offer or
 16 sale; and
 17 **(c) (3)** discloses in writing to each prospective franchisee, at least
 18 ten (10) days prior to the execution by the prospective franchisee
 19 of a binding franchise or other agreement, or at least ten (10) days
 20 prior to the receipt of any consideration, whichever first occurs,
 21 the following information:
 22 **(1) (A)** The name of the franchisor, the name under which the
 23 franchisor is doing or intends to do business, and the name of
 24 any affiliate that will engage in business transactions with
 25 franchisees.
 26 **(2) (B)** The franchisor's principal business address and the
 27 name and address of its agent in Indiana authorized to receive
 28 service of process.
 29 **(3) (C)** The business form of the franchisor and the
 30 jurisdiction under which it was organized.
 31 **(4) (D)** The business experience of the franchisor, including
 32 the length of time the franchisor:
 33 (i) has conducted a business of the type to be operated by the
 34 franchisee;
 35 (ii) has granted franchises for that business; and
 36 (iii) has granted franchises in other lines of business.
 37 **(5) (E)** A copy of the franchise contract proposed for use or in
 38 use in Indiana.
 39 **(6) (F)** A statement of the franchise fee charged, the proposed
 40 application of the proceeds of such fee by the franchisor, and
 41 the formula by which the amount of the fee is determined if
 42 the fee is not the same in all cases.



- 1 ~~(7)~~ **(G)** A statement describing any payments other than
 2 franchise fees that the franchisee is required to pay to the
 3 franchisor or affiliated persons, including royalties or
 4 payments which the franchisor or affiliated persons collect in
 5 whole or in part on behalf of a third party or parties.
 6 ~~(8)~~ **(H)** A statement of the conditions under which the
 7 franchise may be terminated, renewal refused, or repurchased.
 8 ~~(9)~~ **(I)** A statement as to whether the franchisee is required to
 9 purchase from the franchisor or affiliates or their designee
 10 services, supplies, products, fixtures, or other goods relating
 11 to the establishment or operation of the franchised business,
 12 together with a description thereof.
 13 ~~(10)~~ **(J)** A statement as to whether the franchisee is limited in
 14 the goods or services offered by ~~him~~ **the franchisee** to ~~his~~ **the**
 15 **franchisee's** customers.
 16 ~~(11)~~ **(K)** A statement of the terms and conditions of any
 17 financing agreements.
 18 ~~(12)~~ **(L)** A statement of any past or present practice or of any
 19 intent of the franchisor to transfer to a third party any note,
 20 contract, or other obligation of the franchisee in whole or in
 21 part.
 22 ~~(13)~~ **(M)** If any financial statement concerning estimated
 23 profits or earnings is used, the data upon which the estimate is
 24 based.
 25 ~~(14)~~ **(N)** A statement as to whether the franchisee will receive
 26 an exclusive area or territory.
- 27 SECTION 2. IC 23-2-2.5-10.5 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 10.5. (a) A person who
 29 wants to offer for sale a franchise in Indiana and who is not exempt
 30 under sections 3 through 5 of this chapter shall register the franchise by
 31 notification to the commissioner on a notification form prescribed by
 32 the commissioner. The notification shall include the following:
 33 (1) The name of the franchisor.
 34 (2) The name or names under which the franchisor intends to do
 35 business.
 36 (3) The franchisor's principal business address.
 37 (b) The following items shall be filed with the notification:
 38 (1) One (1) copy of the disclosure statement required under
 39 section 13 of this chapter.
 40 (2) The consent to service of process required under section 24 of
 41 this chapter, unless consent has previously been filed by the
 42 person.



1 (3) The registration fee required under section 43 of this chapter.

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

4 (d) The registration of a franchise under this section is effective
5 upon the commissioner's receipt of the notification. The notification is
6 effective for one (1) year from the date of the commissioner's receipt
7 of the notification.

8 (e) **Except as provided in section 13.1 of this chapter**, during the
9 one (1) year registration period, a person is not required to file with the
10 commissioner any supplemental information, including any
11 amendments to the disclosure statement, unless the commissioner,
12 acting under the commissioner's authority to suspend or revoke a
13 registration under section 14 of this chapter, requests the information.

14 SECTION 3. IC 23-2-2.5-13.1 IS ADDED TO THE INDIANA
15 CODE AS A NEW SECTION TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2020]: **Sec. 13.1. (a) Subject to subsection (b),**
17 **a person that has a registration in effect under this chapter shall,**
18 **not later than thirty (30) days after the occurrence of any material**
19 **change in the information set forth in the person's disclosure**
20 **statement under section 13 of this chapter, notify the commissioner**
21 **of the change by filing an amended copy of the disclosure**
22 **statement.**

23 (b) A "material change" requiring notification to the
24 commissioner under subsection (a) includes the following:

25 (1) The occurrence of any of the following within any three (3)
26 month period:

27 (A) The termination, closing, or failure to renew the
28 franchise of either:

29 (i) ten percent (10%) of all franchises of the franchisor,
30 regardless of the location of the franchises; or

31 (ii) ten percent (10%) of the franchisor's franchises that
32 are located in Indiana.

33 (B) The purchase by the franchisor of either:

34 (i) ten percent (10%) of the franchisor's existing
35 franchises, regardless of the location of the franchises; or

36 (ii) ten percent (10%) of the franchisor's existing
37 franchises that are located in Indiana.

38 (2) Any:

39 (A) change in control, corporate name, or state of
40 incorporation; or

41 (B) reorganization;
42 of the franchisor.



1 **(3) Either of the following:**

2 **(A) The introduction of any new product, service, model,**
 3 **or line involving, directly or indirectly, an additional**
 4 **investment by franchisees that exceeds twenty percent**
 5 **(20%) of the average investment made by all franchisees**
 6 **immediately before the introduction of the new product,**
 7 **service, model, or line.**

8 **(B) The discontinuation or modification of the marketing**
 9 **plan or marketing system of any product or service of the**
 10 **franchisor if the average total sales attributable to the**
 11 **product or service exceed twenty percent (20%) of the**
 12 **average annual gross sales of existing franchisees**
 13 **immediately before the discontinuation or modification of**
 14 **the marketing plan or marketing system.**

15 **(4) Any change in the franchise fees charged by the**
 16 **franchisor.**

17 **(5) Any significant change in:**

18 **(A) the obligations of a franchisee to purchase items from**
 19 **the franchisor or the franchisor's designated sources;**

20 **(B) the limitations or restrictions on goods or services that**
 21 **a franchisee may offer to a customer;**

22 **(C) the obligations to be performed by the franchisor or a**
 23 **franchisee; or**

24 **(D) the franchise contract or agreement, including any**
 25 **amendments to the franchise contract or agreement.**

26 **(6) Any other change designated as material by the**
 27 **commissioner by rule adopted or order issued under this**
 28 **chapter.**

29 SECTION 4. IC 23-2-2.5-18, AS AMENDED BY P.L.48-2006,
 30 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2020]: Sec. 18. A registration by notification may be renewed
 32 by submitting to the commissioner a registration renewal form not later
 33 than the date the registration is due to expire. ~~If no stop order or other~~
 34 ~~order under section 14 of this chapter is in effect,~~ Registration of the
 35 offer is renewed at the time the registration would have expired **unless**
 36 **the franchisor requests an earlier renewal date.** A renewal is
 37 effective for a period of one (1) year unless the commissioner ~~specified~~
 38 **specifies** a shorter period.

39 SECTION 5. IC 23-2-2.5-43, AS AMENDED BY P.L.27-2007,
 40 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2020]: Sec. 43. (a) All fees and funds of whatever character
 42 accruing from the administration of this chapter shall be:

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

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

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

11 (d) ~~When~~ **If** a registration notification form or registration renewal
 12 form is denied or withdrawn, the commissioner shall retain ~~one~~
 13 ~~hundred fifty dollars (\$150)~~ **the amount** of the fee **submitted under**
 14 **subsection (b) or (c), as applicable.**

15 SECTION 6. IC 23-2-4-11 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 11. In lieu of
 17 establishing an escrow account under section 10 of this chapter, a
 18 provider may, with the commissioner's permission, post a letter of
 19 credit from a financial institution, negotiable securities, or a bond by
 20 a surety authorized to do business in Indiana. The letter of credit,
 21 negotiable securities, or bond must be:

- 22 (1) approved by the commissioner as to form;
 23 (2) for an amount ~~not to exceed the total amount of all entrance~~
 24 ~~fees received by the provider before the date the resident is~~
 25 ~~permitted to occupy the living unit; that is at least equal to the~~
 26 **maximum amount of entrance fees reasonably anticipated by**
 27 **the provider to otherwise be subject to the escrow**
 28 **requirements set forth in section 10 of this chapter; and**
 29 (3) executed in favor of the commissioner on behalf of individuals
 30 who may be found entitled to a refund of entrance fees.

31 SECTION 7. IC 23-19-1-0.2, AS ADDED BY P.L.220-2011,
 32 SECTION 384, IS AMENDED TO READ AS FOLLOWS
 33 [EFFECTIVE JULY 1, 2020]: Sec. 0.2. (a) The predecessor act
 34 exclusively governs all actions or proceedings that are pending on June
 35 30, 2008, or may be instituted on the basis of conduct occurring before
 36 July 1, 2008, but a civil action may not be maintained to enforce any
 37 liability under the predecessor act unless instituted within any period
 38 of limitation that applied when the cause of action accrued or within
 39 five (5) years after June 30, 2008, whichever is earlier.

40 (b) All effective registrations under the predecessor act and all
 41 administrative orders relating to the registrations, rules, statements of
 42 policy, ~~interpretative~~ **interpretive** opinions, declaratory rulings,



1 no-action determinations, and conditions imposed on the registrations
 2 under the predecessor act remain in effect while they would have
 3 remained in effect if this article had not been enacted, and are
 4 considered to have been filed, issued, or imposed under this article, but
 5 are exclusively governed by the predecessor act.

6 (c) The predecessor act exclusively applies to an offer or sale made
 7 within one (1) year after June 30, 2008, under an offering made in good
 8 faith before July 1, 2008, on the basis of an exemption available under
 9 the predecessor act.

10 SECTION 8. IC 23-19-6-5, AS AMENDED BY P.L.3-2008,
 11 SECTION 172, IS AMENDED TO READ AS FOLLOWS
 12 [EFFECTIVE JULY 1, 2020]: Sec. 5. (a) The commissioner may:

13 (1) issue forms and orders and, after notice and comment, may
 14 adopt and amend rules necessary or appropriate to carry out this
 15 article and may repeal rules, including rules and forms governing
 16 registration statements, applications, notice filings, reports, and
 17 other records;

18 (2) by rule, define terms, whether or not used in this article, but
 19 those definitions may not be inconsistent with this article; and

20 (3) by rule, classify securities, persons, and transactions and adopt
 21 different requirements for different classes.

22 (b) Under this article, a rule or form may not be adopted or
 23 amended, or an order issued or amended, unless the commissioner
 24 finds that the rule, form, order, or amendment is necessary or
 25 appropriate in the public interest or for the protection of investors and
 26 is consistent with the purposes intended by this article.

27 (c) Subject to Section 15(h) of the Securities Exchange Act of 1938
 28 (15 U.S.C. 78o(h)) and Section 222 of the Investment Advisers Act of
 29 1940 (15 U.S.C. 80b-18a), the commissioner may require that a
 30 financial statement filed under this article be prepared in accordance
 31 with generally accepted accounting principles in the United States and
 32 comply with other requirements specified by rule adopted or order
 33 issued under this article. A rule adopted or order issued under this
 34 article may establish:

35 (1) subject to Section 15(h) of the Securities Exchange Act of
 36 1934 (15 U.S.C. 78o(h)) and Section 222 of the Investment
 37 Advisers Act of 1940 (15 U.S.C. 80b-18a), the form and content
 38 of financial statements required under this article;

39 (2) whether unconsolidated financial statements must be filed;
 40 and

41 (3) whether required financial statements must be audited by an
 42 independent certified public accountant.



1 (d) The commissioner may provide ~~interpretative~~ **interpretive**
 2 opinions or issue determinations that the commissioner will not
 3 institute a proceeding or an action under this article against a specified
 4 person for engaging in a specified act, practice, or course of business
 5 if the determination is consistent with this article. The commissioner
 6 shall charge a fee of one hundred dollars (\$100) for an ~~interpretative~~
 7 **interpretive** opinion or determination.

8 (e) A penalty under this article may not be imposed for, and liability
 9 does not arise from, conduct that is engaged in or omitted in good faith
 10 and reasonably believed to be conforming to a rule, form, or order of
 11 the commissioner under this article.

12 (f) A hearing in an administrative proceeding under this article must
 13 be conducted in public unless the commissioner finds a statutory basis
 14 that would allow the hearing to be closed to the public.

15 SECTION 9. IC 23-19-6-6, AS ADDED BY P.L.27-2007,
 16 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2020]: Sec. 6. (a) The commissioner shall maintain, or
 18 designate a person to maintain, a register of applications for
 19 registration of securities; registration statements; notice filings;
 20 applications for registration of broker-dealers, agents, investment
 21 advisers, and investment adviser representatives; notice filings by
 22 federal covered investment advisers that are or have been effective
 23 under this article or the predecessor act; notices of claims of exemption
 24 from registration or notice filing requirements contained in a record;
 25 orders issued under this article or the predecessor act; and
 26 ~~interpretative~~ **interpretive** opinions or no-action determinations issued
 27 under this article.

28 (b) The commissioner shall make all rules, forms, ~~interpretative~~
 29 **interpretive** opinions, and orders available to the public.

30 (c) The commissioner shall furnish a copy of a record that is a
 31 public record, or a certification that the public record does not exist, to
 32 a person that so requests. A rule adopted under this article may
 33 establish a reasonable charge for furnishing the record or certification.
 34 A copy of the record certified or a certificate by the commissioner of
 35 a record's nonexistence is prima facie evidence of a record or its
 36 nonexistence.

37 SECTION 10. IC 23-19-6-8, AS ADDED BY P.L.27-2007,
 38 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2020]: Sec. 8. (a) The commissioner shall, in its discretion,
 40 cooperate, coordinate, consult, and, subject to section 7 of this chapter,
 41 share records and information with the securities regulator of another
 42 state, Canada, a Canadian province or territory, a foreign jurisdiction,



1 the Securities and Exchange Commission, the United States
 2 Department of Justice, the Commodity Futures Trading Commission,
 3 the Federal Trade Commission, the Securities Investor Protection
 4 Corporation, a self-regulatory organization, a national or international
 5 organization of securities regulators, a federal or state banking and
 6 insurance regulator, or a governmental law enforcement agency to
 7 effectuate greater uniformity in securities matters among the federal
 8 government, self-regulatory organizations, states, and foreign
 9 governments.

10 (b) In cooperating, coordinating, consulting, and sharing records and
 11 information under this section and in acting by rule, order, or waiver
 12 under this article, the commissioner shall, in its discretion, take into
 13 consideration in carrying out the public interest the following general
 14 policies:

15 (1) Maximizing effectiveness of regulation for the protection of
 16 investors.

17 (2) Maximizing uniformity in federal and state regulatory
 18 standards.

19 (3) Minimizing burdens on the business of capital formation,
 20 without adversely affecting essentials of investor protection.

21 (c) The cooperation, coordination, consultation, and sharing of
 22 records and information authorized by this section includes:

23 (1) establishing or employing one (1) or more designees as a
 24 central depository for registration and notice filings under this
 25 article and for records required or allowed to be maintained under
 26 this article;

27 (2) developing and maintaining uniform forms;

28 (3) conducting a joint examination or investigation;

29 (4) holding a joint administrative hearing;

30 (5) instituting and prosecuting a joint civil or administrative
 31 proceeding;

32 (6) sharing and exchanging personnel;

33 (7) coordinating registrations under IC 23-19-3 and IC 23-19-4-1
 34 through IC 23-19-4-4 and exemptions under IC 23-19-2-3;

35 (8) sharing and exchanging records, subject to section 7 of this
 36 chapter;

37 (9) formulating rules, statements of policy, guidelines, forms, and
 38 **interpretative interpretive** opinions and releases;

39 (10) formulating common systems and procedures;

40 (11) notifying the public of proposed rules, forms, statements of
 41 policy, and guidelines;

42 (12) attending conferences and other meetings among securities



1 regulators, which may include representatives of governmental
 2 and private sector organizations involved in capital formation,
 3 considered necessary or appropriate to promote or achieve
 4 uniformity; and

5 (13) developing and maintaining a uniform exemption from
 6 registration for small issuers, and taking other steps to reduce the
 7 burden of raising investment capital by small businesses.

8 SECTION 11. IC 25-11-1-3, AS AMENDED BY P.L.136-2018,
 9 SECTION 141, IS AMENDED TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2020]: Sec. 3. **(a) As used in this section,**
 11 **"Nationwide Multistate Licensing System" refers to a multistate**
 12 **licensing system owned and operated by the State Regulatory**
 13 **Registry, LLC, or by a successor or an affiliated entity, for the**
 14 **licensing and registration of:**

- 15 (1) **creditors;**
 16 (2) **mortgage loan originators;**
 17 (3) **other financial services entities; and**
 18 (4) **employees and agents of the persons described in**
 19 **subdivisions (1) through (3).**

20 **The term includes "NMLS" and any other name or acronym that**
 21 **may be assigned to the system by the State Regulatory Registry,**
 22 **LLC, or by a successor or an affiliated entity of the State**
 23 **Regulatory Registry, LLC.**

24 **(a) (b) Any person desiring to conduct a collection agency shall**
 25 **make an application to the secretary of state upon such forms as may**
 26 **be prescribed by the secretary of state. Such application shall include**
 27 **the following:**

- 28 (1) **If the applicant is an individual:**
 29 (A) **the individual's name;**
 30 (B) **the individual's residence address;**
 31 (C) **the address of each location from which the individual**
 32 **carries out the activities of the collection agency; and**
 33 (D) **a statement that the individual satisfies the qualifications**
 34 **set forth in section 4 of this chapter.**
 35 (2) **If the applicant is a partnership:**
 36 (A) **the name of each partner;**
 37 (B) **the business address of the partnership;**
 38 (C) **the residence address of at least one (1) of the partners;**
 39 (D) **the address of each location from which the partnership**
 40 **carries out the activities of the collection agency; and**
 41 (E) **a statement that each partner in the partnership satisfies the**
 42 **qualifications set forth in section 4 of this chapter.**



- 1 (3) If the applicant is a limited liability company:
- 2 (A) the date and place of organization;
- 3 (B) the name of the limited liability company;
- 4 (C) the business address of the limited liability company;
- 5 (D) the residence address of at least one (1) of the managers or
- 6 members of the limited liability company; and
- 7 (E) a statement that each of the managers and members in the
- 8 limited liability company satisfies the qualifications set forth
- 9 in section 4 of this chapter.
- 10 (4) If the applicant is a corporation:
- 11 (A) the date and place of incorporation;
- 12 (B) the name of the corporation;
- 13 (C) the business address of the corporation;
- 14 (D) the residence address of at least one (1) of the officers of
- 15 the corporation; and
- 16 (E) a statement that each of the officers of the corporation
- 17 satisfies the qualifications set forth in section 4 of this chapter.

18 The application shall be duly sworn to before an officer qualified to
 19 administer oaths. The application shall set forth in the application any
 20 other verified information which will assist the secretary of state in
 21 determining the qualifications of the applicant to meet the requirements
 22 of a collection agency as set forth in this chapter.

23 ~~(b)~~ (c) Every original and renewal application of any person desiring
 24 to conduct a collection agency shall be accompanied by a fee of one
 25 hundred dollars (\$100) plus an additional fee of thirty dollars (\$30) for
 26 each branch office operated by the applicant whether as sole owner,
 27 partnership, limited liability company, or corporation.

28 ~~(c)~~ (d) Any person desiring to secure a renewal of a collection
 29 agency license shall make a renewal application to the secretary of state
 30 not later than January 1 of the year following the year in which the
 31 person's license expires under section 5 of this chapter. The application
 32 shall be made on such forms as the secretary of state may prescribe.
 33 Such application shall contain in the application verified information
 34 that will assist the secretary of state in determining whether or not the
 35 applicant is in default, or is in violation of any of the provisions of this
 36 chapter, and whether or not the applicant has at all times complied with
 37 the requirements of this chapter in the operation of the applicant's
 38 collection agency.

39 ~~(d)~~ (e) Each renewal application shall be accompanied by the
 40 renewal fee and an additional fee of thirty dollars (\$30) for each branch
 41 office maintained and operated by the applicant.

42 ~~(e)~~ (f) Every **An original and application or a renewal application**



1 ~~shall~~ **under this section must** be accompanied by the following:

2 (1) ~~A~~ **An electronic** corporate surety bond **that is:**

3 **(A) filed by the applicant collection agency; and**

4 **(B) satisfactory to the commissioner;**

5 ~~in the an amount calculated to equal the~~ sum of five thousand
6 dollars (\$5,000) for each office the applicant operates in ~~the state~~
7 ~~of Indiana. All bonds shall~~ **A collection agency's bond must** run
8 to the people of ~~the state~~ of Indiana and ~~shall must~~ be furnished
9 by a surety company authorized to do business in ~~this state. All~~
10 ~~bonds shall~~ **Indiana. A collection agency's bond must** be
11 conditioned upon the faithful accounting of all money collected
12 upon accounts entrusted to ~~such person~~ **the collection agency** and
13 ~~shall must~~ be continuous in form and ~~shall~~ remain in full force
14 and effect and run continuously with the license period and any
15 renewal ~~thereof. All bonds shall~~ **period. A collection agency's**
16 **bond must** further be conditioned upon the provision that the
17 applicant shall, ~~within not later than~~ **sixty (60) days** from the
18 date of the collection of any claim, render an account of and pay
19 to the client, for whom collection has been made, the proceeds of
20 such collection less the charges for collection agreed upon by and
21 between the applicant and the client. ~~All bonds~~ **A collection**
22 **agency's bond** shall be filed ~~in the office of the secretary of state~~
23 ~~and shall be approved by the secretary of state before being filed.~~
24 ~~All bonds through the NMLS. A collection agency's bond that~~
25 ~~is filed through the NMLS and approved shall be by the~~
26 ~~secretary of state is~~ for the use and benefit of all persons
27 damaged by the wrongful conversion of any money by ~~such~~
28 ~~person; the collection agency~~, and any individual so injured or
29 aggrieved may bring an action upon ~~such the~~ bond. The surety
30 company may notify the secretary of state and principal of its
31 desire to terminate its liability under any bond furnished. ~~Thirty~~
32 ~~(30) days after~~ **Upon** receipt of such notice by the secretary of
33 state, the secretary of state shall ~~thereupon~~ require the principal
34 to file a new bond or discontinue all operations ~~not later than the~~
35 ~~date that is thirty (30) days after the secretary of state's~~
36 ~~receipt of the notice.~~ If a new bond is filed by the principal, all
37 liability under any previous bond ~~shall thereupon cease and~~
38 ~~terminate. ceases and terminates.~~ If a new bond ~~shall is~~ not be
39 filed within the thirty (30) day period ~~above specified described~~
40 ~~in this subdivision~~, the secretary of state shall, after expiration of
41 the period, revoke the principal's license.

42 (2) Any applicant who is a nonresident of ~~the state~~ of Indiana



1 shall also submit a statement appointing an agent or attorney
 2 resident ~~herein~~, upon whom all legal process against the applicant
 3 may be served. The statement ~~shall~~ **must** contain a stipulation that
 4 the applicant agrees that service of legal process upon such agent
 5 or attorney ~~shall be~~ **constitutes** valid service upon the applicant.

6 ~~(f)~~ **(g)** Subject to subsection ~~(g)~~, **(h)**, the secretary of state may
 7 designate ~~a~~ **the NMLS or another** multistate automated licensing
 8 system and repository, established and operated by a third party, to
 9 serve as the sole entity responsible for:

- 10 (1) processing applications for:
 11 (A) licenses under this chapter; and
 12 (B) renewals of licenses under this chapter; and
 13 (2) performing other services that the secretary of state
 14 determines are necessary for the orderly administration of the
 15 secretary of state's licensing system under this chapter.

16 The secretary of state may take any action necessary to participate in
 17 ~~a~~ **the NMLS or another** multistate automated licensing system and
 18 repository.

19 ~~(g)~~ **(h)** The secretary of state's authority to designate ~~a~~ **the NMLS**
 20 **or another** multistate automated licensing system and repository under
 21 subsection ~~(f)~~ **(g)** is subject to the following:

- 22 (1) The secretary of state may not require any person that is not
 23 required to be licensed under this chapter, or any employee or
 24 agent of a person that is not required to be licensed under this
 25 chapter, to:

- 26 (A) submit information to; or
 27 (B) participate in;
 28 the **NMLS or another** multistate automated licensing system and
 29 repository.

- 30 (2) The secretary of state may require a person required under this
 31 chapter to submit information to the **NMLS or another** multistate
 32 automated licensing system and repository to pay a processing fee
 33 considered reasonable by the secretary of state.

34 SECTION 12. IC 25-11-1-4 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 4. The following
 36 qualifications apply to all individual applicants and any individual who
 37 is an officer of any corporation or a member of any partnership, limited
 38 liability company, or firm and actively manages the collection of or
 39 solicits accounts for collection for any firm, partnership, limited
 40 liability company, or corporation which makes an application for a
 41 collection agency license:

- 42 (1) The applicant must be a citizen of the United States, of good



- 1 moral character, and not less than eighteen (18) years of age.
 - 2 (2) The applicant must not have a record as a defaulter in the
 - 3 payment of money collected or received for another.
 - 4 (3) The applicant must not be a former licensee under this chapter
 - 5 whose license has been suspended or revoked and not
 - 6 subsequently reinstated under this chapter.
 - 7 **(4) The applicant must not have made a false statement of**
 - 8 **material fact in the application for the license.**
 - 9 **(5) The applicant must not have been, within the ten (10)**
 - 10 **years immediately preceding the date of the application:**
 - 11 **(A) the subject of an adjudication or a determination by:**
 - 12 **(i) a court with jurisdiction; or**
 - 13 **(ii) an agency or administrator that regulates debt**
 - 14 **collection, securities, commodities, banking, financial**
 - 15 **services, insurance, real estate, or the real estate**
 - 16 **appraisal industry;**
 - 17 **in Indiana or any other jurisdiction; and**
 - 18 **(B) found, after notice and opportunity for hearing, to have**
 - 19 **violated the debt collection, securities, commodities,**
 - 20 **banking, financial services, insurance, real estate, or real**
 - 21 **estate appraisal laws of Indiana or any other jurisdiction**
 - 22 **in a manner that substantially undermines faith in the**
 - 23 **financial responsibility, character, reputation, integrity,**
 - 24 **and general fitness of the applicant or of the owners,**
 - 25 **partners, and members of the applicant, as determined by**
 - 26 **the commissioner.**
 - 27 **(6) The applicant must not have violated:**
 - 28 **(A) this article or rules promulgated under this article;**
 - 29 **(B) any similar regulatory regime of another jurisdiction;**
 - 30 **or**
 - 31 **(C) any other law applicable to the conduct of the**
 - 32 **collection agency business;**
 - 33 **in a manner that substantially undermines faith in the**
 - 34 **financial responsibility, character, reputation, integrity, and**
 - 35 **general fitness of the applicant or of the owners, partners, and**
 - 36 **members of the applicant, as determined by the**
 - 37 **commissioner.**
- 38 An applicant to whom a license is to be issued must meet the bonding
- 39 requirements of section ~~3(e)~~ **3(f)** of this chapter.
- 40 SECTION 13. IC 25-11-1-8 IS AMENDED TO READ AS
- 41 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 8. The secretary of state
- 42 shall **issue forms and orders and** adopt and enforce such rules and



1 regulations, not in conflict with the provisions of this chapter, as are
2 advisable or necessary to carry out the provisions of this chapter. All
3 money collected under the provisions of this chapter shall be deposited
4 by the treasurer of state into the general fund of the state.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1049, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1049 as introduced.)

BURTON

Committee Vote: Yeas 11, Nays 0

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1049, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 14, line 21, delete "jurisdiction." and insert "**jurisdiction in a manner that substantially undermines faith in the financial responsibility, character, reputation, integrity, and general fitness of the applicant or of the owners, partners, and members of the applicant, as determined by the commissioner.**".

and when so amended that said bill do pass.

(Reference is to HB 1049 as printed January 14, 2020.)

KOCH, Chairperson

Committee Vote: Yeas 10, Nays 0.

