



March 15, 2019

ENGROSSED HOUSE BILL No. 1440

DIGEST OF HB 1440 (Updated March 13, 2019 2:58 pm - DI 133)

Citations Affected: IC 23-2; IC 23-2.5; IC 23-19; IC 24-4.4; IC 24-4.5; IC 27-7; IC 35-41; IC 35-52.

Synopsis: Loan brokers. Reorganizes current provisions regulating loan brokers and moves the reorganized provisions to a new article, including: (1) the loan broker regulation account; (2) licensure and notice requirements; (3) education and examination requirements for licensure; (4) requirements for loan broker offices, personnel, and conduct of business; and (5) violations and enforcement. Makes conforming amendments. Repeals the current law regulating loan brokers.

Effective: July 1, 2019.

Heaton, Hamilton, Schaibley, Heine

(SENATE SPONSOR — BASSLER)

January 15, 2019, read first time and referred to Committee on Financial Institutions.
January 29, 2019, reported — Do Pass.
January 31, 2019, read second time, ordered engrossed. Engrossed.
February 4, 2019, read third time, passed. Yeas 92, nays 0.

SENATE ACTION

February 27, 2019, read first time and referred to Committee on Insurance and Financial Institutions.
March 14, 2019, reported favorably — Do Pass.

EH 1440—LS 6839/DI 97



March 15, 2019

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.

ENGROSSED HOUSE BILL No. 1440

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

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

- 1 SECTION 1. IC 23-2-5 IS REPEALED [EFFECTIVE JULY 1,
2 2019]. (Loan Brokers).
3 SECTION 2. IC 23-2.5 IS ADDED TO THE INDIANA CODE AS
4 A **NEW ARTICLE TO READ AS FOLLOWS** [EFFECTIVE JULY 1,
5 2019]:
6 **ARTICLE 2.5. LOAN BROKERS**
7 **Chapter 1. Definitions**
8 **Sec. 1. The definitions in this chapter apply throughout this**
9 **article.**
10 **Sec. 2. "Appraisal company" means a business entity that:**
11 **(1) performs real estate appraisals on a regular basis for**
12 **compensation through one (1) or more owners, officers,**
13 **employees, or agents; or**
14 **(2) holds itself out to the public as performing real estate**
15 **appraisals.**
16 **Sec. 3. "Bona fide third party fee", with respect to a residential**
17 **mortgage loan, includes any of the following:**

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1 (1) Fees for real estate appraisals. However, if the residential
 2 mortgage loan is governed by Title XI of the Financial
 3 Institutions Reform, Recovery, and Enforcement Act (12
 4 U.S.C. 3331 through 3352), the fee for an appraisal performed
 5 in connection with the loan is not a bona fide third party fee
 6 unless the appraisal is performed by a person that is licensed
 7 or certified under IC 25-34.1-3-8.

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

10 (3) Notary and credit report fees.

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

14 Sec. 4. "Borrower's residential mortgage loan application
 15 information" means the:

16 (1) address of proposed residential real property to be
 17 mortgaged; and

18 (2) borrower's essential personal and financial information
 19 necessary for an informed credit decision to be made
 20 concerning the borrower's mortgage loan application.

21 Sec. 5. "Branch manager" means a mortgage loan originator or
 22 principal manager who is:

23 (1) licensed under this article; and

24 (2) designated by a loan broker to supervise and oversee
 25 mortgage loan origination activities conducted at a branch
 26 office.

27 Sec. 6. "Branch office" means a loan broker office other than
 28 the loan broker's principal place of business.

29 Sec. 7. "Branch office license" means a license issued by the
 30 commissioner authorizing a loan broker to operate a branch office.

31 Sec. 8. "Commissioner" refers to the securities commissioner
 32 appointed under IC 23-19-6-1(a).

33 Sec. 9. "Depository institution" has the meaning set forth in the
 34 Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes a
 35 credit union.

36 Sec. 10. "Encrypted", with respect to personal information,
 37 means that the personal information:

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

42 (2) is secured by another method that renders the personal



- 1 information unreadable or unusable.
- 2 **Sec. 11. "Immediate family", with respect to an individual,**
- 3 **refers to:**
- 4 (1) the individual's spouse who resides in the individual's
- 5 household; and
- 6 (2) any dependent child of the individual.
- 7 **Sec. 12. "Licensee" means a person that is issued a license under**
- 8 **this article.**
- 9 **Sec. 13. "Loan" means an agreement to advance money or**
- 10 **property in return for the promise to make payments for the**
- 11 **money or property.**
- 12 **Sec. 14. (a) "Loan broker" means a person who, in return for**
- 13 **consideration from any source:**
- 14 (1) procures;
- 15 (2) attempts to procure; or
- 16 (3) assists in procuring;
- 17 **a residential mortgage loan from a third party, regardless of**
- 18 **whether the person seeking the loan obtains the loan.**
- 19 **(b) The term "loan broker" does not include:**
- 20 (1) a supervised financial organization (as defined in
- 21 IC 26-1-4-102.5), including a bank, savings bank, trust
- 22 company, savings association, or credit union;
- 23 (2) another financial institution that is:
- 24 (A) regulated by an agency of the United States or a state;
- 25 and
- 26 (B) regularly actively engaged in the business of:
- 27 (i) making consumer loans that are not secured by real
- 28 estate; or
- 29 (ii) taking assignment of consumer sales contracts that
- 30 are not secured by real estate;
- 31 (3) an insurance company;
- 32 (4) a person arranging financing for the sale of the person's
- 33 product; or
- 34 (5) a creditor that is licensed under IC 24-4.4-2-402.
- 35 **Sec. 15. "Loan broker employee" means an individual:**
- 36 (1) who is an employee of a single loan broker who is licensed
- 37 under this article;
- 38 (2) for whom the loan broker, in addition to providing a wage
- 39 or salary:
- 40 (A) pays Social Security and unemployment taxes; and
- 41 (B) withholds local, state, and federal income taxes;
- 42 (3) who acts at the direction of, and subject to the supervision



1 of, the loan broker or a principal manager employed by the
2 loan broker; and

3 (4) who performs loan processing activities on behalf of the
4 loan broker.

5 Sec. 16. "Loan broker license" means a license issued by the
6 commissioner authorizing a person to engage in the activities of a
7 loan broker.

8 Sec. 17. "Loan broker office" means a fixed physical location:

9 (1) at which a person holds itself out as engaging in the
10 activities of a loan broker;

11 (2) the address of which appears on business cards, on
12 stationery, or in advertising in connection with the activities
13 of a loan broker;

14 (3) at which the person's name, advertising, promotional
15 materials, or signage suggests that residential mortgage loans
16 are originated, negotiated, funded, or serviced; or

17 (4) where the person otherwise engages in conduct that
18 suggests to the public that the activities of a loan broker may
19 occur at the location.

20 Sec. 18. (a) "Loan processing activities" means clerical or
21 support duties performed on behalf of a loan broker with respect
22 to residential mortgage loan origination activities performed by the
23 loan broker.

24 (b) The term "loan processing activities" includes the following:

25 (1) The receipt, collection, distribution, and analysis of
26 information commonly used in the processing of a residential
27 mortgage loan.

28 (2) Communicating with a borrower or potential borrower to
29 obtain the information necessary for the processing of a
30 residential mortgage loan, to the extent that the
31 communication does not include:

32 (A) offering or negotiating loan rates or terms; or

33 (B) counseling borrowers or potential borrowers about
34 residential mortgage loan rates or terms.

35 Sec. 19. "Loan processing company" means a person that:

36 (1) performs loan processing activities for compensation; and

37 (2) holds itself out to the public as engaging in loan processing
38 activities.

39 Sec. 20. "Loan processor" means an individual who performs
40 loan processing activities for compensation on behalf of a loan
41 processing company and is not a loan broker employee.

42 Sec. 21. "Mortgage loan origination activities" means



1 performance of any of the following activities for compensation or
2 gain in connection with a residential mortgage loan:

- 3 (1) Receiving or recording a borrower's or potential
4 borrower's residential mortgage loan application information
5 in any form for use in a credit decision by a creditor.
6 (2) Offering to negotiate or negotiating terms of a residential
7 mortgage loan.

8 Sec. 22. (a) "Mortgage loan originator" means an individual
9 engaged in mortgage loan origination activities.

10 (b) The term "mortgage loan originator" does not include a
11 person who:

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

22 Sec. 23. "Mortgage loan originator license" means a license
23 issued by the commissioner authorizing an individual to act as a
24 mortgage loan originator on behalf of a loan broker.

25 Sec. 24. "Nationwide Multistate Licensing System" refers to a
26 multistate licensing system owned and operated by the State
27 Regulatory Registry, LLC, or by a successor or an affiliated entity,
28 for the licensing and registration of:

- 29 (1) creditors;
30 (2) mortgage loan originators;
31 (3) other financial services entities; and
32 (4) employees and agents of the persons described in
33 subdivisions (1) through (3).

34 The term includes "NMLS" and any other name or acronym that
35 may be assigned to the system by the State Regulatory Registry,
36 LLC, or by a successor or an affiliated entity of the State
37 Regulatory Registry, LLC.

38 Sec. 25. "Person" means an individual, a partnership, a trust, a
39 corporation, a limited liability company, a limited liability
40 partnership, a sole proprietorship, a joint venture, a joint stock
41 company, or another group or entity, however organized.

42 Sec. 26. "Personal information" includes the following:



- 1 **(1) An individual's first and last names or first initial and last**
 2 **name.**
- 3 **(2) Any of the following data elements:**
 4 **(A) A Social Security number.**
 5 **(B) A driver's license number.**
 6 **(C) A state identification card number.**
 7 **(D) A credit card number.**
 8 **(E) A financial account number or debit card number in**
 9 **combination with a security code, password, or access code**
 10 **that would permit access to the person's account.**
- 11 **(3) With respect to an individual, any of the following:**
 12 **(A) Address.**
 13 **(B) Telephone number.**
 14 **(C) Information concerning the individual's:**
 15 **(i) income or other compensation;**
 16 **(ii) credit history;**
 17 **(iii) credit score;**
 18 **(iv) assets;**
 19 **(v) liabilities; or**
 20 **(vi) employment history.**
- 21 **Sec. 27. "Principal manager" means an individual who has at**
 22 **least three (3) years of experience as a mortgage loan originator**
 23 **and is principally responsible for the supervision and management**
 24 **of the employees and business affairs of not more than five (5) loan**
 25 **broker offices.**
- 26 **Sec. 28. "Principal manager license" means a license issued by**
 27 **the commissioner authorizing an individual to act as:**
 28 **(1) a principal manager; and**
 29 **(2) a mortgage loan originator;**
 30 **on behalf of a loan broker.**
- 31 **Sec. 29. "Principal place of business" means the loan broker**
 32 **office designated by a loan broker or an applicant for a loan broker**
 33 **license as the primary or main office. If a loan broker operates**
 34 **only one (1) loan broker office, the loan broker office is considered**
 35 **to be the principal place of business of the loan broker.**
- 36 **Sec. 30. "Real estate appraiser" means a person who:**
 37 **(1) is licensed as a real estate broker under IC 25-34.1 and**
 38 **performs real estate appraisals within the scope of the**
 39 **person's license;**
 40 **(2) holds a real estate appraiser license or certificate issued**
 41 **under IC 25-34.1-3-8; or**
 42 **(3) otherwise performs real estate appraisals in Indiana.**



1 **Sec. 31. "Real estate brokerage activity"** means offering or
 2 providing real estate brokerage services to the public, including the
 3 following:

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

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

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

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

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

18 **Sec. 32. "Redacted"**, with respect to personal information,
 19 means that the personal information has been altered or truncated
 20 so that not more than the last four (4) digits of:

21 (1) a Social Security number;

22 (2) a driver's license number;

23 (3) a state identification number; or

24 (4) an account number;

25 are accessible as part of the personal information.

26 **Sec. 33. "Registered mortgage loan originator"** means a
 27 mortgage loan originator who:

28 (1) is an employee of:

29 (A) a depository institution;

30 (B) a subsidiary that is:

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

32 (ii) regulated by the federal financial institutions
 33 regulatory agencies (as defined in 12 U.S.C. 3350(6)); or

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

36 (2) is registered with and maintains a unique identifier with
 37 the Nationwide Multistate Licensing System.

38 **Sec. 34. "Residential mortgage loan"** means a loan:

39 (1) that is or will be used primarily for personal, family, or
 40 household purposes; and

41 (2) that is secured by a mortgage (or another equivalent
 42 consensual security interest) on:



- 1 (A) a dwelling (as defined in Section 103(w) of the federal
2 Truth in Lending Act (15 U.S.C. 1602(w)); or
3 (B) residential real estate.
- 4 **Sec. 35. "Residential real estate" means real property:**
5 (1) that is located in Indiana; and
6 (2) upon which a dwelling is constructed or intended to be
7 constructed.
- 8 **Sec. 36. "Securities division" refers to the division of the office**
9 **of the secretary of state described in IC 23-19-6-1(a).**
- 10 **Sec. 37. "State licensed mortgage loan originator" means an**
11 **individual who:**
12 (1) is a mortgage loan originator;
13 (2) is not an employee of:
14 (A) a depository institution;
15 (B) a subsidiary that is:
16 (i) owned and controlled by a depository institution; and
17 (ii) regulated by the federal financial institutions
18 regulatory agencies (as defined in 12 U.S.C. 3350(6)); or
19 (C) an institution regulated by the Farm Credit
20 Administration;
21 (3) is licensed by:
22 (A) a state;
23 (B) the Secretary of the United States Department of
24 Housing and Urban Development under Section 1508 of
25 the S.A.F.E. Mortgage Licensing Act of 2008 (Title V of
26 P.L.110-289); and
27 (4) is registered as a mortgage loan originator with, and
28 maintains a unique identifier through, the Nationwide
29 Multistate Licensing System.
- 30 **Sec. 38. "Ultimate equitable owner" means a person that,**
31 **directly or indirectly, owns or controls ten percent (10%) or more**
32 **of the equity interest in a loan broker, regardless of whether the**
33 **person owns or controls the equity interest through:**
34 (1) one (1) or more other persons; or
35 (2) one (1) or more proxies, powers of attorney, or variances.
- 36 **Sec. 39. "Unique identifier" means a number or other identifier**
37 **that:**
38 (1) permanently identifies a:
39 (A) loan broker;
40 (B) principal manager;
41 (C) mortgage loan originator; or
42 (D) branch office; and



1 (2) is assigned by protocols established by the Nationwide
 2 Mortgage Licensing System and the federal financial
 3 institutions regulatory agencies (as defined in 12 U.S.C.
 4 3350(6)) to facilitate the:

5 (A) electronic tracking of; and

6 (B) uniform identification of, and public access to:

7 (i) the employment history of; and

8 (ii) any publicly adjudicated disciplinary and
 9 enforcement actions against;

10 a person described in subdivision (1).

11 **Chapter 2. Loan Broker Regulation Account**

12 **Sec. 1. (a) The loan broker regulation account is created in the**
 13 **state general fund. The money in the loan broker regulation**
 14 **account may be used only for the regulation of loan brokers,**
 15 **mortgage loan originators, and principal managers under this**
 16 **article.**

17 (b) The loan broker regulation account shall be administered by
 18 the treasurer of state. Except as provided in subsection (d), all fees
 19 and funds accruing from the administration of this article shall be
 20 accounted for by the commissioner and shall be deposited with the
 21 treasurer of state who shall deposit them in the loan broker
 22 regulation account in the state general fund.

23 (c) The money in the loan broker regulation account:

24 (1) is continuously appropriated for the purposes of this
 25 article; and

26 (2) does not revert to any other account within the state
 27 general fund at the end of a state fiscal year.

28 (d) All expenses incurred in the administration of this article
 29 shall be paid from appropriations made from the state general
 30 fund. However, costs of investigations incurred under this article
 31 shall be paid from, and disgorgements of profits and civil penalties
 32 recovered under this article shall be deposited in, the securities
 33 division enforcement account established by IC 23-19-6-1(f). The
 34 funds in the securities division enforcement account shall be
 35 available, with the approval of the budget agency, to augment and
 36 supplement the funds appropriated for the administration of this
 37 article.

38 **Chapter 3. Licensure and Loan Processing Company Notice**
 39 **Filing Requirements**

40 **Sec. 1. (a) A person may not engage in the activities of a loan**
 41 **broker in Indiana unless the person first obtains a:**

42 (1) unique identifier from the Nationwide Multistate



1 Licensing System; and
2 (2) loan broker license from the commissioner.
3 (b) A person desiring to engage in the activities of a loan broker
4 shall apply to the commissioner for a loan broker license under this
5 article.
6 Sec. 2. (a) An individual may not act as a principal manager in
7 Indiana unless the individual first obtains a:
8 (1) unique identifier from the Nationwide Multistate
9 Licensing System; and
10 (2) principal manager license from the commissioner.
11 (b) An individual may not act as a mortgage loan originator in
12 Indiana unless the individual first obtains a:
13 (1) unique identifier from the Nationwide Multistate
14 Licensing System; and
15 (2) mortgage loan originator license from the commissioner.
16 (c) An individual desiring to act as a principal manager or
17 mortgage loan originator on behalf of a loan broker shall apply to
18 the commissioner for a principal manager license or a mortgage
19 loan originator license under this article, as applicable.
20 Sec. 3. An individual may not engage in loan processing
21 activities unless the individual:
22 (1) is employed by a loan processing company; and
23 (2) obtains a mortgage loan originator license under this
24 article.
25 Sec. 4. (a) A loan broker may not operate a branch office in
26 Indiana unless the loan broker first obtains a:
27 (1) unique identifier from the Nationwide Multistate
28 Licensing System; and
29 (2) branch office license from the commissioner.
30 (b) A loan broker shall apply to the commissioner for a branch
31 office license under this article.
32 Sec. 5. Before engaging in loan processing activities, a loan
33 processing company shall file a loan processing company notice
34 filing.
35 Chapter 4. License Issuance and Renewal
36 Sec. 1. (a) An application for issuance or renewal of a loan
37 broker license must contain the following:
38 (1) Consent to service of process under section 9 of this
39 chapter.
40 (2) Evidence of the bond required by section 12 of this
41 chapter.
42 (3) An application fee of two hundred dollars (\$200), plus one



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- hundred dollars (\$100) for each ultimate equitable owner.
- (4) An affidavit affirming that none of the applicant's ultimate equitable owners, directors, managers, or officers have been convicted, in any jurisdiction, of:
 - (A) a felony during the previous seven (7) years; or
 - (B) an offense involving fraud or deception that is punishable by at least one (1) year of imprisonment; unless the affidavit is waived by the commissioner under subsection (b).
- (5) Evidence that the applicant, if the applicant is an individual, has completed the education requirements under IC 23-2.5-6.
- (6) The name and license number of each mortgage loan originator to be employed by the loan broker.
- (7) The name and license number of each principal manager to be employed by the loan broker.
- (8) The location of each loan broker office to be operated by the loan broker. If the loan broker operates only one (1) loan broker office or one (1) location at which mortgage loan origination activities occur, that location must be designated as the loan broker's principal place of business.
- (9) The name of the individual employed by the loan broker who will serve as branch manager for any branch office operated by the loan broker.
- (10) For each ultimate equitable owner, the following information:
 - (A) The name of the ultimate equitable owner.
 - (B) The address of the ultimate equitable owner, including the home address of the ultimate equitable owner if the ultimate equitable owner is an individual.
 - (C) The telephone number of the ultimate equitable owner, including the home telephone number if the ultimate equitable owner is an individual.
 - (D) The ultimate equitable owner's Social Security number and date of birth, if the ultimate equitable owner is an individual.
- (b) Upon good cause shown, the commissioner may waive the requirements of subsection (a)(4) for one (1) or more of an applicant's ultimate equitable owners, directors, managers, or officers.
- Sec. 2. (a) An application for issuance or renewal of a principal manager license must be made on a form prescribed by the



- 1 commissioner.
- 2 (b) An application under subsection (a) must include the
- 3 following information for the individual who seeks to be licensed
- 4 as a principal manager:
- 5 (1) The name of the individual.
- 6 (2) The home address of the individual.
- 7 (3) The home telephone number of the individual.
- 8 (4) The individual's Social Security number and date of birth.
- 9 (5) The name of the:
- 10 (A) loan broker; or
- 11 (B) applicant for a loan broker license;
- 12 by whom the individual seeks to be employed as a principal
- 13 manager.
- 14 (6) Consent to service of process under section 9 of this
- 15 chapter.
- 16 (7) Evidence that the individual has completed the education
- 17 requirements described in IC 23-2.5-6.
- 18 (8) Evidence that the individual:
- 19 (A) has, in addition to the education requirements
- 20 described in subdivision (7), completed an additional
- 21 sixteen (16) hours of education acceptable to the
- 22 commissioner, including four (4) hours on the topic of
- 23 ethics; and
- 24 (B) has been a registered mortgage loan originator or state
- 25 licensed mortgage loan originator through the Nationwide
- 26 Multistate Licensing System for at least three (3) of the five
- 27 (5) years immediately preceding the date of application
- 28 under this section.
- 29 (9) An application fee of one hundred dollars (\$100).
- 30 (10) All:
- 31 (A) registration numbers previously issued to the
- 32 individual under IC 23-2-5 if the applicant was registered
- 33 as an originator or a principal manager under IC 23-2-5
- 34 before its repeal on July 1, 2019; and
- 35 (B) license numbers previously issued to the individual
- 36 under IC 23-2-5 (before its repeal) or this article.
- 37 (11) The name of each individual who is a mortgage loan
- 38 originator and the location of any loan broker offices for
- 39 which the individual is designated by the loan broker as
- 40 supervising principal manager.
- 41 (12) Written authorization for the commissioner or an agent
- 42 of the commissioner to obtain a consumer report (as defined



1 in IC 24-5-24-2) concerning the individual.

2 **Sec. 3. (a) An application for issuance or renewal of a mortgage**
 3 **loan originator license must be made on a form prescribed by the**
 4 **commissioner.**

5 **(b) An application under subsection (a) must include the**
 6 **following information for the individual who seeks to be licensed**
 7 **as a mortgage loan originator:**

8 **(1) The name of the individual.**

9 **(2) The home address of the individual.**

10 **(3) The home telephone number of the individual.**

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

12 **(5) The name of the:**

13 **(A) loan broker; or**

14 **(B) applicant for a loan broker license;**

15 **for whom the individual will act as a mortgage loan**
 16 **originator.**

17 **(6) Consent to service of process under section 9 of this**
 18 **chapter.**

19 **(7) Evidence that the individual has completed the education**
 20 **requirements described in IC 23-2.5-6.**

21 **(8) An affidavit completed in the manner prescribed by the**
 22 **commissioner stating the address of each location where the**
 23 **individual intends to habitually or repeatedly conduct**
 24 **mortgage loan origination activities.**

25 **(9) An application fee of fifty dollars (\$50).**

26 **(10) All:**

27 **(A) registration numbers previously issued to the**
 28 **individual under IC 23-2-5, if the applicant was registered**
 29 **as an originator or a principal manager under IC 23-2-5**
 30 **before its repeal on July 1, 2019; and**

31 **(B) license numbers previously issued to the individual**
 32 **under IC 23-2-5 (before its repeal) or this article.**

33 **(11) An indication as to whether the mortgage loan originator**
 34 **is the branch manager of a loan broker office and the address**
 35 **of the loan broker office.**

36 **(12) Written authorization for the commissioner or an agent**
 37 **of the commissioner to obtain a consumer report (as defined**
 38 **in IC 24-5-24-2) concerning the individual.**

39 **Sec. 4. (a) An application for issuance or renewal of a branch**
 40 **office license must be made on a form prescribed by the**
 41 **commissioner.**

42 **(b) An application under subsection (a) must include the**



1 following information for the location for which licensure as a
2 branch office is sought:

- 3 (1) The address of the branch office.
4 (2) The name and license number of the principal manager
5 who will be designated by the loan broker to supervise the
6 branch office.
7 (3) The name and license number of the individual who will be
8 designated to act as branch manager of the branch office.
9 (4) An application fee of seventy-five dollars (\$75).

10 Sec. 5. (a) The commissioner shall issue a license and license
11 number to an applicant for a license issued under this chapter if
12 the applicant meets the applicable licensure requirements under
13 this chapter.

14 (b) A license issued under this chapter expires on December 31
15 of the year during which the license is issued.

16 (c) If an initial or a renewal application for a license is denied or
17 withdrawn, the commissioner shall retain the application fee paid.

18 Sec. 6. (a) A licensee under this chapter may not continue to:

- 19 (1) act as a loan broker, principal manager, or mortgage loan
20 originator; or
21 (2) operate as a branch office;

22 unless the licensee annually renews the license.

23 (b) A licensee under this chapter shall renew the license by:

- 24 (1) filing with the commissioner, at least thirty (30) days
25 before the date on which the license expires, an application
26 containing any information the commissioner requires to
27 indicate any material change from the information contained
28 in the applicant's original application or any previous
29 application; and
30 (2) including, with the filing under subdivision (1), the
31 applicable application fee specified in this chapter.

32 Sec. 7. (a) The license of a principal manager or a mortgage loan
33 originator is not effective during any period during which the
34 mortgage loan originator or principal manager is not employed by
35 a loan broker that is licensed under this article.

36 (b) If a licensed principal manager or mortgage loan originator
37 seeks to transfer the licensee's license to another loan broker who
38 desires to have the licensee act as a principal manager or mortgage
39 loan originator, whichever applies, the licensee shall, before acting
40 as a principal manager or mortgage loan originator for the new
41 employer, submit to the commissioner, on a form prescribed by the
42 commissioner, a license application required by section 2 or 3 of



1 this chapter, whichever applies.

2 (c) If the employment of a principal manager or mortgage loan
3 originator by a loan broker is terminated:

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

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

8 the loan broker shall, not later than five (5) days after the date of
9 the termination, notify the commissioner of the termination and
10 the reasons for the termination.

11 Sec. 8. (a) If a material fact or statement included in an
12 application for a license under this chapter changes after the
13 application has been submitted, the applicant shall provide written
14 notice to the commissioner of the change.

15 (b) The commissioner may deny issuance, revoke, or refuse to
16 renew a license under this article if the applicant or licensee:

17 (1) fails to provide the written notice required by this section
18 within two (2) business days after the date on which the
19 applicant or licensee discovers or should have discovered the
20 change; or

21 (2) is not qualified for licensure under this article as a result
22 of the change in a material fact or statement.

23 Sec. 9. An applicant for licensure, or renewal of a license, under
24 this chapter shall file with the commissioner, in a form prescribed
25 by the commissioner, an irrevocable consent appointing the
26 secretary of state as the applicant's agent for service of process in
27 any noncriminal suit, action, or proceeding against the applicant
28 arising from the violation of this article. Service shall be made in
29 accordance with the Indiana Rules of Trial Procedure.

30 Sec. 10. (a) At the time of application for an initial license under
31 this chapter, the commissioner shall require the following to
32 submit fingerprints for a national criminal history background
33 check (as defined in IC 10-13-3-12) for use by the commissioner in
34 determining whether the equitable owner of a loan broker, an
35 individual described in subdivision (1), or the applicant should be
36 denied issuance of a license under this chapter for a reason set
37 forth in IC 23-2.5-11-1 or IC 23-2.5-11-2:

38 (1) In the case of an applicant for licensure as a loan broker,
39 each ultimate equitable owner, equitable owner, director,
40 manager, and officer.

41 (2) An applicant for licensure as a principal manager.

42 (3) An applicant for licensure as a mortgage loan originator.



1 (b) Every three (3) years at the time of application for renewal
 2 of a license issued under this chapter, beginning with the third
 3 calendar year following the calendar year during which the initial
 4 license is issued, the commissioner shall require the following to
 5 submit fingerprints for a national criminal history background
 6 check (as defined in IC 10-13-3-12) for use by the commissioner in
 7 determining whether the equitable owner of a loan broker, an
 8 individual described in subdivision (1), or the applicant should be
 9 denied renewal of a license under this chapter for a reason set forth
 10 in IC 23-2.5-11-1 or IC 23-2.5-11-2:

11 (1) In the case of an applicant for licensure as a loan broker,
 12 each ultimate equitable owner, equitable owner, director,
 13 manager, and officer.

14 (2) An applicant for licensure as a principal manager.

15 (3) An applicant for licensure as a mortgage loan originator.

16 (c) The individual whose fingerprints are submitted under this
 17 section shall pay any fees or costs associated with the fingerprints
 18 and background check required by this section.

19 (d) The commissioner may not release the results of a
 20 background check required by this section to any private entity.

21 Sec. 11. In reviewing a consumer report obtained under section
 22 2(b)(12) or 3(b)(12) of this chapter, the commissioner may consider
 23 one (1) or more of the following in determining whether the
 24 individual applicant has demonstrated financial responsibility:

25 (1) Bankruptcies filed by the individual during the most
 26 recent ten (10) years.

27 (2) Current outstanding civil judgments against the
 28 individual, except judgments resulting solely from medical
 29 expenses owed by the individual.

30 (3) Current outstanding tax liens or other government liens or
 31 filings.

32 (4) Foreclosure actions filed during the most recent three (3)
 33 years against property owned by the individual.

34 (5) Any pattern of seriously delinquent accounts associated
 35 with the individual during the most recent three (3) years.

36 Sec. 12. A loan broker shall maintain an electronic surety bond
 37 that:

38 (1) is satisfactory to the commissioner;

39 (2) is in the amount of sixty thousand dollars (\$60,000); and

40 (3) covers the activities of each principal manager and
 41 mortgage loan originator employed by the loan broker.

42 Sec. 13. (a) The commissioner may request evidence of



1 compliance with this chapter at any of the following times:

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

5 (b) For purposes of subsection (a), evidence of compliance with
 6 this chapter must include a criminal background check, including
 7 a national criminal history background check (as defined in
 8 IC 10-13-3-12) by the Federal Bureau of Investigation.

9 Sec. 14. A unique identifier obtained by an individual from the
 10 Nationwide Multistate Licensing System as required by
 11 IC 23-2.5-3-1, IC 23-2.5-3-2, and IC 23-2.5-3-3 may not be used for
 12 purposes other than the purposes set forth in the S.A.F.E.
 13 Mortgage Licensing Act of 2008 (Title V of P.L.110-289).

14 Chapter 5. Loan Processing Company Notice Filing and
 15 Renewal

16 Sec. 1. Before engaging in loan processing activities, a loan
 17 processing company shall file, via the Nationwide Multistate
 18 Licensing System, a loan processing company notice filing.

19 Sec. 2. A loan processing company notice filing must be made on
 20 a form prescribed by the commissioner and include all of the
 21 following:

- 22 (1) The loan processing company's business name, address,
 23 and state of incorporation or business registration.
 24 (2) The names of the owners, officers, members, or partners
 25 who control the loan processing company.
 26 (3) The name of each individual who is employed by the loan
 27 processing company, including the mortgage loan originator
 28 license number of each loan processor.
 29 (4) The name and license number of each loan broker who:
 30 (A) is licensed or required to be licensed under this article;
 31 and
 32 (B) engaged the loan processing company to perform loan
 33 processing activities during the preceding calendar year.
 34 (5) An attestation stating that each loan processor employed
 35 by the loan processing company maintains a mortgage loan
 36 originator license under this article.
 37 (6) Consent to service of process as described in section 7 of
 38 this chapter.
 39 (7) An application fee of twenty-five dollars (\$25).

40 Sec. 3. (a) A loan processing company notice filing described in
 41 section 2 of this chapter:

- 42 (1) expires on December 31 of each year; and



1 **(2) must be refiled annually.**
2 **(b) A loan processing company shall update and renew the loan**
3 **processing company's notice filing at least thirty (30) days before**
4 **the date on which the loan processing company notice filing expires**
5 **by resubmitting the information and fee set forth in section 2 of**
6 **this chapter.**
7 **(c) A loan processing company that engages in loan processing**
8 **activities without filing or renewing a loan processing company**
9 **notice filing as required by this chapter violates this article.**
10 **Sec. 4. A loan processing company may not employ an**
11 **individual to engage in loan processing activities unless the**
12 **individual maintains a valid mortgage loan originator license**
13 **under this article.**
14 **Sec. 5. A loan processing company bears the burden of showing**
15 **that the loan processing company is in compliance with this**
16 **chapter.**
17 **Sec. 6. (a) If the commissioner determines that a loan processing**
18 **company or loan processor has violated this article, the**
19 **commissioner may issue any notice or order determined by the**
20 **commissioner to be in the public interest.**
21 **(b) A notice or order issued by the commissioner under**
22 **subsection (a):**
23 **(1) may include remedies; and**
24 **(2) must follow the procedural requirements;**
25 **specified in IC 23-2.5-11.**
26 **Sec. 7. (a) A loan processing company shall, before engaging in**
27 **loan processing activities, file with the commissioner on a form**
28 **prescribed by the commissioner an irrevocable consent appointing**
29 **the secretary of state as the loan processing company's agent to**
30 **receive service of process in a noncriminal suit, action, or**
31 **proceeding against the loan processing company arising from a**
32 **violation of this article.**
33 **(b) Service of process described in subsection (a) must be made**
34 **in accordance with Indiana Rules of Trial Procedure.**
35 **Sec. 8. If a loan processing company ceases to engage in loan**
36 **processing activities for any reason, the loan processing company**
37 **shall do the following:**
38 **(1) Before ceasing loan processing activities, arrange for the**
39 **preservation and maintenance of the records described in**
40 **IC 23-2.5-9-2 for the remainder of the two (2) year**
41 **maintenance period required by IC 23-2.5-9-2.**
42 **(2) Notify the commissioner of the exact physical address**



1 where the records will be maintained under subdivision (1).

2 **Chapter 6. Education and Examination**

3 **Sec. 1. (a)** An applicant for an initial license under IC 23-2.5-4
4 shall provide to the commissioner evidence that, during the
5 twenty-four (24) month period immediately preceding the
6 application, the applicant completed at least twenty (20) hours of
7 academic education that is acceptable to the commissioner and
8 approved by the Nationwide Multistate Licensing System.

9 (b) The education hours required by subsection (a) must include
10 the following:

11 (1) Three (3) hours of federal law and regulations concerning
12 residential mortgage lending.

13 (2) Three (3) hours of ethics, including instruction on fraud,
14 consumer protection, and fair lending practices.

15 (3) Two (2) hours of training concerning lending standards for
16 nontraditional residential mortgage loan products.

17 (4) Two (2) hours of state law and rules concerning residential
18 mortgage lending.

19 **Sec. 2. (a)** To maintain a license issued under IC 23-2.5-4, an
20 individual shall provide to the commissioner evidence that the
21 individual has, during each calendar year after the year during
22 which the license is initially issued, completed at least eight (8)
23 hours of academic education that is acceptable to the commissioner
24 and approved by the Nationwide Multistate Licensing System.

25 (b) The education hours required by subsection (a) must include
26 the following:

27 (1) Three (3) hours of federal law and regulations concerning
28 residential mortgage lending.

29 (2) Two (2) hours of ethics, including instruction on fraud,
30 consumer protection, and fair lending practices.

31 (3) Two (2) hours of training concerning lending standards for
32 nontraditional residential mortgage loan products.

33 **Sec. 3.** If a license issued under IC 23-2.5-4 lapses or expires for
34 a period of at least five (5) years, the former licensee must complete
35 the initial license educational requirements specified in section 1 of
36 this chapter.

37 **Sec. 4. (a)** In determining the acceptability of academic
38 education, the commissioner shall consider approval of a licensee's
39 internal academic education programs completed by employees.

40 (b) The commissioner may charge a fee, in an amount
41 prescribed by the commissioner, for the commissioner's review of
42 an education course to determine acceptability of the course as



1 required by this chapter.

2 **Sec. 5. (a) The commissioner shall require an applicant for**
 3 **licensure as a:**

4 (1) principal manager; or

5 (2) mortgage loan originator;

6 under IC 23-2.5-4 to pass a written examination prepared and
 7 administered by the commissioner or an agent appointed by the
 8 commissioner and approved by the Nationwide Multistate
 9 Licensing System.

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

13 (1) Ethics.

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

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

18 (c) An individual who answers at least seventy-five percent
 19 (75%) of the questions on the written examination correctly is
 20 considered to have passed the examination.

21 (d) An individual who does not pass the written examination
 22 may retake the examination not more than two (2) additional
 23 times, with each subsequent attempt occurring at least thirty (30)
 24 days after the date on which the individual last sat for the
 25 examination.

26 (e) If an individual fails three (3) consecutive examinations, the
 27 individual must wait to retake the examination until at least six (6)
 28 months after the date on which the individual sat for the third
 29 examination.

30 **Sec. 6. If an individual who has been issued a principal manager**
 31 **license or mortgage loan originator license under this article, or a**
 32 **license or registration issued by another state or jurisdiction**
 33 **allowing the individual to perform mortgage loan origination**
 34 **activities:**

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

36 (2) otherwise has not been a registered mortgage loan
 37 originator, issued a mortgage loan originator license, issued
 38 a principal manager license, or otherwise maintained a license
 39 or registration to perform mortgage loan origination
 40 activities;

41 for a period of at least five (5) years, the individual must pass the
 42 written examination required by this chapter as a condition of



1 relicensure or reregistration.

2 **Sec. 7. If an individual does not obtain a license within two (2)**
 3 **years after the date on which the individual passes the written**
 4 **examination for the license as required by this chapter, the**
 5 **commissioner may not issue the license to the individual unless the**
 6 **individual passes the written examination again.**

7 **Chapter 7. Loan Broker Offices and Personnel**

8 **Sec. 1. A loan broker shall not employ an individual to act as a**
 9 **principal manager or mortgage loan originator unless the**
 10 **individual is licensed under this article as a principal manager or**
 11 **mortgage loan originator, as applicable.**

12 **Sec. 2. A loan broker shall not engage the services of a person to**
 13 **perform loan processing activities unless the person has complied**
 14 **with the loan processing company notice filing requirements of**
 15 **IC 23-2.5-5.**

16 **Sec. 3. An individual who acts solely as a loan processor or an**
 17 **underwriter shall not represent to the public through:**

18 **(1) advertising; or**

19 **(2) other means of communicating or providing information,**
 20 **including business cards, stationery, brochures, signs, rate**
 21 **lists, or other promotional items;**

22 **that the individual will perform mortgage loan origination**
 23 **activities or otherwise act as a mortgage loan originator.**

24 **Sec. 4. A loan broker shall, in accordance with section 5 of this**
 25 **chapter, employ and designate a principal manager who is**
 26 **responsible for supervising the:**

27 **(1) mortgage loan originators employed by the loan broker;**
 28 **and**

29 **(2) loan broker offices operated by the loan broker;**

30 **to ensure compliance with this article.**

31 **Sec. 5. (a) A principal manager designated by a loan broker**
 32 **under section 4 of this chapter may supervise not more than five**
 33 **(5) loan broker offices operated by the loan broker, including the**
 34 **principal place of business and any branch offices.**

35 **(b) A loan broker shall employ a sufficient number of additional**
 36 **principal managers designated as supervisors to accommodate any**
 37 **branch offices:**

38 **(1) operated by the loan broker; and**

39 **(2) in excess of the number permitted under subsection (a).**

40 **Sec. 6. (a) A principal manager shall complete at least one (1)**
 41 **compliance examination per year of each loan broker office for**
 42 **which the principal manager is the supervisor designated under**



1 section 4 of this chapter.

2 (b) A loan broker shall maintain complete documentation of
3 each examination conducted by a principal manager under
4 subsection (a):

5 (1) at the principal place of business; and

6 (2) for a minimum of five (5) years after the calendar year in
7 which the examination is completed.

8 Sec. 7. (a) A loan broker that operates a branch office shall
9 designate a unique individual to act as branch manager of the
10 branch office.

11 (b) A branch manager designated under subsection (a) shall be
12 licensed under this article as either a principal manager or a
13 mortgage loan originator.

14 Sec. 8. A loan broker that fails to take reasonable steps to
15 prevent a violation of this article by a principal manager, mortgage
16 loan originator, or other individual employed by the loan broker
17 may subject the loan broker to discipline under IC 23-2.5-11.

18 Sec. 9. A principal manager who fails to take reasonable steps
19 to prevent a violation of this article:

20 (1) by a mortgage loan originator who is supervised by the
21 principal manager; or

22 (2) that occurs at a branch office that is supervised by the
23 principal manager;

24 may subject the principal manager to discipline under
25 IC 23-2.5-11.

26 Sec. 10. A branch manager who fails to take reasonable steps to
27 prevent a violation of this article by an individual who works at the
28 branch manager's designated branch office may subject the branch
29 manager to discipline under IC 23-2.5-11.

30 Sec. 11. (a) A loan broker shall diligently review work
31 performed on the loan broker's behalf by a loan processing
32 company.

33 (b) A loan broker that fails to take reasonable steps to review
34 work performed by a loan processing company on the loan
35 broker's behalf may subject the loan broker to discipline under
36 IC 23-2.5-11.

37 Chapter 8. Conduct of Business

38 Sec. 1. (a) A contract for the services of a loan broker is not
39 enforceable unless the contract is in writing and signed by each of
40 the contracting parties.

41 (b) At the time a contract for the services of a loan broker is
42 signed, the loan broker shall provide a copy of the signed contract



1 to each party to the contract.

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

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

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

9 Sec. 2. (a) A licensee or a person required to be licensed under
10 this article shall not knowingly bribe, coerce, or intimidate another
11 person to corrupt or improperly influence the independent
12 judgment of a real estate appraiser with respect to the value of real
13 estate offered as security for a residential mortgage loan.

14 (b) Except as provided in subsection (c):

15 (1) a licensee;

16 (2) a person required to be licensed under this article; or

17 (3) a member of the immediate family of a licensee;

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

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

26 (1) The interest in the appraisal company owned or controlled
27 by the person or combination of persons shall not be increased
28 after June 30, 2007.

29 (2) The interest of a licensee shall not be transferred to a
30 member of the licensee's immediate family.

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

39 Sec. 3. (a) If a transaction for which a loan broker has charged
40 a fee is rescinded by a person under the federal Truth in Lending
41 Act (15 U.S.C. 1601-1667e) within twenty (20) calendar days after
42 the date on which a notice of the rescission is delivered to the



1 creditor, the loan broker shall return to the person any
 2 consideration received by the loan broker other than bona fide
 3 third party fees.

4 (b) For purposes of calculating the period during which a
 5 person may avoid a contract under IC 24-5-10-8 or
 6 IC 24-4.5-2-502, a contract with a loan broker is considered to be
 7 a sale of services that occurs on the date on which the person signs
 8 the written contract required by section 1 of this chapter.

9 Sec. 4. A loan broker agreement must be assigned an account
 10 number.

11 Sec. 5. A loan broker shall maintain the following records, or
 12 the electronic equivalent of the following:

13 (1) A file for each borrower or prospective borrower that
 14 contains the following:

15 (A) The name and address of the borrower or prospective
 16 borrower.

17 (B) A copy of the signed loan broker agreement.

18 (C) A copy of any other paper or instrument used in
 19 connection with the loan broker agreement and signed by
 20 the borrower or prospective borrower.

21 (D) If a loan was obtained for the borrower, the name and
 22 address of the creditor.

23 (E) If a loan is accepted by the borrower, a copy of the loan
 24 agreement.

25 (F) The amount of the loan broker's fee paid by the
 26 borrower. If there is an unpaid balance, the status of any
 27 collection effort.

28 (2) All:

29 (A) receipts from or for the account of borrowers or
 30 prospective borrowers; and

31 (B) disbursements to or for the account of borrowers or
 32 prospective borrowers;

33 recorded so that the transactions are readily identifiable.

34 (3) A:

35 (A) general ledger, posted at least monthly; and

36 (B) trial balance sheet and profit and loss statement,
 37 prepared within thirty (30) days of the date on which the
 38 commissioner requests the information.

39 (4) A sample of:

40 (A) all advertisements, pamphlets, circulars, letters,
 41 articles, Internet publications, or communications
 42 published:



- 1 (i) in a newspaper, magazine, or periodical; or
- 2 (ii) by other means of distribution;
- 3 (B) scripts of any recording, radio, or video
- 4 announcement;
- 5 (C) any sales kits or literature; and
- 6 (D) any Internet communication distributed to at least ten
- 7 (10) persons;
- 8 used in the solicitation of borrowers.
- 9 (5) A report that:
 - 10 (A) lists all residential mortgage loans originated by the
 - 11 loan broker, including pending loans and loans that were
 - 12 not closed;
 - 13 (B) is searchable by, or organized according to, the
 - 14 borrower's or prospective borrower's last name; and
 - 15 (C) includes the following information for each residential
 - 16 mortgage loan listed:
 - 17 (i) The name and address of the borrower or prospective
 - 18 borrower.
 - 19 (ii) The name of the creditor.
 - 20 (iii) The name of the mortgage loan originator.
 - 21 (iv) The loan amount.
 - 22 (v) The status of the loan, including the date of closing or
 - 23 denial by the creditor.
 - 24 (vi) The interest rate for the loan.
- 25 The report required by this subdivision may be prepared or
- 26 produced by or through the loan broker's loan origination
- 27 software or other software used by the loan broker.
- 28 Sec. 6. (a) The records maintained under section 5 of this
- 29 chapter must be:
 - 30 (1) maintained for two (2) years in the office of the loan
 - 31 broker in which the loan was originated; and
 - 32 (2) separate or readily identifiable from the records of any
 - 33 other business that is conducted in the office of the loan
 - 34 broker.
 - 35 (b) If the office in which records must be maintained under this
 - 36 section is located outside Indiana, the records must be:
 - 37 (1) made available to the securities division at a location that
 - 38 is:
 - 39 (A) located in Indiana; and
 - 40 (B) accessible to the securities division; or
 - 41 (2) maintained electronically and made available to the
 - 42 securities division not later than ten (10) business days after



- 1 a request by the securities division to inspect or examine the
2 records.
- 3 **Sec. 7. (a)** A loan broker that ceases to conduct business as a
4 loan broker or allows the loan broker license to lapse shall, before
5 ceasing to conduct business as a loan broker, arrange for the
6 preservation of the records specified in section 5 of this chapter for
7 the remainder of the period specified in section 6(a)(1) of this
8 chapter during which the loan broker ceases to conduct business as
9 a loan broker.
- 10 **(b)** A loan broker described in subsection (a) shall notify the
11 commissioner of the exact address of the physical location where
12 the books and records will be maintained during the period
13 described in subsection (a).
- 14 **Sec. 8. If a breach of the security of a record:**
- 15 (1) maintained by a loan broker under this chapter; and
16 (2) containing the unencrypted, unredacted personal
17 information of a borrower or prospective borrower;
18 occurs, the loan broker is subject to the disclosure requirements of
19 IC 24-4.9-3, unless the loan broker is exempt from the disclosure
20 requirements under IC 24-4.9-3-4.
- 21 **Sec. 9.** A licensee may not dispose of the unencrypted,
22 unredacted personal information of a borrower or prospective
23 borrower without first shredding, incinerating, mutilating, erasing,
24 or otherwise rendering the information illegible or unusable.
- 25 **Sec. 10.** If a licensee or a person required to be licensed under
26 this article possesses funds that belong to another person, including
27 money received by or on behalf of a prospective borrower, the
28 licensee or person required to be licensed shall:
- 29 (1) upon request of the prospective borrower, account for the
30 funds possessed for the prospective borrower;
31 (2) follow reasonable and lawful instructions from the
32 prospective borrower concerning the prospective borrower's
33 funds; and
34 (3) return the prospective borrower's unspent funds to the
35 prospective borrower in a timely manner.
- 36 **Sec. 11. (a)** A loan broker shall, when required by the
37 commissioner, submit reports of condition to the:
- 38 (1) commissioner; and
39 (2) Nationwide Multistate Licensing System.
- 40 **(b)** A report required by this section must be in the form and
41 contain the information required by the commissioner.
- 42 **Chapter 9. Residential Mortgage Loan Transaction Documents**



1 **Sec. 1. A loan broker agreement that is delivered or required to**
 2 **be delivered by a licensee to a borrower or prospective borrower**
 3 **must contain the license number of:**

4 (1) the loan broker; and

5 (2) each:

6 (A) mortgage loan originator; and

7 (B) principal manager;

8 **who had contact with the file.**

9 **Sec. 2. (a) A loan processing company shall maintain records of**
 10 **all residential mortgage loan transactions conducted by the loan**
 11 **processing company as follows:**

12 (1) The records required to be maintained under this section
 13 are the records pertaining to the part of each transaction the
 14 loan processing company conducts.

15 (2) The records must be maintained for at least two (2) years
 16 in the office of the loan processing company.

17 (3) The records must be readily identifiable or separate from
 18 the records of any other business conducted by the loan
 19 processing company.

20 **(b) If the office in which records are maintained under this**
 21 **section is not located in Indiana, the records must be:**

22 (1) made available to the securities division at a location that
 23 is:

24 (A) located in Indiana; and

25 (B) accessible to the securities division; or

26 (2) maintained electronically and made available to the
 27 securities division not later than ten (10) business days after
 28 a request by the securities division to inspect or examine the
 29 records.

30 **Sec. 3. If a breach occurs of the security of records that:**

31 (1) are maintained by a loan processing company under this
 32 chapter; and

33 (2) contain the unencrypted, unredacted personal information
 34 of one (1) or more borrowers or prospective borrowers;

35 **the loan processing company is subject to the disclosure**
 36 **requirements under IC 24-4.9-3. However, this section does not**
 37 **apply if the loan processor is exempt from the disclosure**
 38 **requirements under IC 24-4.9-3-4.**

39 **Sec. 4. A loan processing company may not dispose of the**
 40 **unencrypted, unredacted personal information of one (1) or more**
 41 **borrowers or prospective borrowers without first shredding,**
 42 **incinerating, mutilating, erasing, or otherwise rendering the**



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information illegible or unusable.

Sec. 5. The commissioner may examine the books and records of a loan processing company as often as the commissioner considers necessary to verify that the loan processing company is compliant with this article.

Sec. 6. A loan processor shall comply with all of the following:

- (1) The federal Truth in Lending Act (15 U.S.C. 1601 et seq.).
- (2) The federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.).
- (3) The federal Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.).
- (4) Any other federal law concerning residential mortgage lending.

Sec. 7. The following are subject to disciplinary proceedings under IC 23-2.5-11 for a violation of this article:

- (1) A loan processor.
- (2) A loan processing company.

Chapter 10. Prohibited Acts

Sec. 1. (a) A person shall not, in connection with a contract for the services of a loan broker, do any of the following:

- (1) Employ a device, a scheme, or an artifice to defraud.
- (2) Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading.
- (3) Engage in an act, a practice, or a course of business that operates or would operate as a fraud or deceit on a person.
- (4) Collect or solicit consideration, except a bona fide third party fee, in connection with a residential mortgage loan before the loan is closed.
- (5) Receive funds that the person knows were generated as a result of a fraudulent act.
- (6) File or cause to be filed with a county recorder a document that the person knows:
 - (A) contains:
 - (i) a misstatement; or
 - (ii) an untrue statement; or
 - of material fact; or
 - (B) omits a statement of a material fact that is necessary to make the statements that are made, in the light of circumstances under which they are made, not misleading.
- (7) Knowingly release or disclose the unencrypted, unredacted



1 **personal information of a borrower or prospective borrower,**
 2 **unless the personal information is used in an activity**
 3 **authorized by the borrower or prospective borrower under**
 4 **any of the following circumstances:**

5 **(A) The personal information is:**

- 6 **(i) included on an application form or another form; or**
 7 **(ii) transmitted as part of an application or enrollment**
 8 **process.**

9 **(B) The personal information is used to obtain a consumer**
 10 **report (as defined in IC 24-5-24-2) for an applicant for**
 11 **credit.**

12 **(C) The personal information is used to:**

- 13 **(i) establish, amend, or terminate an account, a contract,**
 14 **or a policy; or**
 15 **(ii) confirm the accuracy of the personal information.**

16 **However, personal information allowed to be disclosed**
 17 **under this clause may not be printed in whole or in part on**
 18 **a postcard or other mailer that does not require an**
 19 **envelope, or in a manner that makes the personal**
 20 **information visible on an envelope or a mailer without the**
 21 **envelope or mailer being opened.**

22 **(8) Engage in reckless or negligent activity allowing the**
 23 **release or disclosure of the unencrypted, unredacted personal**
 24 **information of a borrower or prospective borrower, including**
 25 **an action prohibited by IC 23-2.5-8-9.**

26 **(9) Knowingly bribe, coerce, or intimidate another person to**
 27 **corrupt or improperly influence the independent judgment of**
 28 **a real estate appraiser with respect to the value of real estate**
 29 **offered as security for a residential mortgage loan, as**
 30 **prohibited by IC 23-2.5-8-2.**

31 **(10) Violate any of the following:**

32 **(A) The federal Truth in Lending Act (15 U.S.C. 1601 et**
 33 **seq.).**

34 **(B) The federal Real Estate Settlement Procedures Act (12**
 35 **U.S.C. 2601 et seq.).**

36 **(C) The federal Equal Credit Opportunity Act (15 U.S.C.**
 37 **1691 et seq.).**

38 **(D) Another federal law or regulation concerning**
 39 **residential mortgage lending.**

40 **(11) Omit a material fact or fail to promptly correct a**
 41 **misstatement of material fact in an application made to the**
 42 **commissioner under this article.**



1 (b) A person who commits an act described in subsection (a) is
2 subject to disciplinary proceedings under IC 23-2.5-11.

3 Chapter 11. Violations and Civil Enforcement

4 Sec. 1. The commissioner may deny an application for an initial
5 or a renewal license under this article, and may suspend or revoke
6 the license of a licensee, if the applicant, the licensee, or an ultimate
7 equitable owner of a loan broker or an applicant for a loan broker
8 license:

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

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

12 (i) a court with jurisdiction; or

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

16 in Indiana or any other jurisdiction; and

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

21 (2) except as provided in section 2(1) of this chapter with
22 respect to the activities of a loan broker, has:

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

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

30 by the state or another state, federal, or foreign governmental
31 agency or self-regulatory organization;

32 (3) is insolvent;

33 (4) has violated this article;

34 (5) has knowingly filed with the commissioner a document or
35 statement that:

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

37 (B) fails to state a material fact; or

38 (C) contains a representation that becomes false:

39 (i) after the filing; and

40 (ii) during the term of the license;

41 and does not notify the commissioner as required by
42 IC 23-2.5-4-8;



1 (6) has been convicted, during the ten (10) years preceding the
 2 date of the application, renewal, or review, of a crime, other
 3 than a felony, involving fraud or deceit;

4 (7) if the person is a loan broker or a principal manager, has
 5 failed to reasonably supervise the person's mortgage loan
 6 originators, loan processors or underwriters, or employees to
 7 ensure compliance with this article;

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

10 (9) has engaged in dishonest or unethical practices, as
 11 determined by the commissioner; or

12 (10) has, after receiving a request from the securities division
 13 for additional documentation or information in connection
 14 with an application for an initial or renewal license, failed to
 15 properly respond to the request within thirty (30) days after
 16 the date on which the person receives the request.

17 **Sec. 2. The commissioner shall deny an application for an initial**
 18 **or a renewal license under this article, and shall revoke the license**
 19 **of a licensee, if the applicant, the licensee, or an ultimate equitable**
 20 **owner of a loan broker or an applicant for a loan broker license:**

21 (1) has had a:

22 (A) loan broker license issued under this article;

23 (B) mortgage loan originator license issued under this
 24 article;

25 (C) principal manager license issued under this article; or

26 (D) license that is:

27 (i) equivalent to a license described in clause (A), (B), or
 28 (C); and

29 (ii) issued by another jurisdiction;

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

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

34 (A) during the seven (7) year period immediately preceding
 35 the date of the application or renewal; or

36 (B) at a time preceding the date of the application or
 37 renewal if the felony involved an act of fraud or
 38 dishonesty, a breach of trust, or money laundering;

39 (3) fails to maintain the bond required by IC 23-2.5-4-12;

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

42 (A) command the confidence of the community in which



- 1 the applicant or licensee engages or will engage in the
2 activities of a loan broker; and
3 **(B) warrant a determination by the commissioner that the**
4 **applicant or licensee will operate honestly, fairly, and**
5 **efficiently according to the requirements of this article;**
6 **(5) has failed to meet the education requirements set forth in**
7 **IC 23-2.5-6;**
8 **(6) has failed to pass the written examination required by**
9 **IC 23-2.5-6; or**
10 **(7) fails to:**
11 **(A) keep or maintain records in accordance with**
12 **IC 23-2.5-8; or**
13 **(B) allow the commissioner or an agent appointed by the**
14 **commissioner to inspect or examine a loan broker's books**
15 **and records to determine compliance with IC 23-2.5-8.**
16 **Sec. 3. (a) If the commissioner determines that a person has**
17 **engaged in or is about to engage in an act or a practice that violates**
18 **this article or a rule or an order under this article, the**
19 **commissioner may investigate and issue:**
20 **(1) with a prior hearing if there exists no substantial threat of**
21 **immediate irreparable harm; or**
22 **(2) without a prior hearing if there exists a substantial threat**
23 **of immediate irreparable harm;**
24 **orders and notices determined by the commissioner to be in the**
25 **public interest, including cease and desist orders, orders to show**
26 **cause, and notices.**
27 **(b) After notice and hearing, the commissioner may enter an**
28 **order of rescission, restitution, or disgorgement, including interest**
29 **at the rate of eight percent (8%) per year, directed to a person who**
30 **the commissioner determines has violated this article or a rule or**
31 **an order under this article.**
32 **(c) If the commissioner determines, after a hearing, that a**
33 **person has violated this article or a rule or an order under this**
34 **article, the commissioner may, in addition to other remedies,**
35 **impose a civil penalty on the person in an amount not to exceed ten**
36 **thousand dollars (\$10,000) for each violation.**
37 **(d) Upon the commissioner's issuance under subsection (a) of an**
38 **order or notice without a prior hearing, the commissioner shall**
39 **promptly notify:**
40 **(1) the respondent; and**
41 **(2) if the subject of the order or notice is a mortgage loan**
42 **originator or a principal manager, the loan broker for whom**



1 the mortgage loan originator or principal manager is
 2 employed;
 3 of the issuance of the order or notice.

4 (e) The notification required by subsection (d) must include the
 5 following:

- 6 (1) Notice that the order or notice has been issued.
 7 (2) Notice of the reasons the order or notice has been issued.
 8 (3) Notice that upon the commissioner's receipt of a written
 9 request from the person against which the order or notice is
 10 issued, the matter will be set for a hearing to commence not
 11 later than:

12 (A) fifteen (15) business days after the commissioner's
 13 receipt of the request if the original order or notice issued
 14 by the commissioner was a summary suspension, summary
 15 revocation, or denial of a license; and

16 (B) forty-five (45) business days after the commissioner's
 17 receipt of the request for any other order or notice, unless
 18 the respondent consents to a later date.

19 (f) If a hearing:

- 20 (1) is not requested under subsection (e); and
 21 (2) is not ordered by the commissioner;

22 an order or notice issued under this section remains in effect until
 23 the order or notice is modified or vacated by the commissioner.

24 (g) If a hearing is requested under subsection (e) or ordered by
 25 the commissioner, the commissioner, after notice of an opportunity
 26 for hearing, may modify or vacate the order or notice or extend the
 27 order or notice until final determination.

28 Sec. 4. The commissioner may do either of the following:

29 (1) Censure:

30 (A) a licensee;

31 (B) an officer, a director, an ultimate equitable owner, or
 32 an equitable owner of a loan broker; or

33 (C) another person;

34 who violates or causes a violation of this article.

35 (2) Permanently bar a person described in subdivision (1)
 36 from being:

37 (A) licensed under this article; or

38 (B) employed by, or affiliated with, a person that is
 39 licensed under this article;

40 if the person violates or causes a violation of this article.

41 Sec. 5. Except as provided in subsection (b), the commissioner
 42 may not enter a final order:



- 1 (1) denying, suspending, or revoking the license of an
 2 applicant or a licensee; or
 3 (2) imposing another sanction;
 4 without prior notice to all interested parties, opportunity for a
 5 hearing, and written findings of fact and conclusions of law.
 6 (b) The commissioner may, by summary order, deny, suspend,
 7 or revoke a license:
 8 (1) pending final determination of a proceeding under this
 9 chapter; or
 10 (2) before a proceeding is initiated under this chapter.
 11 (c) Upon the entry of a summary order under subsection (b), the
 12 commissioner shall promptly notify all interested parties:
 13 (1) that the summary order has been entered;
 14 (2) of the reasons for the summary order; and
 15 (3) that, upon receipt by the commissioner of a written
 16 request from a party, the matter will be set for hearing to
 17 commence not later than forty-five (45) business days after
 18 the commissioner's receipt of the request.
 19 (d) If a hearing:
 20 (1) is not requested under subsection (c); and
 21 (2) is not ordered by the commissioner;
 22 the summary order remains in effect until the summary order is
 23 modified or vacated by the commissioner.
 24 (e) If a hearing is requested under subsection (c) or ordered by
 25 the commissioner, the commissioner may:
 26 (1) after notice of the hearing has been given to all interested
 27 persons; and
 28 (2) the hearing has been held;
 29 modify or vacate the summary order or extend the summary order
 30 until final determination is made.
 31 Sec. 6. (a) The commissioner may do the following:
 32 (1) Issue forms and orders to implement this article.
 33 (2) Adopt rules under IC 4-22-2 to implement this article.
 34 (3) Repeal rules, including rules and forms governing
 35 applications, notice filings, reports, and other records.
 36 (4) Define terms consistent with this article, whether or not
 37 used in this article.
 38 (5) Conduct investigations and examinations:
 39 (A) in connection with an application for licensure, or a
 40 license issued, under this article;
 41 (B) whenever it appears to the commissioner, upon the
 42 basis of a complaint or information, that reasonable



- 1 grounds exist for the belief that an investigation or
 2 examination is necessary or advisable for the more
 3 complete protection of the interests of the public; and
 4 (C) including investigations and examinations of a loan
 5 broker office, principal place of business, branch office,
 6 location listed in a mortgage loan originator's application
 7 under IC 23-2.5-4-3, appraisal company, or loan
 8 processing company.
- 9 (6) Charge, as costs of investigation or examination,
 10 reasonable expenses including:
- 11 (A) a per diem prorated on the salary of the:
- 12 (i) commissioner; or
 13 (ii) employee performing the investigation or
 14 examination; and
- 15 (B) actual travel and hotel expenses;
 16 to be paid by the person that is under investigation or
 17 examination and that is determined to have violated this
 18 article.
- 19 (7) After conducting an investigation or examination, issue
 20 notices and orders, including cease and desist notices and
 21 orders. A notice or order issued under this subdivision must
 22 include the following:
- 23 (A) Notice that the notice or order is issued.
 24 (B) Notice that if the commissioner receives from the
 25 person a written request for a hearing concerning the
 26 notice or order, a hearing will be set not later than:
- 27 (i) fifteen (15) business days after the commissioner
 28 receives the request if the original order issued by the
 29 commissioner was a summary suspension, summary
 30 revocation, or denial of a license; and
 31 (ii) forty-five (45) business days after the commissioner
 32 receives the request for an order not described in item
 33 (i).
- 34 (8) Sign, or delegate to a deputy commissioner the authority
 35 to sign orders, official certifications, documents, or papers
 36 issued under this article.
- 37 (9) Hold and conduct hearings.
- 38 (10) Hear evidence.
- 39 (11) Conduct inquiries, with or without hearings.
- 40 (12) Receive reports of investigators or other officers or
 41 employees of the state or a municipal corporation or
 42 governmental subdivision in Indiana.



- 1 **(13) Administer, or cause to be administered, oaths.**
- 2 **(14) Subpoena witnesses and compel witnesses to attend and**
- 3 **testify.**
- 4 **(15) Compel the production of books, records, and other**
- 5 **documents.**
- 6 **(16) Order depositions to be:**
 - 7 **(A) taken of witnesses that reside in Indiana or elsewhere;**
 - 8 **(B) taken in the manner prescribed by law for depositions**
 - 9 **in civil actions; and**
 - 10 **(C) made returnable to the commissioner.**
- 11 **(17) Order the same fees and mileage allowances provided for**
- 12 **witnesses in civil cases to be paid to each witness who appears**
- 13 **under the commissioner's order to testify before the**
- 14 **commissioner.**
- 15 **(18) Provide interpretive opinions or issue determinations**
- 16 **that the commissioner will not institute a proceeding or an**
- 17 **action under this article against a specified person for**
- 18 **engaging in a specified act, practice, or course of business if:**
 - 19 **(A) the request for the interpretive opinion or**
 - 20 **determination is made after the date on which the specified**
 - 21 **act, practice, or course of business occurs; and**
 - 22 **(B) the interpretive opinion or determination is consistent**
 - 23 **with this article.**
- 24 **(19) Adopt rules to establish fees for individuals requesting an**
- 25 **interpretive opinion or a determination under subdivision**
- 26 **(18).**
- 27 **(20) Subject to subsection (b):**
 - 28 **(A) designate a multistate automated licensing system and**
 - 29 **repository (including the Nationwide Multistate Licensing**
 - 30 **System), established and operated by a third party, to**
 - 31 **serve as the sole entity responsible for:**
 - 32 **(i) processing applications for license issuance and**
 - 33 **renewal under this article; and**
 - 34 **(ii) performing other services that the commissioner**
 - 35 **determines are necessary for the orderly administration**
 - 36 **of the securities division's licensing system; and**
 - 37 **(B) take action necessary to allow the securities division to**
 - 38 **participate in a multistate automated licensing system and**
 - 39 **repository described in clause (A).**
- 40 **(b) The commissioner's authority to designate a multistate**
- 41 **automated licensing system and repository under subsection**
- 42 **(a)(20) is subject to the following:**



- 1 **(1) The commissioner may not require:**
 2 **(A) a person that is not required to be licensed under this**
 3 **article; or**
 4 **(B) an employee or agent of a person that is not required**
 5 **to be licensed under this article;**
 6 **to submit information to or participate in the multistate**
 7 **automated licensing system and repository.**
 8 **(2) The commissioner may require a person that is required**
 9 **under this article to submit information to the multistate**
 10 **automated licensing system and repository to pay a processing**
 11 **fee considered to be reasonable by the commissioner.**
 12 **(c) The commissioner shall do the following:**
 13 **(1) Subject to IC 5-14-3, regularly report:**
 14 **(A) violations of this article; and**
 15 **(B) enforcement actions and other relevant information;**
 16 **to the Nationwide Multistate Licensing System.**
 17 **(2) Establish a process by which a mortgage loan originator**
 18 **may challenge information entered by the commissioner into**
 19 **the Nationwide Multistate Licensing System.**
 20 **Sec. 7. (a) If a witness, in a hearing, an inquiry, or an**
 21 **investigation conducted under this article, refuses to answer a**
 22 **question or produce an item, the commissioner may file a written**
 23 **petition with the circuit or superior court in the county where the**
 24 **hearing, investigation, or inquiry is conducted requesting a hearing**
 25 **on the refusal.**
 26 **(b) The court described in subsection (a) shall hold a hearing to**
 27 **determine if the witness may refuse to answer the question or**
 28 **produce the item.**
 29 **(c) If the court described in subsection (a) determines that the**
 30 **witness, based upon the witness's privilege against**
 31 **self-incrimination, may properly refuse to answer or produce an**
 32 **item, the commissioner may make a written request that the court**
 33 **grant use immunity to the witness.**
 34 **(d) Upon written request of the commissioner under subsection**
 35 **(c), the court shall grant use immunity to the witness and instruct**
 36 **the witness, by written order or in open court, that:**
 37 **(1) any evidence the witness gives, or evidence derived from**
 38 **the evidence given, may not be used in a criminal proceeding**
 39 **against the witness, unless the evidence is volunteered by the**
 40 **witness or is not responsive to a question; and**
 41 **(2) the witness must answer the questions asked and produce**
 42 **the items requested.**



1 (e) A grant of use immunity under this section does not prohibit
 2 evidence that the witness gives in a hearing, investigation, or
 3 inquiry from being used in a prosecution for perjury under
 4 IC 35-44.1-2-1.

5 (f) If a witness refuses to give evidence after the witness has
 6 been granted use immunity, the court may find the witness in
 7 contempt.

8 **Sec. 8. (a)** In a prosecution, action, suit, or proceeding based on
 9 or arising out of this article, the commissioner may sign a
 10 certificate showing compliance or noncompliance with this article
 11 by any person.

12 (b) A certificate signed under subsection (a) constitutes prima
 13 facie evidence of compliance or noncompliance with this article
 14 and is admissible in evidence in an action at law or in equity to
 15 enforce this article.

16 **Sec. 9. (a)** This section applies when a person or witness takes an
 17 action as follows:

18 (1) A person disobeys a lawful:

19 (A) subpoena issued under this article; or

20 (B) order or demand requiring the production of books,
 21 accounts, papers, records, documents, or other evidence or
 22 information as provided in this article.

23 (2) A witness in a hearing, inquiry, or investigation refuses to:

24 (A) appear when subpoenaed;

25 (B) testify to a matter about which the witness may be
 26 lawfully interrogated; or

27 (C) take or subscribe to an oath required by this article.

28 (b) If a person or witness takes an action described in subsection
 29 (a), the:

30 (1) circuit or superior court of the county in which the
 31 hearing, inquiry, or investigation described in subsection (a)
 32 is held, if:

33 (A) demand is made; or

34 (B) upon written petition, the production is ordered to be
 35 made; or

36 (2) commissioner or a hearing officer appointed by the
 37 commissioner;

38 shall compel compliance with the lawful requirements of the
 39 subpoena, order, or demand, compel the production of the
 40 necessary or required books, papers, records, documents, and
 41 other evidence and information, and compel the witness to attend
 42 in an Indiana county and to testify to any matter about which the



1 witness may lawfully be interrogated, and to take or subscribe to
2 any oath required.

3 **Sec. 10. The commissioner may bring an action in the circuit or**
4 **superior court of Marion County to enforce payment of a penalty**
5 **imposed under this article.**

6 **Sec. 11. (a) If the commissioner believes that a person has**
7 **engaged, is engaging, or is about to engage in an act, practice, or**
8 **course of business that:**

9 (1) is; or

10 (2) materially aids;

11 a violation of this article or a rule adopted or an order issued under
12 this article, the commissioner may maintain an action in the circuit
13 or superior court in the county where the investigation or inquiry
14 is being conducted to enjoin the act, practice, or course of business
15 and to enforce compliance with this article or a rule adopted or an
16 order issued under this article.

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

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

21 (2) order other appropriate or ancillary relief, including:

22 (A) an asset freeze, accounting, writ of attachment, writ of
23 general or specific execution, and appointment of a
24 receiver or conservator;

25 (B) ordering a receiver or conservator appointed under
26 clause (A) to:

27 (i) take control of a respondent's property, including
28 investment accounts and accounts in a depository
29 institution, rents, and profits;

30 (ii) collect debts; and

31 (iii) acquire and dispose of property;

32 (C) imposing a civil penalty of not more than ten thousand
33 dollars (\$10,000) per violation and an order of rescission,
34 restitution, or disgorgement directed to the person that has
35 engaged in an act, practice, or course of business
36 constituting a violation of this article or a rule adopted or
37 an order issued under this article; and

38 (D) ordering the payment of prejudgment and
39 postjudgment interest; or

40 (3) order other relief that the court considers appropriate.

41 (c) The commissioner may not be required to post a bond in a
42 action or a proceeding under this article.



1 (d) Penalties collected under this section must be deposited in
2 the securities division enforcement account established by
3 IC 23-19-6-1(f).

4 Sec. 12. (a) An appeal may be taken, to the Marion circuit court
5 or the circuit or superior court of the county where the person
6 taking the appeal resides or maintains a place of business, by the
7 following:

8 (1) A person whose application for issuance or renewal of a
9 license under this article is granted or denied, from any final
10 order of the commissioner concerning the application.

11 (2) An applicant for issuance or renewal of a license as a
12 principal manager or a mortgage loan originator, from any
13 final order of the commissioner affecting the application.

14 (3) An applicant for issuance or renewal of a license for a loan
15 broker office from any final order of the commissioner
16 affecting the application.

17 (4) A person against whom a civil penalty is imposed under
18 section 3(c) of this chapter, from the final order of the
19 commissioner imposing the civil penalty.

20 (5) A person who is named as a respondent, from any final
21 order of the commissioner under this article.

22 (b) Not later than twenty (20) days after the entry of the order
23 under subsection (a), the commissioner must be served with:

24 (1) a written notice of the appeal specifying the court to which
25 the appeal will be taken and the grounds on which a reversal
26 of the final order is sought;

27 (2) a demand in writing from the appellant for a certified
28 transcript of the record and all papers on file in the
29 commissioner's office that affect or relate to the order; and

30 (3) a bond in the penal sum of five hundred dollars (\$500) to
31 the state with sufficient surety to be approved by the
32 commissioner, conditioned on the faithful prosecution of the
33 appeal to final judgment and the payment of all costs that are
34 adjudged against the appellant.

35 (c) Not later than ten (10) days after the date on which the
36 commissioner is served with the items listed in subsection (b), the
37 commissioner shall make, certify, and deliver to the appellant the
38 transcript, and the appellant shall, not later than five (5) days after
39 the date on which the appellant receives the transcript, file the
40 transcript and a copy of the notice of appeal with the clerk of the
41 court. The notice of appeal serves as the appellant's complaint. The
42 commissioner may appear and file a motion or pleading and form



1 the issue. The cause must be entered on the trial calendar for trial
 2 de novo and given precedence over all matters pending in the
 3 court.

4 (d) The court shall receive and consider any pertinent oral or
 5 written evidence concerning the order of the commissioner from
 6 which an appeal under this section is taken. If the order of the
 7 commissioner is reversed, the court shall in the court's mandate
 8 specifically direct the commissioner concerning the commissioner's
 9 further action in the matter. The commissioner is not barred from
 10 revoking or altering the order for proper cause that accrues or is
 11 discovered after the order is entered. If the order is affirmed, the
 12 appellant is not barred after thirty (30) days after the date on
 13 which the order is affirmed from filing a new application if the
 14 application is not otherwise barred or limited. During the pendency
 15 of the appeal, the order from which the appeal is taken is not
 16 suspended but remains in effect unless otherwise ordered by the
 17 court. An appeal may be taken from the judgment of the court on
 18 the same terms and conditions as an appeal is taken in civil actions.

19 Sec. 13. Copies of a statement or document filed with the
 20 commissioner, and copies of any records of the commissioner,
 21 certified to by the commissioner or a deputy are admissible in a
 22 prosecution, an action, a suit, or a proceeding based on, or arising
 23 out of or under, this article to the same extent that the original of
 24 the statement, document, or record would be admissible if
 25 produced.

26 Sec. 14. Upon:

27 (1) disobedience on the part of any person to a lawful:

28 (A) subpoena issued under this article; or

29 (B) order or demand requiring the production of books,
 30 accounts, papers, records, documents, or other evidence or
 31 information as provided in this article; or

32 (2) the refusal of a witness to:

33 (A) appear when subpoenaed to testify to a matter
 34 regarding which the witness may be lawfully interrogated;

35 or

36 (B) take or subscribe to an oath required by this article;

37 it is the duty of the circuit or superior court of the county where
 38 the hearing, inquiry, or investigation in question is held, where
 39 demand is made, or where the production is ordered to be made,
 40 upon written petition of the commissioner, to compel obedience to
 41 the lawful requirements of the subpoena, order, or demand.

42 Sec. 15. (a) If a person fails, refuses, or neglects to comply with



1 a court order under this chapter, the person must be held in
2 contempt of court.

3 (b) A person who violates this article or a rule adopted under
4 this article, in connection with a contract for the activities of a loan
5 broker, is liable to a person damaged by the violation for:

- 6 (1) the amount of the actual damages suffered;
7 (2) interest at the legal rate; and
8 (3) attorney's fees.

9 (c) If a person violates this article, or a rule adopted under this
10 article, in connection with a contract for the activities of a loan
11 broker, the contract is void, and the prospective borrower is
12 entitled to receive from the loan broker all sums paid to the loan
13 broker.

14 Sec. 16. In the securities division's investigative, examination,
15 and regulatory activities related to licensees under this article, the
16 securities division may cooperate with the Indiana department of
17 financial institutions in the regulation of a licensee that conducts:

- 18 (1) business under this article; and
19 (2) business that requires licensure under IC 24-4.4.

20 Sec. 17. (a) Except as provided in subsection (b), a person who
21 knowingly violates this article commits a Level 5 felony.

22 (b) A person who knowingly violates this article commits a Level
23 4 felony if the person damaged by the violation is at least sixty (60)
24 years of age.

25 (c) A person commits a Level 5 felony if the person knowingly
26 makes or causes to be made in:

- 27 (1) a document filed with or sent to the commissioner or the
28 securities division; or
29 (2) a proceeding, an investigation, or an examination under
30 this article;

31 a statement that is, at the time and in the light of the circumstances
32 under which the statement is made, false or misleading in any
33 material respect.

34 Chapter 12. Effect of Repeal of IC 23-2-5

35 Sec. 1. The repeal of IC 23-2-5 does not affect any:

- 36 (1) rules adopted under IC 23-2-5-11;
37 (2) action taken under IC 23-2-5; or
38 (3) right, privilege, obligation, or liability acquired, accrued,
39 or incurred under IC 23-2-5;

40 as in effect before their repeal.

41 Sec. 2. IC 23-2-5, as in effect before its repeal, exclusively
42 governs all actions and proceedings that:



- 1 (1) are pending on June 30, 2019; or
 2 (2) may be instituted after June 30, 2019, on the basis of
 3 conduct occurring before July 1, 2019.

4 **Sec. 3. Unless a license issued under IC 23-2-5, before its repeal,**
 5 **is suspended or revoked before the date on which the license would**
 6 **have expired under IC 23-2-5, before its repeal, the license is valid**
 7 **until the date on which the license would have expired under**
 8 **IC 23-2-5, before its repeal.**

9 **Sec. 4. (a) This section applies to the extent that:**

- 10 (1) a statement of policy;
 11 (2) an administrative order;
 12 (3) a rule;
 13 (4) an interpretive opinion;
 14 (5) a declaratory ruling;
 15 (6) a no-action determination;
 16 (7) a condition; or
 17 (8) another action of the commissioner under IC 23-2-5,
 18 before its repeal;

19 **does not conflict with IC 23-2.5-1 through IC 23-2.5-11.**

20 **(b) An item described in subsection (a) that:**

- 21 (1) under IC 23-2-5, before its repeal; and
 22 (2) before July 1, 2019;

23 **is placed on or affects a license issued under IC 23-2-5, before its**
 24 **repeal, remains in effect until the date on which the item described**
 25 **in subsection (a) is amended, revoked, or vacated by the**
 26 **commissioner.**

27 SECTION 3. IC 23-19-6-1, AS AMENDED BY P.L.39-2016,
 28 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2019]: Sec. 1. (a) This article shall be administered by a
 30 division of the office of the secretary of state. The secretary of state
 31 shall appoint a securities commissioner who shall be responsible for
 32 the direction and supervision of the division and the administration of
 33 this article under the direction and control of the secretary of state. The
 34 salary of the securities commissioner shall be paid out of the funds
 35 appropriated for the administration of this article. The commissioner
 36 shall serve at the will of the secretary of state.

37 (b) The secretary of state:

- 38 (1) shall employ a chief deputy, attorneys, a senior investigator,
 39 a senior accountant, and other deputies, investigators,
 40 accountants, clerks, stenographers, and other employees necessary
 41 for the administration of this article; and
 42 (2) shall fix their compensation with the approval of the budget



1 agency.

2 (c) It is unlawful for the commissioner or an officer, employee, or
3 designee of the commissioner to use for personal benefit or the benefit
4 of others records or other information obtained by or filed with the
5 commissioner that is not public under section 7(b) of this chapter. This
6 article does not authorize the commissioner or an officer, employee, or
7 designee of the commissioner to disclose the record or information,
8 except in accordance with section 2, 7(c), or 8 of this chapter.

9 (d) This article does not create or diminish a privilege or exemption
10 that exists at common law, by statute or rule, or otherwise.

11 (e) Subject to IC 4-2-6-15, the commissioner may develop and
12 implement investor education initiatives to inform the public about
13 investing in securities, with particular emphasis on the prevention and
14 detection of securities fraud. In developing and implementing these
15 initiatives, the commissioner may collaborate with public and nonprofit
16 organizations with an interest in investor education. The commissioner
17 may accept a grant or donation from a person that is not affiliated with
18 the securities industry or from a nonprofit organization, regardless of
19 whether the organization is affiliated with the securities industry, to
20 develop and implement investor education initiatives. This subsection
21 does not authorize the commissioner to require participation or
22 monetary contributions of a registrant in an investor education
23 program.

24 (f) The securities division enforcement account is established. Fees
25 and funds of whatever character accruing from the administration of
26 this article shall be accounted for by the secretary of state and shall be
27 deposited with the treasurer of state to be deposited by the treasurer of
28 the state in either the state general fund or the securities division
29 enforcement account. Subject to IC 4-2-6-15, expenses incurred in the
30 administration of this article shall be paid from the state general fund
31 upon appropriation being made for the expenses in the manner
32 provided by law for the making of those appropriations. The following
33 shall be deposited by the treasurer of state in the securities division
34 enforcement account:

- 35 (1) Grants and donations received under subsection (e).
36 (2) Costs of investigations recovered under section 4(e) of this
37 chapter.
38 (3) Fifty percent (50%) of the first four million dollars
39 (\$4,000,000):
40 (A) of a civil penalty recovered under section 3(b) or 4(d) of
41 this chapter;
42 (B) recovered in a settlement of an action initiated to enforce



- 1 this article; or
 2 (C) awarded as a judgment in an action to enforce this article.
 3 (g) The following shall be deposited by the treasurer of state in the
 4 state general fund:
 5 (1) Fifty percent (50%) of the first four million dollars
 6 (\$4,000,000):
 7 (A) of a civil penalty recovered under section 3(b) or 4(d) of
 8 this chapter;
 9 (B) recovered in a settlement of an action initiated to enforce
 10 this article; or
 11 (C) awarded as a judgment in an action to enforce this article.
 12 (2) Any amount exceeding four million dollars (\$4,000,000):
 13 (A) of a civil penalty recovered under section 3(b) or 4(d) of
 14 this chapter;
 15 (B) recovered in a settlement of an action initiated to enforce
 16 this article; or
 17 (C) awarded as a judgment in an action to enforce this article.
 18 (3) Other fees and revenues that are not designated for deposit in
 19 the securities division enforcement account or the securities
 20 restitution fund.
 21 (h) Notwithstanding IC 23-2-2.5-34, IC 23-2-2.5-43, ~~IC 23-2-5-7,~~
 22 **IC 23-2.5-2**, IC 23-19-4-12, IC 25-11-1-15, and this chapter, five
 23 percent (5%) of funds received for deposit in the securities division
 24 enforcement account shall instead be deposited in the securities
 25 restitution fund established by IC 23-20-1-25. Subject to IC 4-2-6-15,
 26 the funds deposited in the enforcement account shall be available, with
 27 the approval of the budget agency:
 28 (1) to augment and supplement the funds appropriated for the
 29 administration of this article; and
 30 (2) for grants and awards to nonprofit entities for programs and
 31 activities that will further investor education and financial literacy
 32 in the state.
 33 The funds in the enforcement account do not revert to the state general
 34 fund at the end of any state fiscal year.
 35 (i) In connection with the administration and enforcement of this
 36 article, the attorney general shall render all necessary assistance to the
 37 commissioner upon the commissioner's request, and to that end, the
 38 attorney general shall employ legal and other professional services as
 39 are necessary to adequately and fully perform the service under the
 40 direction of the commissioner as the demands of the securities division
 41 shall require. Expenses incurred by the attorney general for the
 42 purposes stated in this subsection shall be chargeable against and paid



1 out of funds appropriated to the attorney general for the administration
 2 of the attorney general's office. The attorney general may authorize the
 3 commissioner and the commissioner's designee to represent the
 4 commissioner and the securities division in any proceeding involving
 5 enforcement or defense of this article.

6 (j) Neither the secretary of state, the commissioner, nor an employee
 7 of the securities division shall be liable in their individual capacity,
 8 except to the state, for an act done or omitted in connection with the
 9 performance of their respective duties under this article.

10 (k) The commissioner shall take, prescribe, and file the oath of
 11 office prescribed by law. The commissioner, chief deputy
 12 commissioner, and each attorney or investigator designated by the
 13 commissioner are police officers of the state and shall have all the
 14 powers and duties of police officers in making arrests for violations of
 15 this article, or in serving any process, notice, or order connected with
 16 the enforcement of this article by whatever officer, authority, or court
 17 issued and shall comprise the enforcement department of the division
 18 and are considered a criminal justice agency for purposes of IC 5-2-4
 19 and IC 10-13-3.

20 (l) The provisions of this article delegating and granting power to
 21 the secretary of state, the securities division, and the commissioner
 22 shall be liberally construed to the end that:

- 23 (1) the practice or commission of fraud may be prohibited and
 24 prevented;
- 25 (2) disclosure of sufficient and reliable information in order to
 26 afford reasonable opportunity for the exercise of independent
 27 judgment of the persons involved may be assured; and
- 28 (3) the qualifications may be prescribed to assure availability of
 29 reliable broker-dealers, investment advisers, and agents engaged
 30 in and in connection with the issuance, barter, sale, purchase,
 31 transfer, or disposition of securities in this state.

32 It is the intent and purpose of this article to delegate and grant to and
 33 vest in the secretary of state, the securities division, and the
 34 commissioner full and complete power to carry into effect and
 35 accomplish the purpose of this article and to charge them with full and
 36 complete responsibility for its effective administration.

37 (m) Copies of any statement and documents filed in the office of the
 38 secretary of state and of any records of the secretary of state certified
 39 by the commissioner shall be admissible in any prosecution, action,
 40 suit, or proceeding based upon, arising out of, or under this article to
 41 the same effect as the original of such statement, document, or record
 42 would be if actually produced.



1 (n) IC 4-21.5 and any rules of practice adopted by the securities
2 division are applicable to administrative proceedings under this article.

3 SECTION 4. IC 24-4.4-1-202.5, AS AMENDED BY P.L.69-2018,
4 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2019]: Sec. 202.5. (1) If a person licensed or required to be
6 licensed by the department to engage in mortgage transactions also
7 engages in ~~the loan brokerage business~~, **activities of a loan broker**
8 **described in IC 23-2.5**, the ~~person's loan brokerage business is~~
9 **activities of a loan broker are** subject to the following sections of the
10 Indiana Code and any rules adopted to implement these sections:

11 (a) ~~IC 23-2-5-9~~: **IC 23-2.5-8-1.**

12 (b) ~~IC 23-2-5-9.1~~: **IC 23-2.5-8-2.**

13 (c) ~~IC 23-2-5-15~~: **IC 23-2.5-11-15(b) and IC 23-2.5-11-15(c).**

14 (d) ~~IC 23-2-5-16~~: **IC 23-2.5-11-17.**

15 (e) ~~IC 23-2-5-17~~: **IC 23-2.5-8-3.**

16 (f) ~~IC 23-2-5-18~~: **IC 23-2.5-8-4 through IC 23-2.5-8-9.**

17 (g) ~~IC 23-2-5-18.5~~: **IC 23-2.5-8-10.**

18 (h) ~~IC 23-2-5-20~~: **IC 23-2.5-10-1.**

19 (i) ~~IC 23-2-5-23~~; **IC 23-2.5-9-1**, except for ~~IC 23-2-5-23(2)(B)~~;
20 **IC 23-2.5-9-1(2)(B).**

21 (j) ~~IC 23-2-5-24~~: **IC 23-2.5-11-16.**

22 (2) Loan broker business transactions engaged in by persons
23 licensed or required to be licensed by the department to engage in
24 mortgage transactions are subject to examination by the department
25 and to the examination fees described in IC 24-4.4-2-402(8)(c). The
26 department may cooperate with the securities division of the office of
27 the secretary of state in the department's examination of loan broker
28 business transactions and may use the securities division's examiners
29 to conduct examinations.

30 SECTION 5. IC 24-4.4-1-204, AS ADDED BY P.L.35-2010,
31 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 JULY 1, 2019]: Sec. 204. In the department's examination and
33 regulatory activities related to licensees under this article, the
34 department may cooperate with the Indiana securities commissioner in
35 the regulation of entities that, in addition to conducting business
36 regulated under this article, also conduct a ~~loan brokerage business~~
37 **activities of a loan broker** subject to ~~IC 23-2-5~~: **IC 23-2.5.**

38 SECTION 6. IC 24-4.5-1-204, AS ADDED BY P.L.35-2010,
39 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 JULY 1, 2019]: Sec. 204. In examinations or other regulatory activities
41 conducted by the department and related to licensees under this article,
42 the department may cooperate with the Indiana securities commissioner



1 in the regulation of individuals who, in addition to conducting business
 2 regulated under this article, also conduct a loan broker business subject
 3 to ~~IC 23-2-5~~. **IC 23-2.5.**

4 SECTION 7. IC 24-4.5-3-501.5, AS ADDED BY P.L.186-2015,
 5 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2019]: Sec. 501.5. (1) If a person licensed or required to be
 7 licensed under section 502.1 of this chapter also engages in ~~the loan~~
 8 ~~brokerage business~~, **activities of a loan broker described in**
 9 **IC 23-2.5**, ~~the person's loan brokerage business is~~ **activities of a loan**
 10 **broker are** subject to the following sections of the Indiana Code and
 11 any rules adopted to implement these sections:

- 12 (a) ~~IC 23-2-5-9~~. **IC 23-2.5-8-1.**
 13 (b) ~~IC 23-2-5-9.1~~. **IC 23-2.5-8-2.**
 14 (c) ~~IC 23-2-5-15~~. **IC 23-2.5-11-15(b) and IC 23-2.5-11-15(c).**
 15 (d) ~~IC 23-2-5-16~~. **IC 23-2.5-11-17.**
 16 (e) ~~IC 23-2-5-17~~. **IC 23-2.5-8-3.**
 17 (f) ~~IC 23-2-5-18~~. **IC 23-2.5-8-4 through IC 23-2.5-8-9.**
 18 (g) ~~IC 23-2-5-18.5~~. **IC 23-2.5-8-10.**
 19 (h) ~~IC 23-2-5-20~~. **IC 23-2.5-10-1.**
 20 (i) ~~IC 23-2-5-23~~, **IC 23-2.5-9-1**, except for ~~IC 23-2-5-23(2)(B)~~.
 21 **IC 23-2.5-9-1(2)(B).**
 22 (j) ~~IC 23-2-5-24~~. **IC 23-2.5-11-16.**

23 (2) Loan broker business transactions engaged in by persons
 24 licensed or required to be licensed under section 502.1 of this chapter
 25 are subject to examination by the department and to the examination
 26 fees described in section 503(8)(b) of this chapter. The department may
 27 cooperate with the securities division of the office of the secretary of
 28 state in the department's examination of loan broker business
 29 transactions and may use the securities division's examiners to conduct
 30 examinations.

31 SECTION 8. IC 27-7-3-15.5, AS AMENDED BY P.L.124-2018,
 32 SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2019]: Sec. 15.5. (a) This section applies to the following
 34 transactions:

- 35 (1) A mortgage transaction (as defined in IC 24-9-3-7(a)) that:
 36 (A) is:
 37 (i) a first lien purchase money mortgage transaction; or
 38 (ii) a refinancing transaction; and
 39 (B) is closed by a closing agent after December 31, 2009.
 40 (2) A real estate transaction (as defined in IC 24-9-3-7(b)) that:
 41 (A) does not involve a mortgage transaction described in
 42 subdivision (1); and



- 1 (B) is closed by a closing agent (as defined in
 2 IC 6-1.1-12-43(a)(2)) after December 31, 2011.
- 3 (b) For purposes of this subsection, a person described in this
 4 subsection is involved in a transaction to which this section applies if
 5 the person participates in or assists with, or will participate in or assist
 6 with, a transaction to which this section applies. The department shall
 7 establish and maintain an electronic system for the collection and
 8 storage of the following information, to the extent applicable,
 9 concerning a transaction to which this section applies:
- 10 (1) In the case of a transaction described in subsection (a)(1), the
 11 name and license number (under ~~IC 23-2-5~~ **IC 23-2.5**) of each
 12 loan ~~brokerage business broker~~ **broker** involved in the transaction.
- 13 (2) In the case of a transaction described in subsection (a)(1), the
 14 name and license or registration number of any mortgage loan
 15 originator who is:
- 16 (A) either licensed or registered under state or federal law as
 17 a mortgage loan originator consistent with the Secure and Fair
 18 Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C.
 19 5101 et seq.); and
- 20 (B) involved in the transaction.
- 21 (3) The name and license number (under IC 25-34.1) of each:
- 22 (A) broker company; and
 23 (B) broker if any;
 24 involved in the transaction.
- 25 (4) The following information:
- 26 (A) The:
- 27 (i) name of; and
 28 (ii) code assigned by the NAIC to;
 29 each title insurance underwriter involved in the transaction.
- 30 (B) The type of title insurance policy issued in connection with
 31 the transaction.
- 32 (5) The name and license number (under IC 27-1-15.6) of each
 33 title insurance agency and agent involved in the transaction as a
 34 closing agent (as defined in IC 6-1.1-12-43(a)(2)).
- 35 (6) The following information:
- 36 (A) The name and:
- 37 (i) license or certificate number (under IC 25-34.1-3-8) of
 38 each licensed or certified real estate appraiser; or
 39 (ii) license number (under IC 25-34.1) of each broker;
 40 who appraises the property that is the subject of the
 41 transaction.
- 42 (B) The name and registration number (under



- 1 IC 25-34.1-11-10) of any appraisal management company that
 2 performs appraisal management services (as defined in
 3 IC 25-34.1-11-3) in connection with the transaction.
- 4 (7) In the case of a transaction described in subsection (a)(1), the
 5 name of the creditor and, if the creditor is required to be licensed
 6 under IC 24-4.4, the license number of the creditor.
- 7 (8) In the case of a transaction described in subsection
 8 (a)(1)(A)(i) or (a)(2), the name of the seller of the property that is
 9 the subject of the transaction.
- 10 (9) In the case of a transaction described in subsection
 11 (a)(1)(A)(i), the following information:
- 12 (A) The name of the buyer of the property that is the subject of
 13 the transaction.
- 14 (B) The purchase price of the property that is the subject of the
 15 transaction.
- 16 (C) The loan amount of the mortgage transaction.
- 17 (10) In the case of a transaction described in subsection (a)(2), the
 18 following information:
- 19 (A) The name of the buyer of the property that is the subject of
 20 the transaction.
- 21 (B) The purchase price of the property that is the subject of the
 22 transaction.
- 23 (11) In the case of a transaction described in subsection
 24 (a)(1)(A)(ii), the following information:
- 25 (A) The name of the borrower in the mortgage transaction.
- 26 (B) The loan amount of the refinancing.
- 27 (12) The:
- 28 (A) name; and
- 29 (B) license number, certificate number, registration number,
 30 or other code, as appropriate;
- 31 of any other person that is involved in a transaction to which this
 32 section applies, as the department may prescribe.
- 33 (c) The system established by the department under this section
 34 must include a form that:
- 35 (1) is uniformly accessible in an electronic format to the closing
 36 agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and
- 37 (2) allows the closing agent to do the following:
- 38 (A) Input information identifying the property that is the
 39 subject of the transaction by lot or parcel number, street
 40 address, or some other means of identification that the
 41 department determines:
- 42 (i) is sufficient to identify the property; and



- 1 (ii) is determinable by the closing agent.
- 2 (B) Subject to subsection (d) and to the extent determinable,
3 input the applicable information described in subsection (b).
- 4 (C) Respond to the following questions, if applicable:
- 5 (i) "On what date did you receive the closing instructions
6 from the creditor in the transaction?"
- 7 (ii) "On what date did the transaction close?"
- 8 (D) Submit the form electronically to a data base maintained
9 by the department.
- 10 (d) Not later than the time of the closing or the date of disbursement,
11 whichever is later, each person described in subsection (b), other than
12 a person described in subsection (b)(8), (b)(9), (b)(10), or (b)(11), shall
13 provide to the closing agent in the transaction the person's:
- 14 (1) legal name; and
- 15 (2) license number, certificate number, registration number, or
16 NAIC code, as appropriate;
- 17 to allow the closing agent to comply with subsection (c)(2)(B). In the
18 case of a transaction described in subsection (a)(1), the person
19 described in subsection (b)(7) shall, with the cooperation of any person
20 involved in the transaction and described in subsection (b)(6)(A) or
21 (b)(6)(B), provide the information described in subsection (b)(6). In the
22 case of a transaction described in subsection (a)(1)(A)(ii), the person
23 described in subsection (b)(7) shall also provide the information
24 described in subsection (b)(11). A person described in subsection
25 (b)(3)(B) who is involved in the transaction may provide the
26 information required by this subsection for a person described in
27 subsection (b)(3)(A) that serves as the broker company for the person
28 described in subsection (b)(3)(B). The closing agent shall determine
29 the information described in subsection (b)(8), (b)(9), and (b)(10) from
30 the HUD-1 settlement statement, or in the case of a transaction
31 described in subsection (a)(2), from the contract or any other document
32 executed by the parties in connection with the transaction.
- 33 (e) The closing agent in a transaction to which this section applies
34 shall submit the information described in subsection (d) to the data
35 base described in subsection (c)(2)(D) not later than twenty (20)
36 business days after the date of closing or the date of disbursement,
37 whichever is later.
- 38 (f) Except for a person described in subsection (b)(8), (b)(9),
39 (b)(10), or (b)(11), a person described in subsection (b) who fails to
40 comply with subsection (d) or (e) is subject to a civil penalty of one
41 hundred dollars (\$100) for each closing with respect to which the
42 person fails to comply with subsection (d) or (e). The penalty:



- 1 (1) may be enforced by the state agency that has administrative
 2 jurisdiction over the person in the same manner that the agency
 3 enforces the payment of fees or other penalties payable to the
 4 agency; and
 5 (2) shall be paid into the home ownership education account
 6 established by IC 5-20-1-27.
- 7 (g) Subject to subsection (h), the department shall make the
 8 information stored in the data base described in subsection (c)(2)(D)
 9 accessible to:
- 10 (1) each entity described in IC 4-6-12-4; and
 11 (2) the homeowner protection unit established under IC 4-6-12-2.
- 12 (h) The department, a closing agent who submits a form under
 13 subsection (c), each entity described in IC 4-6-12-4, and the
 14 homeowner protection unit established under IC 4-6-12-2 shall exercise
 15 all necessary caution to avoid disclosure of any information:
- 16 (1) concerning a person described in subsection (b), including the
 17 person's license, registration, or certificate number; and
 18 (2) contained in the data base described in subsection (c)(2)(D);
 19 except to the extent required or authorized by state or federal law.
- 20 (i) The department may adopt rules under IC 4-22-2, including
 21 emergency rules under IC 4-22-2-37.1, to implement this section. Rules
 22 adopted by the department under this subsection may establish
 23 procedures for the department to:
- 24 (1) establish;
 25 (2) collect; and
 26 (3) change as necessary;
- 27 an administrative fee to cover the department's expenses in establishing
 28 and maintaining the electronic system required by this section.
- 29 (j) If the department adopts a rule under IC 4-22-2 to establish an
 30 administrative fee to cover the department's expenses in establishing
 31 and maintaining the electronic system required by this section, as
 32 allowed under subsection (i), the department may:
- 33 (1) require the fee to be paid:
- 34 (A) to the closing agent responsible for inputting the
 35 information and submitting the form described in subsection
 36 (c)(2); and
 37 (B) by the borrower, the seller, or the buyer in the transaction;
- 38 (2) allow the closing agent described in subdivision (1)(A) to
 39 retain a part of the fee collected to cover the closing agent's costs
 40 in inputting the information and submitting the form described in
 41 subsection (c)(2); and
 42 (3) require the closing agent to pay the remainder of the fee



1 collected to the department for deposit in the title insurance
 2 enforcement fund established by IC 27-7-3.6-1, for the
 3 department's use in establishing and maintaining the electronic
 4 system required by this section.

5 SECTION 9. IC 35-41-4-2, AS AMENDED BY P.L.158-2017,
 6 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2019]: Sec. 2. (a) Except as otherwise provided in this section,
 8 a prosecution for an offense is barred unless it is commenced:

9 (1) within five (5) years after the commission of the offense, in
 10 the case of a Class B, Class C, or Class D felony (for a crime
 11 committed before July 1, 2014) or a Level 3, Level 4, Level 5, or
 12 Level 6 felony (for a crime committed after June 30, 2014); or
 13 (2) within two (2) years after the commission of the offense, in the
 14 case of a misdemeanor.

15 (b) A prosecution for a Class B or Class C felony (for a crime
 16 committed before July 1, 2014) or a Level 3, Level 4, or Level 5 felony
 17 (for a crime committed after June 30, 2014) that would otherwise be
 18 barred under this section may be commenced within one (1) year after
 19 the earlier of the date on which the state:

20 (1) first discovers evidence sufficient to charge the offender with
 21 the offense through DNA (deoxyribonucleic acid) analysis; or
 22 (2) could have discovered evidence sufficient to charge the
 23 offender with the offense through DNA (deoxyribonucleic acid)
 24 analysis by the exercise of due diligence.

25 (c) A prosecution for a Class A felony (for a crime committed
 26 before July 1, 2014) or a Level 1 felony or Level 2 felony (for a crime
 27 committed after June 30, 2014) may be commenced at any time.

28 (d) A prosecution for murder may be commenced:

29 (1) at any time; and
 30 (2) regardless of the amount of time that passes between:
 31 (A) the date a person allegedly commits the elements of
 32 murder; and
 33 (B) the date the alleged victim of the murder dies.

34 (e) A prosecution for the following offenses is barred unless
 35 commenced before the date that the alleged victim of the offense
 36 reaches thirty-one (31) years of age:

37 (1) IC 35-42-4-3(a) (Child molesting).
 38 (2) IC 35-42-4-5 (Vicarious sexual gratification).
 39 (3) IC 35-42-4-6 (Child solicitation).
 40 (4) IC 35-42-4-7 (Child seduction).
 41 (5) IC 35-46-1-3 (Incest).

42 (f) A prosecution for forgery of an instrument for payment of



1 money, or for the uttering of a forged instrument, under IC 35-43-5-2,
 2 is barred unless it is commenced within five (5) years after the maturity
 3 of the instrument.

4 (g) If a complaint, indictment, or information is dismissed because
 5 of an error, defect, insufficiency, or irregularity, a new prosecution may
 6 be commenced within ninety (90) days after the dismissal even if the
 7 period of limitation has expired at the time of dismissal, or will expire
 8 within ninety (90) days after the dismissal.

9 (h) The period within which a prosecution must be commenced does
 10 not include any period in which:

11 (1) the accused person is not usually and publicly resident in
 12 Indiana or so conceals himself or herself that process cannot be
 13 served;

14 (2) the accused person conceals evidence of the offense, and
 15 evidence sufficient to charge the person with that offense is
 16 unknown to the prosecuting authority and could not have been
 17 discovered by that authority by exercise of due diligence; or

18 (3) the accused person is a person elected or appointed to office
 19 under statute or constitution, if the offense charged is theft or
 20 conversion of public funds or bribery while in public office.

21 (i) For purposes of tolling the period of limitation only, a
 22 prosecution is considered commenced on the earliest of these dates:

23 (1) The date of filing of an indictment, information, or complaint
 24 before a court having jurisdiction.

25 (2) The date of issuance of a valid arrest warrant.

26 (3) The date of arrest of the accused person by a law enforcement
 27 officer without a warrant, if the officer has authority to make the
 28 arrest.

29 (j) A prosecution is considered timely commenced for any offense
 30 to which the defendant enters a plea of guilty, notwithstanding that the
 31 period of limitation has expired.

32 (k) The following apply to the specified offenses:

33 (1) A prosecution for an offense under IC 30-2-9-7(b) (misuse of
 34 funeral trust funds) is barred unless commenced within five (5)
 35 years after the date of death of the settlor (as described in
 36 IC 30-2-9).

37 (2) A prosecution for an offense under IC 30-2-10-9(b) (misuse
 38 of funeral trust funds) is barred unless commenced within five (5)
 39 years after the date of death of the settlor (as described in
 40 IC 30-2-10).

41 (3) A prosecution for an offense under IC 30-2-13-38(f) (misuse
 42 of funeral trust or escrow account funds) is barred unless



- 1 commenced within five (5) years after the date of death of the
 2 purchaser (as defined in IC 30-2-13-9).
- 3 (l) A prosecution for an offense under ~~IC 23-2-5~~, IC 23-2-6,
 4 **IC 23-2.5**, IC 23-14-48-9, or IC 23-19 is barred unless commenced
 5 within five (5) years after the earlier of the date on which the state:
 6 (1) first discovers evidence sufficient to charge the offender with
 7 the offense; or
 8 (2) could have discovered evidence sufficient to charge the
 9 offender with the offense by the exercise of due diligence.
- 10 (m) A prosecution for a sex offense listed in IC 11-8-8-4.5 that is
 11 committed against a child and that is not:
 12 (1) a Class A felony (for a crime committed before July 1, 2014)
 13 or a Level 1 felony or Level 2 felony (for a crime committed after
 14 June 30, 2014); or
 15 (2) listed in subsection (e);
 16 is barred unless commenced within ten (10) years after the commission
 17 of the offense, or within four (4) years after the person ceases to be a
 18 dependent of the person alleged to have committed the offense,
 19 whichever occurs later.
- 20 (n) A prosecution for rape (IC 35-42-4-1) as a Class B felony (for a
 21 crime committed before July 1, 2014) or as a Level 3 felony (for a
 22 crime committed after June 30, 2014) that would otherwise be barred
 23 under this section may be commenced not later than five (5) years after
 24 the earlier of the date on which:
 25 (1) the state first discovers evidence sufficient to charge the
 26 offender with the offense through DNA (deoxyribonucleic acid)
 27 analysis;
 28 (2) the state first becomes aware of the existence of a recording
 29 (as defined in IC 35-31.5-2-273) that provides evidence sufficient
 30 to charge the offender with the offense; or
 31 (3) a person confesses to the offense.
- 32 (o) A prosecution for criminal deviate conduct (IC 35-42-4-2)
 33 (repealed) as a Class B felony for a crime committed before July 1,
 34 2014, that would otherwise be barred under this section may be
 35 commenced not later than five (5) years after the earliest of the date on
 36 which:
 37 (1) the state first discovers evidence sufficient to charge the
 38 offender with the offense through DNA (deoxyribonucleic acid)
 39 analysis;
 40 (2) the state first becomes aware of the existence of a recording
 41 (as defined in IC 35-31.5-2-273) that provides evidence sufficient
 42 to charge the offender with the offense; or



1 (3) a person confesses to the offense.
2 SECTION 10. IC 35-52-23-3 IS REPEALED [EFFECTIVE JULY
3 1, 2019]. ~~Sec. 3. IC 23-2-5-16 defines a crime concerning securities~~
4 ~~and franchises.~~
5 SECTION 11. IC 35-52-23-4.3 IS ADDED TO THE INDIANA
6 CODE AS A NEW SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2019]: **Sec. 4.3. IC 23-2.5-11-17 defines a**
8 **crime concerning securities and franchises.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1440, 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 1440 as introduced.)

BURTON

Committee Vote: Yeas 10, Nays 0

COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1440, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to HB 1440 as printed January 29, 2019.)

BASSLER, Chairperson

Committee Vote: Yeas 7, Nays 0

