

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

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

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

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

## HOUSE ENROLLED ACT No. 1440

---

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:*

SECTION 1. IC 23-2-5 IS REPEALED [EFFECTIVE JULY 1, 2019]. (Loan Brokers).

SECTION 2. IC 23-2.5 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

### **ARTICLE 2.5. LOAN BROKERS**

#### **Chapter 1. Definitions**

**Sec. 1. The definitions in this chapter apply throughout this article.**

**Sec. 2. "Appraisal company" means a business entity that:**

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

**Sec. 3. "Bona fide third party fee", with respect to a residential mortgage loan, includes any of the following:**

- (1) Fees for real estate appraisals. However, if the residential mortgage loan is governed by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (12 U.S.C. 3331 through 3352), the fee for an appraisal performed**

HEA 1440



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

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

(3) Notary and credit report fees.

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

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

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

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

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

(1) licensed under this article; and

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

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

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

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

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

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

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

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

Sec. 11. "Immediate family", with respect to an individual, refers to:

(1) the individual's spouse who resides in the individual's



household; and

(2) any dependent child of the individual.

**Sec. 12. "Licensee" means a person that is issued a license under this article.**

**Sec. 13. "Loan" means an agreement to advance money or property in return for the promise to make payments for the money or property.**

**Sec. 14. (a) "Loan broker" means a person who, in return for consideration from any source:**

- (1) procures;**
- (2) attempts to procure; or**
- (3) assists in procuring;**

**a residential mortgage loan from a third party, regardless of whether the person seeking the loan obtains the loan.**

**(b) The term "loan broker" does not include:**

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

**Sec. 15. "Loan broker employee" means an individual:**

- (1) who is an employee of a single loan broker who is licensed under this article;**
- (2) for whom the loan broker, in addition to providing a wage or salary:**
  - (A) pays Social Security and unemployment taxes; and**
  - (B) withholds local, state, and federal income taxes;**
- (3) who acts at the direction of, and subject to the supervision of, the loan broker or a principal manager employed by the loan broker; and**
- (4) who performs loan processing activities on behalf of the loan broker.**



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

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

- (1) at which a person holds itself out as engaging in the activities of a loan broker;**
- (2) the address of which appears on business cards, on stationery, or in advertising in connection with the activities of a loan broker;**
- (3) at which the person's name, advertising, promotional materials, or signage suggests that residential mortgage loans are originated, negotiated, funded, or serviced; or**
- (4) where the person otherwise engages in conduct that suggests to the public that the activities of a loan broker may occur at the location.**

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

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

- (1) The receipt, collection, distribution, and analysis of information commonly used in the processing of a residential mortgage loan.**
- (2) Communicating with a borrower or potential borrower to obtain the information necessary for the processing of a residential mortgage loan, to the extent that the communication does not include:**
  - (A) offering or negotiating loan rates or terms; or**
  - (B) counseling borrowers or potential borrowers about residential mortgage loan rates or terms.**

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

- (1) performs loan processing activities for compensation; and**
- (2) holds itself out to the public as engaging in loan processing activities.**

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

**Sec. 21. "Mortgage loan origination activities" means performance of any of the following activities for compensation or gain in connection with a residential mortgage loan:**

- (1) Receiving or recording a borrower's or potential borrower's residential mortgage loan application information**



in any form for use in a credit decision by a creditor.

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

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

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

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

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

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

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

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

(1) creditors;

(2) mortgage loan originators;

(3) other financial services entities; and

(4) employees and agents of the persons described in subdivisions (1) through (3).

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

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

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

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

(2) Any of the following data elements:

(A) A Social Security number.



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

**Sec. 27. "Principal manager" means an individual who has at least three (3) years of experience as a mortgage loan originator and is principally responsible for the supervision and management of the employees and business affairs of not more than five (5) loan broker offices.**

**Sec. 28. "Principal manager license" means a license issued by the commissioner authorizing an individual to act as:**

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

**on behalf of a loan broker.**

**Sec. 29. "Principal place of business" means the loan broker office designated by a loan broker or an applicant for a loan broker license as the primary or main office. If a loan broker operates only one (1) loan broker office, the loan broker office is considered to be the principal place of business of the loan broker.**

**Sec. 30. "Real estate appraiser" means a person who:**

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

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

- (1) Acting as a real estate broker for a buyer, seller, lessor, or



lessee of real property.

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

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

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

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

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

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

are accessible as part of the personal information.

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

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

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

- (1) that is or will be used primarily for personal, family, or household purposes; and
- (2) that is secured by a mortgage (or another equivalent consensual security interest) on:
  - (A) a dwelling (as defined in Section 103(w) of the federal Truth in Lending Act (15 U.S.C. 1602(w)); or
  - (B) residential real estate.

Sec. 35. "Residential real estate" means real property:



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

Sec. 36. "Securities division" refers to the division of the office of the secretary of state described in IC 23-19-6-1(a).

Sec. 37. "State licensed mortgage loan originator" means an individual who:

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

Sec. 38. "Ultimate equitable owner" means a person that, directly or indirectly, owns or controls ten percent (10%) or more of the equity interest in a loan broker, regardless of whether the person owns or controls the equity interest through:

- (1) one (1) or more other persons; or
- (2) one (1) or more proxies, powers of attorney, or variances.

Sec. 39. "Unique identifier" means a number or other identifier that:

- (1) permanently identifies a:
  - (A) loan broker;
  - (B) principal manager;
  - (C) mortgage loan originator; or
  - (D) branch office; and
- (2) is assigned by protocols established by the Nationwide Mortgage Licensing System and the federal financial institutions regulatory agencies (as defined in 12 U.S.C. 3350(6)) to facilitate the:





- (A) electronic tracking of; and
  - (B) uniform identification of, and public access to:
    - (i) the employment history of; and
    - (ii) any publicly adjudicated disciplinary and enforcement actions against;
- a person described in subdivision (1).

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

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

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

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

- (1) is continuously appropriated for the purposes of this article; and
- (2) does not revert to any other account within the state general fund at the end of a state fiscal year.

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

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

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

- (1) unique identifier from the Nationwide Multistate Licensing System; and
- (2) loan broker license from the commissioner.

(b) A person desiring to engage in the activities of a loan broker shall apply to the commissioner for a loan broker license under this



article.

**Sec. 2. (a) An individual may not act as a principal manager in Indiana unless the individual first obtains a:**

- (1) unique identifier from the Nationwide Multistate Licensing System; and**
- (2) principal manager license from the commissioner.**

**(b) An individual may not act as a mortgage loan originator in Indiana unless the individual first obtains a:**

- (1) unique identifier from the Nationwide Multistate Licensing System; and**
- (2) mortgage loan originator license from the commissioner.**

**(c) An individual desiring to act as a principal manager or mortgage loan originator on behalf of a loan broker shall apply to the commissioner for a principal manager license or a mortgage loan originator license under this article, as applicable.**

**Sec. 3. An individual may not engage in loan processing activities unless the individual:**

- (1) is employed by a loan processing company; and**
- (2) obtains a mortgage loan originator license under this article.**

**Sec. 4. (a) A loan broker may not operate a branch office in Indiana unless the loan broker first obtains a:**

- (1) unique identifier from the Nationwide Multistate Licensing System; and**
- (2) branch office license from the commissioner.**

**(b) A loan broker shall apply to the commissioner for a branch office license under this article.**

**Sec. 5. Before engaging in loan processing activities, a loan processing company shall file a loan processing company notice filing.**

#### **Chapter 4. License Issuance and Renewal**

**Sec. 1. (a) An application for issuance or renewal of a loan broker license must contain the following:**

- (1) Consent to service of process under section 9 of this chapter.**
- (2) Evidence of the bond required by section 12 of this chapter.**
- (3) An application fee of two hundred dollars (\$200), plus one hundred dollars (\$100) for each ultimate equitable owner.**
- (4) An affidavit affirming that none of the applicant's ultimate equitable owners, directors, managers, or officers have been convicted, in any jurisdiction, of:**



(A) 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 commissioner.

(b) An application under subsection (a) must include the following information for the individual who seeks to be licensed as a principal manager:



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

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



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

- (1) The name of the individual.**
- (2) The home address of the individual.**
- (3) The home telephone number of the individual.**
- (4) The individual's Social Security number and date of birth.**
- (5) The name of the:**

**(A) loan broker; or**

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

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

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

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

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

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

**(10) All:**

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

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

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

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

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

**(b) An application under subsection (a) must include the following information for the location for which licensure as a branch office is sought:**

**(1) The address of the branch office.**

**(2) The name and license number of the principal manager**



who will be designated by the loan broker to supervise the branch office.

(3) The name and license number of the individual who will be designated to act as branch manager of the branch office.

(4) An application fee of seventy-five dollars (\$75).

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

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

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

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

(1) act as a loan broker, principal manager, or mortgage loan originator; or

(2) operate as a branch office;

unless the licensee annually renews the license.

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

(1) filing with the commissioner, at least thirty (30) days before the date on which the license expires, an application containing any information the commissioner requires to indicate any material change from the information contained in the applicant's original application or any previous application; and

(2) including, with the filing under subdivision (1), the applicable application fee specified in this chapter.

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

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

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

(1) voluntarily by the principal manager or mortgage loan



originator; or

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

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

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

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

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

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

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

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

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

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

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

(b) Every three (3) years at the time of application for renewal of a license issued under this chapter, beginning with the third calendar year following the calendar year during which the initial license is issued, the commissioner shall require the following to



submit fingerprints for a national criminal history background check (as defined in IC 10-13-3-12) for use by the commissioner in determining whether the equitable owner of a loan broker, an individual described in subdivision (1), or the applicant should be denied renewal of a license under this chapter for a reason set forth in IC 23-2.5-11-1 or IC 23-2.5-11-2:

- (1) In the case of an applicant for licensure as a loan broker, each ultimate equitable owner, equitable owner, director, manager, and officer.
- (2) An applicant for licensure as a principal manager.
- (3) An applicant for licensure as a mortgage loan originator.

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

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

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

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

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

- (1) is satisfactory to the commissioner;
- (2) is in the amount of sixty thousand dollars (\$60,000); and
- (3) covers the activities of each principal manager and mortgage loan originator employed by the loan broker.

Sec. 13. (a) The commissioner may request evidence of compliance with this chapter at any of the following times:

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





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

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

#### **Chapter 5. Loan Processing Company Notice Filing and Renewal**

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

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

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

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

- (1) expires on December 31 of each year; and
- (2) must be refilled annually.

(b) A loan processing company shall update and renew the loan processing company's notice filing at least thirty (30) days before the date on which the loan processing company notice filing expires



by resubmitting the information and fee set forth in section 2 of this chapter.

(c) A loan processing company that engages in loan processing activities without filing or renewing a loan processing company notice filing as required by this chapter violates this article.

Sec. 4. A loan processing company may not employ an individual to engage in loan processing activities unless the individual maintains a valid mortgage loan originator license under this article.

Sec. 5. A loan processing company bears the burden of showing that the loan processing company is in compliance with this chapter.

Sec. 6. (a) If the commissioner determines that a loan processing company or loan processor has violated this article, the commissioner may issue any notice or order determined by the commissioner to be in the public interest.

(b) A notice or order issued by the commissioner under subsection (a):

- (1) may include remedies; and
- (2) must follow the procedural requirements;

specified in IC 23-2.5-11.

Sec. 7. (a) A loan processing company shall, before engaging in loan processing activities, file with the commissioner on a form prescribed by the commissioner an irrevocable consent appointing the secretary of state as the loan processing company's agent to receive service of process in a noncriminal suit, action, or proceeding against the loan processing company arising from a violation of this article.

(b) Service of process described in subsection (a) must be made in accordance with Indiana Rules of Trial Procedure.

Sec. 8. If a loan processing company ceases to engage in loan processing activities for any reason, the loan processing company shall do the following:

- (1) Before ceasing loan processing activities, arrange for the preservation and maintenance of the records described in IC 23-2.5-9-2 for the remainder of the two (2) year maintenance period required by IC 23-2.5-9-2.
- (2) Notify the commissioner of the exact physical address where the records will be maintained under subdivision (1).

#### Chapter 6. Education and Examination

Sec. 1. (a) An applicant for an initial license under IC 23-2.5-4 shall provide to the commissioner evidence that, during the



twenty-four (24) month period immediately preceding the application, the applicant completed at least twenty (20) hours of academic education that is acceptable to the commissioner and approved by the Nationwide Multistate Licensing System.

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

- (1) Three (3) hours of federal law and regulations concerning residential mortgage lending.
- (2) Three (3) hours of ethics, including instruction on fraud, consumer protection, and fair lending practices.
- (3) Two (2) hours of training concerning lending standards for nontraditional residential mortgage loan products.
- (4) Two (2) hours of state law and rules concerning residential mortgage lending.

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

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

- (1) Three (3) hours of federal law and regulations concerning residential mortgage lending.
- (2) Two (2) hours of ethics, including instruction on fraud, consumer protection, and fair lending practices.
- (3) Two (2) hours of training concerning lending standards for nontraditional residential mortgage loan products.

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

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

(b) The commissioner may charge a fee, in an amount prescribed by the commissioner, for the commissioner's review of an education course to determine acceptability of the course as required by this chapter.

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

- (1) principal manager; or



**(2) mortgage loan originator;**  
under IC 23-2.5-4 to pass a written examination prepared and administered by the commissioner or an agent appointed by the commissioner and approved by the Nationwide Multistate Licensing System.

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

- (1) Ethics.**
- (2) Federal laws and regulations concerning the origination of residential mortgage loans.**
- (3) State laws and rules concerning the origination of residential mortgage loans.**

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

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

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

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

- (1) allows the individual's license or registration to lapse; or**
- (2) otherwise has not been a registered mortgage loan originator, issued a mortgage loan originator license, issued a principal manager license, or otherwise maintained a license or registration to perform mortgage loan origination activities;**

**for a period of at least five (5) years, the individual must pass the written examination required by this chapter as a condition of relicensure or reregistration.**

**Sec. 7. If an individual does not obtain a license within two (2) years after the date on which the individual passes the written examination for the license as required by this chapter, the**



commissioner may not issue the license to the individual unless the individual passes the written examination again.

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

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

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

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

- (1) advertising; or
- (2) other means of communicating or providing information, including business cards, stationery, brochures, signs, rate lists, or other promotional items;

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

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

- (1) mortgage loan originators employed by the loan broker; and
- (2) loan broker offices operated by the loan broker;

to ensure compliance with this article.

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

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

- (1) operated by the loan broker; and
- (2) in excess of the number permitted under subsection (a).

**Sec. 6. (a)** A principal manager shall complete at least one (1) compliance examination per year of each loan broker office for which the principal manager is the supervisor designated under section 4 of this chapter.

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



- (1) at the principal place of business; and
- (2) for a minimum of five (5) years after the calendar year in which the examination is completed.

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

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

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

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

- (1) by a mortgage loan originator who is supervised by the principal manager; or
- (2) that occurs at a branch office that is supervised by the principal manager;

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

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

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

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

#### **Chapter 8. Conduct of Business**

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

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

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

"No statement or representation by a loan broker is valid or



enforceable unless the statement or representation is in writing."

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

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

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

- (1) a licensee;
- (2) a person required to be licensed under this article; or
- (3) a member of the immediate family of a licensee;

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

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

- (1) The interest in the appraisal company owned or controlled by the person or combination of persons shall not be increased after June 30, 2007.
- (2) The interest of a licensee shall not be transferred to a member of the licensee's immediate family.
- (3) If the commissioner determines that any person or combination of persons described in subsection (b) has violated this chapter, the commissioner may order one (1) or more of the persons to divest their interest in the appraisal company. The commissioner may exercise the remedy provided by this subdivision in addition to, or as a substitute for, any other remedy available to the commissioner under this article.

Sec. 3. (a) If a transaction for which a loan broker has charged a fee is rescinded by a person under the federal Truth in Lending Act (15 U.S.C. 1601-1667e) within twenty (20) calendar days after the date on which a notice of the rescission is delivered to the creditor, the loan broker shall return to the person any consideration received by the loan broker other than bona fide third party fees.

(b) For purposes of calculating the period during which a



person may avoid a contract under IC 24-5-10-8 or IC 24-4.5-2-502, a contract with a loan broker is considered to be a sale of services that occurs on the date on which the person signs the written contract required by section 1 of this chapter.

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

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

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

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

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

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

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

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

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

**(2) All:**

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

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

**recorded so that the transactions are readily identifiable.**

**(3) A:**

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

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

**(4) A sample of:**

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

**(i) in a newspaper, magazine, or periodical; or**

**(ii) by other means of distribution;**

**(B) scripts of any recording, radio, or video announcement;**





- (C) any sales kits or literature; and
- (D) any Internet communication distributed to at least ten (10) persons;

used in the solicitation of borrowers.

(5) A report that:

- (A) lists all residential mortgage loans originated by the loan broker, including pending loans and loans that were not closed;
- (B) is searchable by, or organized according to, the borrower's or prospective borrower's last name; and
- (C) includes the following information for each residential mortgage loan listed:
  - (i) The name and address of the borrower or prospective borrower.
  - (ii) The name of the creditor.
  - (iii) The name of the mortgage loan originator.
  - (iv) The loan amount.
  - (v) The status of the loan, including the date of closing or denial by the creditor.
  - (vi) The interest rate for the loan.

The report required by this subdivision may be prepared or produced by or through the loan broker's loan origination software or other software used by the loan broker.

Sec. 6. (a) The records maintained under section 5 of this chapter must be:

- (1) maintained for two (2) years in the office of the loan broker in which the loan was originated; and
- (2) separate or readily identifiable from the records of any other business that is conducted in the office of the loan broker.

(b) If the office in which records must be maintained under this section is located outside Indiana, the records must be:

- (1) made available to the securities division at a location that is:
  - (A) located in Indiana; and
  - (B) accessible to the securities division; or
- (2) maintained electronically and made available to the securities division not later than ten (10) business days after a request by the securities division to inspect or examine the records.

Sec. 7. (a) A loan broker that ceases to conduct business as a loan broker or allows the loan broker license to lapse shall, before



ceasing to conduct business as a loan broker, arrange for the preservation of the records specified in section 5 of this chapter for the remainder of the period specified in section 6(a)(1) of this chapter during which the loan broker ceases to conduct business as a loan broker.

(b) A loan broker described in subsection (a) shall notify the commissioner of the exact address of the physical location where the books and records will be maintained during the period described in subsection (a).

**Sec. 8. If a breach of the security of a record:**

- (1) maintained by a loan broker under this chapter; and
- (2) containing the unencrypted, unredacted personal information of a borrower or prospective borrower;

occurs, the loan broker is subject to the disclosure requirements of IC 24-4.9-3, unless the loan broker is exempt from the disclosure requirements under IC 24-4.9-3-4.

**Sec. 9. A licensee may not dispose of the unencrypted, unredacted personal information of a borrower or prospective borrower without first shredding, incinerating, mutilating, erasing, or otherwise rendering the information illegible or unusable.**

**Sec. 10. If a licensee or a person required to be licensed under this article possesses funds that belong to another person, including money received by or on behalf of a prospective borrower, the licensee or person required to be licensed shall:**

- (1) upon request of the prospective borrower, account for the funds possessed for the prospective borrower;
- (2) follow reasonable and lawful instructions from the prospective borrower concerning the prospective borrower's funds; and
- (3) return the prospective borrower's unspent funds to the prospective borrower in a timely manner.

**Sec. 11. (a) A loan broker shall, when required by the commissioner, submit reports of condition to the:**

- (1) commissioner; and
- (2) Nationwide Multistate Licensing System.

(b) A report required by this section must be in the form and contain the information required by the commissioner.

#### **Chapter 9. Residential Mortgage Loan Transaction Documents**

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

- (1) the loan broker; and



**(2) each:**

- (A) mortgage loan originator; and**
- (B) principal manager;**

**who had contact with the file.**

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

- (1) The records required to be maintained under this section are the records pertaining to the part of each transaction the loan processing company conducts.**
- (2) The records must be maintained for at least two (2) years in the office of the loan processing company.**
- (3) The records must be readily identifiable or separate from the records of any other business conducted by the loan processing company.**

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

- (1) made available to the securities division at a location that is:**
  - (A) located in Indiana; and**
  - (B) accessible to the securities division; or**
- (2) maintained electronically and made available to the securities division not later than ten (10) business days after a request by the securities division to inspect or examine the records.**

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

- (1) are maintained by a loan processing company under this chapter; and**
- (2) contain the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers;**

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

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

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



- (A) The personal information is:**
  - (i) included on an application form or another form; or**
  - (ii) transmitted as part of an application or enrollment process.**
- (B) The personal information is used to obtain a consumer report (as defined in IC 24-5-24-2) for an applicant for credit.**
- (C) The personal information is used to:**
  - (i) establish, amend, or terminate an account, a contract, or a policy; or**
  - (ii) confirm the accuracy of the personal information.**

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

- (8) Engage in reckless or negligent activity allowing the release or disclosure of the unencrypted, unredacted personal information of a borrower or prospective borrower, including an action prohibited by IC 23-2.5-8-9.**
- (9) Knowingly bribe, coerce, or intimidate another person to corrupt or improperly influence the independent judgment of a real estate appraiser with respect to the value of real estate offered as security for a residential mortgage loan, as prohibited by IC 23-2.5-8-2.**

- (10) Violate any of the following:**
  - (A) The federal Truth in Lending Act (15 U.S.C. 1601 et seq.).**
  - (B) The federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.).**
  - (C) The federal Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.).**
  - (D) Another federal law or regulation concerning residential mortgage lending.**

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

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

**Chapter 11. Violations and Civil Enforcement**

**Sec. 1. The commissioner may deny an application for an initial**



or a renewal license under this article, and may suspend or revoke the license of a licensee, if the applicant, the licensee, or an ultimate equitable owner of a loan broker or an applicant for a loan broker license:

- (1) has, within the most recent ten (10) years:
  - (A) been the subject of an adjudication or a determination by:
    - (i) a court with jurisdiction; or
    - (ii) an agency or administrator that regulates securities, commodities, banking, financial services, insurance, real estate, or the real estate appraisal industry; in Indiana or any other jurisdiction; and
  - (B) been found, after notice and opportunity for hearing, to have violated the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal laws of the state or any other jurisdiction;
- (2) except as provided in section 2(1) of this chapter with respect to the activities of a loan broker, has:
  - (A) been denied the right to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry; or
  - (B) had the person's authority to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry revoked or suspended; by the state or another state, federal, or foreign governmental agency or self-regulatory organization;
- (3) is insolvent;
- (4) has violated this article;
- (5) has knowingly filed with the commissioner a document or statement that:
  - (A) contains a false representation of a material fact;
  - (B) fails to state a material fact; or
  - (C) contains a representation that becomes false:
    - (i) after the filing; and
    - (ii) during the term of the license;
 and does not notify the commissioner as required by IC 23-2.5-4-8;
- (6) has been convicted, during the ten (10) years preceding the date of the application, renewal, or review, of a crime, other than a felony, involving fraud or deceit;
- (7) if the person is a loan broker or a principal manager, has



failed to reasonably supervise the person's mortgage loan originators, loan processors or underwriters, or employees to ensure compliance with this article;

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

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

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

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

(1) has had a:

(A) loan broker license issued under this article;

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

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

(D) license that is:

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

(ii) issued by another jurisdiction;

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

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

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

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

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

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

(A) command the confidence of the community in which the applicant or licensee engages or will engage in the activities of a loan broker; and

(B) warrant a determination by the commissioner that the applicant or licensee will operate honestly, fairly, and



- efficiently according to the requirements of this article;
- (5) has failed to meet the education requirements set forth in IC 23-2.5-6;
- (6) has failed to pass the written examination required by IC 23-2.5-6; or
- (7) fails to:
- (A) keep or maintain records in accordance with IC 23-2.5-8; or
- (B) allow the commissioner or an agent appointed by the commissioner to inspect or examine a loan broker's books and records to determine compliance with IC 23-2.5-8.

**Sec. 3. (a) If the commissioner determines that a person has engaged in or is about to engage in an act or a practice that violates this article or a rule or an order under this article, the commissioner may investigate and issue:**

- (1) with a prior hearing if there exists no substantial threat of immediate irreparable harm; or
- (2) without a prior hearing if there exists a substantial threat of immediate irreparable harm;

orders and notices determined by the commissioner to be in the public interest, including cease and desist orders, orders to show cause, and notices.

(b) After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who the commissioner determines has violated this article or a rule or an order under this article.

(c) If the commissioner determines, after a hearing, that a person has violated this article or a rule or an order under this article, the commissioner may, in addition to other remedies, impose a civil penalty on the person in an amount not to exceed ten thousand dollars (\$10,000) for each violation.

(d) Upon the commissioner's issuance under subsection (a) of an order or notice without a prior hearing, the commissioner shall promptly notify:

- (1) the respondent; and
- (2) if the subject of the order or notice is a mortgage loan originator or a principal manager, the loan broker for whom the mortgage loan originator or principal manager is employed;

of the issuance of the order or notice.

(e) The notification required by subsection (d) must include the





following:

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

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

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

(f) If a hearing:

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

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

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

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

(1) Censure:

(A) a licensee;

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

(C) another person;

who violates or causes a violation of this article.

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

(A) licensed under this article; or

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

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

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

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

(2) imposing another sanction;

without prior notice to all interested parties, opportunity for a



hearing, and written findings of fact and conclusions of law.

(b) The commissioner may, by summary order, deny, suspend, or revoke a license:

- (1) pending final determination of a proceeding under this chapter; or
- (2) before a proceeding is initiated under this chapter.

(c) Upon the entry of a summary order under subsection (b), the commissioner shall promptly notify all interested parties:

- (1) that the summary order has been entered;
- (2) of the reasons for the summary order; and
- (3) that, upon receipt by the commissioner of a written request from a party, the matter will be set for hearing to commence not later than forty-five (45) business days after the commissioner's receipt of the request.

(d) If a hearing:

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

the summary order remains in effect until the summary order is modified or vacated by the commissioner.

(e) If a hearing is requested under subsection (c) or ordered by the commissioner, the commissioner may:

- (1) after notice of the hearing has been given to all interested persons; and
- (2) the hearing has been held;

modify or vacate the summary order or extend the summary order until final determination is made.

Sec. 6. (a) The commissioner may do the following:

- (1) Issue forms and orders to implement this article.
- (2) Adopt rules under IC 4-22-2 to implement this article.
- (3) Repeal rules, including rules and forms governing applications, notice filings, reports, and other records.
- (4) Define terms consistent with this article, whether or not used in this article.
- (5) Conduct investigations and examinations:
  - (A) in connection with an application for licensure, or a license issued, under this article;
  - (B) whenever it appears to the commissioner, upon the basis of a complaint or information, that reasonable grounds exist for the belief that an investigation or examination is necessary or advisable for the more complete protection of the interests of the public; and
  - (C) including investigations and examinations of a loan



broker office, principal place of business, branch office, location listed in a mortgage loan originator's application under IC 23-2.5-4-3, appraisal company, or loan processing company.

(6) Charge, as costs of investigation or examination, reasonable expenses including:

(A) a per diem prorated on the salary of the:

(i) commissioner; or

(ii) employee performing the investigation or examination; and

(B) actual travel and hotel expenses;

to be paid by the person that is under investigation or examination and that is determined to have violated this article.

(7) After conducting an investigation or examination, issue notices and orders, including cease and desist notices and orders. A notice or order issued under this subdivision must include the following:

(A) Notice that the notice or order is issued.

(B) Notice that if the commissioner receives from the person a written request for a hearing concerning the notice or order, a hearing will be set not later than:

(i) fifteen (15) business days after the commissioner receives the request if the original order issued by the commissioner was a summary suspension, summary revocation, or denial of a license; and

(ii) forty-five (45) business days after the commissioner receives the request for an order not described in item (i).

(8) Sign, or delegate to a deputy commissioner the authority to sign orders, official certifications, documents, or papers issued under this article.

(9) Hold and conduct hearings.

(10) Hear evidence.

(11) Conduct inquiries, with or without hearings.

(12) Receive reports of investigators or other officers or employees of the state or a municipal corporation or governmental subdivision in Indiana.

(13) Administer, or cause to be administered, oaths.

(14) Subpoena witnesses and compel witnesses to attend and testify.

(15) Compel the production of books, records, and other



documents.

**(16) Order depositions to be:**

- (A) taken of witnesses that reside in Indiana or elsewhere;**
- (B) taken in the manner prescribed by law for depositions in civil actions; and**
- (C) made returnable to the commissioner.**

**(17) Order the same fees and mileage allowances provided for witnesses in civil cases to be paid to each witness who appears under the commissioner's order to testify before the commissioner.**

**(18) Provide interpretive opinions or issue determinations that the commissioner will not institute a proceeding or an action under this article against a specified person for engaging in a specified act, practice, or course of business if:**

- (A) the request for the interpretive opinion or determination is made after the date on which the specified act, practice, or course of business occurs; and**
- (B) the interpretive opinion or determination is consistent with this article.**

**(19) Adopt rules to establish fees for individuals requesting an interpretive opinion or a determination under subdivision (18).**

**(20) Subject to subsection (b):**

**(A) designate a multistate automated licensing system and repository (including the Nationwide Multistate Licensing System), established and operated by a third party, to serve as the sole entity responsible for:**

- (i) processing applications for license issuance and renewal under this article; and**
- (ii) performing other services that the commissioner determines are necessary for the orderly administration of the securities division's licensing system; and**

**(B) take action necessary to allow the securities division to participate in a multistate automated licensing system and repository described in clause (A).**

**(b) The commissioner's authority to designate a multistate automated licensing system and repository under subsection (a)(20) is subject to the following:**

**(1) The commissioner may not require:**

- (A) a person that is not required to be licensed under this article; or**
- (B) an employee or agent of a person that is not required**



to be licensed under this article;  
to submit information to or participate in the multistate automated licensing system and repository.

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

(c) The commissioner shall do the following:

(1) Subject to IC 5-14-3, regularly report:

(A) violations of this article; and

(B) enforcement actions and other relevant information;  
to the Nationwide Multistate Licensing System.

(2) Establish a process by which a mortgage loan originator may challenge information entered by the commissioner into the Nationwide Multistate Licensing System.

Sec. 7. (a) If a witness, in a hearing, an inquiry, or an investigation conducted under this article, refuses to answer a question or produce an item, the commissioner may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry is conducted requesting a hearing on the refusal.

(b) The court described in subsection (a) shall hold a hearing to determine if the witness may refuse to answer the question or produce the item.

(c) If the court described in subsection (a) determines that the witness, based upon the witness's privilege against self-incrimination, may properly refuse to answer or produce an item, the commissioner may make a written request that the court grant use immunity to the witness.

(d) Upon written request of the commissioner under subsection (c), the court shall grant use immunity to the witness and instruct the witness, by written order or in open court, that:

(1) any evidence the witness gives, or evidence derived from the evidence given, may not be used in a criminal proceeding against the witness, unless the evidence is volunteered by the witness or is not responsive to a question; and

(2) the witness must answer the questions asked and produce the items requested.

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

HEA 1440



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

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

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

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

(1) A person disobeys a lawful:

(A) subpoena issued under this article; or

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

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

(A) appear when subpoenaed;

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

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

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

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

(A) demand is made; or

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

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

shall compel compliance with the lawful requirements of the subpoena, order, or demand, compel the production of the necessary or required books, papers, records, documents, and other evidence and information, and compel the witness to attend in an Indiana county and to testify to any matter about which the witness may lawfully be interrogated, and to take or subscribe to any oath required.

**Sec. 10.** The commissioner may bring an action in the circuit or superior court of Marion County to enforce payment of a penalty



imposed under this article.

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

- (1) is; or**
- (2) materially aids;**

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

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

- (1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;**
- (2) order other appropriate or ancillary relief, including:**
  - (A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator;**
  - (B) ordering a receiver or conservator appointed under clause (A) to:**
    - (i) take control of a respondent's property, including investment accounts and accounts in a depository institution, rents, and profits;**
    - (ii) collect debts; and**
    - (iii) acquire and dispose of property;**
  - (C) imposing a civil penalty of not more than ten thousand dollars (\$10,000) per violation and an order of rescission, restitution, or disgorgement directed to the person that has engaged in an act, practice, or course of business constituting a violation of this article or a rule adopted or an order issued under this article; and**
  - (D) ordering the payment of prejudgment and postjudgment interest; or**
- (3) order other relief that the court considers appropriate.**

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

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

**Sec. 12. (a) An appeal may be taken, to the Marion circuit court**



or the circuit or superior court of the county where the person taking the appeal resides or maintains a place of business, by the following:

- (1) A person whose application for issuance or renewal of a license under this article is granted or denied, from any final order of the commissioner concerning the application.
- (2) An applicant for issuance or renewal of a license as a principal manager or a mortgage loan originator, from any final order of the commissioner affecting the application.
- (3) An applicant for issuance or renewal of a license for a loan broker office from any final order of the commissioner affecting the application.
- (4) A person against whom a civil penalty is imposed under section 3(c) of this chapter, from the final order of the commissioner imposing the civil penalty.
- (5) A person who is named as a respondent, from any final order of the commissioner under this article.

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

- (1) a written notice of the appeal specifying the court to which the appeal will be taken and the grounds on which a reversal of the final order is sought;
- (2) a demand in writing from the appellant for a certified transcript of the record and all papers on file in the commissioner's office that affect or relate to the order; and
- (3) a bond in the penal sum of five hundred dollars (\$500) to the state with sufficient surety to be approved by the commissioner, conditioned on the faithful prosecution of the appeal to final judgment and the payment of all costs that are adjudged against the appellant.

(c) Not later than ten (10) days after the date on which the commissioner is served with the items listed in subsection (b), the commissioner shall make, certify, and deliver to the appellant the transcript, and the appellant shall, not later than five (5) days after the date on which the appellant receives the transcript, file the transcript and a copy of the notice of appeal with the clerk of the court. The notice of appeal serves as the appellant's complaint. The commissioner may appear and file a motion or pleading and form the issue. The cause must be entered on the trial calendar for trial de novo and given precedence over all matters pending in the court.

(d) The court shall receive and consider any pertinent oral or





written evidence concerning the order of the commissioner from which an appeal under this section is taken. If the order of the commissioner is reversed, the court shall in the court's mandate specifically direct the commissioner concerning the commissioner's further action in the matter. The commissioner is not barred from revoking or altering the order for proper cause that accrues or is discovered after the order is entered. If the order is affirmed, the appellant is not barred after thirty (30) days after the date on which the order is affirmed from filing a new application if the application is not otherwise barred or limited. During the pendency of the appeal, the order from which the appeal is taken is not suspended but remains in effect unless otherwise ordered by the court. An appeal may be taken from the judgment of the court on the same terms and conditions as an appeal is taken in civil actions.

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

**Sec. 14.** Upon:

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

(A) subpoena issued under this article; or

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

(2) the refusal of a witness to:

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

or

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

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

**Sec. 15. (a)** If a person fails, refuses, or neglects to comply with a court order under this chapter, the person must be held in contempt of court.

(b) A person who violates this article or a rule adopted under this article, in connection with a contract for the activities of a loan



broker, is liable to a person damaged by the violation for:

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

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

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

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

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

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

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

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

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

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

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

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

as in effect before their repeal.

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

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

**Sec. 3.** Unless a license issued under IC 23-2-5, before its repeal,



is suspended or revoked before the date on which the license would have expired under IC 23-2-5, before its repeal, the license is valid until the date on which the license would have expired under IC 23-2-5, before its repeal.

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

- (1) a statement of policy;**
- (2) an administrative order;**
- (3) a rule;**
- (4) an interpretive opinion;**
- (5) a declaratory ruling;**
- (6) a no-action determination;**
- (7) a condition; or**
- (8) another action of the commissioner under IC 23-2-5, before its repeal;**

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

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

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

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

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

(b) The secretary of state:

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

(c) It is unlawful for the commissioner or an officer, employee, or designee of the commissioner to use for personal benefit or the benefit of others records or other information obtained by or filed with the

**HEA 1440**



commissioner that is not public under section 7(b) of this chapter. This article does not authorize the commissioner or an officer, employee, or designee of the commissioner to disclose the record or information, except in accordance with section 2, 7(c), or 8 of this chapter.

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

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

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

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

(g) The following shall be deposited by the treasurer of state in the state general fund:

**HEA 1440**



- (1) Fifty percent (50%) of the first four million dollars (\$4,000,000):
  - (A) of a civil penalty recovered under section 3(b) or 4(d) of this chapter;
  - (B) recovered in a settlement of an action initiated to enforce this article; or
  - (C) awarded as a judgment in an action to enforce this article.
- (2) Any amount exceeding four million dollars (\$4,000,000):
  - (A) of a civil penalty recovered under section 3(b) or 4(d) of this chapter;
  - (B) recovered in a settlement of an action initiated to enforce this article; or
  - (C) awarded as a judgment in an action to enforce this article.
- (3) Other fees and revenues that are not designated for deposit in the securities division enforcement account or the securities restitution fund.

(h) Notwithstanding IC 23-2-2.5-34, IC 23-2-2.5-43, ~~IC 23-2-5-7~~, **IC 23-2.5-2**, IC 23-19-4-12, IC 25-11-1-15, and this chapter, five percent (5%) of funds received for deposit in the securities division enforcement account shall instead be deposited in the securities restitution fund established by IC 23-20-1-25. Subject to IC 4-2-6-15, the funds deposited in the enforcement account shall be available, with the approval of the budget agency:

- (1) to augment and supplement the funds appropriated for the administration of this article; and
- (2) for grants and awards to nonprofit entities for programs and activities that will further investor education and financial literacy in the state.

The funds in the enforcement account do not revert to the state general fund at the end of any state fiscal year.

(i) In connection with the administration and enforcement of this article, the attorney general shall render all necessary assistance to the commissioner upon the commissioner's request, and to that end, the attorney general shall employ legal and other professional services as are necessary to adequately and fully perform the service under the direction of the commissioner as the demands of the securities division shall require. Expenses incurred by the attorney general for the purposes stated in this subsection shall be chargeable against and paid out of funds appropriated to the attorney general for the administration of the attorney general's office. The attorney general may authorize the commissioner and the commissioner's designee to represent the commissioner and the securities division in any proceeding involving

**HEA 1440**



enforcement or defense of this article.

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

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

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

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

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

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

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

SECTION 4. IC 24-4.4-1-202.5, AS AMENDED BY P.L.69-2018, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

**HEA 1440**



JULY 1, 2019]: Sec. 202.5. (1) If a person licensed or required to be licensed by the department to engage in mortgage transactions also engages in ~~the loan brokerage business~~, **activities of a loan broker described in IC 23-2.5**, the ~~person's loan brokerage business is~~ **activities of a loan broker are** subject to the following sections of the Indiana Code and any rules adopted to implement these sections:

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

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

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

SECTION 6. IC 24-4.5-1-204, AS ADDED BY P.L.35-2010, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 204. In examinations or other regulatory activities conducted by the department and related to licensees under this article, the department may cooperate with the Indiana securities commissioner in the regulation of individuals who, in addition to conducting business regulated under this article, also conduct a loan broker business subject to ~~IC 23-2-5~~; **IC 23-2.5.**

SECTION 7. IC 24-4.5-3-501.5, AS ADDED BY P.L.186-2015,

**HEA 1440**



SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 501.5. (1) If a person licensed or required to be licensed under section 502.1 of this chapter also engages in ~~the loan brokerage business,~~ **activities of a loan broker described in IC 23-2.5,** the ~~person's loan brokerage business is~~ **activities of a loan broker** are subject to the following sections of the Indiana Code and any rules adopted to implement these sections:

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

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

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

- (1) A mortgage transaction (as defined in IC 24-9-3-7(a)) that:
  - (A) is:
    - (i) a first lien purchase money mortgage transaction; or
    - (ii) a refinancing transaction; and
  - (B) is closed by a closing agent after December 31, 2009.
- (2) A real estate transaction (as defined in IC 24-9-3-7(b)) that:
  - (A) does not involve a mortgage transaction described in subdivision (1); and
  - (B) is closed by a closing agent (as defined in IC 6-1.1-12-43(a)(2)) after December 31, 2011.

(b) For purposes of this subsection, a person described in this subsection is involved in a transaction to which this section applies if





the person participates in or assists with, or will participate in or assist with, a transaction to which this section applies. The department shall establish and maintain an electronic system for the collection and storage of the following information, to the extent applicable, concerning a transaction to which this section applies:

- (1) In the case of a transaction described in subsection (a)(1), the name and license number (under ~~IC 23-2-5~~ **IC 23-2.5**) of each loan ~~brokerage business broker~~ **broker** involved in the transaction.
- (2) In the case of a transaction described in subsection (a)(1), the name and license or registration number of any mortgage loan originator who is:
  - (A) either licensed or registered under state or federal law as a mortgage loan originator consistent with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.); and
  - (B) involved in the transaction.
- (3) The name and license number (under IC 25-34.1) of each:
  - (A) broker company; and
  - (B) broker if any;
 involved in the transaction.
- (4) The following information:
  - (A) The:
    - (i) name of; and
    - (ii) code assigned by the NAIC to;
 each title insurance underwriter involved in the transaction.
  - (B) The type of title insurance policy issued in connection with the transaction.
- (5) The name and license number (under IC 27-1-15.6) of each title insurance agency and agent involved in the transaction as a closing agent (as defined in IC 6-1.1-12-43(a)(2)).
- (6) The following information:
  - (A) The name and:
    - (i) license or certificate number (under IC 25-34.1-3-8) of each licensed or certified real estate appraiser; or
    - (ii) license number (under IC 25-34.1) of each broker; who appraises the property that is the subject of the transaction.
  - (B) The name and registration number (under IC 25-34.1-11-10) of any appraisal management company that performs appraisal management services (as defined in IC 25-34.1-11-3) in connection with the transaction.
- (7) In the case of a transaction described in subsection (a)(1), the



name of the creditor and, if the creditor is required to be licensed under IC 24-4.4, the license number of the creditor.

(8) In the case of a transaction described in subsection (a)(1)(A)(i) or (a)(2), the name of the seller of the property that is the subject of the transaction.

(9) In the case of a transaction described in subsection (a)(1)(A)(i), the following information:

(A) The name of the buyer of the property that is the subject of the transaction.

(B) The purchase price of the property that is the subject of the transaction.

(C) The loan amount of the mortgage transaction.

(10) In the case of a transaction described in subsection (a)(2), the following information:

(A) The name of the buyer of the property that is the subject of the transaction.

(B) The purchase price of the property that is the subject of the transaction.

(11) In the case of a transaction described in subsection (a)(1)(A)(ii), the following information:

(A) The name of the borrower in the mortgage transaction.

(B) The loan amount of the refinancing.

(12) The:

(A) name; and

(B) license number, certificate number, registration number, or other code, as appropriate;

of any other person that is involved in a transaction to which this section applies, as the department may prescribe.

(c) The system established by the department under this section must include a form that:

(1) is uniformly accessible in an electronic format to the closing agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and

(2) allows the closing agent to do the following:

(A) Input information identifying the property that is the subject of the transaction by lot or parcel number, street address, or some other means of identification that the department determines:

(i) is sufficient to identify the property; and

(ii) is determinable by the closing agent.

(B) Subject to subsection (d) and to the extent determinable, input the applicable information described in subsection (b).

(C) Respond to the following questions, if applicable:



(i) "On what date did you receive the closing instructions from the creditor in the transaction?"

(ii) "On what date did the transaction close?"

(D) Submit the form electronically to a data base maintained by the department.

(d) Not later than the time of the closing or the date of disbursement, whichever is later, each person described in subsection (b), other than a person described in subsection (b)(8), (b)(9), (b)(10), or (b)(11), shall provide to the closing agent in the transaction the person's:

(1) legal name; and

(2) license number, certificate number, registration number, or NAIC code, as appropriate;

to allow the closing agent to comply with subsection (c)(2)(B). In the case of a transaction described in subsection (a)(1), the person described in subsection (b)(7) shall, with the cooperation of any person involved in the transaction and described in subsection (b)(6)(A) or (b)(6)(B), provide the information described in subsection (b)(6). In the case of a transaction described in subsection (a)(1)(A)(ii), the person described in subsection (b)(7) shall also provide the information described in subsection (b)(11). A person described in subsection (b)(3)(B) who is involved in the transaction may provide the information required by this subsection for a person described in subsection (b)(3)(A) that serves as the broker company for the person described in subsection (b)(3)(B). The closing agent shall determine the information described in subsection (b)(8), (b)(9), and (b)(10) from the HUD-1 settlement statement, or in the case of a transaction described in subsection (a)(2), from the contract or any other document executed by the parties in connection with the transaction.

(e) The closing agent in a transaction to which this section applies shall submit the information described in subsection (d) to the data base described in subsection (c)(2)(D) not later than twenty (20) business days after the date of closing or the date of disbursement, whichever is later.

(f) Except for a person described in subsection (b)(8), (b)(9), (b)(10), or (b)(11), a person described in subsection (b) who fails to comply with subsection (d) or (e) is subject to a civil penalty of one hundred dollars (\$100) for each closing with respect to which the person fails to comply with subsection (d) or (e). The penalty:

(1) may be enforced by the state agency that has administrative jurisdiction over the person in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and

**HEA 1440**



(2) shall be paid into the home ownership education account established by IC 5-20-1-27.

(g) Subject to subsection (h), the department shall make the information stored in the data base described in subsection (c)(2)(D) accessible to:

- (1) each entity described in IC 4-6-12-4; and
- (2) the homeowner protection unit established under IC 4-6-12-2.

(h) The department, a closing agent who submits a form under subsection (c), each entity described in IC 4-6-12-4, and the homeowner protection unit established under IC 4-6-12-2 shall exercise all necessary caution to avoid disclosure of any information:

- (1) concerning a person described in subsection (b), including the person's license, registration, or certificate number; and
  - (2) contained in the data base described in subsection (c)(2)(D);
- except to the extent required or authorized by state or federal law.

(i) The department may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to implement this section. Rules adopted by the department under this subsection may establish procedures for the department to:

- (1) establish;
- (2) collect; and
- (3) change as necessary;

an administrative fee to cover the department's expenses in establishing and maintaining the electronic system required by this section.

(j) If the department adopts a rule under IC 4-22-2 to establish an administrative fee to cover the department's expenses in establishing and maintaining the electronic system required by this section, as allowed under subsection (i), the department may:

- (1) require the fee to be paid:
  - (A) to the closing agent responsible for inputting the information and submitting the form described in subsection (c)(2); and
  - (B) by the borrower, the seller, or the buyer in the transaction;
- (2) allow the closing agent described in subdivision (1)(A) to retain a part of the fee collected to cover the closing agent's costs in inputting the information and submitting the form described in subsection (c)(2); and
- (3) require the closing agent to pay the remainder of the fee collected to the department for deposit in the title insurance enforcement fund established by IC 27-7-3.6-1, for the department's use in establishing and maintaining the electronic system required by this section.



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

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

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

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

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

(d) A prosecution for murder may be commenced:

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

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

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

(f) A prosecution for forgery of an instrument for payment of money, or for the uttering of a forged instrument, under IC 35-43-5-2, is barred unless it is commenced within five (5) years after the maturity of the instrument.

(g) If a complaint, indictment, or information is dismissed because

**HEA 1440**



of an error, defect, insufficiency, or irregularity, a new prosecution may be commenced within ninety (90) days after the dismissal even if the period of limitation has expired at the time of dismissal, or will expire within ninety (90) days after the dismissal.

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

- (1) the accused person is not usually and publicly resident in Indiana or so conceals himself or herself that process cannot be served;
- (2) the accused person conceals evidence of the offense, and evidence sufficient to charge the person with that offense is unknown to the prosecuting authority and could not have been discovered by that authority by exercise of due diligence; or
- (3) the accused person is a person elected or appointed to office under statute or constitution, if the offense charged is theft or conversion of public funds or bribery while in public office.

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

- (1) The date of filing of an indictment, information, or complaint before a court having jurisdiction.
- (2) The date of issuance of a valid arrest warrant.
- (3) The date of arrest of the accused person by a law enforcement officer without a warrant, if the officer has authority to make the arrest.

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

(k) The following apply to the specified offenses:

- (1) A prosecution for an offense under IC 30-2-9-7(b) (misuse of funeral trust funds) is barred unless commenced within five (5) years after the date of death of the settlor (as described in IC 30-2-9).
- (2) A prosecution for an offense under IC 30-2-10-9(b) (misuse of funeral trust funds) is barred unless commenced within five (5) years after the date of death of the settlor (as described in IC 30-2-10).
- (3) A prosecution for an offense under IC 30-2-13-38(f) (misuse of funeral trust or escrow account funds) is barred unless commenced within five (5) years after the date of death of the purchaser (as defined in IC 30-2-13-9).

(l) A prosecution for an offense under ~~IC 23-2-5~~, IC 23-2-6, IC 23-2.5, IC 23-14-48-9, or IC 23-19 is barred unless commenced

**HEA 1440**



within five (5) years after the earlier of the date on which the state:

- (1) first discovers evidence sufficient to charge the offender with the offense; or
- (2) could have discovered evidence sufficient to charge the offender with the offense by the exercise of due diligence.

(m) A prosecution for a sex offense listed in IC 11-8-8-4.5 that is committed against a child and that is not:

- (1) a Class A felony (for a crime committed before July 1, 2014) or a Level 1 felony or Level 2 felony (for a crime committed after June 30, 2014); or
- (2) listed in subsection (e);

is barred unless commenced within ten (10) years after the commission of the offense, or within four (4) years after the person ceases to be a dependent of the person alleged to have committed the offense, whichever occurs later.

(n) A prosecution for rape (IC 35-42-4-1) as a Class B felony (for a crime committed before July 1, 2014) or as a Level 3 felony (for a crime committed after June 30, 2014) that would otherwise be barred under this section may be commenced not later than five (5) years after the earlier of the date on which:

- (1) the state first discovers evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) analysis;
- (2) the state first becomes aware of the existence of a recording (as defined in IC 35-31.5-2-273) that provides evidence sufficient to charge the offender with the offense; or
- (3) a person confesses to the offense.

(o) A prosecution for criminal deviate conduct (IC 35-42-4-2) (repealed) as a Class B felony for a crime committed before July 1, 2014, that would otherwise be barred under this section may be commenced not later than five (5) years after the earliest of the date on which:

- (1) the state first discovers evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) analysis;
- (2) the state first becomes aware of the existence of a recording (as defined in IC 35-31.5-2-273) that provides evidence sufficient to charge the offender with the offense; or
- (3) a person confesses to the offense.

SECTION 10. IC 35-52-23-3 IS REPEALED [EFFECTIVE JULY 1, 2019]. See: 3. IC 23-2-5-16 defines a crime concerning securities and franchises.

**HEA 1440**



SECTION 11. IC 35-52-23-4.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 4.3. IC 23-2.5-11-17 defines a crime concerning securities and franchises.**





---

Speaker of the House of Representatives

---

President of the Senate

---

President Pro Tempore

---

Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

**HEA 1440**

