

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1462

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

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

SECTION 1. IC 23-2-2.5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 8. **(a)** The commissioner may determine whether any proposed offer or sale is entitled to an exemption. However, the commissioner may decline to exercise that authority as to any such offer or sale. Any interested party desiring the commissioner to exercise **that the authority to determine whether a proposed offer or sale is entitled to an exemption** shall submit to the commissioner **the following**:

- (1) A verified statement of all material facts relating to the proposed offer or sale. ~~which verified statement shall be accompanied by~~
- (2) **Documentation demonstrating that the requirements for exemption under sections 3, 4, and 5 of this chapter, and any rules adopted under those sections, are met.**
- (3) A **written** request for a ruling as to the particular exemption claimed. ~~together with~~
- (4) A filing fee of fifty dollars (\$50.00).

**(b)** After such notice to interested parties as the commissioner deems proper and after a hearing, if any, the commissioner may enter an order finding the proposed offer or sale entitled or not entitled to the exemption claimed. Any order so entered, unless an appeal be taken

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therefrom in the manner prescribed in this chapter is binding upon the commissioner and upon all interested parties if the proposed offer or sale of a franchise when consummated or issued conforms in every relevant and material particular with the facts set forth in the verified statement submitted.

SECTION 2. IC 23-2-4-5, AS AMENDED BY P.L.153-2009, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 5. (a) Each year after the initial year in which a continuing care retirement community is registered under section 3 of this chapter, the provider shall file with the commissioner ~~within not later than~~ four (4) months after the end of the provider's fiscal year, unless otherwise extended by the written consent of the commissioner ~~under subsection (c)~~, an annual disclosure statement which shall consist of the financial information set forth in section 4(11) of this chapter.

(b) The annual disclosure statement required to be filed with the commissioner under this section shall be accompanied by an annual filing fee of one hundred dollars (\$100), ~~which shall be paid to the commissioner not later than four (4) months after the end of the provider's fiscal year, regardless whether the commissioner issues an extension under subsection (c)~~.

(c) ~~The commissioner may, by issuing a written statement, extend the time in which a provider files its annual disclosure statement. However, an extension under this subsection shall not allow an annual disclosure statement to be filed later than twelve (12) months after the end of the provider's fiscal year. The commissioner may request information from a provider to determine whether an extension is necessary.~~

(d) ~~A provider that receives an extension under subsection (c) and has not filed its annual disclosure statement during the period specified in subsection (a) shall inform all prospective residents, in a manner prescribed by the commissioner, that the provider has received an extension for filing its annual disclosure statement.~~

SECTION 3. IC 23-2.5-3-3, AS ADDED BY P.L.175-2019, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: 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. has met the requirements described in IC 23-2.5-5-4.~~

SECTION 4. IC 23-2.5-3-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY



1, 2021]: **Sec. 6. A registered mortgage loan originator is not required to obtain a license under this article.**

SECTION 5. IC 23-2.5-5-4, AS ADDED BY P.L.175-2019, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: 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.~~

- (1) has completed the education and examination requirements for a mortgage loan originator; and
- (2) is registered to conduct business in Indiana through the **Nationwide Multistate Licensing System.**

SECTION 6. IC 23-19-4-12, AS AMENDED BY P.L.85-2012, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 12. (a) If the commissioner finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this article may deny an application, or may condition or limit registration, of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

(b) If the commissioner finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this article may revoke, suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser. However, the commissioner may not:

- (1) institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the commissioner or a designee of the commissioner more than one (1) year after the date of the order on which it is based; or
- (2) under subsection (d)(5)(A) and (d)(5)(B), issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this state.
- (c) If the commissioner finds that the order is in the public interest and subsection (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(6), (d)(8), (d)(9),

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(d)(11), (d)(12), or (d)(13) authorizes the action, an order under this article may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of ten thousand dollars (\$10,000) per violation on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

(d) A person may be disciplined under subsections (a) through (c) if the person:

- (1) has filed an application for registration in this state under this article or the predecessor act within the previous ten (10) years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;
- (2) knowingly violated or knowingly failed to comply with this article or the predecessor act or a rule adopted or order issued under this article or the predecessor act within the previous ten (10) years;
- (3) has been convicted of a felony or within the previous ten (10) years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;
- (4) is enjoined or restrained by a court with jurisdiction in an action instituted by the commissioner under this article or the predecessor act, a state, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;
- (5) is the subject of an order, issued after notice and opportunity for hearing, by:
  - (A) the securities, depository institution, insurance, or other financial services regulator of a state or by the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;
  - (B) the securities regulator of a state or the Securities and Exchange Commission against a broker-dealer, agent,



investment adviser, investment adviser representative, or federal covered investment adviser;

(C) the Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;

(D) a court adjudicating a United States Postal Service fraud order;

(E) the insurance regulator of a state denying, suspending, or revoking registration as an insurance agent;

(F) a depository institution regulator suspending or barring the person from the depository institution business; or

(G) any state regulatory body or organization governing real estate brokers or sales persons denying, suspending, or revoking a person's registration or license in the real estate industry;

(6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;

(7) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the commissioner may not enter an order against an applicant or registrant under this subdivision without a finding of insolvency as to the applicant or registrant;

(8) refuses to allow or otherwise impedes the commissioner from conducting an audit or inspection under section 11(d) of this chapter or refuses access to a registrant's office to conduct an audit or inspection under section 11(d) of this chapter;

(9) has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this article or the predecessor act or a rule adopted or order issued under this



article or the predecessor act within the previous ten (10) years; (10) has not paid the proper filing fee within thirty (30) days after having been notified by the commissioner of a deficiency, but the commissioner shall vacate an order under this subdivision when the deficiency is corrected;

(11) after notice and opportunity for a hearing, has been found within the previous ten (10) years:

(A) by a court with jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(B) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or

(C) to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

(12) is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;

(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten (10) years;

(14) is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this subdivision if the individual has successfully completed all examinations required by subsection (e). The commissioner may require an applicant for registration under section 2 or 4 of this chapter who has not been registered in a state within the two (2) years preceding the filing of an application in this state to successfully complete an examination;

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

(16) is an individual who is:

(A) an applicant for registration as an agent for a broker-dealer



or as an investment adviser representative; or

(B) registered as an agent for a broker-dealer or as an investment adviser representative;

and has failed to comply with a court order imposing a child support obligation; or

**(17) fails to comply with the disclosure requirements set forth under IC 24-4.9-3.**

(e) A rule adopted or order issued under this article may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this article may waive, in whole or in part, an examination as to an individual and a rule adopted under this article may waive, in whole or in part, an examination as to a class of individuals if the commissioner determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) The commissioner may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the commissioner shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the commissioner within thirty (30) days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) An order may not be issued under this section, except under subsection (f), without:

(1) appropriate notice to the applicant or registrant;

(2) opportunity for hearing; and

(3) findings of fact and conclusions of law in a record.

(h) A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the commissioner under subsections (a) through (c) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(i) The commissioner may not institute a proceeding under



subsection (a), (b), or (c) based solely on material facts actually known by the commissioner unless an investigation or the proceeding is instituted within one (1) year after the commissioner actually acquires knowledge of the material facts.

(j) All fines and penalties collected under this section shall be deposited into the securities division enforcement account as established by IC 23-19-6-1(f).

SECTION 7. IC 25-11-1-1, AS AMENDED BY P.L.145-2006, SECTION 159, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 1. As used in this chapter, unless the context otherwise requires:

(a) The term "person" means any individual, firm, partnership, limited liability company, or corporation.

(b) The term "collection agency" means and includes all persons engaging directly or indirectly and as a primary or secondary object, business, or pursuit, in soliciting claims for collection, or in the collection of claims owed or due or asserted to be owed or due to another, including child support arrearages under IC 31-25-4. The term "collection agency" also means and includes, but shall not be limited to, any person who sells, furnishes, or maintains a letter or written demand service, including stickers or coupon books, designed for the purpose of making demand on any debtor on behalf of any creditor for the payment of any claim wherein the person furnishing or maintaining such letter or written demand service, including stickers or coupon books, shall sell such services for a stated amount or for a percentage of money collected whether paid to the creditor or to the collection agency, or where such services may be rendered as a part of a membership in such collection agency regardless of whether or not a separate fee or percentage is charged. The term "collection agency" shall also include, but not be limited to, any individual, firm, partnership, limited liability company, or corporation who uses a fictitious name, or any name other than the individual's or entity's name, in the collection of accounts receivable with the intention of conveying to the debtor that a third person has been employed.

(c) The term "claim" means any obligation for the payment of money or its equivalent and any sum or sums owed or due or asserted to be owed or due to another, for which any person may be employed to demand payment and to collect or enforce payment thereof. The term "claim" also includes obligations for the payment of money in the form of conditional sales agreements, notwithstanding that the personal property sold thereunder, for which payment is claimed, may be or is repossessed in lieu of payment.



**(d) The term "branch office" means a fixed physical location:**

- (1) that is not designated by a collection agency as its main office; and**
- (2) where one (1) or more of the following occur:**
  - (A) A person holds itself out as a collection agency or engages in conduct that suggests to the public that the person acts as a collection agency.**
  - (B) The address of the branch office appears on the business cards or other advertisement material of the collection agency.**
  - (C) A person's name, advertising, promotional materials, or signage suggests that a person acts as a collection agency.**

SECTION 8. IC 25-11-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 7. (a) It is unlawful for any person to conduct, within this state, a collection agency without first having applied for and obtained a license under the provisions of this chapter.

(b) It is unlawful for any person conducting a collection agency within this state to fail to render an account of and pay to the client, for whom collection has been made, the proceeds of such collection, less the charges for collection in accordance with the terms of agreement between the applicant and client. This account shall be made within sixty (60) days from the date of the collection of any claim.

(c) It is unlawful for any person conducting a collection agency, within this state, to fail to deposit with a local depository not less than one (1) time each week all money due and owing to clients collected by said person, and keep the same on deposit in such depository in a special account until remitted to the clients. It shall be unlawful for any person to fail to keep a record of the money collected and the remittance thereof.

**(d) It is unlawful for any person to operate a branch office without having first satisfied the requirements for operating a branch office as described in section 3(c) and 3(e) of this chapter.**

**(e) It is unlawful for any person licensed under this chapter to fail to comply with any disclosure requirements under IC 24-4.9.**



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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

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

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