

SENATE BILL No. 334

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.4; IC 24-4.5-3.

Synopsis: Mortgage lending. Provides that a depository institution that is exempt from the Indiana statute concerning the licensing of creditors in first lien mortgage transactions may voluntarily register with the department of financial institutions (department) for the purpose of retaining and sponsoring, under an exclusive written contract, licensed mortgage loan originators if the depository institution does the following: (1) Assumes responsibility for and reasonably supervises the activities of the licensed loan originators. (2) Complies with certain requirements under the statute concerning: (A) registering with the Nationwide Mortgage Licensing System and Registry (NMLSR); (B) maintaining a surety bond; (C) submitting reports to the NMLSR; and (D) filing financial statements with the department. (3) Cooperates with the department, and provides access to records and documents, as required by the department in examining the activities of the licensed loan originators. Makes conforming amendments to similar provisions in the Uniform Consumer Credit Code concerning the licensing of creditors in subordinate lien mortgage transactions.

Effective: July 1, 2014.

Walker

January 14, 2014, read first time and referred to Committee on Financial Institutions.



Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 334

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

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

1 SECTION 1. IC 24-4.4-1-202, AS AMENDED BY P.L.13-2013,
2 SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 202. (a) As used in this section, "balloon
4 payment", with respect to a mortgage transaction, means any payment:
5 (1) that the creditor requires the debtor to make at any time during
6 the term of the mortgage;
7 (2) that represents the entire amount of the outstanding balance
8 with respect to the mortgage; and
9 (3) the entire amount of which is due as of a specified date or at
10 the end of a specified period;
11 if the aggregate amount of the minimum periodic payments required
12 under the mortgage would not fully amortize the outstanding balance
13 by the specified date or at the end of the specified period. The term
14 does not include a payment required by a creditor under a due-on-sale
15 clause (as defined in 12 U.S.C. 1701j-3(a)) or a payment required by
16 a creditor under a provision in the mortgage that permits the creditor



1 to accelerate the debt upon the debtor's default or failure to abide by the
2 material terms of the mortgage.

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

4 (1) Extensions of credit to government or governmental agencies
5 or instrumentalities.

6 (2) A first lien mortgage transaction in which the debt is incurred
7 primarily for a purpose other than a personal, family, or
8 household purpose.

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

11 (4) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3,
12 IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a first lien mortgage
13 transaction made:

14 (a) in compliance with the requirements of; and

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

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

19 (5) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3,
20 IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a first lien mortgage
21 transaction made by an entity that exclusively uses funds provided
22 by the United States Department of Housing and Urban
23 Development under Title 1 of the federal Housing and
24 Community Development Act of 1974, Public Law 93-383, as
25 amended (42 U.S.C. 5301 et seq.).

26 (6) An extension of credit originated by **the following:**

27 (a) A depository institution. **However, a depository**
28 **institution may voluntarily register with the department**
29 **for the purpose of retaining and sponsoring, under an**
30 **exclusive written contract, individuals who are licensed as**
31 **mortgage loan originators under this article and 750**
32 **IAC 9-3, and who perform mortgage loan origination**
33 **activities under the depository institution's direct**
34 **supervision and control, if the depository institution does**
35 **the following:**

36 (i) **Assumes responsibility for and reasonably supervises**
37 **the activities of all licensed loan originators retained and**
38 **sponsored by the depository institution under this clause.**

39 (ii) **Registers with and maintains a valid unique identifier**
40 **issued by the NMLSR as required by IC 24-4.4-2-401(2),**
41 **maintains a surety bond in accordance with**
42 **IC 24-4.4-2-402.3, submits to the NMLSR reports of**



1 **condition in accordance with IC 24-4.4-2-405(4) (subject**
 2 **to IC 24-4.4-2-402.4), and files financial statements with**
 3 **the department in accordance with IC 24-4.4-2-405(5).**

4 **(iii) Cooperates with the department, and provides**
 5 **access to records and documents, as required by the**
 6 **department in carrying out examinations of the activities**
 7 **of the licensed loan originators retained and sponsored**
 8 **by the depository institution under this clause, as**
 9 **described in IC 24-4.4-2-405(1).**

10 (b) Subsidiaries that are:

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

12 (ii) regulated by a federal banking agency. ~~or~~

13 (c) An institution regulated by the Farm Credit Administration.

14 (7) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3,
 15 IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a credit union service
 16 organization that is majority owned, directly or indirectly, by one
 17 (1) or more credit unions.

18 (8) A first lien mortgage transaction originated by a registered
 19 mortgage loan originator, when acting for an entity described in
 20 subsection (6). However, a privately insured state chartered credit
 21 union shall comply with the system of mortgage loan originator
 22 registration developed by the Federal Financial Institutions
 23 Examinations Council under Section 1507 of the federal Secure
 24 and Fair Enforcement for Mortgage Licensing Act of 2008
 25 (SAFE).

26 (9) An individual who offers or negotiates terms of a mortgage
 27 transaction with or on behalf of an immediate family member of
 28 the individual.

29 (10) An individual who offers or negotiates terms of a mortgage
 30 transaction secured by a dwelling that served as the individual's
 31 residence.

32 (11) Unless the attorney is compensated by:

33 (a) a lender;

34 (b) a mortgage broker;

35 (c) another mortgage loan originator; or

36 (d) any agent of the lender, mortgage broker, or other
 37 mortgage loan originator described in clauses (a) through (c);
 38 a licensed attorney who negotiates the terms of a mortgage
 39 transaction on behalf of a client as an ancillary matter to the
 40 attorney's representation of the client.

41 (12) The United States, any state or local government, or any
 42 agency or instrumentality of any governmental entity, including



- 1 United States government sponsored enterprises.
 2 (13) A person in whose name a tablefunded transaction is closed,
 3 as described in section 301(34)(a) of this chapter. However, the
 4 exemption provided by this subsection does not apply if:
 5 (a) the transaction:
 6 (i) is secured by a dwelling that is a mobile home, a
 7 manufactured home, or a trailer; and
 8 (ii) is not also secured by an interest in land; and
 9 (b) the person in whose name the transaction is closed, as
 10 described in section 301(34)(a) of this chapter, sells the
 11 dwelling to the debtor through a retail installment contract or
 12 other similar transaction.
- 13 (14) A bona fide nonprofit organization not operating in a
 14 commercial context, as determined by the director, if the
 15 following criteria are satisfied:
 16 (a) Subject to clause (b), the organization originates only one
 17 (1) or both of the following types of mortgage transactions:
 18 (i) Zero (0) interest first lien mortgage transactions.
 19 (ii) Zero (0) interest subordinate lien mortgage transactions.
 20 (b) The organization does not require, under the terms of the
 21 mortgage or otherwise, balloon payments with respect to the
 22 mortgage transactions described in clause (a).
 23 (c) The organization is exempt from federal income taxation
 24 under Section 501(c)(3) of the Internal Revenue Code.
 25 (d) The organization's primary purpose is to serve the public
 26 by helping low income individuals and families build, repair,
 27 and purchase housing.
 28 (e) The organization uses only:
 29 (i) unpaid volunteers; or
 30 (ii) employees whose compensation is not based on the
 31 number or size of any mortgage transactions that the
 32 employees originate;
 33 to originate the mortgage transactions described in clause (a).
 34 (f) The organization does not charge loan origination fees in
 35 connection with the mortgage transactions described in clause
 36 (a).
- 37 (15) A bona fide nonprofit organization (as defined in section
 38 301(37) of this chapter) if the following criteria are satisfied:
 39 (a) For each calendar year that the organization seeks the
 40 exemption provided by this subdivision, the organization
 41 certifies, not later than December 31 of the preceding calendar
 42 year and on a form prescribed by the director and accompanied



1 by such documentation as required by the director, that the
 2 organization is a bona fide nonprofit organization (as defined
 3 in section 301(37) of this chapter).

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

11 SECTION 2. IC 24-4.4-2-401, AS AMENDED BY P.L.89-2011,
 12 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2014]: Sec. 401. (1) Unless a person subject to this article has
 14 first obtained a license under this article from the department and
 15 annually maintains the license, the person shall not engage in Indiana
 16 as a creditor in first lien mortgage transactions. A separate license
 17 under this article is required for each legal entity that engages in
 18 Indiana as a creditor in first lien mortgage transactions. However, a
 19 separate license under this article is not required for each branch of a
 20 legal entity licensed under this article.

21 (2) Each:

22 (a) creditor licensed under this article; and

23 (b) entity exempt from licensing under this article that:

24 (i) employs; or

25 (ii) **retains and sponsors under an exclusive written**
 26 **contract, as permitted by IC 24-4.4-1-202(b)(6)(a);**

27 a licensed mortgage loan originator;

28 shall register with and maintain a valid unique identifier issued by the
 29 NMLSR. Each licensed mortgage loan originator must be employed by,
 30 **or retained and sponsored under an exclusive written contract (as**
 31 **permitted by IC 24-4.4-1-202(b)(6)(a)),** and associated with, a
 32 licensed creditor, or an entity exempt from licensing under this article,
 33 in the NMLSR in order to originate loans.

34 (3) An individual engaging solely in loan processor or underwriter
 35 activities shall not represent to the public, through advertising or other
 36 means of communicating or providing information, including the use
 37 of business cards, stationery, brochures, signs, rate lists, or other
 38 promotional items, that the individual can or will perform any of the
 39 activities of a mortgage loan originator.

40 (4) Applicants for a license under this article must apply for the
 41 license in the form prescribed by the director. Each form:

42 (a) must contain content as set forth by rule, instruction, or



1 procedure of the director; and

2 (b) may be changed or updated as necessary by the director to
3 carry out the purposes of this article.

4 (5) To fulfill the purposes of this article, the director may establish
5 relationships or contracts with the NMLSR or other entities designated
6 by the NMLSR to:

7 (a) collect and maintain records; and

8 (b) process transaction fees or other fees related to licensees or
9 other persons subject to this article.

10 (6) For the purpose of participating in the NMLSR, the director or
11 the department may:

12 (a) waive or modify, in whole or in part, by rule or order, any of
13 the requirements of this article; and

14 (b) establish new requirements as reasonably necessary to
15 participate in the NMLSR.

16 SECTION 3. IC 24-4.4-2-402.3, AS AMENDED BY P.L.216-2013,
17 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2014]: Sec. 402.3. (1) Each:

19 (a) creditor; and

20 (b) entity exempt from licensing under this article that:

21 (i) employs; or

22 (ii) **retains and sponsors under an exclusive written**
23 **contract, as permitted by IC 24-4.4-1-202(b)(6)(a);**

24 a licensed mortgage loan originator;

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

26 (2) A surety bond must:

27 (a) provide coverage for:

28 (i) a creditor; or

29 (ii) a person exempt from licensing under this article that
30 employs, **or retains and sponsors under an exclusive**
31 **written contract (as permitted by IC 24-4.4-1-202(b)(6)(a)),**
32 a mortgage loan originator;

33 in an amount as prescribed in subsection (4);

34 (b) be in a form prescribed by the director;

35 (c) be in effect:

36 (i) during the term of the creditor's license under this chapter;
37 or

38 (ii) at any time during which the person exempt from licensing
39 under this article employs, **or retains and sponsors under an**
40 **exclusive written contract (as permitted by**
41 **IC 24-4.4-1-202(b)(6)(a)),** a licensed mortgage loan
42 originator;



- 1 as applicable;
- 2 (d) remain in effect during the two (2) years after:
- 3 (i) the creditor ceases offering financial services to individuals
- 4 in Indiana; or
- 5 (ii) the person exempt from licensing under this article ceases
- 6 to employ, **or ceases to retain and sponsor under an**
- 7 **exclusive written contract (as permitted by**
- 8 **IC 24-4.4-1-202(b)(6)(a))**, a licensed mortgage loan originator
- 9 or to offer financial services to individuals in Indiana,
- 10 whichever is later;
- 11 as applicable;
- 12 (e) be payable to the department for the benefit of:
- 13 (i) the state; and
- 14 (ii) individuals who reside in Indiana when they agree to
- 15 receive financial services from the creditor or the person
- 16 exempt from licensing under this article, as applicable;
- 17 (f) be issued by a bonding, surety, or insurance company
- 18 authorized to do business in Indiana and rated at least "A-" by at
- 19 least one (1) nationally recognized investment rating service; and
- 20 (g) have payment conditioned upon:
- 21 (i) the creditor's or any of the creditor's licensed mortgage loan
- 22 originators'; or
- 23 (ii) the exempt person's or any of the exempt person's licensed
- 24 mortgage loan originators';
- 25 noncompliance with or violation of this chapter, 750 IAC 9, or
- 26 other federal or state laws or regulations applicable to mortgage
- 27 lending.
- 28 (3) The director may adopt rules or guidance documents with
- 29 respect to the requirements for a surety bond as necessary to
- 30 accomplish the purposes of this article.
- 31 (4) The penal sum of the surety bond shall be maintained in an
- 32 amount that reflects the dollar amount of mortgage transactions
- 33 originated as determined by the director. If the principal amount of a
- 34 surety bond required under this section is reduced by payment of a
- 35 claim or judgment, the creditor or exempt person for whom the bond
- 36 is issued shall immediately notify the director of the reduction and, not
- 37 later than thirty (30) days after notice by the director, file a new or an
- 38 additional surety bond in an amount set by the director. The amount of
- 39 the new or additional bond set by the director must be at least the
- 40 amount of the bond before payment of the claim or judgment.
- 41 (5) If for any reason a surety terminates a bond issued under this
- 42 section, the creditor or the exempt person shall immediately notify the



1 department and file a new surety bond in an amount determined by the
2 director.

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

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

9 (8) Notices required under this section must be in writing and
10 delivered by certified mail, return receipt requested and postage
11 prepaid, or by overnight delivery using a nationally recognized carrier.

12 SECTION 4. IC 24-4.4-2-405, AS AMENDED BY P.L.27-2012,
13 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2014]: Sec. 405. (1) Every licensee shall maintain records in
15 a manner that will enable the department to determine whether the
16 licensee is complying with this article. The record keeping system of
17 a licensee is sufficient if the licensee makes the required information
18 reasonably available. The department shall determine the sufficiency
19 of the records and whether the licensee has made the required
20 information reasonably available. The department shall be given free
21 access to the records wherever the records are located. Records
22 concerning any first lien mortgage transaction shall be retained for two
23 (2) years after the making of the final entry relating to the transaction,
24 but in the case of a revolving first lien mortgage transaction, the two (2)
25 years required under this subsection is measured from the date of each
26 entry relating to the transaction. **A depository institution that
27 voluntarily registers with the department under
28 IC 24-4.4-1-202(b)(6)(a) for the purpose of retaining and
29 sponsoring, under an exclusive written contract, licensed mortgage
30 loan originators shall:**

31 **(a) cooperate with the department; and**

32 **(b) provide access to records and documents;**

33 **as required by the department in carrying out examinations of the**
34 **activities of the licensed loan originators retained and sponsored by**
35 **the depository institution.**

36 (2) The unique identifier of any person originating a mortgage
37 transaction must be clearly shown on all mortgage transaction
38 application forms and any other documents as required by the director.

39 (3) Every licensee shall use automated examination and regulatory
40 software designated by the director, including third party software. Use
41 of the software consistent with guidance and policies issued by the
42 director is not a violation of IC 28-1-2-30.



- 1 (4) Each:
 2 (a) creditor licensed by the department under this article; and
 3 (b) entity that is exempt from licensing under this article and that:
 4 (i) employs; or
 5 (ii) **retains and sponsors under an exclusive written**
 6 **contract, as permitted by IC 24-4.4-1-202(b)(6)(a);**
 7 one (1) or more licensed mortgage originators;
 8 shall submit to the NMLSR reports of condition, which must be in a
 9 form and must contain information as required by the NMLSR.
- 10 (5) Each:
 11 (a) creditor licensed by the department under this article; and
 12 (b) entity exempt from licensing under this article that:
 13 (i) employs; or
 14 (ii) **retains and sponsors under an exclusive written**
 15 **contract, as permitted by IC 24-4.4-1-202(b)(6)(a);**
 16 **one (1) or more** licensed mortgage loan originators;
 17 shall file with the department additional financial statements relating
 18 to all first lien mortgage transactions originated by the licensed creditor
 19 or the exempt entity as required by the department, but not more
 20 frequently than annually, in the form prescribed by the department.
- 21 (6) A licensed creditor shall file notification with the department if
 22 the licensee:
 23 (a) has a change in name, address, or any of its principals;
 24 (b) opens a new branch, closes an existing branch, or relocates an
 25 existing branch;
 26 (c) files for bankruptcy or reorganization; or
 27 (d) is subject to revocation or suspension proceedings by a state
 28 or governmental authority with regard to the licensed creditor's
 29 activities;
 30 not later than thirty (30) days after the date of the event described in
 31 this subsection.
- 32 (7) A licensee shall file notification with the department if the
 33 licensee or any director, executive officer, or manager of the licensee
 34 has been convicted of a felony under the laws of Indiana or any other
 35 jurisdiction. The licensee shall file the notification required by this
 36 subsection not later than thirty (30) days after the date of the event
 37 described in this subsection.
- 38 (8) A licensee shall file notification with the department if the
 39 licensee or any director, executive officer, or manager of the licensee
 40 has had the person's authority to do business in the securities,
 41 commodities, banking, financial services, insurance, real estate, or real
 42 estate appraisal industry revoked or suspended by Indiana or by any



1 other state, federal, or foreign governmental agency or self regulatory
 2 organization. The licensee shall file the notification required by this
 3 subsection not later than thirty (30) days after the date of the event
 4 described in this subsection.

5 SECTION 5. IC 24-4.5-3-502.1, AS ADDED BY P.L.35-2010,
 6 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2014]: Sec. 502.1. (1) Unless a person:

- 8 (a) is a depository institution;
 9 (b) is a subsidiary that is owned and controlled by a depository
 10 institution and regulated by a federal banking agency;
 11 (c) is an institution regulated by the Farm Credit Administration;
 12 or
 13 (d) has first obtained, and subsequently retains, a license from the
 14 department under this article;

15 the person shall not regularly engage in Indiana as a creditor in
 16 subordinate lien mortgage transactions, take assignments in Indiana of
 17 subordinate lien mortgage transactions, or undertake in the direct
 18 collection of payments from or enforcement of rights against debtors
 19 in Indiana arising from subordinate lien mortgage transactions.

20 (2) Each:

- 21 (a) creditor licensed by the department under this article; and
 22 (b) entity **that is** exempt from licensing under this article **or**
 23 **under IC 24-4.4-1-202(b)(6)(a) and that:**

24 (i) employs; or

25 (ii) **retains and sponsors under an exclusive written**
 26 **contract, as permitted by IC 24-4.4-1-202(b)(6)(a);**

27 a licensed mortgage loan originator;

28 shall register with and maintain a valid unique identifier issued by the
 29 NMLSR. Each licensed mortgage loan originator must be employed by,
 30 **or retained and sponsored under an exclusive written contract (as**
 31 **permitted by IC 24-4.4-1-202(b)(6)(a)),** and associated with, a
 32 licensed creditor or an exempt entity described under subdivision (b)
 33 in the NMLSR in order to originate loans.

34 (3) Applicants for a license must apply for a license under this
 35 chapter in a form prescribed by the director. Each form:

- 36 (a) must contain content as set forth by rule, instruction, or
 37 procedure of the director; and
 38 (b) may be changed or updated as necessary by the director to
 39 carry out the purposes of this article.

40 (4) To fulfill the purposes of this article, the director may establish
 41 relationships or contracts with the NMLSR or other entities designated
 42 by the NMLSR to:



- 1 (a) collect and maintain records; and
- 2 (b) process transaction fees or other fees;
- 3 related to licensees or other persons subject to this article.
- 4 (5) For the purpose of participating in the NMLSR, the director or
- 5 the department may:
 - 6 (a) waive or modify, in whole or in part, by rule, regulation, or
 - 7 order, any or all of the requirements of this article; and
 - 8 (b) establish new requirements as reasonably necessary to
 - 9 participate in the NMLSR.
- 10 SECTION 6. IC 24-4.5-3-503.3, AS AMENDED BY P.L.216-2013,
- 11 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 12 JULY 1, 2014]: Sec. 503.3. (1) Each:
 - 13 (a) creditor licensed by the department under this article; and
 - 14 (b) person **that is exempt from licensing under this article or**
 - 15 **under IC 24-4.4-1-202(b)(6)(a) and that:**
 - 16 (i) employs; or
 - 17 (ii) **retains and sponsors under an exclusive written**
 - 18 **contract, as permitted by IC 24-4.4-1-202(b)(6)(a);**
 - 19 a licensed mortgage loan originator;
 - 20 must be covered by a surety bond in accordance with this section.
- 21 (2) A surety bond must:
 - 22 (a) provide coverage for:
 - 23 (i) a creditor described in subsection (1)(a); and
 - 24 (ii) an exempt person described in subsection (1)(b);
 - 25 in an amount as prescribed in subsection (4);
 - 26 (b) be in a form as prescribed by the director;
 - 27 (c) be in effect:
 - 28 (i) during the term of the creditor's license under this chapter;
 - 29 or
 - 30 (ii) at any time during which the person exempt from licensing
 - 31 under this article employs, **or retains and sponsors under an**
 - 32 **exclusive written contract (as permitted by**
 - 33 **IC 24-4.4-1-202(b)(6)(a)),** a licensed mortgage loan
 - 34 originator;
 - 35 as applicable;
 - 36 (d) remain in effect during the two (2) years after:
 - 37 (i) the creditor ceases offering financial services to individuals
 - 38 in Indiana; or
 - 39 (ii) the person exempt from licensing under this article **or**
 - 40 **under IC 24-4.4-1-202(b)(6)(a) ceases to employ, or ceases**
 - 41 **to retain and sponsor under an exclusive written contract**
 - 42 **(as permitted by IC 24-4.4-1-202(b)(6)(a)),** a licensed



- 1 mortgage loan originator or to offer financial services to
 2 individuals in Indiana, whichever is later;
 3 as applicable;
- 4 (e) be payable to the department for the benefit of:
 5 (i) the state; and
 6 (ii) individuals who reside in Indiana when they agree to
 7 receive financial services from the creditor or the person
 8 exempt from licensing under this article **or under**
 9 **IC 24-4.4-1-202(b)(6)(a)**, as applicable;
- 10 (f) be issued by a bonding, surety, or insurance company
 11 authorized to do business in Indiana and rated at least "A-" by at
 12 least one (1) nationally recognized investment rating service; and
 13 (g) have payment conditioned upon:
 14 (i) the creditor's or any of the creditor's licensed mortgage loan
 15 originators'; or
 16 (ii) the exempt person's or any of the exempt person's licensed
 17 mortgage loan originators';
 18 noncompliance with or violation of this chapter, 750 IAC 9, or
 19 other federal or state laws or regulations applicable to mortgage
 20 lending.
- 21 (3) The director may adopt rules or guidance documents with
 22 respect to the requirements for surety bonds as necessary to accomplish
 23 the purposes of this article.
- 24 (4) The penal sum of the surety bond shall be maintained in an
 25 amount that reflects the dollar amount of mortgage transactions
 26 originated as determined by the director. If the principal amount of a
 27 surety bond required under this section is reduced by payment of a
 28 claim or judgment, the creditor or exempt person for whom the bond
 29 is issued shall immediately notify the director of the reduction and, not
 30 later than thirty (30) days after notice by the director, file a new or an
 31 additional surety bond in an amount set by the director. The amount of
 32 the new or additional bond set by the director must be at least the
 33 amount of the bond before payment of the claim or judgment.
- 34 (5) If for any reason a surety terminates a bond issued under this
 35 section, the creditor or the exempt person shall immediately notify the
 36 department and file a new surety bond in an amount determined by the
 37 director.
- 38 (6) Cancellation of a surety bond issued under this section does not
 39 affect any liability incurred or accrued during the period when the
 40 surety bond was in effect.
- 41 (7) The director may obtain satisfaction from a surety bond issued
 42 under this section if the director incurs expenses, issues a final order,



1 or recovers a final judgment under this chapter.

2 (8) Notices required under this section must be in writing and
3 delivered by certified mail, return receipt requested and postage
4 prepaid, or by overnight delivery using a nationally recognized carrier.

5 SECTION 7. IC 24-4.5-3-505, AS AMENDED BY P.L.27-2012,
6 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2014]: Sec. 505. (1) Every creditor required to be licensed
8 under this article shall maintain records in conformity with generally
9 accepted accounting principles and practices in a manner that will
10 enable the department to determine whether the licensee is complying
11 with the provisions of this article. The record keeping system of a
12 licensee shall be sufficient if the licensee makes the required
13 information reasonably available. The department shall determine the
14 sufficiency of the records and whether the licensee has made the
15 required information reasonably available. The department shall be
16 given free access to the records wherever located. The records
17 pertaining to any loan shall be retained for two (2) years after making
18 the final entry relating to the loan, but in the case of a revolving loan
19 account the two (2) years is measured from the date of each entry. A
20 person licensed or required to be licensed under this chapter is subject
21 to IC 28-1-2-30.5 with respect to any records maintained by the person.
22 **A person that is exempt from licensing under this article or under**
23 **IC 24-4.4-1-202(b)(6)(a) and that retains and sponsors one (1) or**
24 **more licensed mortgage loan originators under an exclusive**
25 **written contract, as permitted by IC 24-4.4-1-202(b)(6)(a), shall:**

26 (a) cooperate with the department; and

27 (b) provide access to records and documents;

28 **as required by the department in carrying out examinations of the**
29 **activities of the licensed loan originators retained and sponsored by**
30 **the depository institution.**

31 (2) The unique identifier of any person originating a mortgage
32 transaction must be clearly shown on all mortgage transaction
33 application forms and any other documents as required by the director.

34 (3) Every licensee that engages in mortgage transactions shall use
35 automated examination and regulatory software designated by the
36 director, including third party software. Use of the software consistent
37 with guidance documents and policies issued by the director is not a
38 violation of IC 28-1-2-30.

39 (4) Each:

40 (a) creditor that is licensed by the department under this article
41 and that engages in mortgage transactions; and

42 (b) entity that is exempt from licensing under this article **or under**



1 **IC 24-4.4-1-202(b)(6)(a)** and that:

2 **(i)** employs; or

3 **(ii) retains and sponsors under an exclusive written**
 4 **contract, as permitted by IC 24-4.4-1-202(b)(6)(a);**

5 one (1) or more licensed mortgage loan originators;
 6 shall submit to the NMLSR a call report, which must be in the form
 7 and contain information the NMLSR requires.

8 (5) Every creditor required to be licensed under this article shall file
 9 with the department a composite report as required by the department,
 10 but not more frequently than annually, in the form prescribed by the
 11 department relating to all consumer loans made by the licensee. The
 12 department shall consult with comparable officials in other states for
 13 the purpose of making the kinds of information required in the reports
 14 uniform among the states. Information contained in the reports shall be
 15 confidential and may be published only in composite form. The
 16 department may impose a fee in an amount fixed by the department
 17 under IC 28-11-3-5 for each day that a creditor fails to file the report
 18 required by this subsection.

19 (6) A creditor required to be licensed under this article shall file
 20 notification with the department if the licensee:

21 (a) has a change in name, address, or principals;

22 (b) opens a new branch, closes an existing branch, or relocates an
 23 existing branch;

24 (c) files for bankruptcy or reorganization; or

25 (d) is subject to revocation or suspension proceedings by a state
 26 or governmental authority with regard to the licensee's activities;
 27 not later than thirty (30) days after the date of the event described in
 28 this subsection.

29 (7) Every licensee shall file notification with the department if the
 30 licensee or any director, executive officer, or manager of the licensee
 31 has been convicted of a felony under the laws of Indiana or any other
 32 jurisdiction. The licensee shall file the notification required by this
 33 subsection not later than thirty (30) days after the date of the event
 34 described in this subsection.

