

SENATE BILL No. 393

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5-27; IC 32-34-4.

Synopsis: Collateral recovery agencies. Defines a "collateral recovery agency" as a person that engages in the business of locating, recovering, or repossessing collateral that is subject to a: (1) security agreement; (2) lease; or (3) rental agreement; on behalf of the legal owner of the collateral. Provides that after June 30, 2014, a person may not engage in business as a collateral recovery agency in Indiana unless the person first registers with the consumer protection division of the office of the attorney general (division). Provides that a collateral recovery agency must file a registration statement with the division on a form prescribed by the division and that requires the collateral recovery agency to provide certain specified information. Provides that as part of a registration statement filed with the division, a collateral recovery agency shall include a certification that each collateral recovery agent who will perform collateral recovery activities in Indiana on behalf of the collateral recovery agency satisfies certain specified requirements, including that the collateral recovery agent has not been convicted of certain felonies and misdemeanors. Requires the division to: (1) maintain as public records all registration statements and filings made by collateral recovery agencies; and (2) post on the attorney general's Internet web site a listing of all collateral recovery agencies registered with the division. Provides that a collateral recovery agency must enter into a written contract with the legal owner of collateral before performing collateral recovery activities on behalf of the legal owner. Sets forth civil remedies and criminal penalties for violations of these provisions. Establishes the collateral recovery enforcement account (account) within the state general fund to provide
(Continued next page)

Effective: Upon passage.

Tomes

January 14, 2014, read first time and referred to Committee on Commerce, Economic Development & Technology.



Digest Continued

funds to reimburse county sheriff's departments and local law enforcement agencies for costs incurred in responding to disturbances, breaches of the peace, and calls for assistance in connection with collateral recovery activities within their jurisdictions. Provides that the account is to be administered by the division. Authorizes the division to adopt rules to implement these provisions. Makes an appropriation.



Introduced

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. 393

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation and to make an appropriation.

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

- 1 SECTION 1. IC 24-5-27 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]:
4 **Chapter 27. Collateral Recovery Agencies**
5 **Sec. 1. As used in this chapter, "collateral" means any item of**
6 **personal property, including a motor vehicle (as defined in**
7 **IC 26-2-10-1) or a watercraft (as defined in IC 9-13-2-198.5), that**
8 **is subject to a security agreement, lease, or rental agreement.**
9 **Sec. 2. (a) As used in this chapter, "collateral recovery agency"**
10 **means a person that for consideration engages in Indiana in the**
11 **business of locating, recovering, or repossessing collateral on**
12 **behalf of the legal owner of the collateral.**
13 **(b) The term includes:**
14 **(1) any:**
15 **(A) successor in interest to; or**

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1 **(B) affiliate, associate, or subsidiary of;**
 2 **a person described in subsection (a); and**
 3 **(2) collectively, the directors, officers, employees, and agents**
 4 **of a person described in subsection (a).**

5 **(c) The term does not include any of the following:**

6 **(1) A person admitted to the practice of law in Indiana if the**
 7 **person is acting within the course and scope of the person's**
 8 **practice as an attorney.**

9 **(2) The legal owner of collateral in a security agreement,**
 10 **lease, or rental agreement, or the legal owner's bona fide**
 11 **employee who is a regular, nontemporary employee under the**
 12 **legal owner's direct and exclusive control.**

13 **(3) A person that:**

14 **(A) is authorized to make loans or extensions of credit**
 15 **under state or federal laws; and**

16 **(B) is subject to regulation and supervision under state or**
 17 **federal laws.**

18 **(4) A bank or savings association or a subsidiary of a bank or**
 19 **savings association that has deposits or accounts that are**
 20 **eligible for insurance by the Federal Deposit Insurance**
 21 **Corporation.**

22 **(5) A credit union doing business in Indiana.**

23 **(6) An officer or employee of the United States, or of the state**
 24 **or a political subdivision of the state, while the officer or**
 25 **employee is performing the officer's or employee's official**
 26 **duties.**

27 **(7) A collection agency (as defined in IC 25-11-1-1) or a debt**
 28 **collector (as defined in IC 24-5-0.5-2(a)(15)) if the collection**
 29 **agency's or debt collector's activities are limited to assisting**
 30 **an owner in the recovery of property that is not collateral.**

31 **Sec. 3. As used in this chapter, "collateral recovery agent"**
 32 **means an individual who is hired, as an employee or an**
 33 **independent contractor, by a collateral recovery agency to**
 34 **physically locate, recover, or repossess collateral in Indiana.**

35 **Sec. 4. As used in this chapter, "division" refers to the consumer**
 36 **protection division of the office of the attorney general.**

37 **Sec. 5. As used in this chapter, "legal owner" means a person**
 38 **holding:**

39 **(1) a security interest or ownership interest in; or**

40 **(2) a lien against;**

41 **collateral that is subject to a security agreement, lease, or rental**
 42 **agreement.**



1 **Sec. 6. Except as provided in section 7(i) of this chapter, after**
 2 **June 30, 2014, a person may not engage in business as a collateral**
 3 **recovery agency in Indiana:**

- 4 **(1) except as authorized by this chapter or by the division in**
 5 **rules adopted under section 14 of this chapter; and**
 6 **(2) unless the person first registers with the division under**
 7 **section 7 of this chapter.**

8 **Sec. 7. (a) Except as provided in subsection (i), before engaging**
 9 **in the collateral recovery business in Indiana, a collateral recovery**
 10 **agency must file a registration statement with the division in the**
 11 **form and manner prescribed by the division. A registration**
 12 **statement form prescribed by the division under this chapter must**
 13 **require the collateral recovery agency to provide the following**
 14 **information:**

- 15 **(1) The legal name of the collateral recovery agency.**
 16 **(2) Whether the collateral recovery agency is doing business**
 17 **as an individual, a corporation, a partnership, or another**
 18 **legal entity.**
 19 **(3) The names under which the collateral recovery agency has**
 20 **done, is doing, or intends to do business in Indiana.**
 21 **(4) The name of any:**
 22 **(A) parent company; and**
 23 **(B) affiliated business entities.**
 24 **(5) Subject to subsection (g), the name, date of birth, business**
 25 **contact information, and title of each executive officer,**
 26 **director, or manager of the collateral recovery agency, or any**
 27 **other individual having a similar status or performing a**
 28 **similar function for the collateral recovery agency.**
 29 **(6) The length of time the collateral recovery agency has**
 30 **engaged in the collateral recovery business.**
 31 **(7) An unexecuted copy of all contracts required by section 8**
 32 **of this chapter to be used by the collateral recovery agency in**
 33 **entering into transactions in which the collateral recovery**
 34 **agency will perform collateral recovery activities on behalf of**
 35 **legal owners of collateral.**
 36 **(8) The complete street address of all locations, including:**
 37 **(A) the collateral recovery agency's principal business**
 38 **location;**
 39 **(B) any branch offices; and**
 40 **(C) any storage facilities used to store collateral;**
 41 **to be used by the collateral recovery agency in engaging in the**
 42 **collateral recovery business in Indiana. If the collateral**



1 recovery agency's principal business location is outside
 2 Indiana, the collateral recovery agency must designate one (1)
 3 of the collateral recovery agency's Indiana business locations
 4 as the collateral recovery agency's principal location in
 5 Indiana.

6 (9) The name and address of the collateral recovery agency's
 7 agent authorized to receive service of process in Indiana. If
 8 the collateral recovery agency's principal place of business is
 9 outside Indiana, the collateral recovery agency is considered
 10 to have appointed the secretary of state as the collateral
 11 recovery agency's agent.

12 (10) Proof of financial responsibility:

13 (A) in the form of:

14 (i) one (1) or more insurance policies with terms and
 15 coverage amounts prescribed by the division; or

16 (ii) a bond or a deposit of money or securities;

17 as the division may prescribe in rules adopted under
 18 section 14 of this chapter; and

19 (B) that provides or ensures coverage for damages to or
 20 losses sustained by:

21 (i) the collateral recovery agency;

22 (ii) individuals described in subdivision (5);

23 (iii) the collateral recovery agency's collateral recovery
 24 agents;

25 (iv) the legal owners of collateral that is the subject of the
 26 collateral recovery agency's collateral recovery
 27 activities; and

28 (v) the general public;

29 as a result of any acts or omissions of the collateral
 30 recovery agency, an individual described in subdivision (5),
 31 the collateral recovery agency's collateral recovery agents,
 32 or any other employee or agent of the collateral recovery
 33 agency, in connection with the collateral recovery agency's
 34 collateral recovery business in Indiana.

35 The proof of financial responsibility required under this
 36 subdivision must include proof of motor vehicle insurance
 37 coverage for any vehicles used by the collateral recovery
 38 agency's collateral recovery agents in performing collateral
 39 recovery activities on behalf of the collateral recovery agency.

40 (11) A statement as to whether the collateral recovery agency
 41 or any individual described in subdivision (5) has been:

42 (A) held liable in a civil action in connection with engaging



- 1 **in the collateral recovery business or any collateral**
 2 **recovery activities; or**
 3 **(B) convicted of a felony under Indiana law or the laws of**
 4 **any other jurisdiction during the seven (7) years**
 5 **immediately preceding the date of the registration**
 6 **statement.**
- 7 **(12) A statement containing the names of the parties, the**
 8 **name of the court, the cause or docket number of the lawsuit,**
 9 **the date the suit was filed, and the date the judgment was**
 10 **entered, if applicable, for each action identified under**
 11 **subdivision (11).**
- 12 **(13) A statement as to whether the collateral recovery agency**
 13 **has ever had a license or registration:**
- 14 **(A) authorizing the collateral recovery agency to engage in**
 15 **the collateral recovery business; and**
 16 **(B) issued by another jurisdiction;**
 17 **denied, suspended, revoked, or enjoined by any court or**
 18 **governmental authority.**
- 19 **(14) Subject to subsection (g), the following information with**
 20 **respect to each collateral recovery agent who will perform**
 21 **collateral recovery activities in Indiana on behalf of the**
 22 **collateral recovery agency:**
- 23 **(A) Name.**
 24 **(B) Home address.**
 25 **(C) Driver's license number.**
 26 **(D) A certification described in subsection (b).**
- 27 **(15) Any other information that the division may require in**
 28 **rules adopted under section 14 of this chapter.**
- 29 **(b) As part of a registration statement under subsection (a), a**
 30 **collateral recovery agency shall include a certification by the**
 31 **collateral recovery agency that each collateral recovery agent who**
 32 **will perform collateral recovery activities in Indiana on behalf of**
 33 **the collateral recovery agency satisfies the following requirements:**
- 34 **(1) The collateral recovery agent is at least eighteen (18) years**
 35 **of age.**
 36 **(2) The collateral recovery agent has not been convicted of a**
 37 **felony during the seven (7) years immediately preceding the**
 38 **date of the registration statement.**
 39 **(3) During the seven (7) years immediately preceding the date**
 40 **of the registration statement, the collateral recovery agent has**
 41 **not been released from incarceration after serving time for a**
 42 **felony conviction.**



1 **(4) The collateral recovery agent has not been convicted of:**
 2 **(A) a misdemeanor involving fraud, deceit, or dishonesty;**
 3 **(B) battery as a misdemeanor; or**
 4 **(C) two (2) or more misdemeanors involving the illegal use**
 5 **of alcohol or the illegal sale, use, or possession of a**
 6 **controlled substance;**
 7 **during the five (5) years immediately preceding the date of the**
 8 **registration statement.**

9 **(5) The collateral recovery agent has a valid driver's license.**

10 **(c) A collateral recovery agency may comply with subsection (b)**
 11 **by submitting to the division a document signed by the collateral**
 12 **recovery agency in which the collateral recovery agency:**

13 **(1) subject to subsection (g), identifies each collateral recovery**
 14 **agent by name, home address, and driver's license number;**

15 **(2) certifies that each collateral recovery agent has been the**
 16 **subject of a criminal history background check for each**
 17 **jurisdiction in the United States in which the collateral**
 18 **recovery agent has lived or worked during the seven (7) years**
 19 **immediately preceding the date of the registration statement;**
 20 **and**

21 **(3) affirms that the background check described in**
 22 **subdivision (2) for each collateral recovery agent indicates**
 23 **that the collateral recovery agent satisfies the requirements**
 24 **set forth in subsection (b), as applicable.**

25 **(d) A collateral recovery agency shall update a registration**
 26 **statement filed with the division under this chapter on an annual**
 27 **basis:**

28 **(1) in the manner; and**

29 **(2) not later than any deadline for doing so;**

30 **that the division may prescribe in rules adopted under section 14**
 31 **of this chapter.**

32 **(e) In addition to submitting an annual update under subsection**
 33 **(d), if, at any time, any information contained in:**

34 **(1) an initial registration statement under subsection (a); or**

35 **(2) an annual update under subsection (d);**

36 **is or becomes inaccurate or incomplete in a material respect, a**
 37 **collateral recovery agency shall promptly file a correcting**
 38 **amendment with the division in the form and manner prescribed**
 39 **by the division.**

40 **(f) The director of the division shall maintain a record of all**
 41 **filings made under this chapter and shall assign a registration**
 42 **number to each collateral recovery agency that files a registration**



1 statement under this chapter. The director shall advise a collateral
2 recovery agency, in writing, of the registration number assigned to
3 the collateral recovery agency. All advertisements, contracts, or
4 any other materials, in whatever medium created or distributed,
5 that are used to solicit or conduct business as a collateral recovery
6 agency must include the assigned registration number in the
7 following manner: "C.P.D. Reg. No. C.R.A. _____."

8 (g) All registration statements and information required to be
9 filed under this chapter with the division are public records. The
10 division shall maintain these records for at least two (2) years from
11 the date they are received by the division, and shall make them
12 available to the general public for inspection and photocopying for
13 a charge, during the division's normal business hours. However,
14 the division shall not divulge a collateral recovery agent's home
15 address or driver's license number, or the birth date of an
16 individual described in subsection (a)(5), unless ordered to do so by
17 a court with jurisdiction, or in furtherance of the prosecution of a
18 violation of this chapter. The division shall ensure that any home
19 address, driver's license number, or birth date included in any
20 filing under this chapter is redacted before making the filing
21 available for public inspection under this subsection. The division
22 shall post on the attorney general's Internet web site, and update
23 as appropriate, a listing of all collateral recovery agencies
24 registered with the division under this chapter. The listing required
25 by this subsection must include the following information for each
26 registered collateral recovery agency:

27 (1) The legal name of the collateral recovery agency and all
28 names under which the collateral recovery agency does
29 business in Indiana.

30 (2) The address and telephone number of the collateral
31 recovery agency's principal business location in Indiana, as
32 identified by the collateral recovery agency under subsection
33 (a)(8).

34 (3) The names of all collateral recovery agents performing
35 collateral recovery activities on behalf of the collateral
36 recovery agency in Indiana.

37 (h) Rules adopted by the division under section 14 of this
38 chapter may establish procedures for the division to establish,
39 collect, and change as necessary any of the following to cover the
40 division's expenses in administering this article:

41 (1) A registration fee that a collateral recovery agency must
42 submit with an initial registration statement under subsection



1 (a).

2 (2) A renewal fee that a collateral recovery agency must
3 submit with an annual update under subsection (d).

4 (i) Notwithstanding subsection (a) and section 6 of this chapter,
5 a person that:

6 (1) before March 28, 2014, is engaging in business in Indiana
7 as a collateral recovery agency; and

8 (2) submits a registration statement under this chapter to the
9 division before September 1, 2014;

10 may continue to engage in business in Indiana as a collateral
11 recovery agency during the period beginning July 1, 2014, and the
12 date on which the collateral recovery agency's registration
13 statement is filed with the division.

14 **Sec. 8. Before performing collateral recovery activities on behalf**
15 **of the legal owner of collateral, a collateral recovery agency must**
16 **enter into a written contract with the legal owner that identifies:**

17 (1) the parties to the contract;

18 (2) the collateral that is to be located, recovered, or
19 repossessed;

20 (3) any other services to be provided by the collateral
21 recovery agency to the legal owner, including the storing or
22 inventorying of any:

23 (A) collateral recovered or repossessed; or

24 (B) personal property or personal effects remaining in, or
25 attached to, any collateral recovered or repossessed; and

26 (4) any other information or contractual terms that the
27 division may prescribe in rules adopted under section 14 of
28 this chapter.

29 **Sec. 9. (a) Each collateral recovery agency required to register**
30 **under this chapter shall keep accurate records regarding its**
31 **business activities in Indiana. A collateral recovery agency shall**
32 **retain the records for at least three (3) years after the end of the**
33 **period of registration to which they relate.**

34 (b) Records maintained under subsection (a) shall be made
35 available for inspection and copying by the division upon oral or
36 written request of the division at any time during the normal
37 business hours of the collateral recovery agency.

38 **Sec. 10. A collateral recovery agency that recovers or**
39 **repossesses a motor vehicle or a watercraft on behalf of a legal**
40 **owner:**

41 (1) shall provide the information required under IC 26-2-10-6
42 to the sheriff's department of the appropriate county; and



1 (2) subject to the written consent of the legal owner, may
 2 comply with the IC 32-34-4-5 on behalf of the legal owner if
 3 the legal owner is a creditor with respect to the motor vehicle
 4 or watercraft recovered or repossessed.

5 **Sec. 11. The division shall:**

- 6 (1) cooperate with; and
 7 (2) exchange information with;

8 county sheriff's departments, state and local law enforcement
 9 agencies, and political subdivisions as necessary and appropriate
 10 to administer this chapter.

11 **Sec. 12. (a) The division may receive, investigate, and prosecute**
 12 **complaints concerning the activities of collateral recovery agencies**
 13 **that have or may have violated this chapter. All complaints must**
 14 **be in writing, signed by the complainant, and filed with the**
 15 **division.**

16 (b) The attorney general may subpoena witnesses, send for and
 17 compel the production of books, records, papers, and documents
 18 of collateral recovery agencies that are subject to registration
 19 under this chapter, in furtherance of any investigation under this
 20 chapter. The circuit or superior court located in the county where
 21 any subpoena by the attorney general is issued shall enforce the
 22 subpoena.

23 (c) The attorney general may bring an action to enjoin a
 24 violation of this chapter. In an action under this subsection, if the
 25 court finds that a person has violated this chapter, the court may:

- 26 (1) order the person to pay the reasonable costs of the
 27 investigation and prosecution incurred by the attorney
 28 general;
 29 (2) award the state civil penalties up to five hundred dollars
 30 (\$500) for each violation, to be deposited in the collateral
 31 recovery enforcement account created by section 13 of this
 32 chapter; and
 33 (3) order the collateral recovery agency to pay restitution to
 34 any aggrieved persons.

35 (d) A person that knowingly or intentionally:

- 36 (1) files a registration statement or other information that is
 37 materially false; or
 38 (2) fails to make a disclosure required by this chapter;

39 commits a Class B misdemeanor. However, the offense is a Class
 40 A misdemeanor if the person has a prior unrelated conviction
 41 under this subsection.

42 (e) A local unit of government may adopt an ordinance that



1 regulates collateral recovery agencies or collateral recovery agents
2 if the ordinance does not conflict with this chapter.

3 (f) In rules adopted by the division under section 14 of this
4 chapter, the division may impose civil penalties on collateral
5 recovery agencies for the late filing of information required to be
6 filed under this chapter. Any civil penalties described in this
7 subsection that are imposed and collected shall be deposited in the
8 collateral recovery enforcement account established under section
9 13 of this chapter.

10 Sec. 13. (a) The collateral recovery enforcement account is
11 established within the state general fund to provide funds to
12 reimburse county sheriff's departments and local law enforcement
13 agencies for costs incurred in responding to disturbances, breaches
14 of the peace, and calls for assistance in connection with collateral
15 recovery activities within their jurisdictions. The account shall be
16 administered by the division.

17 (b) The account consists of the following:

18 (1) Civil penalties imposed and collected under section
19 12(c)(2) of this chapter.

20 (2) Civil penalties imposed and collected by the division under
21 section 12(f) of this chapter.

22 (3) Any money appropriated to the account by the general
23 assembly.

24 (4) Money from any other source, including gifts and grants.

25 (c) Money in the account is continuously appropriated for the
26 purposes described in subsection (a).

27 (d) The division shall prepare a plan annually for the
28 expenditure of money in the account. The plan prepared by the
29 division under this subsection must include a process by which
30 county sheriff's departments and local law enforcement agencies
31 may apply to the division for reimbursement from the account for
32 expenses described in subsection (a). The plan must be reviewed by
33 the budget committee before the division may make expenditures
34 from the fund.

35 (e) Money in the account may be spent for the purposes
36 described in subsection (a).

37 (f) The expenses of administering the account shall be paid from
38 money in the account.

39 (g) The treasurer of state shall invest the money in the account
40 not currently needed to meet the obligations of the account in the
41 same manner as other public money may be invested.

42 (h) Money that is in the account at the end of a state fiscal year



1 does not revert to the state general fund.

2 **Sec. 14. (a) The division may adopt rules under IC 4-22-2,**
 3 **including emergency rules under IC 4-22-2-37.1, to implement this**
 4 **chapter. Rules or emergency rules adopted by the division under**
 5 **this section must take effect by a date that will enable a person to**
 6 **register with the division under this chapter beginning July 1,**
 7 **2014.**

8 **(b) An emergency rule adopted by the division under**
 9 **IC 4-22-2-37.1 to implement this chapter expires on the date a rule**
 10 **that supersedes the emergency rule is adopted by the division**
 11 **under IC 4-22-2-24 through IC 4-22-2-36.**

12 SECTION 2. IC 32-34-4-0.5 IS ADDED TO THE INDIANA CODE
 13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 14 UPON PASSAGE]: **Sec. 0.5. As used in this chapter, "collateral**
 15 **recovery agency" has the meaning set forth in IC 24-5-27-2.**

16 SECTION 3. IC 32-34-4-5 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) If items of
 18 personal property having an estimated aggregate value of at least ten
 19 dollars (\$10) are discovered within a vehicle that has been lawfully
 20 repossessed, the creditor, **or a collateral recovery agency on behalf**
 21 **of a creditor (as authorized by IC 24-5-27-10(2)),** must notify the
 22 debtor as follows:

23 (1) The notice must be written.

24 (2) The notice must list each item of personal property having an
 25 estimated value greater than five dollars (\$5).

26 (3) The notice must include the estimated aggregate value of all
 27 of the items of personal property.

28 (4) The notice must include a statement that if the debtor does not
 29 claim the property within thirty (30) days after the notice was
 30 sent, the personal property will become the property of the
 31 creditor with no right of redemption by the debtor.

32 (5) The notice must be sent by certified mail.

33 (b) If the debtor does not claim the items of personal property
 34 included in a notice given under subsection (a) not more than thirty
 35 (30) days after the notice was mailed, the items of personal property
 36 become the property of the creditor with no right of redemption by the
 37 debtor.

38 SECTION 4. **An emergency is declared for this act.**

