

HOUSE BILL No. 1526

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-23-30-4; IC 23-19; IC 23-20-1; IC 35-41-4.

Synopsis: Securities matters. Increases the frequency of meetings of the mortgage lending and fraud prevention task force. Exempts certain offers to sell or sales of the securities of issuers made after June 30, 2014, from the requirements of IC 23-19-2-2 through IC 23-19-3-6 and IC 23-19-5-4. Changes the fee structure in IC 23-19-3-2. Makes numerous other changes in the law of registration of securities and notice filing of federal covered securities.

Effective: July 1, 2017.

Heaton, Ellington

January 18, 2017, read first time and referred to Committee on Financial Institutions.



First Regular Session of the 120th General Assembly (2017)

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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

HOUSE BILL No. 1526

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

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

1 SECTION 1. IC 4-23-30-4, AS ADDED BY P.L.16-2009,
2 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 4. Subject to section 5 of this chapter, the task
4 force shall meet ~~each month~~ **quarterly, with additional meetings**
5 **scheduled as needed by the task force chair**, to:

- 6 (1) coordinate the state's efforts to:
 - 7 (A) regulate the various participants involved in originating,
8 issuing, and closing home loans;
9 (B) enforce state laws and rules concerning mortgage lending
10 practices and mortgage fraud; and11 (C) prevent fraudulent practices in the home loan industry; and
- 12 (2) share information and resources necessary for the efficient
13 administration of the tasks set forth in subdivision (1), unless
14 prohibited by law.

15 SECTION 2. IC 23-19-2-2, AS AMENDED BY P.L.160-2015,
16 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2017]: Sec. 2. The following transactions are exempt from the



1 requirements of IC 23-19-3-1 through IC 23-19-3-6 and IC 23-19-5-4:

2 (1) An isolated nonissuer transaction, whether effected by or
3 through a broker-dealer or not.

4 (2) A nonissuer transaction by or through a broker-dealer
5 registered, or exempt from registration under this article, and a
6 resale transaction by a sponsor of a unit investment trust
7 registered under the Investment Company Act of 1940, in a
8 security of a class that has been outstanding in the hands of the
9 public for at least ninety (90) days, if, at the date of the
10 transaction:

11 (A) the issuer of the security is engaged in business, the issuer
12 is not in the organizational stage or in bankruptcy or
13 receivership, and the issuer is not a blank check, blind pool, or
14 shell company that has no specific business plan or purpose or
15 has indicated that its primary business plan is to engage in a
16 merger or combination of the business with, or an acquisition
17 of, an unidentified person;

18 (B) the security is sold at a price reasonably related to its
19 current market price;

20 (C) the security does not constitute the whole or part of an
21 unsold allotment to, or a subscription or participation by, the
22 broker-dealer as an underwriter of the security or a
23 redistribution;

24 (D) a nationally recognized securities manual or its electronic
25 equivalent designated by rule adopted or order issued under
26 this article or a record filed with the Securities and Exchange
27 Commission that is publicly available contains:

28 (i) a description of the business and operations of the issuer;

29 (ii) the names of the issuer's executive officers and the
30 names of the issuer's directors, if any;

31 (iii) an audited balance sheet of the issuer as of a date within
32 eighteen (18) months before the date of the transaction or, in
33 the case of a reorganization or merger when the parties to
34 the reorganization or merger each had an audited balance
35 sheet, a pro forma balance sheet for the combined
36 organization; and

37 (iv) an audited income statement for each of the issuer's two

38 (2) immediately previous fiscal years or for the period of
39 existence of the issuer, whichever is shorter, or, in the case
40 of a reorganization or merger when each party to the
41 reorganization or merger had audited income statements, a
42 pro forma income statement; and



- 1 (E) any one (1) of the following requirements is met:
 2 (i) The issuer of the security has a class of equity securities
 3 listed on a national securities exchange registered under
 4 Section 6 of the Securities Exchange Act of 1934 or
 5 designated for trading on the National Association of
 6 Securities Dealers Automated Quotation System.
 7 (ii) The issuer of the security is a unit investment trust
 8 registered under the Investment Company Act of 1940.
 9 (iii) The issuer of the security, including its predecessors,
 10 has been engaged in continuous business for at least three
 11 (3) years.
 12 (iv) The issuer of the security has total assets of at least two
 13 million dollars (\$2,000,000) based on an audited balance
 14 sheet as of a date within eighteen (18) months before the
 15 date of the transaction or, in the case of a reorganization or
 16 merger when the parties to the reorganization or merger
 17 each had such an audited balance sheet, a pro forma balance
 18 sheet for the combined organization.
 19 (3) A nonissuer transaction by or through a broker-dealer
 20 registered or exempt from registration under this article in a
 21 security of a foreign issuer that is a margin security defined in
 22 regulations or rules adopted by the Board of Governors of the
 23 Federal Reserve System.
 24 (4) A nonissuer transaction by or through a broker-dealer
 25 registered or exempt from registration under this article in an
 26 outstanding security if the guarantor of the security files reports
 27 with the Securities and Exchange Commission under the reporting
 28 requirements of Section 13 or 15(d) of the Securities Exchange
 29 Act of 1934 (15 U.S.C. 78m or 78o(d)).
 30 (5) A nonissuer transaction by or through a broker-dealer
 31 registered or exempt from registration under this article in a
 32 security that:
 33 (A) is rated at the time of the transaction by a nationally
 34 recognized statistical rating organization in one (1) of its four
 35 (4) highest rating categories; or
 36 (B) has a fixed maturity or a fixed interest or dividend, if:
 37 (i) a default has not occurred during the current fiscal year
 38 or within the three (3) previous fiscal years, or during the
 39 existence of the issuer and any predecessor if less than three
 40 (3) fiscal years, in the payment of principal, interest, or
 41 dividends on the security; and
 42 (ii) the issuer is engaged in business, is not in the



1 organizational stage or in bankruptcy or receivership, and is
2 not and has not been within the previous twelve (12) months
3 a blank check, blind pool, or shell company that has no
4 specific business plan or purpose or has indicated that its
5 primary business plan is to engage in a merger or
6 combination of the business with, or an acquisition of, an
7 unidentified person.

8 (6) A nonissuer transaction by or through a broker-dealer
9 registered or exempt from registration under this article effecting
10 an unsolicited order or offer to purchase.

11 (7) A nonissuer transaction executed by a bona fide pledgee
12 without the purpose of evading this article.

13 (8) A nonissuer transaction by a federal covered investment
14 adviser with investments under management in excess of one
15 hundred million dollars (\$100,000,000) acting in the exercise of
16 discretionary authority in a signed record for the account of
17 others.

18 (9) A transaction in a security, whether or not the security or
19 transaction is otherwise exempt, in exchange for one (1) or more
20 bona fide outstanding securities, claims, or property interests, or
21 partly in such exchange and partly for cash, if the terms and
22 conditions of the issuance and exchange or the delivery and
23 exchange and the fairness of the terms and conditions have been
24 approved by the commissioner after a hearing.

25 (10) A transaction between the issuer or other person on whose
26 behalf the offering is made and an underwriter, or among
27 underwriters.

28 (11) A transaction in a note, bond, debenture, or other evidence
29 of indebtedness secured by a mortgage or other security
30 agreement if:

31 (A) the note, bond, debenture, or other evidence of
32 indebtedness is offered and sold with the mortgage or other
33 security agreement as a unit;

34 (B) a general solicitation or general advertisement of the
35 transaction is not made; and

36 (C) a commission or other remuneration is not paid or given,
37 directly or indirectly, to a person not registered under this
38 article as a broker-dealer or as an agent.

39 (12) A transaction by an executor, administrator of an estate,
40 sheriff, marshal, receiver, trustee in bankruptcy, guardian, or
41 conservator.

42 (13) A sale or offer to sell to:



- 1 (A) an institutional investor;
 2 (B) a federal covered investment adviser; or
 3 (C) any other person exempted by rule adopted or order issued
 4 under this article.
- 5 (14) A sale or an offer to sell securities of an issuer, if the
 6 transaction is part of a single issue in which:
 7 (A) not more than twenty-five (25) purchasers are present in
 8 this state during any twelve (12) consecutive months, other
 9 than those designated in subdivision (13);
 10 (B) a general solicitation or general advertising is not made in
 11 connection with the offer to sell or sale of the securities;
 12 (C) a commission or other remuneration is not paid or given,
 13 directly or indirectly, to a person other than a broker-dealer
 14 registered under this article or an agent registered under this
 15 article for soliciting a prospective purchaser in this state; and
 16 (D) the issuer reasonably believes that all the purchasers in
 17 this state, other than those designated in subdivision (13), are
 18 purchasing for investment.
- 19 (15) A transaction under an offer to existing security holders of
 20 the issuer, including persons that at the date of the transaction are
 21 holders of convertible securities, options, or warrants, if a
 22 commission or other remuneration, other than a standby
 23 commission, is not paid or given, directly or indirectly, for
 24 soliciting a security holder in this state.
- 25 (16) An offer to sell, but not a sale, of a security not exempt from
 26 registration under the Securities Act of 1933 if:
 27 (A) a registration or offering statement or similar record as
 28 required under the Securities Act of 1933 has been filed, but
 29 is not effective, or the offer is made in compliance with Rule
 30 165 adopted under the Securities Act of 1933 (17 CFR
 31 230.165); and
 32 (B) a stop order of which the offeror is aware has not been
 33 issued against the offeror by the commissioner or the
 34 Securities and Exchange Commission, and an audit,
 35 inspection, or proceeding that is public and that may culminate
 36 in a stop order is not known by the offeror to be pending.
- 37 (17) An offer to sell, but not a sale of, a security exempt from
 38 registration under the Securities Act of 1933 if:
 39 (A) a registration statement has been filed under this article,
 40 but is not effective;
 41 (B) a solicitation of interest is provided in a record to offerees
 42 in compliance with a rule adopted by the commissioner under



- 1 this article; and
 2 (C) a stop order of which the offeror is aware has not been
 3 issued by the commissioner under this article and an audit,
 4 inspection, or proceeding that may culminate in a stop order is
 5 not known by the offeror to be pending.
- 6 (18) A transaction involving the distribution of the securities of
 7 an issuer to the security holders of another person in connection
 8 with a merger, consolidation, exchange of securities, sale of
 9 assets, or other reorganization to which the issuer, or its parent or
 10 subsidiary and the other person, or its parent or subsidiary, are
 11 parties.
- 12 (19) A rescission offer, sale, or purchase under IC 23-19-5-10.
- 13 (20) An offer or sale of a security to a person not a resident of this
 14 state and not present in this state if the offer or sale does not
 15 constitute a violation of the laws of the state or foreign
 16 jurisdiction in which the offeree or purchaser is present and is not
 17 part of an unlawful plan or scheme to evade this article.
- 18 (21) Employees' stock purchase, savings, option, profit-sharing,
 19 pension, or similar employees' benefit plan, including any
 20 securities, plan interests, and guarantees issued under a
 21 compensatory benefit plan or compensation contract, contained
 22 in a record, established by the issuer, its parents, its
 23 majority-owned subsidiaries, or the majority-owned subsidiaries
 24 of the issuer's parent for the participation of their employees
 25 including offers or sales of such securities to:
- 26 (A) directors; general partners; trustees, if the issuer is a
 27 business trust; officers; consultants; and advisers;
 28 (B) family members who acquire such securities from those
 29 persons through gifts or domestic relations orders;
 30 (C) former employees, directors, general partners, trustees,
 31 officers, consultants, and advisers if those individuals were
 32 employed by or providing services to the issuer when the
 33 securities were offered; and
 34 (D) insurance agents who are exclusive insurance agents of the
 35 issuer, or the issuer's subsidiaries or parents, or who derive
 36 more than fifty percent (50%) of their annual income from
 37 those organizations.
- 38 (22) A transaction involving:
 39 (A) a stock dividend or equivalent equity distribution, whether
 40 the corporation or other business organization distributing the
 41 dividend or equivalent equity distribution is the issuer or not,
 42 if nothing of value is given by stockholders or other equity



- 1 holders for the dividend or equivalent equity distribution other
2 than the surrender of a right to a cash or property dividend if
3 each stockholder or other equity holder may elect to take the
4 dividend or equivalent equity distribution in cash, property, or
5 stock;
- 6 (B) an act incident to a judicially approved reorganization in
7 which a security is issued in exchange for one (1) or more
8 outstanding securities, claims, or property interests, or partly
9 in such exchange and partly for cash; or
- 10 (C) the solicitation of tenders of securities by an offeror in a
11 tender offer in compliance with Rule 162 adopted under the
12 Securities Act of 1933 (17 CFR 230.162).
- 13 (23) A nonissuer transaction in an outstanding security by or
14 through a broker-dealer registered or exempt from registration
15 under this article, if the issuer is a reporting issuer in a foreign
16 jurisdiction designated by this subdivision or by rule adopted or
17 order issued under this article; has been subject to continuous
18 reporting requirements in the foreign jurisdiction for not less than
19 one hundred eighty (180) days before the transaction; and the
20 security is listed on the foreign jurisdiction's securities exchange
21 that has been designated by this subdivision or by rule adopted or
22 order issued under this article, or is a security of the same issuer
23 that is of senior or substantially equal rank to the listed security
24 or is a warrant or right to purchase or subscribe to any of the
25 foregoing. For purposes of this subdivision, Canada, together with
26 its provinces and territories, is a designated foreign jurisdiction
27 and The Toronto Stock Exchange, Inc., is a designated securities
28 exchange. After an administrative hearing in compliance with this
29 article, the commissioner, by rule adopted or order issued under
30 this article, may revoke the designation of a securities exchange
31 under this subdivision, if the commissioner finds that revocation
32 is necessary or appropriate in the public interest and for the
33 protection of investors.
- 34 (24) Subject to the following, an offer or sale of securities by an
35 issuer made after June 30, 2014, only to persons who are or the
36 issuer reasonably believes are accredited investors:
- 37 (A) The exemption under this subdivision is not available to
38 an issuer that is in the development stage that either has no
39 specific business plan or purpose or has indicated that its
40 business plan is to engage in a merger or acquisition with:
- 41 (i) an unidentified company or companies; or
42 (ii) another entity or person.



1 (B) The issuer reasonably believes that all purchasers are
2 purchasing for investment and not with the view to or for sale
3 in connection with a distribution of the security. Any resale of
4 a security sold in reliance on the exemption under this
5 subdivision within twelve (12) months after sale is presumed
6 to be with a view to distribution and not for investment,
7 except:

8 (i) a resale under a registration statement effective under
9 IC 23-19-3; or

10 (ii) a resale to an accredited investor under an exemption
11 available under the Indiana Uniform Securities Act.

12 (C) Except as provided in clause (D), the exemption under this
13 subdivision is not available to an issuer if the issuer, any of the
14 issuer's predecessors, any affiliated issuer, any of the issuer's
15 directors, officers, general partners, beneficial owners of ten
16 percent (10%) or more of any class of its equity securities, any
17 of the issuer's promoters presently connected with the issuer in
18 any capacity, any underwriter of the securities to be offered, or
19 any partner, director, or officer of the underwriter:

20 (i) within the last five (5) years, has filed a registration
21 statement that is the subject of a currently effective
22 registration stop order entered by any state securities
23 administrator or the Securities and Exchange Commission;

24 (ii) within the last five (5) years, has been convicted of any
25 criminal offense in connection with the offer, purchase, or
26 sale of any security, or any criminal offense involving fraud
27 or deceit;

28 (iii) is currently subject to any state or federal administrative
29 enforcement order or judgment entered within the last five
30 (5) years, finding fraud or deceit in connection with the
31 purchase or sale of any security; or

32 (iv) is currently subject to any order, judgment, or decree of
33 any court with jurisdiction, entered within the last five (5)
34 years, temporarily, preliminarily, or permanently restraining
35 or enjoining the party from engaging in or continuing to
36 engage in any conduct or practice involving fraud or deceit
37 in connection with the purchase or sale of any security.

38 (D) Clause (C) does not apply if:

39 (i) the party subject to the disqualification is licensed or
40 registered to conduct securities related business in the state
41 in which the order, judgment, or decree creating the
42 disqualification was entered against the party;



1 (ii) before the first offer under the exemption described in
 2 this subdivision, the state securities administrator, or the
 3 court or regulatory authority that entered the order,
 4 judgment, or decree, waives the disqualification; or
 5 (iii) the issuer establishes that it did not know and in the
 6 exercise of reasonable care, based on a factual inquiry, could
 7 not have known that a disqualification existed under this
 8 subdivision.

9 (E) A general announcement of the proposed offering may be
 10 made by any means. A general announcement described in this
 11 clause must include only the following information, unless
 12 additional information is specifically permitted by the
 13 commissioner:

14 (i) The name, address, and telephone number of the issuer of
 15 the securities.

16 (ii) The name, a brief description, and price (if known) of
 17 any security to be issued.

18 (iii) A brief description of the business of the issuer in
 19 twenty-five (25) words or less.

20 (iv) The type, number, and aggregate amount of securities
 21 being offered.

22 (v) The name, address, and telephone number of the person
 23 to contact for additional information.

24 (vi) A statement that indicates that sales will be made only
 25 to accredited investors, that no money or other consideration
 26 is being solicited or will be accepted by way of the general
 27 announcement, that the securities have not been registered
 28 with or approved by any state securities agency or the
 29 Securities and Exchange Commission, and that the securities
 30 are being offered and sold under an exemption from
 31 registration.

32 (F) The issuer, in connection with an offer, may provide
 33 information in addition to the general announcement under
 34 clause (E), if the information:

35 (i) is delivered through an electronic data base that is
 36 restricted to persons who have been prequalified as
 37 accredited investors; or

38 (ii) is delivered after the issuer reasonably believes that the
 39 prospective purchaser is an accredited investor.

40 (G) No telephone solicitation is permitted unless before
 41 placing the call, the issuer reasonably believes that the
 42 prospective purchaser to be solicited is an accredited investor.



- 1 (H) Dissemination of the general announcement of the
 2 proposed offering to persons who are not accredited investors
 3 does not disqualify the issuer from claiming the exemption
 4 under this subdivision.
- 5 (I) The issuer shall file with the division a notice of
 6 transaction, a consent to service of process, a copy of the
 7 general announcement, and a fee established by the
 8 commissioner within fifteen (15) days after the first sale in
 9 Indiana.
- 10 (25) An offer to sell or a sale of a security of an issuer made after
 11 June 30, 2014, if:
- 12 (A) the transaction is part of a single issue in which:
- 13 (i) the offer or sale is made in compliance with 17 CFR
 14 230.504, 17 CFR 230.505, and 17 CFR 230.506, including
 15 any offer or sale made exempt by the application of 17 CFR
 16 508(a);
- 17 (ii) the issuer is required to submit a notice filing on a Form
 18 D, **as promulgated by the Securities and Exchange**
 19 **Commission to the commissioner together with a consent**
 20 **to service of process complying with IC 23-19-6-11,**
 21 **signed by the issuer,** not later than fifteen (15) days after
 22 the first sale of securities in this state; and
- 23 (iii) by submitting the notice described in item (ii), the issuer
 24 agrees, upon written request by the commissioner, to furnish
 25 to the commissioner any information the issuer furnished to
 26 offerees;
- 27 (B) for offerings made in compliance with 17 CFR 230.504, no
 28 commission, fee, or other remuneration is paid or given,
 29 directly or indirectly, to any broker-dealer for soliciting any
 30 prospective purchaser in this state unless the broker-dealer is
 31 appropriately registered under this article. It is a defense to a
 32 violation of this clause if the issuer sustains the burden of
 33 proof that the issuer did not know and, in the exercise of
 34 reasonable care could not have known, that the person who
 35 received the commission, fee, or other remuneration was not
 36 properly registered; and
- 37 (C) in all sales to purchasers other than those described in
 38 subdivision (13) for offerings made in compliance with 17
 39 CFR 230.504, at least one (1) of the following is satisfied:
- 40 (i) The investment is suitable for the purchaser upon the
 41 basis of facts, if any facts are disclosed by the purchaser, as
 42 to the purchaser's other securities holdings, financial



1 situation, and needs. For purposes of this item only, it is
 2 presumed that, if the investment does not exceed ten percent
 3 (10%) of the investor's net worth, the investment is suitable.

4 (ii) The purchaser, either alone or with the purchaser's
 5 representative or representatives, has the knowledge and
 6 experience in financial and business matters that
 7 demonstrate that the purchaser is capable of evaluating the
 8 merits and risks of the prospective investment.

9 (26) Any offer or sale of securities after June 30, 2014, by an
 10 issuer that meets the requirements of the federal exemption for
 11 intrastate offerings in Section 3(a)(11) of the Securities Act of
 12 1933, 15 U.S.C. 77c(a)(11), and Securities and Exchange
 13 Commission Rule 147, 17 CFR 230.147. However, all the
 14 following apply:

15 (A) The issuer must make a notice filing with the division on
 16 a form prescribed by the commissioner within thirty (30) days
 17 after the first sale in Indiana.

18 (B) Any commission, discount, or other remuneration for sales
 19 of securities in Indiana must be paid or given only to dealers
 20 or salespersons licensed under this article.

21 (C) The issuer must pay the fee established by the
 22 commissioner. However, no filing fee is required to file
 23 amendments to the form described in clause (A).

24 (D) Within ten (10) days of receiving the form required by this
 25 subdivision, the commissioner may require the issuer to
 26 furnish any additional information considered necessary by the
 27 commissioner to determine the issuer's qualifications.

28 (27) An offer or sale of a security made after June 30, 2014, by an
 29 issuer if the offer or sale is conducted in accordance with all the
 30 following requirements:

31 (A) The issuer of the security is a business entity organized
 32 under the laws of Indiana and authorized to do business in
 33 Indiana.

34 (B) The transaction meets the requirements of the federal
 35 exemption for intrastate offerings in Section 3(a)(11) of the
 36 Securities Act of 1933 (15 U.S.C. 77c(a)(11)) and Rule 147
 37 adopted under the Securities Act of 1933 (17 CFR 230.147).

38 (C) Except as provided in clause (E), the sum of all cash and
 39 other consideration to be received for all sales of the security
 40 in reliance on the exemption under this subdivision, excluding
 41 sales to any accredited investor or institutional investor, does
 42 not exceed the following amount:



1 (i) If the issuer has not undergone and made available to
2 each prospective investor and the commissioner the
3 documentation resulting from a financial audit of its most
4 recently completed fiscal year that complies with generally
5 accepted accounting principles, one million dollars
6 (\$1,000,000), less the aggregate amount received for all
7 sales of securities by the issuer within the twelve (12)
8 months before the first offer or sale made in reliance on the
9 exemption under this subdivision.

10 (ii) If the issuer has undergone and made available to each
11 prospective investor and the commissioner the
12 documentation resulting from a financial audit of its most
13 recently completed fiscal year that complies with generally
14 accepted accounting principles, two million dollars
15 (\$2,000,000), less the aggregate amount received for all
16 sales of securities by the issuer within the twelve (12)
17 months before the first offer or sale made in reliance on the
18 exemption under this subdivision.

19 (D) An offer or sale to an officer, director, partner, trustee, or
20 individual occupying similar status or performing similar
21 functions with respect to the issuer or to a person owning ten
22 percent (10%) or more of the outstanding shares of any class
23 or classes of securities of the issuer does not count toward the
24 monetary limitations in clause (C).

25 (E) The issuer does not accept more than five thousand dollars
26 (\$5,000) from any single purchaser unless the purchaser is an
27 accredited investor.

28 (F) Unless waived by written consent by the commissioner, not
29 less than ten (10) days before the commencement of an
30 offering of securities in reliance on the exemption under this
31 subdivision, the issuer must do all the following:

32 (i) Make a notice filing with the division on a form
33 prescribed by the commissioner.

34 (ii) Pay the fee established by the commissioner. However,
35 no filing fee is required to file amendments to the form
36 described in item (i).

37 (iii) Provide the commissioner a copy of the disclosure
38 document to be provided to prospective investors under
39 clause (L).

40 (iv) Provide the commissioner a copy of an escrow
41 agreement with a bank, regulated trust company or corporate
42 fiduciary, savings bank, savings and loan association, or



1 credit union authorized to do business in Indiana in which
2 the issuer will deposit the investor funds or cause the
3 investor funds to be deposited. The bank, regulated trust
4 company or corporate fiduciary, savings bank, savings and
5 loan association, or credit union in which the investor funds
6 are deposited is only responsible to act at the direction of the
7 party establishing the escrow agreement and does not have
8 any duty or liability, contractual or otherwise, to any
9 investor or other person.

10 (v) The issuer shall not access the escrow funds until the
11 aggregate funds raised from all investors equals or exceeds
12 the minimum amount specified in the escrow agreement.

13 (vi) An investor may cancel the investor's commitment to
14 invest if the target offering amount is not raised before the
15 time stated in the escrow agreement.

16 (G) The issuer is not, either before or as a result of the
17 offering, an investment company, as defined in Section 3 of
18 the Investment Company Act of 1940 (15 U.S.C. 80a-3), an
19 entity that would be an investment company but for the
20 exclusions provided in Section 3(c) of the Investment
21 Company Act of 1940 (15 U.S.C. 80a-3(c)), or subject to the
22 reporting requirements of Section 13 or 15(d) of the Securities
23 Exchange Act of 1934 (15 U.S.C. 78m or 15 U.S.C. 78o(d)).

24 (H) The issuer informs all prospective purchasers of securities
25 offered under an exemption under this subdivision that the
26 securities have not been registered under federal or state
27 securities law and that the securities are subject to limitations
28 on resale. The issuer shall display the following legend
29 conspicuously on the cover page of the disclosure document:

30 "IN MAKING AN INVESTMENT DECISION,
31 INVESTORS MUST RELY ON THEIR OWN
32 EXAMINATION OF THE ISSUER AND THE TERMS OF
33 THE OFFERING, INCLUDING THE MERITS AND RISKS
34 INVOLVED. THESE SECURITIES HAVE NOT BEEN
35 RECOMMENDED BY ANY FEDERAL OR STATE
36 SECURITIES COMMISSION OR DIVISION OR OTHER
37 REGULATORY AUTHORITY. FURTHERMORE, THE
38 FOREGOING AUTHORITIES HAVE NOT CONFIRMED
39 THE ACCURACY OR DETERMINED THE ADEQUACY
40 OF THIS DOCUMENT. ANY REPRESENTATION TO
41 THE CONTRARY IS A CRIMINAL OFFENSE. THESE
42 SECURITIES ARE SUBJECT TO RESTRICTIONS ON



1 TRANSFERABILITY AND RESALE AND MAY NOT BE
2 TRANSFERRED OR RESOLD EXCEPT AS PERMITTED
3 BY SUBSECTION (e) OF SEC RULE 147 (17 CFR
4 230.147(e)) AS PROMULGATED UNDER THE
5 SECURITIES ACT OF 1933, AS AMENDED, AND THE
6 APPLICABLE STATE SECURITIES LAWS, PURSUANT
7 TO REGISTRATION OR EXEMPTION THEREFROM.
8 INVESTORS SHOULD BE AWARE THAT THEY WILL
9 BE REQUIRED TO BEAR THE FINANCIAL RISKS OF
10 THIS INVESTMENT FOR AN INDEFINITE PERIOD OF
11 TIME."

12 (I) The issuer requires each purchaser to certify in writing or
13 electronically as follows:

14 "I UNDERSTAND AND ACKNOWLEDGE THAT I am
15 investing in a high-risk, speculative business venture. I may
16 lose all of my investment, or under some circumstances
17 more than my investment, and I can afford this loss. This
18 offering has not been reviewed or approved by any state or
19 federal securities commission or division or other regulatory
20 authority and no such person or authority has confirmed the
21 accuracy or determined the adequacy of any disclosure made
22 to me relating to this offering. The securities I am acquiring
23 in this offering are illiquid, there is no ready market for the
24 sale of such securities, it may be difficult or impossible for
25 me to sell or otherwise dispose of this investment, and,
26 accordingly, I may be required to hold this investment
27 indefinitely. I may be subject to tax on my share of the
28 taxable income and losses of the company, whether or not I
29 have sold or otherwise disposed of my investment or
30 received any dividends or other distributions from the
31 company."

32 (J) The issuer obtains from each purchaser of a security
33 offered under an exemption under this subdivision evidence
34 that the purchaser is a resident of Indiana and, if applicable, is
35 an accredited investor.

36 (K) All payments for purchase of securities offered under an
37 exemption under this subdivision are directed to and held by
38 the financial institution specified in clause (F)(iv). The
39 commissioner may request from the financial institutions
40 information necessary to ensure compliance with this section.
41 This information is not a public record and is not available for
42 public inspection.



1 (L) The issuer of securities offered under an exemption under
2 this subdivision provides a disclosure document to each
3 prospective investor at the time the offer of securities is made
4 to the prospective investor that contains all the following:

5 (i) A description of the company, its type of entity, the
6 address and telephone number of its principal office, its
7 history, its business plan, and the intended use of the
8 offering proceeds, including any amounts to be paid, as
9 compensation or otherwise, to any owner, executive officer,
10 director, managing member, or other person occupying a
11 similar status or performing similar functions on behalf of
12 the issuer.

13 (ii) The identity of all persons owning more than twenty
14 percent (20%) of the ownership interests of any class of
15 securities of the company.

16 (iii) The identity of the executive officers, directors,
17 managing members, and other persons occupying a similar
18 status or performing similar functions in the name of and on
19 behalf of the issuer, including their titles and their prior
20 experience.

21 (iv) The terms and conditions of the securities being offered
22 and of any outstanding securities of the company; the
23 minimum and maximum amount of securities being offered,
24 if any; either the percentage ownership of the company
25 represented by the offered securities or the valuation of the
26 company implied by the price of the offered securities; the
27 price per share, unit, or interest of the securities being
28 offered; any restrictions on transfer of the securities being
29 offered; and a disclosure of any anticipated future issuance
30 of securities that might dilute the value of securities being
31 offered.

32 (v) The identity of any person who has been or will be
33 retained by the issuer to assist the issuer in conducting the
34 offering and sale of the securities, including any Internet
35 web site operator but excluding persons acting solely as
36 accountants or attorneys and employees whose primary job
37 responsibilities involve the operating business of the issuer
38 rather than assisting the issuer in raising capital.

39 (vi) For each person identified as required in this clause, a
40 description of the consideration being paid to the person for
41 such assistance.

42 (vii) A description of any litigation, legal proceedings, or



- 1 pending regulatory action involving the company or its
 2 management.
- 3 (viii) The names and addresses, including the Uniform
 4 Resource Locator, of each Internet web site that will be used
 5 by the issuer to offer or sell securities under an exemption
 6 under this subdivision.
- 7 (ix) Any additional information material to the offering,
 8 including, if appropriate, a discussion of significant factors
 9 that make the offering speculative or risky. This discussion
 10 must be concise and organized logically and may not be
 11 limited to risks that could apply to any issuer or any offering.
- 12 (M) The exemption under this subdivision may not be used in
 13 conjunction with any other exemption under this article,
 14 except for offers and sales to individuals identified in the
 15 disclosure document, during the immediately preceding twelve
 16 (12) month period.
- 17 (N) The exemption described in this subdivision does not
 18 apply if an issuer or person affiliated with the issuer or
 19 offering is subject to disqualification established by the
 20 commissioner by rule or contained in the Securities Act of
 21 1933 (15 U.S.C. 77c(a)(11)) and Rule 262 adopted under the
 22 Securities Act of 1933 (17 CFR 230.262). However, this
 23 clause does not apply if both of the following are met:
- 24 (i) On a showing of good cause and without prejudice to any
 25 other action by the commissioner, the commissioner
 26 determines that it is not necessary under the circumstances
 27 that an exemption is denied.
- 28 (ii) The issuer establishes that it made a factual inquiry into
 29 whether any disqualification existed under this subdivision
 30 but did not know, and in the exercise of reasonable care,
 31 could not have known that a disqualification existed under
 32 this subdivision. The nature and scope of the requisite
 33 inquiry will vary based on the circumstances of the issuer
 34 and the other offering participants.
- 35 (O) The offering exempted under this subdivision is made
 36 exclusively through one (1) or more Internet web sites and
 37 each Internet web site is subject to the following:
- 38 (i) Before any offer or sale of securities, the issuer must
 39 provide to the Internet web site operator evidence that the
 40 issuer is organized under the laws of Indiana and is
 41 authorized to do business in Indiana.
- 42 (ii) Subject to items (iii) and (v), the Internet web site



1 operator must register with the division by filing a
2 statement, accompanied by the filing fee established by the
3 commissioner, that includes all the information described in
4 section 2.3(b) of this chapter.

5 (iii) The Internet web site operator is not required to register
6 as a broker-dealer if all the conditions in section 2.3(c) of
7 this chapter apply with respect to the Internet web site and
8 its operator.

9 (iv) If any change occurs that affects the Internet web site's
10 registration exemption, the Internet web site operator must
11 notify the division within thirty (30) days after the change
12 occurs.

13 (v) The Internet web site operator is not required to register
14 as a broker-dealer under item (ii) if the Internet web site
15 operator is registered as a broker-dealer under the Securities
16 Exchange Act of 1934 (15 U.S.C. 78o) or is a funding portal
17 registered under the Securities Act of 1933 (15 U.S.C.
18 77d-1) and the Securities and Exchange Commission has
19 adopted rules under authority of Section 3(h) of the
20 Securities Exchange Act of 1934 (15 U.S.C. 78c(h)) and
21 P.L.112-106, Section 304, governing funding portals. This
22 item does not require an Internet web site operator to
23 register as a broker-dealer under the Securities Exchange
24 Act of 1934 or as a funding portal under the Securities Act
25 of 1933.

26 (vi) The issuer and the Internet web site operator must
27 maintain records of all offers and sales of securities effected
28 through the Internet web site and must provide ready access
29 to the records to the division, upon request. The records of
30 an Internet web site operator under this clause are subject to
31 the reasonable periodic, special, or other audits or
32 inspections by a representative of the commissioner, in or
33 outside Indiana, as the commissioner considers necessary or
34 appropriate in the public interest and for the protection of
35 investors. An audit or inspection may be made at any time
36 and without prior notice. The commissioner may copy, and
37 remove for audit or inspection copies of, all records the
38 commissioner reasonably considers necessary or appropriate
39 to conduct the audit or inspection. The commissioner may
40 assess a reasonable charge for conducting an audit or
41 inspection under this item.

42 (vii) The Internet web site operator shall limit web site



- 1 access to the offer or sale of securities to only Indiana
 2 residents.
- 3 (viii) The Internet web site operator shall not hold, manage,
 4 possess, or handle investor funds or securities.
- 5 (ix) The Internet web site operator may not be an investor in
 6 any Indiana offering under this subdivision or subdivision
 7 (26).
- 8 (P) An issuer of a security, the offer and sale of which is
 9 exempt under this subdivision, shall provide, free of charge, a
 10 quarterly report to the issuer's investors until no securities
 11 issued under an exemption under this subdivision are
 12 outstanding. An issuer may satisfy the reporting requirement
 13 of this clause by making the information available on an
 14 Internet web site if the information is made available within
 15 forty-five (45) days after the end of each fiscal quarter and
 16 remains available until the succeeding quarterly report is
 17 issued. An issuer shall file each quarterly report under this
 18 clause with the division and, if the quarterly report is made
 19 available on an Internet web site, the issuer shall also provide
 20 a written copy of the report to any investor upon request. The
 21 report must contain all the following:
- 22 (i) Compensation received by each director and executive
 23 officer, including cash compensation earned since the
 24 previous report and on an annual basis and any bonuses,
 25 stock options, other rights to receive securities of the issuer
 26 or any affiliate of the issuer, or other compensation received.
- 27 (ii) An analysis by management of the issuer of the business
 28 operations and financial condition of the issuer.
- 29 (Q) In 2019 and every fifth year thereafter, the commissioner
 30 shall cumulatively adjust the dollar limitations provided in
 31 clause (C) to reflect the change in the Consumer Price Index
 32 for all Urban Consumers published by the federal Bureau of
 33 Labor Statistics rounding each dollar limitation to the nearest
 34 fifty thousand dollars (\$50,000).
- 35 **(28) An offer to sell or a sale of a security of an issuer made**
 36 **after June 30, 2017, in which:**
- 37 **(A) the offer or sale is made in compliance with federal**
 38 **Regulation Crowdfunding (17 CFR 227) and Sections**
 39 **4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933; and**
 40 **(B) the issuer is required to submit a notice filing on a**
 41 **Uniform Notice of Federal Crowdfunding Offering form or**
 42 **copies of documents filed with the Securities and Exchange**



- 1 **Commission, a consent to service of process on Form U-2**
 2 **if not filing on the Uniform Notice of Federal**
 3 **Crowdfunding Offering form.**
 4 **(29) An offer to sell or a sale of a security of an issuer made**
 5 **after June 30, 2017, if the transaction is part of a single issue**
 6 **in which:**
 7 **(A) the offer or sale is made in compliance with Tier 2 of**
 8 **federal Regulation A and Section 18(b)(3) or Section**
 9 **18(b)(4) of the Securities Act of 1933; and**
 10 **(B) the issuer is required to submit a notice filing on a**
 11 **Uniform Notice of Regulation A -- Tier 2 Offering form or**
 12 **copies of documents filed with the Securities and Exchange**
 13 **Commission, a consent to service of process on Form U-2**
 14 **if not filing on the Uniform Notice of Regulation A -- Tier**
 15 **2 Offering form.**
 16 SECTION 3. IC 23-19-3-2, AS ADDED BY P.L.27-2007,
 17 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2017]: Sec. 2. (a) With respect to a federal covered security,
 19 as defined in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C.
 20 77r(b)(2)), that is not otherwise exempt under IC 23-19-2-1 through
 21 IC 23-19-2-3, a rule adopted or order issued under this article may
 22 require the filing of any or all of the following records:
 23 (1) Before the initial offer of a federal covered security in this
 24 state, all records that are part of a federal registration statement
 25 filed with the Securities and Exchange Commission under the
 26 Securities Act of 1933 and a consent to service of process
 27 complying with IC 23-19-6-11 signed by the issuer and the
 28 payment of a fee of: **as set forth in subsection (f).**
 29 (A) five hundred dollars (\$500) for an issuer with net assets
 30 not exceeding ten million dollars (\$10,000,000); or
 31 (B) one thousand dollars (\$1,000) for other issuers.
 32 (2) After the initial offer of the federal covered security in this
 33 state, all records that are part of an amendment to a federal
 34 registration statement filed with the Securities and Exchange
 35 Commission, under the Securities Act of 1933.
 36 (3) To the extent necessary or appropriate to compute fees, a
 37 report of the value of the federal covered securities sold or offered
 38 to persons present in this state, if the sales data are not included
 39 in records filed with the Securities and Exchange Commission;
 40 and payment of a fee of five-hundredths of one percent (0.05%)
 41 of the excess of the dollar amount of securities sold during the
 42 fiscal year over the dollar amount of securities redeemed, not to



1 exceed two thousand dollars (\$2,000) in any one (1) year. The fee
 2 required in subdivision (1) shall be applied as a credit against the
 3 fee required under this subdivision.

4 (b) A notice filing under subsection (a) is effective for one (1) year
 5 commencing on the later of the notice filing or the effectiveness of the
 6 offering filed with the Securities and Exchange Commission. On or
 7 before expiration, the issuer may renew a notice filing by filing a copy
 8 of those records filed by the issuer with the Securities and Exchange
 9 Commission that are required by rule or order under this article to be
 10 filed and by paying a renewal fee of two hundred fifty dollars (\$250)
 11 as set forth in subsection (f). A previously filed consent to service of
 12 process complying with IC 23-19-6-11 may be incorporated by
 13 reference in a renewal. A renewed notice filing becomes effective upon
 14 the expiration of the filing being renewed.

15 (c) With respect to a security that is a federal covered security under
 16 Section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C.
 17 77r(b)(4)(D)), **that is not otherwise exempt under IC 23-19-2-1**
 18 **through IC 23-19-2-3**, a rule under this article may require a notice
 19 filing by or on behalf of an issuer to include a copy of Form D,
 20 including the Appendix, as promulgated by the Securities and
 21 Exchange Commission, **17 CFR 239.500, or a successor form**, and a
 22 consent to service of process complying with IC 23-19-6-11 signed by
 23 the issuer not later than fifteen (15) days after the first sale of the
 24 federal covered security in this state.

25 (d) Except with respect to a federal security under Section 18(b)(1)
 26 of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)), if the commissioner
 27 finds that there is a failure to comply with a notice or fee requirement
 28 of this section, the commissioner may issue a stop order suspending the
 29 offer and sale of a federal covered security in this state. If the
 30 deficiency is corrected, the stop order is void as of the time of its
 31 issuance and no penalty may be imposed by the commissioner.

32 (d) The following provisions apply to offerings made under
 33 federal Regulation Crowdfunding (17 CFR 227) and Sections
 34 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933:

35 (1) An issuer that offers and sells securities in this state in an
 36 offering exempt under federal Regulation Crowdfunding (17
 37 CFR 227), and that either has its principal place of business
 38 in this state or sells fifty percent (50%) or greater of the
 39 aggregate amount of the offering to residents of this state,
 40 shall file the following with the commissioner:

41 (A) A completed Uniform Notice of Federal Crowdfunding
 42 Offering form or copies of all documents filed with the



1 **Securities and Exchange Commission.**

2 **(B) A consent to service of process on Form U-2 if not filing**
 3 **on the Uniform Notice of Federal Crowdfunding Offering**
 4 **form.**

5 **(2) If the issuer has its principal place of business in this state,**
 6 **the filing required under subdivision (1) shall be filed with the**
 7 **Commissioner when the issuer makes its initial Form C filing**
 8 **concerning the offering with the Securities and Exchange**
 9 **Commission. If the issuer does not have its principal place of**
 10 **business in this state but residents of this state have purchased**
 11 **fifty percent (50%) or greater of the aggregate amount of the**
 12 **offering, the filing required under subdivision (1) shall be filed**
 13 **when the issuer becomes aware that the purchases have met**
 14 **this threshold and not later than thirty (30) days after the date**
 15 **of completion of the offering.**

16 **(3) The initial notice filing is effective for twelve (12) months**
 17 **after the date of the filing with the commissioner.**

18 **(4) For each additional twelve (12) month period in which the**
 19 **offering is continued, an issuer conducting an offering under**
 20 **federal Regulation Crowdfunding (17 CFR 227) may renew**
 21 **its notice filing by filing the following on or before the**
 22 **expiration of the notice filing a completed Uniform Notice of**
 23 **Federal Crowdfunding Offering form marked "renewal" or**
 24 **a cover letter or other document requesting renewal, or both**
 25 **the form and a cover letter or other document.**

26 **(5) An issuer may increase the amount of securities offered in**
 27 **this state by submitting a completed Uniform Notice of**
 28 **Federal Crowdfunding Offering form marked "amendment"**
 29 **or other document describing the transaction.**

30 **(e) The following provisions apply to offerings made under Tier**
 31 **2 of federal Regulation A and Section 18(b)(3) or Section 18(b)(4)**
 32 **of the Securities Act of 1933:**

33 **(1) An issuer planning to offer and sell securities in this state**
 34 **in an offering exempt under Tier 2 of federal Regulation A**
 35 **shall submit the following at least twenty-one (21) calendar**
 36 **days prior to the initial sale in this state:**

37 **(A) A completed Uniform Notice of Regulation A - Tier 2**
 38 **Offering form or copies of all documents filed with the**
 39 **Securities and Exchange Commission.**

40 **(B) A consent to service of process on Form U-2 if not filing**
 41 **on the Uniform Notice of Regulation A - Tier 2 Offering**
 42 **form.**



- 1 **(C) The filing fee as set forth in subsection (f).**
 2 **The initial notice filing is effective for twelve (12) months**
 3 **from the date of the filing with this state.**
 4 **(2) For each additional twelve (12) month period in which the**
 5 **same offering is continued, an issuer conducting a Tier 2**
 6 **offering under federal Regulation A may renew its notice**
 7 **filing by filing the following on or before the expiration of the**
 8 **notice filing:**
 9 **(A) The Uniform Notice of Regulation A - Tier 2 Offering**
 10 **form marked "renewal" or a cover letter or other**
 11 **document requesting renewal, or both the form and a**
 12 **cover letter or other document.**
 13 **(B) The renewal fee as set forth in subsection (f).**
 14 **(3) An issuer may increase the amount of securities offered in**
 15 **this state by submitting a Uniform Notice of Regulation A -**
 16 **Tier 2 Offering form marked "amendment" or other**
 17 **document describing the transaction.**
 18 **(f) At the time of the filing of the information prescribed in**
 19 **subsection (a) or (b), the issuer shall pay to the commissioner a fee**
 20 **of nine hundred dollars (\$900). If the notice filing is withdrawn or**
 21 **otherwise terminated, the commissioner shall retain the fee.**
 22 **(g) Except for a federal security under Section 18(b)(1) of the**
 23 **Securities Act of 1933 (15 U.S.C. 77r(b)(1)), if the commissioner**
 24 **finds that there is a failure to comply with a notice or fee**
 25 **requirement of this section, the commissioner may issue a stop**
 26 **order suspending the offer and sale of a federal covered security in**
 27 **this state. If the deficiency is corrected, the stop order is void as of**
 28 **the time of its issuance and no penalty may be imposed by the**
 29 **commissioner.**
 30 **SECTION 4. IC 23-19-3-5, AS ADDED BY P.L.27-2007,**
 31 **SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
 32 **JULY 1, 2017]: Sec. 5. (a) A registration statement **under section 3 or****
 33 ****4 of this chapter** may be filed by the issuer, a person on whose behalf**
 34 **the offering is to be made, or a broker-dealer registered under this**
 35 **article.**
 36 **(b) A person filing a registration statement shall pay a filing fee of**
 37 **five-hundredths of one percent (0.05%) of the maximum aggregate**
 38 **offering price at which the registered securities are to be offered in**
 39 **Indiana, but the fee may not be less than two hundred fifty dollars**
 40 **(\$250) and may not be more than one thousand dollars (\$1,000). If a**
 41 **registration statement is withdrawn before the effective date or a**
 42 **preeffective stop order is issued under section 6 of this chapter, the**



1 commissioner shall retain two hundred fifty dollars (\$250) of the fee.
2 **five hundred dollars (\$500). If the registration statement is**
3 **withdrawn before the effective date or a preeffective stop order is**
4 **issued, the commissioner shall retain the fee.**

5 (c) A registration statement filed under section 3 or 4 of this chapter
6 must specify:

7 (1) the amount of securities to be offered in this state;

8 (2) the states in which a registration statement or similar record
9 in connection with the offering has been or is to be filed; and

10 (3) any adverse order, judgment, or decree issued in connection
11 with the offering by a state securities regulator, the Securities and
12 Exchange Commission, or a court.

13 (d) A record filed under this article or the predecessor act within
14 five (5) years preceding the filing of a registration statement may be
15 incorporated by reference in the registration statement to the extent that
16 the record is currently accurate.

17 (e) In the case of a nonissuer distribution, information or a record
18 may not be required under subsection (i) or section 4 of this chapter,
19 unless it is known to the person filing the registration statement or to
20 the person on whose behalf the distribution is to be made or unless it
21 can be furnished by those persons without unreasonable effort or
22 expense.

23 (f) A rule adopted or order issued under this article may require as
24 a condition of registration that a security issued within the previous five
25 (5) years or to be issued to a promoter for a consideration substantially
26 less than the public offering price or to a person for a consideration
27 other than cash be deposited in escrow and that the proceeds from the
28 sale of the registered security in this state be impounded until the issuer
29 receives a specified amount from the sale of the security either in this
30 state or elsewhere. The conditions of any escrow or impoundment
31 required under this subsection may be established by rule adopted or
32 order issued under this article, but the commissioner may not reject a
33 depository institution solely because of its location in another state.

34 (g) A rule adopted or order issued under this article may require as
35 a condition of registration that a security registered under this article be
36 sold only on a specified form of subscription or sale contract and that
37 a signed or conformed copy of each contract be filed under this article
38 or preserved for a period specified by the rule or order, which may not
39 be longer than five (5) years.

40 (h) Except while a stop order is in effect under section 6 of this
41 chapter, a registration statement is effective for one (1) year after its
42 effective date, or for any longer period designated in an order under



1 this article during which the security is being offered or distributed in
 2 a nonexempted transaction by or for the account of the issuer or other
 3 person on whose behalf the offering is being made or by an underwriter
 4 or broker-dealer that is still offering part of an unsold allotment or
 5 subscription taken as a participant in the distribution. For the purposes
 6 of a nonissuer transaction, all outstanding securities of the same class
 7 identified in the registration statement as a security registered under
 8 this article are considered to be registered while the registration
 9 statement is effective. If any securities of the same class are
 10 outstanding, a registration statement may not be withdrawn until one
 11 (1) year after its effective date. A registration statement may be
 12 withdrawn only with the approval of the commissioner.

13 (i) While a registration statement is effective, a rule adopted or
 14 order issued under this article may require the person that filed the
 15 registration statement to file reports, not more often than quarterly, to
 16 keep the information or other record in the registration statement
 17 reasonably current and to disclose the progress of the offering.

18 (j) A registration statement ~~may~~ **shall** be amended after its effective
 19 date **if there are material changes in information or documents in**
 20 **the registration statement or if there is an increase in the aggregate**
 21 **amount of securities offered or sold in the state.** The posteffective
 22 amendment becomes effective when the commissioner so orders. If a
 23 posteffective amendment is made to increase the number of securities
 24 specified to be offered or sold, the person filing the amendment shall
 25 pay the greater of one hundred dollars (\$100) or the difference between
 26 the amount originally paid and the amount the registration fee would
 27 have been if all the securities to be offered had been registered. **If a**
 28 **posteffective amendment is made to increase the number of**
 29 **securities specified to be offered or sold, the issuer filing the**
 30 **amendment shall pay a nonrefundable registration fee of one**
 31 **hundred dollars (\$100).** A posteffective amendment relates back to
 32 the date of the offering of the additional securities being registered if,
 33 within one (1) year after the date of the sale, the amendment is filed
 34 and the additional registration fee is paid.

35 SECTION 5. IC 23-19-4.1-5, AS ADDED BY P.L.39-2016,
 36 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2017]: Sec. 5. As used in this chapter, "qualified individual"
 38 means an individual associated with a broker-dealer **or investment**
 39 **adviser** who serves in a supervisory, compliance, or legal capacity as
 40 part of the individual's job.

41 SECTION 6. IC 23-19-4.1-7, AS ADDED BY P.L.39-2016,
 42 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2017]: Sec. 7. (a) A qualified individual may refuse a request
2 for disbursement of funds from an account:

3 (1) owned by a financially endangered adult; or

4 (2) of which a financially endangered adult is a beneficiary or
5 beneficial owner;

6 if the qualified individual has reason to believe that the requested
7 disbursement may result in financial exploitation of the financially
8 endangered adult.

9 (b) If a qualified individual refuses a request for disbursement under
10 subsection (a), a broker-dealer **or investment adviser** involved in the
11 transaction or the qualified individual shall:

12 (1) subject to subsection (c), make a reasonable effort to notify all
13 parties authorized to transact business on the account:

14 (A) orally; or

15 (B) in writing by:

16 (i) electronic communication; or

17 (ii) mail postmarked;

18 not more than two (2) business days after the qualified individual
19 refuses the request for disbursement; and

20 (2) notify the protective agencies:

21 (A) orally; or

22 (B) in writing by:

23 (i) electronic communication; or

24 (ii) mail postmarked;

25 not more than three (3) business days after the qualified
26 individual refuses the request for disbursement.

27 (c) A broker-dealer, **investment adviser**, or the qualified individual
28 described in subsection (b) is not required to contact a party authorized
29 to transact business on the account if the broker-dealer, **investment**
30 **adviser**, or qualified individual has reason to believe that the party has
31 engaged in suspected or attempted financial exploitation of the
32 financially endangered adult.

33 (d) Unless a court or the commissioner enters an order extending the
34 refusal of disbursement or providing any other applicable protective
35 relief, any refusal of disbursement under this section expires upon the
36 earlier of the following:

37 (1) The date that the qualified individual has reason to believe
38 that the disbursement will not result in financial exploitation of
39 the financially endangered adult.

40 (2) Fifteen (15) business days after the date of the initial refusal
41 of disbursement by the qualified individual. However, if a
42 broker-dealer's **or investment adviser's** internal review of the



1 facts and circumstances supports the broker-dealer's **or**
 2 **investment adviser's** reasonable belief that the financial
 3 exploitation of the financially endangered adult has occurred, is
 4 occurring, has been attempted, or will be attempted, the
 5 commissioner shall extend the refusal of disbursement for an
 6 additional fifteen (15) business days after the expiration date that
 7 would otherwise apply under this subdivision.

8 (e) A court with jurisdiction may enter an order that:

- 9 (1) extends a refusal of disbursement; or
 10 (2) provides for any other protective relief.

11 (f) After:

- 12 (1) a broker-dealer, **investment adviser**, or qualified individual
 13 provides notice under subsection (b); and
 14 (2) the refusal of disbursement has expired or a court or the
 15 commissioner has entered an order as described in subsection (d)
 16 or (e)(1);

17 the broker-dealer, **investment adviser**, or qualified individual shall
 18 notify, in writing, the protective agencies of the expiration or the order,
 19 as applicable.

20 SECTION 7. IC 23-19-4.1-8, AS ADDED BY P.L.39-2016,
 21 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2017]: Sec. 8. Notwithstanding any other provision of law, a
 23 broker-dealer, **investment adviser**, or a qualified individual who, in
 24 good faith, complies with section 6 or 7 of this chapter, is immune from
 25 any administrative or civil liability for actions taken in accordance with
 26 those sections. A broker-dealer, **investment adviser**, or qualified
 27 individual who, in good faith, releases or does not release copies of
 28 records under section 9 of this chapter is immune from any civil
 29 liability for release of such records or failing to release such records.
 30 This chapter does not limit or otherwise impede the authority of the
 31 commissioner to access or examine books and records of
 32 broker-dealers **or investment advisers** as otherwise provided by law.

33 SECTION 8. IC 23-19-4.1-9, AS ADDED BY P.L.39-2016,
 34 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2017]: Sec. 9. (a) A broker-dealer **or investment adviser** may
 36 provide to protective agencies or law enforcement access to or copies
 37 of records that are relevant to the suspected financial exploitation of a
 38 financially endangered adult. The records may include records relating
 39 to:

- 40 (1) disbursement of any funds from an account of the financially
 41 endangered adult; and
 42 (2) disbursements of funds that comprise the suspected financial



1 exploitation of a financially endangered adult.

2 (b) All records made available to the protective agencies under this
3 section are confidential under IC 5-14-3.

4 SECTION 9. IC 23-19-4.1-10, AS ADDED BY P.L.39-2016,
5 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2017]: Sec. 10. Not later than September 1, 2017, the
7 commissioner shall develop and make available on the secretary of
8 state's Internet web site information that includes training resources to
9 assist broker-dealers, **investment advisers**, and qualified individuals
10 in the prevention and detection of financial exploitation of financially
11 endangered adults. The training resources must include information on:

12 (1) indicators of financial exploitation of financially endangered
13 adults; and

14 (2) the potential steps broker-dealers, **investment advisers**, and
15 qualified individuals can take, under Indiana law, to prevent
16 suspected financial exploitation of financially endangered adults.

17 SECTION 10. IC 23-19-6-1, AS AMENDED BY P.L.39-2016,
18 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2017]: Sec. 1. (a) This article shall be administered by a
20 division of the office of the secretary of state. The secretary of state
21 shall appoint a securities commissioner who shall be responsible for
22 the direction and supervision of the division and the administration of
23 this article under the direction and control of the secretary of state. The
24 salary of the securities commissioner shall be paid out of the funds
25 appropriated for the administration of this article. The commissioner
26 shall serve at the will of the secretary of state.

27 (b) The secretary of state:

28 (1) shall employ a chief deputy, attorneys, a senior investigator,
29 a senior accountant, and other deputies, investigators,
30 accountants, clerks, stenographers, and other employees necessary
31 for the administration of this article; and

32 (2) shall fix their compensation with the approval of the budget
33 agency.

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

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



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

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

- 25 (1) Grants and donations received under subsection (e).
 26 (2) Costs of investigations recovered under section 4(e) of this
 27 chapter.
 28 (3) Fifty percent (50%) of the first four million dollars
 29 (\$4,000,000):
 30 (A) of a civil penalty recovered under section 3(b) or 4(d) of
 31 this chapter;
 32 (B) recovered in a settlement of an action initiated to enforce
 33 this article; or
 34 (C) awarded as a judgment in an action to enforce this article.

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

- 37 (1) Fifty percent (50%) of the first four million dollars
 38 (\$4,000,000):
 39 (A) of a civil penalty recovered under section 3(b) or 4(d) of
 40 this chapter;
 41 (B) recovered in a settlement of an action initiated to enforce
 42 this article; or



- 1 (C) awarded as a judgment in an action to enforce this article.
 2 (2) Any amount exceeding four million dollars (\$4,000,000):
 3 (A) of a civil penalty recovered under section 3(b) or 4(d) of
 4 this chapter;
 5 (B) recovered in a settlement of an action initiated to enforce
 6 this article; or
 7 (C) awarded as a judgment in an action to enforce this article.
 8 (3) Other fees and revenues that are not designated for deposit in
 9 the securities division enforcement account or the securities
 10 restitution fund.
 11 (h) Notwithstanding IC 23-2-2.5-34, IC 23-2-2.5-43, IC 23-2-5-7,
 12 IC 23-19-4-12, IC 25-11-1-15, and this chapter, **five percent (5%) of**
 13 **funds received for deposit in the securities division enforcement**
 14 **account the first ten percent (10%) of any and all funds recovered**
 15 **as a civil penalty by or on behalf of the state attributable to or**
 16 **arising out of actions relating to violations of this article** shall
 17 ~~instead~~ be deposited in the securities restitution fund established by
 18 IC 23-20-1-25. Subject to IC 4-2-6-15, the funds deposited in the
 19 enforcement account shall be available, with the approval of the budget
 20 agency:
 21 (1) to augment and supplement the funds appropriated for the
 22 administration of this article; and
 23 (2) for grants and awards to nonprofit entities for programs and
 24 activities that will further investor education and financial literacy
 25 in the state.
 26 The funds in the enforcement account do not revert to the state general
 27 fund at the end of any state fiscal year.
 28 (i) In connection with the administration and enforcement of this
 29 article, the attorney general shall render all necessary assistance to the
 30 commissioner upon the commissioner's request, and to that end, the
 31 attorney general shall employ legal and other professional services as
 32 are necessary to adequately and fully perform the service under the
 33 direction of the commissioner as the demands of the securities division
 34 shall require. Expenses incurred by the attorney general for the
 35 purposes stated in this subsection shall be chargeable against and paid
 36 out of funds appropriated to the attorney general for the administration
 37 of the attorney general's office. The attorney general may authorize the
 38 commissioner and the commissioner's designee to represent the
 39 commissioner and the securities division in any proceeding involving
 40 enforcement or defense of this article.
 41 (j) Neither the secretary of state, the commissioner, nor an employee
 42 of the securities division shall be liable in their individual capacity,



1 except to the state, for an act done or omitted in connection with the
2 performance of their respective duties under this article.

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

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

16 (1) the practice or commission of fraud may be prohibited and
17 prevented;

18 (2) disclosure of sufficient and reliable information in order to
19 afford reasonable opportunity for the exercise of independent
20 judgment of the persons involved may be assured; and

21 (3) the qualifications may be prescribed to assure availability of
22 reliable broker-dealers, investment advisers, and agents engaged
23 in and in connection with the issuance, barter, sale, purchase,
24 transfer, or disposition of securities in this state.

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

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

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

38 SECTION 11. IC 23-20-1-4, AS ADDED BY P.L.114-2010,
39 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 JULY 1, 2017]: Sec. 4. As used in this chapter, "out-of-pocket loss"
41 means an amount equal to:

42 (1) the amount of restitution ordered under ~~any of the following~~:



1 **a:**

2 (+) ~~Ⓐ~~ **(A)** final court order; **or**

3 (2) ~~Ⓐ~~ **(B)** final administrative order; **minus**

4 **(2) any amounts paid to the victim from the party ordered to**
5 **pay restitution under the court order or administrative order.**

6 SECTION 12. IC 23-20-1-23, AS ADDED BY P.L.114-2010,
7 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2017]: Sec. 23. An award under this chapter may not exceed
9 the lesser of the following:

10 (1) ~~Fifteen Twenty-five~~ thousand dollars (~~\$15,000~~): **(\$25,000).**

11 (2) Twenty-five percent (25%) of the amount of the out-of-pocket
12 loss.

13 SECTION 13. IC 35-41-4-2, AS AMENDED BY P.L.70-2016,
14 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2017]: Sec. 2. (a) Except as otherwise provided in this section,
16 a prosecution for an offense is barred unless it is commenced:

17 (1) within five (5) years after the commission of the offense, in
18 the case of a Class B, Class C, or Class D felony (for a crime
19 committed before July 1, 2014) or a Level 3, Level 4, Level 5, or
20 Level 6 felony (for a crime committed after June 30, 2014); or

21 (2) within two (2) years after the commission of the offense, in the
22 case of a misdemeanor.

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

28 (1) first discovers evidence sufficient to charge the offender with
29 the offense through DNA (deoxyribonucleic acid) analysis; or

30 (2) could have discovered evidence sufficient to charge the
31 offender with the offense through DNA (deoxyribonucleic acid)
32 analysis by the exercise of due diligence.

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

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

37 (1) at any time; and

38 (2) regardless of the amount of time that passes between:

39 (A) the date a person allegedly commits the elements of
40 murder; and

41 (B) the date the alleged victim of the murder dies.

42 (e) A prosecution for the following offenses is barred unless



1 commenced before the date that the alleged victim of the offense
2 reaches thirty-one (31) years of age:

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

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

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

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

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

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

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

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

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

- 41 (1) A prosecution for an offense under IC 30-2-9-7(b) (misuse of
42 funeral trust funds) is barred unless commenced within five (5)



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



1 commenced not later than five (5) years after the earliest of the date on
2 which:

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

