



January 30, 2015

HOUSE BILL No. 1539

DIGEST OF HB 1539 (Updated January 28, 2015 6:15 pm - DI 101)

Citations Affected: IC 23-2; IC 23-19.

Synopsis: Securities. Provides that living residents of bankrupt continuing care retirement communities who executed a continuing care agreement before July 1, 2009, are eligible to receive distributions from the guaranty association fund. (Current law provides that any living resident of a bankrupt continuing care retirement community is eligible to receive distributions from the guaranty association fund.) Removes a provision that provides that IC 4-21.5 (laws governing administrative orders and proceedings) does not apply to certain provisions regulating loan brokers. Removes certain provisions concerning transactions involving securities that are exempt from registration. Provides that IC 4-21.5 (laws governing administrative orders and proceedings) and any rules of practice adopted by the securities division are applicable to administrative proceedings under the uniform securities act. (Current law provides that IC 4-21.5 is not applicable to administrative proceedings under the uniform securities act.) Makes a correction.

Effective: July 1, 2015.

Heaton, Moed

January 20, 2015, read first time and referred to Committee on Financial Institutions.
January 29, 2015, reported — Do Pass.

HB 1539—LS 6497/DI 110



January 30, 2015

First Regular Session of the 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1539

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 23-2-4-16, AS AMENDED BY P.L.153-2009,
2 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 16. (a) If a continuing care retirement community
4 is bankrupt and the operation of the continuing care retirement
5 community is terminated, the board of directors shall, subject to the
6 approval of the commissioner, distribute from the guaranty association
7 fund established in section 13 **of this chapter** to the living residents of
8 the continuing care retirement community an aggregate amount not to
9 exceed one-half (1/2) of the amount in the fund at the time of
10 disbursement. The amount each living resident is entitled to receive
11 shall be prorated, based on the total amount paid on behalf of the
12 resident by the contracting party under the continuing care agreement.
13 In no event may the amount paid to an individual resident under this
14 section exceed the total amount paid on behalf of that resident under
15 the continuing care agreement, less the total value of services received

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1 under the agreement.

2 (b) Any living resident of the continuing care retirement community
3 shall, **if the resident executed a continuing care agreement before**
4 **July 1, 2009**, be eligible to receive distributions under subsection (a),
5 regardless of whether any contribution to the guaranty association fund
6 has been made on behalf of the resident.

7 (c) A resident compensated under this section assigns the resident's
8 rights under the continuing care agreement, to the extent of
9 compensation received under this section, to the board of directors on
10 behalf of the fund. The board of directors may require an assignment
11 of those rights by a resident to the board, on behalf of the fund, as a
12 condition precedent to the receipt of compensation under this section.
13 The board of directors, on behalf of the fund, is subrogated to these
14 rights against the assets of a bankrupt or dissolved provider. Any
15 monies or property collected by the board of directors under this
16 subsection shall be deposited in the fund.

17 (d) The subrogation rights of the board of directors, on behalf of the
18 fund, have the same priority against the assets of the bankrupt or
19 dissolved provider as those possessed by the resident under the
20 continuing care agreement.

21 SECTION 2. IC 23-2-5-10, AS AMENDED BY P.L.156-2009,
22 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
23 JULY 1, 2015]: Sec. 10. (a) Whenever it appears to the commissioner
24 that a person has engaged in or is about to engage in an act or a practice
25 constituting a violation of this chapter or a rule or an order under this
26 chapter, the commissioner may investigate and may issue, with a prior
27 hearing if there exists no substantial threat of immediate irreparable
28 harm or without a prior hearing, if there exists a substantial threat of
29 immediate irreparable harm, orders and notices as the commissioner
30 determines to be in the public interest, including cease and desist
31 orders, orders to show cause, and notices. After notice and hearing, the
32 commissioner may enter an order of rescission, restitution, or
33 disgorgement, including interest at the rate of eight percent (8%) per
34 year, directed to a person who has violated this chapter or a rule or
35 order under this chapter.

36 (b) Upon the issuance of an order or notice without a prior hearing
37 by the commissioner under subsection (a), the commissioner shall
38 promptly notify the respondent and, if the subject of the order or notice
39 is a mortgage loan originator licensee or a principal manager licensee,
40 the loan broker licensee for whom the mortgage loan originator or
41 principal manager is employed:

42 (1) that the order or notice has been issued;



1 (2) of the reasons the order or notice has been issued; and
 2 (3) that upon the receipt of a written request the matter will be set
 3 for a hearing to commence not later than fifteen (15) business
 4 days after receipt of the request if the original order issued by the
 5 commissioner was a summary suspension, summary revocation,
 6 or denial of a license and not later than forty-five (45) business
 7 days after receipt of the request for all other orders unless the
 8 respondent consents to a later date.

9 If a hearing is not requested and not ordered by the commissioner, an
 10 order remains in effect until it is modified or vacated by the
 11 commissioner. If a hearing is requested or ordered, the commissioner,
 12 after notice of an opportunity for hearing, may modify or vacate the
 13 order or extend it until final determination.

14 (c) The commissioner may deny an application for an initial or a
 15 renewal license, and may suspend or revoke the license of a licensee if
 16 the applicant, the licensee, or an ultimate equitable owner of an
 17 applicant for a loan broker license or of a loan broker licensee:

18 (1) has, within the most recent ten (10) years:

19 (A) been the subject of an adjudication or a determination by:

20 (i) a court with jurisdiction; or

21 (ii) an agency or administrator that regulates securities,
 22 commodities, banking, financial services, insurance, real
 23 estate, or the real estate appraisal industry;

24 in Indiana or in any other jurisdiction; and

25 (B) been found, after notice and opportunity for hearing, to
 26 have violated the securities, commodities, banking, financial
 27 services, insurance, real estate, or real estate appraisal laws of
 28 Indiana or any other jurisdiction;

29 (2) except as provided in subsection (d)(1) with respect to the
 30 loan brokerage business, has:

31 (A) been denied the right to do business in the securities,
 32 commodities, banking, financial services, insurance, real
 33 estate, or real estate appraisal industry; or

34 (B) had the person's authority to do business in the securities,
 35 commodities, banking, financial services, insurance, real
 36 estate, or real estate appraisal industry revoked or suspended;

37 by Indiana or by any other state, federal, or foreign governmental
 38 agency or self regulatory organization;

39 (3) is insolvent;

40 (4) has violated any provision of this chapter;

41 (5) has knowingly filed with the commissioner any document or
 42 statement that:



- 1 (A) contains a false representation of a material fact;
 2 (B) fails to state a material fact; or
 3 (C) contains a representation that becomes false after the filing
 4 but during the term of a license as provided in subsection (j);
 5 (i);
 6 (6) has been convicted, within ten (10) years before the date of the
 7 application, renewal, or review, of any crime, other than a felony,
 8 involving fraud or deceit;
 9 (7) if the person is a loan broker licensee or a principal manager,
 10 has failed to reasonably supervise the person's mortgage loan
 11 originators or employees to ensure their compliance with this
 12 chapter;
 13 (8) is on the most recent tax warrant list supplied to the
 14 commissioner by the department of state revenue; or
 15 (9) has engaged in dishonest or unethical practices in the loan
 16 brokerage business, as determined by the commissioner.
 17 (d) The commissioner shall deny an application for an initial or a
 18 renewal license and shall revoke the license of a licensee if the
 19 applicant, the licensee, or an ultimate equitable owner of an applicant
 20 for a loan broker license or of a loan broker licensee:
 21 (1) has had a:
 22 (A) loan broker license issued under this chapter;
 23 (B) mortgage loan originator license issued under this chapter;
 24 (C) principal manager license issued under this chapter; or
 25 (D) license that is:
 26 (i) equivalent to a license described in clause (A), (B), or
 27 (C); and
 28 (ii) issued by another jurisdiction;
 29 revoked by the commissioner or the appropriate regulatory agency
 30 in another jurisdiction, whichever applies;
 31 (2) has been convicted of or pleaded guilty or nolo contendere to
 32 a felony in a domestic, foreign, or military court:
 33 (A) during the seven (7) year period immediately preceding
 34 the date of the application or review; or
 35 (B) at any time preceding the date of the application or review
 36 if the felony involved an act of fraud or dishonesty, a breach
 37 of trust, or money laundering;
 38 (3) fails to maintain the bond required under section 5(d) of this
 39 chapter;
 40 (4) fails to demonstrate the financial responsibility, character, and
 41 general fitness necessary to:
 42 (A) command the confidence of the community in which the



- 1 applicant or licensee engages or will engage in the loan
 2 brokerage business; and
 3 (B) warrant a determination by the commissioner that the
 4 applicant or licensee will operate honestly, fairly, and
 5 efficiently within the purposes of this chapter;
 6 (5) has failed to meet the education requirements set forth in
 7 section 21 of this chapter;
 8 (6) has failed to pass the written examination required by section
 9 5.5 of this chapter; or
 10 (7) fails to:
 11 (A) keep or maintain records in accordance with section 18 of
 12 this chapter; or
 13 (B) allow the commissioner or an agent appointed by the
 14 commissioner to inspect or examine a loan broker licensee's
 15 books and records to determine compliance with section 18 of
 16 this chapter.
- 17 (e) The commissioner may do either of the following:
 18 (1) Censure:
 19 (A) a licensee;
 20 (B) an officer, a director, or an ultimate equitable owner of a
 21 loan broker licensee; or
 22 (C) any other person;
 23 who violates or causes a violation of this chapter.
 24 (2) Permanently bar any person described in subdivision (1) from
 25 being:
 26 (A) licensed under this chapter; or
 27 (B) employed by or affiliated with a person licensed under this
 28 chapter;
 29 if the person violates or causes a violation of this chapter.
- 30 (f) The commissioner may not enter a final order:
 31 (1) denying, suspending, or revoking the license of an applicant
 32 or a licensee; or
 33 (2) imposing other sanctions;
 34 without prior notice to all interested parties, opportunity for a hearing,
 35 and written findings of fact and conclusions of law. However, the
 36 commissioner may by summary order deny, suspend, or revoke a
 37 license pending final determination of any proceeding under this
 38 section or before any proceeding is initiated under this section. Upon
 39 the entry of a summary order, the commissioner shall promptly notify
 40 all interested parties that the summary order has been entered, of the
 41 reasons for the summary order, and that upon receipt by the
 42 commissioner of a written request from a party, the matter will be set



1 for hearing to commence not later than forty-five (45) business days
 2 after receipt of the request. If no hearing is requested and none is
 3 ordered by the commissioner, the order remains in effect until it is
 4 modified or vacated by the commissioner. If a hearing is requested or
 5 ordered, the commissioner, after notice of the hearing has been given
 6 to all interested persons and the hearing has been held, may modify or
 7 vacate the order or extend it until final determination.

8 ~~(g)~~ IC 4-21.5 does not apply to a proceeding under this section.

9 ~~(h)~~ (g) If a mortgage loan originator licensee or a principal manager
 10 licensee seeks to transfer the licensee's license to another loan broker
 11 licensee who desires to have the mortgage loan originator licensee or
 12 principal manager licensee act as a mortgage loan originator or as a
 13 principal manager, whichever applies, the mortgage loan originator
 14 licensee or principal manager licensee shall, before the mortgage loan
 15 originator licensee or principal manager licensee acts as a mortgage
 16 loan originator or as a principal manager for the new employer, submit
 17 to the commissioner, on a form prescribed by the commissioner, a
 18 license application, as required by section 5 of this chapter.

19 ~~(i)~~ (h) If the employment of a mortgage loan originator licensee or
 20 principal manager licensee is terminated, whether:

21 (1) voluntarily by the mortgage loan originator licensee or
 22 principal manager licensee; or

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

25 the loan broker licensee that employed the mortgage loan originator
 26 licensee or principal manager licensee shall, not later than five (5) days
 27 after the termination, notify the commissioner of the termination and
 28 the reasons for the termination.

29 ~~(j)~~ (i) If a material fact or statement included in an application under
 30 this chapter changes after the application has been submitted, the
 31 applicant shall provide written notice to the commissioner of the
 32 change. The commissioner may deny, revoke, or refuse to renew a
 33 license applied for or held by any person who:

34 (1) is required to submit a written notice under this subsection
 35 and fails to provide the required notice within two (2) business
 36 days after the person discovers or should have discovered the
 37 change; or

38 (2) would not qualify for licensure under this chapter as a result
 39 of the change in a material fact or statement.

40 SECTION 3. IC 23-19-2-2, AS AMENDED BY P.L.71-2014,
 41 SECTION 1, AND AS AMENDED BY P.L.106-2014, SECTION 3, IS
 42 CORRECTED AND AMENDED TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2015]: Sec. 2. The following transactions are
2 exempt from the requirements of IC 23-19-3-1 through IC 23-19-3-6
3 and IC 23-19-5-4:

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

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

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

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

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

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

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

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

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

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

40 (2) immediately previous fiscal years or for the period of
41 existence of the issuer, whichever is shorter, or, in the case
42 of a reorganization or merger when each party to the



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



- 1 dividends on the security; and
- 2 (ii) the issuer is engaged in business, is not in the
- 3 organizational stage or in bankruptcy or receivership, and is
- 4 not and has not been within the previous twelve (12) months
- 5 a blank check, blind pool, or shell company that has no
- 6 specific business plan or purpose or has indicated that its
- 7 primary business plan is to engage in a merger or
- 8 combination of the business with, or an acquisition of, an
- 9 unidentified person.
- 10 (6) A nonissuer transaction by or through a broker-dealer
- 11 registered or exempt from registration under this article effecting
- 12 an unsolicited order or offer to purchase.
- 13 (7) A nonissuer transaction executed by a bona fide pledgee
- 14 without the purpose of evading this article.
- 15 (8) A nonissuer transaction by a federal covered investment
- 16 adviser with investments under management in excess of one
- 17 hundred million dollars (\$100,000,000) acting in the exercise of
- 18 discretionary authority in a signed record for the account of
- 19 others.
- 20 (9) A transaction in a security, whether or not the security or
- 21 transaction is otherwise exempt, in exchange for one (1) or more
- 22 bona fide outstanding securities, claims, or property interests, or
- 23 partly in such exchange and partly for cash, if the terms and
- 24 conditions of the issuance and exchange or the delivery and
- 25 exchange and the fairness of the terms and conditions have been
- 26 approved by the commissioner after a hearing.
- 27 (10) A transaction between the issuer or other person on whose
- 28 behalf the offering is made and an underwriter, or among
- 29 underwriters.
- 30 (11) A transaction in a note, bond, debenture, or other evidence
- 31 of indebtedness secured by a mortgage or other security
- 32 agreement if:
- 33 (A) the note, bond, debenture, or other evidence of
- 34 indebtedness is offered and sold with the mortgage or other
- 35 security agreement as a unit;
- 36 (B) a general solicitation or general advertisement of the
- 37 transaction is not made; and
- 38 (C) a commission or other remuneration is not paid or given,
- 39 directly or indirectly, to a person not registered under this
- 40 article as a broker-dealer or as an agent.
- 41 (12) A transaction by an executor, administrator of an estate,
- 42 sheriff, marshal, receiver, trustee in bankruptcy, guardian, or



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



- 1 (B) a solicitation of interest is provided in a record to offerees
 2 in compliance with a rule adopted by the commissioner under
 3 this article; and
 4 (C) a stop order of which the offeror is aware has not been
 5 issued by the commissioner under this article and an audit,
 6 inspection, or proceeding that may culminate in a stop order is
 7 not known by the offeror to be pending.
- 8 (18) A transaction involving the distribution of the securities of
 9 an issuer to the security holders of another person in connection
 10 with a merger, consolidation, exchange of securities, sale of
 11 assets, or other reorganization to which the issuer, or its parent or
 12 subsidiary and the other person, or its parent or subsidiary, are
 13 parties.
- 14 (19) A rescission offer, sale, or purchase under IC 23-19-5-10.
- 15 (20) An offer or sale of a security to a person not a resident of this
 16 state and not present in this state if the offer or sale does not
 17 constitute a violation of the laws of the state or foreign
 18 jurisdiction in which the offeree or purchaser is present and is not
 19 part of an unlawful plan or scheme to evade this article.
- 20 (21) Employees' stock purchase, savings, option, profit-sharing,
 21 pension, or similar employees' benefit plan, including any
 22 securities, plan interests, and guarantees issued under a
 23 compensatory benefit plan or compensation contract, contained
 24 in a record, established by the issuer, its parents, its
 25 majority-owned subsidiaries, or the majority-owned subsidiaries
 26 of the issuer's parent for the participation of their employees
 27 including offers or sales of such securities to:
- 28 (A) directors; general partners; trustees, if the issuer is a
 29 business trust; officers; consultants; and advisers;
 30 (B) family members who acquire such securities from those
 31 persons through gifts or domestic relations orders;
 32 (C) former employees, directors, general partners, trustees,
 33 officers, consultants, and advisers if those individuals were
 34 employed by or providing services to the issuer when the
 35 securities were offered; and
 36 (D) insurance agents who are exclusive insurance agents of the
 37 issuer, or the issuer's subsidiaries or parents, or who derive
 38 more than fifty percent (50%) of their annual income from
 39 those organizations.
- 40 (22) A transaction involving:
- 41 (A) a stock dividend or equivalent equity distribution, whether
 42 the corporation or other business organization distributing the



1 dividend or equivalent equity distribution is the issuer or not,
 2 if nothing of value is given by stockholders or other equity
 3 holders for the dividend or equivalent equity distribution other
 4 than the surrender of a right to a cash or property dividend if
 5 each stockholder or other equity holder may elect to take the
 6 dividend or equivalent equity distribution in cash, property, or
 7 stock;

8 (B) an act incident to a judicially approved reorganization in
 9 which a security is issued in exchange for one (1) or more
 10 outstanding securities, claims, or property interests, or partly
 11 in such exchange and partly for cash; or

12 (C) the solicitation of tenders of securities by an offeror in a
 13 tender offer in compliance with Rule 162 adopted under the
 14 Securities Act of 1933 (17 CFR 230.162).

15 (23) A nonissuer transaction in an outstanding security by or
 16 through a broker-dealer registered or exempt from registration
 17 under this article, if the issuer is a reporting issuer in a foreign
 18 jurisdiction designated by this subdivision or by rule adopted or
 19 order issued under this article; has been subject to continuous
 20 reporting requirements in the foreign jurisdiction for not less than
 21 one hundred eighty (180) days before the transaction; and the
 22 security is listed on the foreign jurisdiction's securities exchange
 23 that has been designated by this subdivision or by rule adopted or
 24 order issued under this article, or is a security of the same issuer
 25 that is of senior or substantially equal rank to the listed security
 26 or is a warrant or right to purchase or subscribe to any of the
 27 foregoing. For purposes of this subdivision, Canada, together with
 28 its provinces and territories, is a designated foreign jurisdiction
 29 and The Toronto Stock Exchange, Inc., is a designated securities
 30 exchange. After an administrative hearing in compliance with this
 31 article, the commissioner, by rule adopted or order issued under
 32 this article, may revoke the designation of a securities exchange
 33 under this subdivision, if the commissioner finds that revocation
 34 is necessary or appropriate in the public interest and for the
 35 protection of investors.

36 *(24) An offer to sell or a sale of a security of an issuer under an*
 37 *offering made and completed solely within Indiana, if:*

38 *(A) the transaction is part of a single issue in which:*

39 *(i) not more than twenty-five (25) purchasers are present in*
 40 *Indiana during any twelve (12) consecutive months; other*
 41 *than those designated in subdivision (13);*

42 *(ii) general solicitation or general advertising is not made*



1 *in connection with the offer to sell or the sale of the*
 2 *security;*

3 *(iii) a commission or other remuneration is not paid or*
 4 *given, directly or indirectly, to a person other than a*
 5 *broker-dealer registered under this article, or to an agent*
 6 *registered under this article, for soliciting a prospective*
 7 *purchaser in Indiana; and*

8 *(iv) the issuer reasonably believes that all the purchasers in*
 9 *Indiana, other than those designated in subdivision (13), are*
 10 *purchasing for investment; and*

11 *(B) the issuer:*

12 *(i) is not a registered securities broker-dealer; and*

13 *(ii) does not sell issue by or through a registered securities*
 14 *broker-dealer; and*

15 *(C) the issuer files a notice of the issuer's intent to sell a*
 16 *security in accordance with this subdivision on a form*
 17 *prescribed by the commissioner.*

18 *The commissioner may require the issuer to furnish any*
 19 *additional information considered necessary by the commissioner*
 20 *to determine the issuer's qualifications.*

21 *(24) Subject to the following, an offer or sale of securities by an*
 22 *issuer made after June 30, 2014, only to persons who are or the*
 23 *issuer reasonably believes are accredited investors:*

24 *(A) The exemption under this subdivision is not available to an*
 25 *issuer that is in the development stage that either has no*
 26 *specific business plan or purpose or has indicated that its*
 27 *business plan is to engage in a merger or acquisition with:*

28 *(i) an unidentified company or companies; or*

29 *(ii) another entity or person.*

30 *(B) The issuer reasonably believes that all purchasers are*
 31 *purchasing for investment and not with the view to or for sale*
 32 *in connection with a distribution of the security. Any resale of*
 33 *a security sold in reliance on the exemption under this*
 34 *subdivision within twelve (12) months after sale is presumed*
 35 *to be with a view to distribution and not for investment,*
 36 *except:*

37 *(i) a resale under a registration statement effective under*
 38 *IC 23-19-3; or*

39 *(ii) a resale to an accredited investor under an exemption*
 40 *available under the Indiana Uniform Securities Act.*

41 *(C) Except as provided in clause (D), the exemption under this*
 42 *subdivision is not available to an issuer if the issuer, any of*



1 *the issuer's predecessors, any affiliated issuer, any of the*
 2 *issuer's directors, officers, general partners, beneficial owners*
 3 *of ten percent (10%) or more of any class of its equity*
 4 *securities, any of the issuer's promoters presently connected*
 5 *with the issuer in any capacity, any underwriter of the*
 6 *securities to be offered, or any partner, director, or officer of*
 7 *the underwriter:*

8 *(i) within the last five (5) years, has filed a registration*
 9 *statement that is the subject of a currently effective*
 10 *registration stop order entered by any state securities*

11 *administrator or the Securities and Exchange Commission;*
 12 *(ii) within the last five (5) years, has been convicted of any*
 13 *criminal offense in connection with the offer, purchase, or*
 14 *sale of any security, or any criminal offense involving fraud*
 15 *or deceit;*

16 *(iii) is currently subject to any state or federal*
 17 *administrative enforcement order or judgment entered*
 18 *within the last five (5) years, finding fraud or deceit in*
 19 *connection with the purchase or sale of any security; or*

20 *(iv) is currently subject to any order, judgment, or decree of*
 21 *any court with jurisdiction, entered within the last five (5)*
 22 *years, temporarily, preliminarily, or permanently*
 23 *restraining or enjoining the party from engaging in or*
 24 *continuing to engage in any conduct or practice involving*
 25 *fraud or deceit in connection with the purchase or sale of*
 26 *any security.*

27 *(D) Clause (C) does not apply if:*

28 *(i) the party subject to the disqualification is licensed or*
 29 *registered to conduct securities related business in the state*
 30 *in which the order, judgment, or decree creating the*
 31 *disqualification was entered against the party;*

32 *(ii) before the first offer under the exemption described in*
 33 *this subdivision, the state securities administrator, or the*
 34 *court or regulatory authority that entered the order,*
 35 *judgment, or decree, waives the disqualification; or*

36 *(iii) the issuer establishes that it did not know and in the*
 37 *exercise of reasonable care, based on a factual inquiry,*
 38 *could not have known that a disqualification existed under*
 39 *this subdivision.*

40 *(E) A general announcement of the proposed offering may be*
 41 *made by any means. A general announcement described in*
 42 *this clause must include only the following information, unless*



1 additional information is specifically permitted by the
2 commissioner:

3 (i) The name, address, and telephone number of the issuer
4 of the securities.

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

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

9 (iv) The type, number, and aggregate amount of securities
10 being offered.

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

13 (vi) A statement that indicates that sales will be made only
14 to accredited investors, that no money or other
15 consideration is being solicited or will be accepted by way
16 of the general announcement, that the securities have not
17 been registered with or approved by any state securities
18 agency or the Securities and Exchange Commission, and
19 that the securities are being offered and sold under an
20 exemption from registration.

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

24 (i) is delivered through an electronic data base that is
25 restricted to persons who have been prequalified as
26 accredited investors; or

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

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

32 (H) Dissemination of the general announcement of the
33 proposed offering to persons who are not accredited investors
34 does not disqualify the issuer from claiming the exemption
35 under this subdivision.

36 (I) The issuer shall file with the division a notice of
37 transaction, a consent to service of process, a copy of the
38 general announcement, and a fee established by the
39 commissioner within fifteen (15) days after the first sale in
40 Indiana.

41 ~~(25) An offer to sell or a sale of a security of an issuer, if the~~
42 ~~following apply:~~



1 (A) *The transaction is part of a single issue in which:*

2 (i) *the offer or sale is made in compliance with 17 CFR*
 3 *230.504, 17 CFR 230.505, and 17 CFR 230.506, including*
 4 *any offer or sale made exempt by the application of 17 CFR*
 5 *508(a);*

6 (ii) *the issuer is required to submit a notice filing on a Form*
 7 *D not later than fifteen (15) days after the first sale of*
 8 *securities in this state; and*

9 (iii) *by submitting the notice described in item (ii); the issuer*
 10 *agrees, upon written request by the commissioner, to furnish*
 11 *to the commissioner any information the issuer furnished to*
 12 *offerees.*

13 (B) *For offerings made in compliance with 17 CFR 230.504,*
 14 *no commission, fee, or other remuneration is paid or given,*
 15 *directly or indirectly, to any broker-dealer for soliciting any*
 16 *prospective purchaser in this state unless the broker-dealer is*
 17 *appropriately registered under this article. It is a defense to*
 18 *a violation of this clause if the issuer sustains the burden of*
 19 *proof that the issuer did not know and, in the exercise of*
 20 *reasonable care could not have known, that the person who*
 21 *received the commission, fee, or other remuneration was not*
 22 *properly registered.*

23 (C) *In all sales to purchasers other than those described in*
 24 *subdivision (13) for offerings made in compliance with 17*
 25 *CFR 230.504, at least one (1) of the following is satisfied:*

26 (i) *The investment is suitable for the purchaser upon the*
 27 *basis of facts, if any facts are disclosed by the purchaser, as*
 28 *to the purchaser's other securities holdings, financial*
 29 *situation, and needs. For purposes of this item only, it is*
 30 *presumed that, if the investment does not exceed ten percent*
 31 *(10%) of the investor's net worth, the investment is suitable.*

32 (ii) *The purchaser, either alone or with the purchaser's*
 33 *representative or representatives, has the knowledge and*
 34 *experience in financial and business matters that*
 35 *demonstrate that the purchaser is capable of evaluating the*
 36 *merits and risks of the prospective investment.*

37 (25) *An offer to sell or a sale of a security of an issuer made after*
 38 *June 30, 2014, if:*

39 (A) *the transaction is part of a single issue in which:*

40 (i) *the offer or sale is made in compliance with 17 CFR*
 41 *230.504, 17 CFR 230.505, and 17 CFR 230.506, including*
 42 *any offer or sale made exempt by the application of 17 CFR*



- 1 508(a);
- 2 (ii) the issuer is required to submit a notice filing on a Form
- 3 D not later than fifteen (15) days after the first sale of
- 4 securities in this state; and
- 5 (iii) by submitting the notice described in item (ii), the issuer
- 6 agrees, upon written request by the commissioner, to furnish
- 7 to the commissioner any information the issuer furnished to
- 8 offerees;
- 9 (B) for offerings made in compliance with 17 CFR 230.504, no
- 10 commission, fee, or other remuneration is paid or given,
- 11 directly or indirectly, to any broker-dealer for soliciting any
- 12 prospective purchaser in this state unless the broker-dealer is
- 13 appropriately registered under this article. It is a defense to
- 14 a violation of this clause if the issuer sustains the burden of
- 15 proof that the issuer did not know and, in the exercise of
- 16 reasonable care could not have known, that the person who
- 17 received the commission, fee, or other remuneration was not
- 18 properly registered; and
- 19 (C) in all sales to purchasers other than those described in
- 20 subdivision (13) for offerings made in compliance with 17
- 21 CFR 230.504, at least one (1) of the following is satisfied:
- 22 (i) The investment is suitable for the purchaser upon the
- 23 basis of facts, if any facts are disclosed by the purchaser, as
- 24 to the purchaser's other securities holdings, financial
- 25 situation, and needs. For purposes of this item only, it is
- 26 presumed that, if the investment does not exceed ten percent
- 27 (10%) of the investor's net worth, the investment is suitable.
- 28 (ii) The purchaser, either alone or with the purchaser's
- 29 representative or representatives, has the knowledge and
- 30 experience in financial and business matters that
- 31 demonstrate that the purchaser is capable of evaluating the
- 32 merits and risks of the prospective investment.
- 33 (26) Subject to section 2.4 of this chapter, an offer to sell or a
- 34 sale of a security by an issuer in a transaction that meets all the
- 35 following requirements:
- 36 (A) The sale of the security is made only to a person who:
- 37 (i) is; or
- 38 (ii) the issuer reasonably believes is;
- 39 an accredited investor as defined in 17 CFR 230.501(a);
- 40 (B) The issuer complies with the requirements in section 2.6
- 41 of this chapter;
- 42 (C) The issuer:



1 (i) reasonably believes that all purchasers are purchasing
2 for investment; and

3 (ii) is not selling or offering to sell the security with the view
4 to or for sale in connection with a distribution of the
5 security.

6 If a security is resold within twelve (12) months after the date that
7 the security was sold in reliance on the exemption under this
8 subdivision, the sale of the security in reliance on this exemption
9 is presumed to be with a view to distribution and not for
10 investment. However, the presumption does not apply to a
11 security resold under a registration statement effective under
12 IC 23-19-3-4 or IC 23-19-3-5 or to an accredited investor under
13 an exemption available under this section.

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

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

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

26 (C) The issuer must pay the fee established by the
27 commissioner. However, no filing fee is required to file
28 amendments to ~~Form D of the Securities and Exchange~~
29 ~~Commission.~~ **the form described in clause (A).**

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

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

37 (A) The issuer of the security is a business entity organized
38 under the laws of Indiana and authorized to do business in
39 Indiana.

40 (B) The transaction meets the requirements of the federal
41 exemption for intrastate offerings in Section 3(a)(11) of the
42 Securities Act of 1933 (15 U.S.C. 77c(a)(11)) and Rule 147



1 adopted under the Securities Act of 1933 (17 CFR 230.147).
 2 (C) Except as provided in clause (E), the sum of all cash and
 3 other consideration to be received for all sales of the security
 4 in reliance on the exemption under this subdivision, excluding
 5 sales to any accredited investor or institutional investor, does
 6 not exceed the following amount:

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

16 (ii) If the issuer has undergone and made available to each
 17 prospective investor and the commissioner the
 18 documentation resulting from a financial audit of its most
 19 recently completed fiscal year that complies with generally
 20 accepted accounting principles, two million dollars
 21 (\$2,000,000), less the aggregate amount received for all
 22 sales of securities by the issuer within the twelve (12)
 23 months before the first offer or sale made in reliance on the
 24 exemption under this subdivision.

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

31 (E) The issuer does not accept more than five thousand dollars
 32 (\$5,000) from any single purchaser unless the purchaser is an
 33 accredited investor.

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

38 (i) Make a notice filing with the division on *Form D of the*
 39 *Securities and Exchange Commission*: **a form prescribed**
 40 **by the commissioner.**

41 (ii) Pay the fee established by the commissioner. However,
 42 no filing fee is required to file amendments to *Form D of the*



1 ~~Securities and Exchange Commission. the form described~~
 2 ~~in item (i).~~

3 (iii) Provide the commissioner a copy of the disclosure
 4 document to be provided to prospective investors under
 5 clause (L).

6 (iv) Provide the commissioner a copy of an escrow
 7 agreement with a bank, regulated trust company or
 8 corporate fiduciary, savings bank, savings and loan
 9 association, or credit union authorized to do business in
 10 Indiana in which the issuer will deposit the investor funds or
 11 cause the investor funds to be deposited. The bank,
 12 regulated trust company or corporate fiduciary, savings
 13 bank, savings and loan association, or credit union in which
 14 the investor funds are deposited is only responsible to act at
 15 the direction of the party establishing the escrow agreement
 16 and does not have any duty or liability, contractual or
 17 otherwise, to any investor or other person.

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

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

24 (G) The issuer is not, either before or as a result of the
 25 offering, an investment company, as defined in Section 3 of the
 26 Investment Company Act of 1940 (15 U.S.C. 80a-3), an entity
 27 that would be an investment company but for the exclusions
 28 provided in Section 3(c) of the Investment Company Act of
 29 1940 (15 U.S.C. 80a-3(c)), or subject to the reporting
 30 requirements of Section 13 or 15(d) of the Securities
 31 Exchange Act of 1934 (15 U.S.C. 78m or 15 U.S.C. 78o(d)).

32 (H) The issuer informs all prospective purchasers of securities
 33 offered under an exemption under this subdivision that the
 34 securities have not been registered under federal or state
 35 securities law and that the securities are subject to limitations
 36 on resale. The issuer shall display the following legend
 37 conspicuously on the cover page of the disclosure document:

38 "IN MAKING AN INVESTMENT DECISION, INVESTORS
 39 MUST RELY ON THEIR OWN EXAMINATION OF THE
 40 ISSUER AND THE TERMS OF THE OFFERING,
 41 INCLUDING THE MERITS AND RISKS INVOLVED.
 42 THESE SECURITIES HAVE NOT BEEN RECOMMENDED



1 BY ANY FEDERAL OR STATE SECURITIES COMMISSION
 2 OR DIVISION OR OTHER REGULATORY AUTHORITY.
 3 FURTHERMORE, THE FOREGOING AUTHORITIES
 4 HAVE NOT CONFIRMED THE ACCURACY OR
 5 DETERMINED THE ADEQUACY OF THIS DOCUMENT.
 6 ANY REPRESENTATION TO THE CONTRARY IS A
 7 CRIMINAL OFFENSE. THESE SECURITIES ARE
 8 SUBJECT TO RESTRICTIONS ON TRANSFERABILITY
 9 AND RESALE AND MAY NOT BE TRANSFERRED OR
 10 RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e)
 11 OF SEC RULE 147 (17 CFR 230.147(e)) AS
 12 PROMULGATED UNDER THE SECURITIES ACT OF
 13 1933, AS AMENDED, AND THE APPLICABLE STATE
 14 SECURITIES LAWS, PURSUANT TO REGISTRATION OR
 15 EXEMPTION THEREFROM. INVESTORS SHOULD BE
 16 AWARE THAT THEY WILL BE REQUIRED TO BEAR THE
 17 FINANCIAL RISKS OF THIS INVESTMENT FOR AN
 18 INDEFINITE PERIOD OF TIME."

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

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

39 (J) The issuer obtains from each purchaser of a security
 40 offered under an exemption under this subdivision evidence
 41 that the purchaser is a resident of Indiana and, if applicable,
 42 is an accredited investor.



1 (K) All payments for purchase of securities offered under an
2 exemption under this subdivision are directed to and held by
3 the financial institution specified in clause (F)(iv). The
4 commissioner may request from the financial institutions
5 information necessary to ensure compliance with this section.
6 This information is not a public record and is not available for
7 public inspection.

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

12 (i) A description of the company, its type of entity, the
13 address and telephone number of its principal office, its
14 history, its business plan, and the intended use of the
15 offering proceeds, including any amounts to be paid, as
16 compensation or otherwise, to any owner, executive officer,
17 director, managing member, or other person occupying a
18 similar status or performing similar functions on behalf of
19 the issuer.

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

23 (iii) The identity of the executive officers, directors,
24 managing members, and other persons occupying a similar
25 status or performing similar functions in the name of and on
26 behalf of the issuer, including their titles and their prior
27 experience.

28 (iv) The terms and conditions of the securities being offered
29 and of any outstanding securities of the company; the
30 minimum and maximum amount of securities being offered,
31 if any; either the percentage ownership of the company
32 represented by the offered securities or the valuation of the
33 company implied by the price of the offered securities; the
34 price per share, unit, or interest of the securities being
35 offered; any restrictions on transfer of the securities being
36 offered; and a disclosure of any anticipated future issuance
37 of securities that might dilute the value of securities being
38 offered.

39 (v) The identity of any person who has been or will be
40 retained by the issuer to assist the issuer in conducting the
41 offering and sale of the securities, including any Internet
42 web site operator but excluding persons acting solely as



1 *accountants or attorneys and employees whose primary job*
 2 *responsibilities involve the operating business of the issuer*
 3 *rather than assisting the issuer in raising capital.*

4 *(vi) For each person identified as required in this clause, a*
 5 *description of the consideration being paid to the person for*
 6 *such assistance.*

7 *(vii) A description of any litigation, legal proceedings, or*
 8 *pending regulatory action involving the company or its*
 9 *management.*

10 *(viii) The names and addresses, including the Uniform*
 11 *Resource Locator, of each Internet web site that will be used*
 12 *by the issuer to offer or sell securities under an exemption*
 13 *under this subdivision.*

14 *(ix) Any additional information material to the offering,*
 15 *including, if appropriate, a discussion of significant factors*
 16 *that make the offering speculative or risky. This discussion*
 17 *must be concise and organized logically and may not be*
 18 *limited to risks that could apply to any issuer or any*
 19 *offering.*

20 *(M) The exemption under this subdivision may not be used in*
 21 *conjunction with any other exemption under this article,*
 22 *except for offers and sales to individuals identified in the*
 23 *disclosure document, during the immediately preceding twelve*
 24 *(12) month period.*

25 *(N) The exemption described in this subdivision does not apply*
 26 *if an issuer or person affiliated with the issuer or offering is*
 27 *subject to disqualification established by the commissioner by*
 28 *rule or contained in the Securities Act of 1933 (15 U.S.C.*
 29 *77c(a)(11)) and Rule ~~147~~ 262 adopted under the Securities*
 30 *Act of 1933 (17 CFR 230.262). However, this clause does not*
 31 *apply if both of the following are met:*

32 *(i) On a showing of good cause and without prejudice to any*
 33 *other action by the commissioner, the commissioner*
 34 *determines that it is not necessary under the circumstances*
 35 *that an exemption is denied.*

36 *(ii) The issuer establishes that it made a factual inquiry into*
 37 *whether any disqualification existed under this subdivision*
 38 *but did not know, and in the exercise of reasonable care,*
 39 *could not have known that a disqualification existed under*
 40 *this subdivision. The nature and scope of the requisite*
 41 *inquiry will vary based on the circumstances of the issuer*
 42 *and the other offering participants.*



1 (O) *The offering exempted under this subdivision is made*
2 *exclusively through one (1) or more Internet web sites and*
3 *each Internet web site is subject to the following:*

4 (i) *Before any offer or sale of securities, the issuer must*
5 *provide to the Internet web site operator evidence that the*
6 *issuer is organized under the laws of Indiana and is*
7 *authorized to do business in Indiana.*

8 (ii) *Subject to items (iii) and (v), the Internet web site*
9 *operator must register with the division by filing a*
10 *statement, accompanied by the filing fee established by the*
11 *commissioner, that includes all the information described in*
12 *section 2.3(b) of this chapter.*

13 (iii) *The Internet web site operator is not required to*
14 *register as a broker-dealer if all the conditions in section*
15 *2.3(c) of this chapter apply with respect to the Internet web*
16 *site and its operator.*

17 (iv) *If any change occurs that affects the Internet web site's*
18 *registration exemption, the Internet web site operator must*
19 *notify the division within thirty (30) days after the change*
20 *occurs.*

21 (v) *The Internet web site operator is not required to register*
22 *as a broker-dealer under item (ii) if the Internet web site*
23 *operator is registered as a broker-dealer under the*
24 *Securities Exchange Act of 1934 (15 U.S.C. 78o) or is a*
25 *funding portal registered under the Securities Act of 1933*
26 *(15 U.S.C. 77d-1) and the Securities and Exchange*
27 *Commission has adopted rules under authority of Section*
28 *3(h) of the Securities Exchange Act of 1934 (15 U.S.C.*
29 *78c(h)) and P.L.112-106, Section 304, governing funding*
30 *portals. This item does not require an Internet web site*
31 *operator to register as a broker-dealer under the Securities*
32 *Exchange Act of 1934 or as a funding portal under the*
33 *Securities Act of 1933.*

34 (vi) *The issuer and the Internet web site operator must*
35 *maintain records of all offers and sales of securities effected*
36 *through the Internet web site and must provide ready access*
37 *to the records to the division, upon request. The records of*
38 *an Internet web site operator under this clause are subject*
39 *to the reasonable periodic, special, or other audits or*
40 *inspections by a representative of the commissioner, in or*
41 *outside Indiana, as the commissioner considers necessary*
42 *or appropriate in the public interest and for the protection*



1 of investors. An audit or inspection may be made at any time
 2 and without prior notice. The commissioner may copy, and
 3 remove for audit or inspection copies of, all records the
 4 commissioner reasonably considers necessary or
 5 appropriate to conduct the audit or inspection. The
 6 commissioner may assess a reasonable charge for
 7 conducting an audit or inspection under this item.

8 (vii) The Internet web site operator shall limit web site
 9 access to the offer or sale of securities to only Indiana
 10 residents.

11 (viii) The Internet web site operator shall not hold, manage,
 12 possess, or handle investor funds or securities.

13 (ix) The Internet web site operator may not be an investor in
 14 any Indiana offering under this subdivision or subdivision
 15 (26).

16 (P) An issuer of a security, the offer and sale of which is
 17 exempt under this subdivision, shall provide, free of charge,
 18 a quarterly report to the issuer's investors until no securities
 19 issued under an exemption under this subdivision are
 20 outstanding. An issuer may satisfy the reporting requirement
 21 of this clause by making the information available on an
 22 Internet web site if the information is made available within
 23 forty-five (45) days after the end of each fiscal quarter and
 24 remains available until the succeeding quarterly report is
 25 issued. An issuer shall file each quarterly report under this
 26 clause with the division and, if the quarterly report is made
 27 available on an Internet web site, the issuer shall also provide
 28 a written copy of the report to any investor upon request. The
 29 report must contain all the following:

30 (i) Compensation received by each director and executive
 31 officer, including cash compensation earned since the
 32 previous report and on an annual basis and any bonuses,
 33 stock options, other rights to receive securities of the issuer
 34 or any affiliate of the issuer, or other compensation
 35 received.

36 (ii) An analysis by management of the issuer of the business
 37 operations and financial condition of the issuer.

38 (Q) In 2019 and every fifth year thereafter, the commissioner
 39 shall cumulatively adjust the dollar limitations provided in
 40 clause (C) to reflect the change in the Consumer Price Index
 41 for all Urban Consumers published by the federal Bureau of
 42 Labor Statistics rounding each dollar limitation to the nearest



1 *fifty thousand dollars (\$50,000).*

2 SECTION 4. IC 23-19-2-2.4 IS REPEALED [EFFECTIVE JULY
3 1, 2015]. Sec. 2-4. (a) As used in this section, "person associated with
4 the issuer" includes the following:

5 (1) A predecessor of an issuer:

6 (2) An issuer affiliated with the issuer:

7 (3) A director, an officer, or a general partner of the issuer:

8 (4) A beneficial owner of at least ten percent (10%) of any class
9 of the issuer's equity securities:

10 (5) A promoter presently connected with the issuer in any
11 capacity:

12 (6) An underwriter of the securities of the issuer that are to be
13 offered:

14 (7) A partner, a director, or an officer of an underwriter described
15 in subdivision (6):

16 (b) A transaction described in section 2(26) of this chapter is not
17 exempt under section 2(26) of this chapter if:

18 (1) the issuer of the security or a person associated with the
19 issuer:

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

24 (B) has, within the past five (5) years, been convicted of any
25 criminal offense:

26 (i) in connection with the offer, purchase, or sale of any
27 security; or

28 (ii) involving fraud or deceit;

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

33 (D) is currently subject to any order, judgment, or decree of
34 any court with jurisdiction, entered within the past five (5)
35 years, temporarily, preliminarily, or permanently restraining or
36 enjoining the issuer or a person associated with the issuer from
37 engaging in or continuing to engage in any conduct or practice
38 involving fraud or deceit in connection with the purchase or
39 sale of any security; and

40 (2) one (1) or more of the following do not apply:

41 (A) The issuer of the security or a person associated with the
42 issuer described in subdivision (1) is licensed or registered to



1 conduct securities related business in the state in which the
2 order, judgment, or decree creating the disqualification of the
3 exemption was entered against the issuer of the security or a
4 person associated with the issuer.

5 (B) Before the first offer of a security in reliance on the
6 exemption in section 2(26) of this chapter, the:

7 (i) state securities administrator; or

8 (ii) court or regulatory authority that entered the order,
9 judgment, or decree waived;

10 the disqualification of the exemption.

11 (C) The issuer establishes that the issuer did not know and in
12 the exercise of reasonable care, based on a factual inquiry,
13 could not have known that a disqualification of the exemption
14 existed under this subsection.

15 (e) A transaction described in section 2(26) of this chapter is not
16 exempt under section 2(26) of this chapter if the issuer of the security
17 is in the development stage of the issuer's business and:

18 (1) does not have a specific business plan or purpose; or

19 (2) has indicated that the issuer's business plan is to engage in a
20 merger or acquisition with an unidentified company, companies,
21 entity, or other person.

22 SECTION 5. IC 23-19-2-2.6 IS REPEALED [EFFECTIVE JULY
23 1, 2015]. Sec. 2:6: (a) This section applies only to the sale of or offer
24 to sell a security in reliance on the exemption under section 2(26) of
25 this chapter.

26 (b) A general announcement of a proposed offering of securities
27 may be made by any means:

28 (c) Except as provided in subsection (d), a general announcement
29 described in subsection (b) may include only the following information
30 unless additional information is specifically permitted by the
31 commissioner:

32 (1) The name, address, and telephone number of the issuer of the
33 securities:

34 (2) The name and a brief description and price, if known, of any
35 security to be issued:

36 (3) A brief description of the business of the issuer in less than
37 twenty-six (26) words:

38 (4) The type, number, and aggregate amount of securities being
39 offered:

40 (5) The name, address, and telephone number of the person to
41 contact for additional information:

42 (6) A statement that:



- 1 (A) sales will be made only to accredited investors;
 2 (B) no money or other consideration is being solicited or will
 3 be accepted by way of the general announcement; and
 4 (C) the securities:
 5 (i) have not been registered with or approved by any state
 6 securities agency or the Securities and Exchange
 7 Commission; and
 8 (ii) are being offered and sold pursuant to an exemption
 9 from registration.
- 10 (d) An issuer, in connection with an offer to sell a security in
 11 reliance on the exemption under section 2(26) of this chapter, may
 12 provide information in addition to the general announcement described
 13 in subsection (c) if one (1) or more of the following apply:
 14 (1) The information is delivered through an electronic data base
 15 that is restricted to persons who have been prequalified as
 16 accredited investors.
 17 (2) The information is delivered after the issuer reasonably
 18 believes that the prospective purchaser is an accredited investor.
- 19 (e) The issuer may not make solicitations by telephone for the sale
 20 of or offer to sell securities in reliance on the exemption under section
 21 2(26) of this chapter unless before placing the telephone call the issuer
 22 reasonably believes that the prospective purchaser the issuer will be
 23 soliciting is an accredited investor.
- 24 (f) Any dissemination of the general announcement of the proposed
 25 offering described in this section does not disqualify the issuer from
 26 claiming the exemption under section 2(26) of this chapter.
- 27 (g) The issuer shall file with the securities division a:
 28 (1) Model Accredited Investor Exemption Uniform Notice of
 29 Transaction; along with a consent to service of process; and
 30 (2) copy of the general announcement;
 31 not later than fifteen (15) days after the first sale of the security in
 32 Indiana.
- 33 SECTION 6. IC 23-19-6-1, AS AMENDED BY P.L.2-2014,
 34 SECTION 103, IS AMENDED TO READ AS FOLLOWS
 35 [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) This article shall be
 36 administered by a division of the office of the secretary of state. The
 37 secretary of state shall appoint a securities commissioner who shall be
 38 responsible for the direction and supervision of the division and the
 39 administration of this article under the direction and control of the
 40 secretary of state. The salary of the securities commissioner shall be
 41 paid out of the funds appropriated for the administration of this article.
 42 The commissioner shall serve at the will of the secretary of state.



- 1 (b) The secretary of state:
 2 (1) shall employ a chief deputy, attorneys, a senior investigator,
 3 a senior accountant, and other deputies, investigators,
 4 accountants, clerks, stenographers, and other employees necessary
 5 for the administration of this article; and
 6 (2) shall fix their compensation with the approval of the budget
 7 agency.
- 8 (c) It is unlawful for the commissioner or an officer, employee, or
 9 designee of the commissioner to use for personal benefit or the benefit
 10 of others records or other information obtained by or filed with the
 11 commissioner that is not public under section 7(b) of this chapter. This
 12 article does not authorize the commissioner or an officer, employee, or
 13 designee of the commissioner to disclose the record or information,
 14 except in accordance with section 2, 7(c), or 8 of this chapter.
- 15 (d) This article does not create or diminish a privilege or exemption
 16 that exists at common law, by statute or rule, or otherwise.
- 17 (e) Subject to IC 4-2-6-15, the commissioner may develop and
 18 implement investor education initiatives to inform the public about
 19 investing in securities, with particular emphasis on the prevention and
 20 detection of securities fraud. In developing and implementing these
 21 initiatives, the commissioner may collaborate with public and nonprofit
 22 organizations with an interest in investor education. The commissioner
 23 may accept a grant or donation from a person that is not affiliated with
 24 the securities industry or from a nonprofit organization, regardless of
 25 whether the organization is affiliated with the securities industry, to
 26 develop and implement investor education initiatives. This subsection
 27 does not authorize the commissioner to require participation or
 28 monetary contributions of a registrant in an investor education
 29 program.
- 30 (f) The securities division enforcement account is established. Fees
 31 and funds of whatever character accruing from the administration of
 32 this article shall be accounted for by the secretary of state and shall be
 33 deposited with the treasurer of state to be deposited by the treasurer of
 34 the state in either the state general fund or the securities division
 35 enforcement account. Subject to IC 4-2-6-15, expenses incurred in the
 36 administration of this article shall be paid from the state general fund
 37 upon appropriation being made for the expenses in the manner
 38 provided by law for the making of those appropriations. The following
 39 shall be deposited by the treasurer of state in the securities division
 40 enforcement account:
 41 (1) Grants and donations received under subsection (e).
 42 (2) Costs of investigations recovered under section 4(e) of this



- 1 chapter.
- 2 (3) Fifty percent (50%) of the first two million dollars
- 3 (\$2,000,000):
- 4 (A) of a civil penalty recovered under section 3(b) or 4(d) of
- 5 this chapter;
- 6 (B) recovered in a settlement of an action initiated to enforce
- 7 this article; or
- 8 (C) awarded as a judgment in an action to enforce this article.
- 9 (g) The following shall be deposited by the treasurer of state in the
- 10 state general fund:
- 11 (1) Fifty percent (50%) of the first two million dollars
- 12 (\$2,000,000):
- 13 (A) of a civil penalty recovered under section 3(b) or 4(d) of
- 14 this chapter;
- 15 (B) recovered in a settlement of an action initiated to enforce
- 16 this article; or
- 17 (C) awarded as a judgment in an action to enforce this article.
- 18 (2) Any amount exceeding two million dollars (\$2,000,000):
- 19 (A) of a civil penalty recovered under section 3(b) or 4(d) of
- 20 this chapter;
- 21 (B) recovered in a settlement of an action initiated to enforce
- 22 this article; or
- 23 (C) awarded as a judgment in an action to enforce this article.
- 24 (3) Other fees and revenues that are not designated for deposit in
- 25 the securities division enforcement account or the securities
- 26 restitution fund.
- 27 (h) Notwithstanding IC 23-2-2.5-34, IC 23-2-2.5-43, IC 23-2-5-7,
- 28 IC 23-19-4-12, IC 25-11-1-15, and this chapter, five percent (5%) of
- 29 funds received for deposit in the securities division enforcement
- 30 account shall instead be deposited in the securities restitution fund
- 31 established by IC 23-20-1-25. Subject to IC 4-2-6-15, the funds
- 32 deposited in the enforcement account shall be available, with the
- 33 approval of the budget agency:
- 34 (1) to augment and supplement the funds appropriated for the
- 35 administration of this article; and
- 36 (2) for grants and awards to nonprofit entities for programs and
- 37 activities that will further investor education and financial literacy
- 38 in the state.
- 39 The funds in the enforcement account do not revert to the state general
- 40 fund at the end of any state fiscal year.
- 41 (i) In connection with the administration and enforcement of this
- 42 article, the attorney general shall render all necessary assistance to the



1 commissioner upon the commissioner's request, and to that end, the
 2 attorney general shall employ legal and other professional services as
 3 are necessary to adequately and fully perform the service under the
 4 direction of the commissioner as the demands of the securities division
 5 shall require. Expenses incurred by the attorney general for the
 6 purposes stated in this subsection shall be chargeable against and paid
 7 out of funds appropriated to the attorney general for the administration
 8 of the attorney general's office. The attorney general may authorize the
 9 commissioner and the commissioner's designee to represent the
 10 commissioner and the securities division in any proceeding involving
 11 enforcement or defense of this article.

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

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

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

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

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



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

7 (n) IC 4-21.5 is not applicable to any of the **and any rules of**
8 **practice adopted by the securities division are applicable to**
9 **administrative** proceedings under this article.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1539, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1539 as introduced.)

BURTON

Committee Vote: Yeas 12, Nays 0

