



January 29, 2014

SENATE BILL No. 375

DIGEST OF SB 375 (Updated January 28, 2014 12:10 pm - DI 73)

Citations Affected: IC 6-3.1; IC 23-19.

Synopsis: Business financing arrangements. Specifies that the following are not securities subject to IC 23: (1) A venture capital investment tax credit. (2) A certificate from the Indiana economic development corporation indicating that a taxpayer has fulfilled the requirements of the corporation and is entitled to a venture capital investment tax credit. Defines "accredited investor" for the purposes of the Uniform Securities Act. Adds exemptions to the Uniform Securities Act for certain transactions.

Effective: July 1, 2014.

Holdman

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

January 24, 2014, amended, reported favorably — Do Pass; reassigned to Committee on Appropriations. Pursuant to Senate Rule 68(b), reassigned to Committee on Tax and Fiscal Policy.

January 28, 2014, amended, reported favorably — Do Pass.

SB 375—LS 6542/DI 51



January 29, 2014

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 375

A BILL FOR AN ACT to amend the Indiana Code concerning economic development.

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

1 SECTION 1. IC 6-3.1-24-14 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2014]: **Sec. 14. A certificate or tax credit issued under this**
4 **chapter may not be considered to be a security for purposes of**
5 **IC 23.**

6 SECTION 2. IC 23-19-1-2, AS ADDED BY P.L.27-2007,
7 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2014]: Sec. 2. In this article, unless the context otherwise
9 requires:

10 (1) "Agent" means an individual, other than a broker-dealer, who
11 represents a broker-dealer in effecting or attempting to effect
12 purchases or sales of securities or represents an issuer in effecting
13 or attempting to effect purchases or sales of the issuer's securities.
14 However, a partner, officer, or director of a broker-dealer or
15 issuer, or an individual having a similar status or performing
16 similar functions is an agent only if the individual otherwise

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1 comes within the term. The term does not include an individual
2 excluded by rule adopted or order issued under this article.

3 (2) "Bank" means:

4 (A) a banking institution organized under the laws of the
5 United States;

6 (B) a member bank of the Federal Reserve System;

7 (C) any other banking institution, whether incorporated or not,
8 doing business under the laws of a state or of the United
9 States, a substantial portion of the business of which consists
10 of receiving deposits or exercising fiduciary powers similar to
11 those permitted to be exercised by national banks under the
12 authority of the Comptroller of the Currency under Section 1
13 of Public Law 87-722 (12 U.S.C. 92a), and which is
14 supervised and examined by a state or federal agency having
15 supervision over banks, and which is not operated for the
16 purpose of evading this article; and

17 (D) a receiver, conservator, or other liquidating agent of any
18 institution or firm included in clause (A), (B), or (C).

19 (3) "Broker-dealer" means a person engaged in the business of
20 effecting transactions in securities for the account of others or for
21 the person's own account. The term does not include:

22 (A) an agent;

23 (B) an issuer;

24 (C) a bank, a savings institution, or a trust company that is a
25 wholly owned subsidiary of a bank or savings institution if its
26 activities as a broker-dealer are limited to those specified in
27 subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and
28 (xi) if limited to unsolicited transactions; 3(a)(5)(B); and
29 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C.
30 78c(a)(4) and 15 U.S.C. 78c(a)(5)) or a bank that satisfies the
31 conditions described in subsection 3(a)(4)(E) of the Securities
32 Exchange Act of 1934 (15 U.S.C. 78c(a)(4));

33 (D) an international banking institution; or

34 (E) a person excluded by rule adopted or order issued under
35 this article.

36 (4) "Commissioner" means the securities commissioner appointed
37 under IC 23-19-6-1(a).

38 (5) "Depository institution" means:

39 (A) a bank; or

40 (B) a savings institution, trust company, credit union, or
41 similar institution that is organized or chartered under the laws
42 of a state or of the United States, authorized to receive



1 deposits, and supervised and examined by an official or
 2 agency of a state or the United States if its deposits or share
 3 accounts are insured to the maximum amount authorized by
 4 statute by the Federal Deposit Insurance Corporation, the
 5 National Credit Union Share Insurance Fund, or a successor
 6 authorized by federal law. The term does not include:

7 (i) an insurance company or other organization primarily
 8 engaged in the business of insurance;

9 (ii) a Morris Plan bank; or

10 (iii) an industrial loan company that is not an insured
 11 depository institution as defined in Section 3(c)(2) of the
 12 Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)) or any
 13 successor federal statute.

14 (6) "Federal covered investment adviser" means a person
 15 registered under the Investment Advisers Act of 1940.

16 (7) "Federal covered security" means a security that is, or upon
 17 completion of a transaction will be, a covered security under
 18 Section 18(b) of the Securities Act of 1933 (15 U.S.C. 77r(b)) or
 19 rules or regulations adopted under that provision.

20 (8) "Filing" means the receipt under this article of a record by the
 21 commissioner or a designee of the commissioner.

22 (9) "Fraud", "fraudulent", "deceit", and "defraud" mean a
 23 misrepresentation of a material fact, a promise, representation, or
 24 prediction not made honestly or in good faith, or the failure to
 25 disclose a material fact necessary in order to make the statements
 26 made, in light of the circumstances under which they were made,
 27 not misleading. This definition does not limit or diminish the full
 28 meaning of the terms as applied by or defined in courts of law or
 29 equity. The terms are not limited to common law deceit.

30 (10) "Guaranteed" means guaranteed as to payment of all
 31 principal, dividends, and interest.

32 (11) "Institutional investor" means any of the following, whether
 33 acting for itself or for others in a fiduciary capacity:

34 (A) a depository institution or international banking
 35 institution;

36 (B) an insurance company;

37 (C) a separate account of an insurance company;

38 (D) an investment company as defined in the Investment
 39 Company Act of 1940;

40 (E) a broker-dealer registered under the Securities Exchange
 41 Act of 1934;

42 (F) an employee pension, profit-sharing, or benefit plan if the



- 1 plan has total assets in excess of ten million dollars
2 (\$10,000,000) or its investment decisions are made by a
3 named fiduciary, as defined in the Employee Retirement
4 Income Security Act of 1974, that is a broker-dealer registered
5 under the Securities Exchange Act of 1934, an investment
6 adviser registered or exempt from registration under the
7 Investment Advisers Act of 1940, an investment adviser
8 registered under this article, a depository institution, or an
9 insurance company;
- 10 (G) a plan established and maintained by a state, a political
11 subdivision of a state, or an agency or instrumentality of a state
12 or a political subdivision of a state for the benefit of its
13 employees, if the plan has total assets in excess of ten million
14 dollars (\$10,000,000) or its investment decisions are made by
15 a duly designated public official or by a named fiduciary, as
16 defined in the Employee Retirement Income Security Act of
17 1974, that is a broker-dealer registered under the Securities
18 Exchange Act of 1934, an investment adviser registered or
19 exempt from registration under the Investment Advisers Act
20 of 1940, an investment adviser registered under this article, a
21 depository institution, or an insurance company;
- 22 (H) a trust, if it has total assets in excess of ten million dollars
23 (\$10,000,000), its trustee is a depository institution, and its
24 participants are exclusively plans of the types identified in
25 clause (F) or (G), regardless of the size of their assets, except
26 a trust that includes as participants self-directed individual
27 retirement accounts or similar self-directed plans;
- 28 (I) an organization described in Section 501(c)(3) of the
29 Internal Revenue Code (26 U.S.C. 501(c)(3)), corporation,
30 Massachusetts trust or similar business trust, limited liability
31 company, or partnership, not formed for the specific purpose
32 of acquiring the securities offered, with total assets in excess
33 of ten million dollars (\$10,000,000);
- 34 (J) a small business investment company licensed by the Small
35 Business Administration under Section 301(c) of the Small
36 Business Investment Act of 1958 (15 U.S.C. 681(c)) with total
37 assets in excess of ten million dollars (\$10,000,000);
- 38 (K) a private business development company, as defined in
39 Section 202(a)(22) of the Investment Advisers Act of 1940 (15
40 U.S.C. 80b-2(a)(22)) with total assets in excess of ten million
41 dollars (\$10,000,000);
- 42 (L) a federal covered investment adviser acting for its own



- 1 account;
- 2 (M) a "qualified institutional buyer", as defined in Rule
- 3 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under
- 4 the Securities Act of 1933 (17 CFR 230.144A);
- 5 (N) a "major U.S. institutional investor", as defined in Rule
- 6 15a-6(b)(4)(i) adopted under the Securities Exchange Act of
- 7 1934 (17 CFR 240.15a-6);
- 8 (O) any other person, other than an individual, of institutional
- 9 character with total assets in excess of ten million dollars
- 10 (\$10,000,000) not organized for the specific purpose of
- 11 evading this article; or
- 12 (P) any other person specified by rule adopted or order issued
- 13 under this article.
- 14 (12) "Insurance company" means a company organized as an
- 15 insurance company whose primary business is writing insurance
- 16 or reinsuring risks underwritten by insurance companies and
- 17 which is subject to supervision by the insurance commissioner or
- 18 a similar official or agency of a state.
- 19 (13) "Insured" means insured as to payment of all principal and
- 20 all interest.
- 21 (14) "International banking institution" means an international
- 22 financial institution of which the United States is a member and
- 23 whose securities are exempt from registration under the Securities
- 24 Act of 1933.
- 25 (15) "Investment adviser" means a person that, for compensation,
- 26 engages in the business of advising others, either directly or
- 27 through publications or writings, as to the value of securities or
- 28 the advisability of investing in, purchasing, or selling securities or
- 29 that, for compensation and as a part of a regular business, issues
- 30 or promulgates analyses or reports concerning securities. The
- 31 term includes a financial planner or other person that, as an
- 32 integral component of other financially related services, provides
- 33 investment advice to others for compensation as part of a business
- 34 or that holds itself out as providing investment advice to others
- 35 for compensation. The term does not include:
- 36 (A) an investment adviser representative;
- 37 (B) a lawyer, accountant, engineer, or teacher whose
- 38 performance of investment advice is solely incidental to the
- 39 practice of the person's profession;
- 40 (C) a broker-dealer or its agents whose performance of
- 41 investment advice is solely incidental to the conduct of
- 42 business as a broker-dealer and that does not receive special



- 1 compensation for the investment advice;
 2 (D) a publisher of a bona fide newspaper, news magazine, or
 3 business or financial publication of general and regular
 4 circulation;
 5 (E) a federal covered investment adviser;
 6 (F) a bank, a savings institution, or a trust company that is a
 7 wholly owned subsidiary of a bank or savings institution;
 8 (G) any other person that is excluded by the Investment
 9 Advisers Act of 1940 from the definition of investment
 10 adviser; or
 11 (H) any other person excluded by rule adopted or order issued
 12 under this article.
- 13 (16) "Investment adviser representative" means an individual
 14 employed by or associated with an investment adviser or federal
 15 covered investment adviser and who makes any recommendations
 16 or otherwise gives investment advice regarding securities,
 17 manages accounts or portfolios of clients, determines which
 18 recommendation or advice regarding securities should be given,
 19 provides investment advice or holds herself or himself out as
 20 providing investment advice, receives compensation to solicit,
 21 offer, or negotiate for the sale of or for selling investment advice,
 22 or supervises employees who perform any of the foregoing. The
 23 term does not include an individual who:
- 24 (A) performs only clerical or ministerial acts;
 25 (B) is an agent whose performance of investment advice is
 26 solely incidental to the individual acting as an agent and who
 27 does not receive special compensation for investment advisory
 28 services;
 29 (C) is employed by or associated with a federal covered
 30 investment adviser, unless the individual has a "place of
 31 business" in this state, as that term is defined by rule adopted
 32 under Section 203A of the Investment Advisers Act of 1940
 33 (15 U.S.C. 80b-3a), and is:
 34 (i) an "investment adviser representative", as that term is
 35 defined by rule adopted under Section 203A of the
 36 Investment Advisers Act of 1940 (15 U.S.C. 80b-3a); or
 37 (ii) not a "supervised person", as that term is defined in
 38 Section 202(a)(25) of the Investment Advisers Act of 1940
 39 (15 U.S.C. 80b-2(a)(25)); or
 40 (D) is excluded by rule adopted or order issued under this
 41 article.
- 42 (17) "Issuer" means a person that issues or proposes to issue a



- 1 security, subject to the following:
- 2 (A) The issuer of a voting trust certificate, collateral trust
- 3 certificate, certificate of deposit for a security, or share in an
- 4 investment company without a board of directors or
- 5 individuals performing similar functions is the person
- 6 performing the acts and assuming the duties of depositor or
- 7 manager under the trust or other agreement or instrument
- 8 under which the security is issued.
- 9 (B) The issuer of an equipment trust certificate or similar
- 10 security serving the same purpose is the person by which the
- 11 property is or will be used or to which the property or
- 12 equipment is or will be leased or conditionally sold or that is
- 13 otherwise contractually responsible for assuring payment of
- 14 the certificate.
- 15 (C) The issuer of a fractional undivided interest in an oil, gas,
- 16 or other mineral lease or in payments out of production under
- 17 a lease, right, or royalty is the owner of an interest in the lease
- 18 or in payments out of production under a lease, right, or
- 19 royalty, whether whole or fractional, that creates fractional
- 20 interests for the purpose of sale.
- 21 (18) "Nonissuer transaction" or "nonissuer distribution" means a
- 22 transaction or distribution not directly or indirectly for the benefit
- 23 of the issuer.
- 24 (19) "Offer to purchase" includes an attempt or offer to obtain, or
- 25 solicitation of an offer to sell, a security or interest in a security
- 26 for value. The term does not include a tender offer that is subject
- 27 to Section 14(d) of the Securities Exchange Act of 1934 (15
- 28 U.S.C. 78n(d)).
- 29 (20) "Person" means an individual; corporation; business trust;
- 30 estate; trust; partnership; limited liability company; association;
- 31 joint venture; government; governmental subdivision, agency, or
- 32 instrumentality; public corporation; or any other legal or
- 33 commercial entity.
- 34 (21) "Place of business" of a broker-dealer, an investment adviser,
- 35 or a federal covered investment adviser means:
- 36 (A) an office at which the broker-dealer, investment adviser,
- 37 or federal covered investment adviser regularly provides
- 38 brokerage or investment advice or solicits, meets with, or
- 39 otherwise communicates with customers or clients; or
- 40 (B) any other location that is held out to the general public as
- 41 a location at which the broker-dealer, investment adviser, or
- 42 federal covered investment adviser provides brokerage or



- 1 investment advice or solicits, meets with, or otherwise
 2 communicates with customers or clients.
- 3 (22) "Predecessor act" means IC 23-2-1 (before its repeal).
- 4 (23) "Price amendment" means the amendment to a registration
 5 statement filed under the Securities Act of 1933 or, if an
 6 amendment is not filed, the prospectus or prospectus supplement
 7 filed under the Securities Act of 1933 that includes a statement of
 8 the offering price, underwriting and selling discounts or
 9 commissions, amount of proceeds, conversion rates, call prices,
 10 and other matters dependent upon the offering price.
- 11 (24) "Principal place of business" of a broker-dealer or an
 12 investment adviser means the executive office of the
 13 broker-dealer or investment adviser from which the officers,
 14 partners, or managers of the broker-dealer or investment adviser
 15 direct, control, and coordinate the activities of the broker-dealer
 16 or investment adviser.
- 17 (25) "Record", except in the phrases "of record", "official record",
 18 and "public record", means information that is inscribed on a
 19 tangible medium or that is stored in an electronic or other medium
 20 and is retrievable in perceivable form.
- 21 (26) "Sale" includes every contract of sale, contract to sell, or
 22 disposition of a security or interest in a security for value, and
 23 "offer to sell" includes every attempt or offer to dispose of, or
 24 solicitation of an offer to purchase, a security or interest in a
 25 security for value. Both terms include:
- 26 (A) a security given or delivered with, or as a bonus on
 27 account of, a purchase of securities or any other thing
 28 constituting part of the subject of the purchase and having
 29 been offered and sold for value;
- 30 (B) a gift of assessable stock involving an offer and sale; and
- 31 (C) a sale or offer of a warrant or right to purchase or
 32 subscribe to another security of the same or another issuer and
 33 a sale or offer of a security that gives the holder a present or
 34 future right or privilege to convert the security into another
 35 security of the same or another issuer, including an offer of the
 36 other security.
- 37 (27) "Securities and Exchange Commission" means the United
 38 States Securities and Exchange Commission.
- 39 (28) "Security" means a note; stock; treasury stock; security
 40 future; bond; debenture; evidence of indebtedness; certificate of
 41 interest or participation in a profit-sharing agreement; collateral
 42 trust certificate; preorganization certificate or subscription;



1 transferable share; investment contract; voting trust certificate;
 2 certificate of deposit for a security; fractional undivided interest
 3 in oil, gas, or other mineral rights; put, call, straddle, option, or
 4 privilege on a security, certificate of deposit, or group or index of
 5 securities, including an interest therein or based on the value
 6 thereof; put, call, straddle, option, or privilege entered into on a
 7 national securities exchange relating to foreign currency; or, in
 8 general, an interest or instrument commonly known as a
 9 "security"; or a certificate of interest or participation in, temporary
 10 or interim certificate for, receipt for, guarantee of, or warrant or
 11 right to subscribe to or purchase, any of the foregoing. The term:

12 (A) includes both a certificated and an uncertificated security;

13 (B) does not include an insurance or endowment policy or
 14 annuity contract under which an insurance company promises
 15 to pay a fixed or variable sum of money either in a lump sum
 16 or periodically for life or another specified period;

17 (C) does not include an interest in a contributory or
 18 noncontributory pension or welfare plan subject to the
 19 Employee Retirement Income Security Act of 1974;

20 (D) includes as an "investment contract" an investment in a
 21 common enterprise with the expectation of profits to be
 22 derived primarily from the efforts of a person other than the
 23 investor and a "common enterprise" means an enterprise in
 24 which the fortunes of the investor are interwoven with those of
 25 either the person offering the investment, a third party, or other
 26 investors; and

27 (E) includes as an "investment contract", among other
 28 contracts, an interest in a limited partnership and a limited
 29 liability company and an investment in a viatical settlement or
 30 similar agreement.

31 (29) "Self-regulatory organization" means a national securities
 32 exchange registered under the Securities Exchange Act of 1934,
 33 a national securities association of broker-dealers registered under
 34 the Securities Exchange Act of 1934, a clearing agency registered
 35 under the Securities Exchange Act of 1934, or the Municipal
 36 Securities Rulemaking Board established under the Securities
 37 Exchange Act of 1934.

38 (30) "Sign" means, with present intent to authenticate or adopt a
 39 record:

40 (A) to execute or adopt a tangible symbol; or

41 (B) to attach or logically associate with the record an
 42 electronic symbol, sound, or process.



1 (31) "State" means a state of the United States, the District of
 2 Columbia, Puerto Rico, the United States Virgin Islands, or any
 3 territory or insular possession subject to the jurisdiction of the
 4 United States.
 5 **(32) "Accredited investor" has the meaning set forth in 17**
 6 **CFR 230.501(a).**
 7 SECTION 3. IC 23-19-2-2, AS ADDED BY P.L.27-2007,
 8 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2014]: Sec. 2. The following transactions are exempt from the
 10 requirements of IC 23-19-3-1 through IC 23-19-3-6 and IC 23-19-5-4:
 11 (1) An isolated nonissuer transaction, whether effected by or
 12 through a broker-dealer or not.
 13 (2) A nonissuer transaction by or through a broker-dealer
 14 registered, or exempt from registration under this article, and a
 15 resale transaction by a sponsor of a unit investment trust
 16 registered under the Investment Company Act of 1940, in a
 17 security of a class that has been outstanding in the hands of the
 18 public for at least ninety (90) days, if, at the date of the
 19 transaction:
 20 (A) the issuer of the security is engaged in business, the issuer
 21 is not in the organizational stage or in bankruptcy or
 22 receivership, and the issuer is not a blank check, blind pool, or
 23 shell company that has no specific business plan or purpose or
 24 has indicated that its primary business plan is to engage in a
 25 merger or combination of the business with, or an acquisition
 26 of, an unidentified person;
 27 (B) the security is sold at a price reasonably related to its
 28 current market price;
 29 (C) the security does not constitute the whole or part of an
 30 unsold allotment to, or a subscription or participation by, the
 31 broker-dealer as an underwriter of the security or a
 32 redistribution;
 33 (D) a nationally recognized securities manual or its electronic
 34 equivalent designated by rule adopted or order issued under
 35 this article or a record filed with the Securities and Exchange
 36 Commission that is publicly available contains:
 37 (i) a description of the business and operations of the issuer;
 38 (ii) the names of the issuer's executive officers and the
 39 names of the issuer's directors, if any;
 40 (iii) an audited balance sheet of the issuer as of a date within
 41 eighteen (18) months before the date of the transaction or, in
 42 the case of a reorganization or merger when the parties to



- 1 the reorganization or merger each had an audited balance
 2 sheet, a pro forma balance sheet for the combined
 3 organization; and
 4 (iv) an audited income statement for each of the issuer's two
 5 (2) immediately previous fiscal years or for the period of
 6 existence of the issuer, whichever is shorter, or, in the case
 7 of a reorganization or merger when each party to the
 8 reorganization or merger had audited income statements, a
 9 pro forma income statement; and
 10 (E) any one (1) of the following requirements is met:
 11 (i) The issuer of the security has a class of equity securities
 12 listed on a national securities exchange registered under
 13 Section 6 of the Securities Exchange Act of 1934 or
 14 designated for trading on the National Association of
 15 Securities Dealers Automated Quotation System.
 16 (ii) The issuer of the security is a unit investment trust
 17 registered under the Investment Company Act of 1940.
 18 (iii) The issuer of the security, including its predecessors,
 19 has been engaged in continuous business for at least three
 20 (3) years.
 21 (iv) The issuer of the security has total assets of at least two
 22 million dollars (\$2,000,000) based on an audited balance
 23 sheet as of a date within eighteen (18) months before the
 24 date of the transaction or, in the case of a reorganization or
 25 merger when the parties to the reorganization or merger
 26 each had such an audited balance sheet, a pro forma balance
 27 sheet for the combined organization.
 28 (3) A nonissuer transaction by or through a broker-dealer
 29 registered or exempt from registration under this article in a
 30 security of a foreign issuer that is a margin security defined in
 31 regulations or rules adopted by the Board of Governors of the
 32 Federal Reserve System.
 33 (4) A nonissuer transaction by or through a broker-dealer
 34 registered or exempt from registration under this article in an
 35 outstanding security if the guarantor of the security files reports
 36 with the Securities and Exchange Commission under the reporting
 37 requirements of Section 13 or 15(d) of the Securities Exchange
 38 Act of 1934 (15 U.S.C. 78m or 78o(d)).
 39 (5) A nonissuer transaction by or through a broker-dealer
 40 registered or exempt from registration under this article in a
 41 security that:
 42 (A) is rated at the time of the transaction by a nationally



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



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



1 Securities and Exchange Commission, and an audit,
 2 inspection, or proceeding that is public and that may culminate
 3 in a stop order is not known by the offeror to be pending.
 4 (17) An offer to sell, but not a sale of, a security exempt from
 5 registration under the Securities Act of 1933 if:
 6 (A) a registration statement has been filed under this article,
 7 but is not effective;
 8 (B) a solicitation of interest is provided in a record to offerees
 9 in compliance with a rule adopted by the commissioner under
 10 this article; and
 11 (C) a stop order of which the offeror is aware has not been
 12 issued by the commissioner under this article and an audit,
 13 inspection, or proceeding that may culminate in a stop order is
 14 not known by the offeror to be pending.
 15 (18) A transaction involving the distribution of the securities of
 16 an issuer to the security holders of another person in connection
 17 with a merger, consolidation, exchange of securities, sale of
 18 assets, or other reorganization to which the issuer, or its parent or
 19 subsidiary and the other person, or its parent or subsidiary, are
 20 parties.
 21 (19) A rescission offer, sale, or purchase under IC 23-19-5-10.
 22 (20) An offer or sale of a security to a person not a resident of this
 23 state and not present in this state if the offer or sale does not
 24 constitute a violation of the laws of the state or foreign
 25 jurisdiction in which the offeree or purchaser is present and is not
 26 part of an unlawful plan or scheme to evade this article.
 27 (21) Employees' stock purchase, savings, option, profit-sharing,
 28 pension, or similar employees' benefit plan, including any
 29 securities, plan interests, and guarantees issued under a
 30 compensatory benefit plan or compensation contract, contained
 31 in a record, established by the issuer, its parents, its
 32 majority-owned subsidiaries, or the majority-owned subsidiaries
 33 of the issuer's parent for the participation of their employees
 34 including offers or sales of such securities to:
 35 (A) directors; general partners; trustees, if the issuer is a
 36 business trust; officers; consultants; and advisers;
 37 (B) family members who acquire such securities from those
 38 persons through gifts or domestic relations orders;
 39 (C) former employees, directors, general partners, trustees,
 40 officers, consultants, and advisers if those individuals were
 41 employed by or providing services to the issuer when the
 42 securities were offered; and



- 1 (D) insurance agents who are exclusive insurance agents of the
2 issuer, or the issuer's subsidiaries or parents, or who derive
3 more than fifty percent (50%) of their annual income from
4 those organizations.
- 5 (22) A transaction involving:
- 6 (A) a stock dividend or equivalent equity distribution, whether
7 the corporation or other business organization distributing the
8 dividend or equivalent equity distribution is the issuer or not,
9 if nothing of value is given by stockholders or other equity
10 holders for the dividend or equivalent equity distribution other
11 than the surrender of a right to a cash or property dividend if
12 each stockholder or other equity holder may elect to take the
13 dividend or equivalent equity distribution in cash, property, or
14 stock;
- 15 (B) an act incident to a judicially approved reorganization in
16 which a security is issued in exchange for one (1) or more
17 outstanding securities, claims, or property interests, or partly
18 in such exchange and partly for cash; or
- 19 (C) the solicitation of tenders of securities by an offeror in a
20 tender offer in compliance with Rule 162 adopted under the
21 Securities Act of 1933 (17 CFR 230.162).
- 22 (23) A nonissuer transaction in an outstanding security by or
23 through a broker-dealer registered or exempt from registration
24 under this article, if the issuer is a reporting issuer in a foreign
25 jurisdiction designated by this subdivision or by rule adopted or
26 order issued under this article; has been subject to continuous
27 reporting requirements in the foreign jurisdiction for not less than
28 one hundred eighty (180) days before the transaction; and the
29 security is listed on the foreign jurisdiction's securities exchange
30 that has been designated by this subdivision or by rule adopted or
31 order issued under this article, or is a security of the same issuer
32 that is of senior or substantially equal rank to the listed security
33 or is a warrant or right to purchase or subscribe to any of the
34 foregoing. For purposes of this subdivision, Canada, together with
35 its provinces and territories, is a designated foreign jurisdiction
36 and The Toronto Stock Exchange, Inc., is a designated securities
37 exchange. After an administrative hearing in compliance with this
38 article, the commissioner, by rule adopted or order issued under
39 this article, may revoke the designation of a securities exchange
40 under this subdivision, if the commissioner finds that revocation
41 is necessary or appropriate in the public interest and for the
42 protection of investors.



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

4 (A) The exemption under this subdivision is not available
5 to an issuer that is in the development stage that either has
6 no specific business plan or purpose or has indicated that
7 its business plan is to engage in a merger or acquisition
8 with:

9 (i) an unidentified company or companies; or

10 (ii) another entity or person.

11 (B) The issuer reasonably believes that all purchasers are
12 purchasing for investment and not with the view to or for
13 sale in connection with a distribution of the security. Any
14 resale of a security sold in reliance on the exemption under
15 this subdivision within twelve (12) months after sale is
16 presumed to be with a view to distribution and not for
17 investment, except:

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

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

22 (C) Except as provided in clause (D), the exemption under
23 this subdivision is not available to an issuer if the issuer,
24 any of the issuer's predecessors, any affiliated issuer, any
25 of the issuer's directors, officers, general partners,
26 beneficial owners of ten percent (10%) or more of any
27 class of its equity securities, any of the issuer's promoters
28 presently connected with the issuer in any capacity, any
29 underwriter of the securities to be offered, or any partner,
30 director, or officer of the underwriter:

31 (i) within the last five (5) years, has filed a registration
32 statement that is the subject of a currently effective
33 registration stop order entered by any state securities
34 administrator or the Securities and Exchange
35 Commission;

36 (ii) within the last five (5) years, has been convicted of
37 any criminal offense in connection with the offer,
38 purchase, or sale of any security, or any criminal offense
39 involving fraud or deceit;

40 (iii) is currently subject to any state or federal
41 administrative enforcement order or judgment entered
42 within the last five (5) years, finding fraud or deceit in



1 connection with the purchase or sale of any security; or
 2 (iv) is currently subject to any order, judgment, or
 3 decree of any court with jurisdiction, entered within the
 4 last five (5) years, temporarily, preliminary, or
 5 permanently restraining or enjoining the party from
 6 engaging in or continuing to engage in any conduct or
 7 practice involving fraud or deceit in connection with the
 8 purchase or sale of any security.

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

10 (i) the party subject to the disqualification is licensed or
 11 registered to conduct securities related business in the
 12 state in which the order, judgment, or decree creating
 13 the disqualification was entered against the party;

14 (ii) before the first offer under the exemption described
 15 in this subdivision, the state securities administrator, or
 16 the court or regulatory authority that entered the order,
 17 judgment, or decree, waives the disqualification; or

18 (iii) the issuer establishes that it did not know and in the
 19 exercise of reasonable care, based on a factual inquiry,
 20 could not have known that a disqualification existed
 21 under this subdivision.

22 **(E) A general announcement of the proposed offering may**
 23 **be made by any means. A general announcement described**
 24 **in this clause must include only the following information,**
 25 **unless additional information is specifically permitted by**
 26 **the commissioner:**

27 (i) The name, address, and telephone number of the
 28 issuer of the securities.

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

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

33 (iv) The type, number, and aggregate amount of
 34 securities being offered.

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

37 (vi) A statement that indicates that sales will be made
 38 only to accredited investors, that no money or other
 39 consideration is being solicited or will be accepted by
 40 way of the general announcement, that the securities
 41 have not been registered with or approved by any state
 42 securities agency or the Securities and Exchange



- 1 Commission, and that the securities are being offered
 2 and sold under an exemption from registration.
- 3 (F) The issuer, in connection with an offer, may provide
 4 information in addition to the general announcement
 5 under clause (E), if the information:
 6 (i) is delivered through an electronic data base that is
 7 restricted to persons who have been prequalified as
 8 accredited investors; or
 9 (ii) is delivered after the issuer reasonably believes that
 10 the prospective purchaser is an accredited investor.
- 11 (G) No telephone solicitation is permitted unless before
 12 placing the call, the issuer reasonably believes that the
 13 prospective purchaser to be solicited is an accredited
 14 investor.
- 15 (H) Dissemination of the general announcement of the
 16 proposed offering to persons who are not accredited
 17 investors does not disqualify the issuer from claiming the
 18 exemption under this subdivision.
- 19 (I) The issuer shall file with the division a notice of
 20 transaction, a consent to service of process, a copy of the
 21 general announcement, and a fee established by the
 22 commissioner within fifteen (15) days after the first sale in
 23 Indiana.
- 24 (25) An offer to sell or a sale of a security of an issuer made
 25 after June 30, 2014, if:
 26 (A) the transaction is part of a single issue in which:
 27 (i) the offer or sale is made in compliance with 17 CFR
 28 230.504, 17 CFR 230.505, and 17 CFR 230.506, including
 29 any offer or sale made exempt by the application of 17
 30 CFR 508(a);
 31 (ii) the issuer is required to submit a notice filing on a
 32 Form D not later than fifteen (15) days after the first sale
 33 of securities in this state; and
 34 (iii) by submitting the notice described in item (ii), the
 35 issuer agrees, upon written request by the commissioner,
 36 to furnish to the commissioner any information the
 37 issuer furnished to offerees;
- 38 (B) for offerings made in compliance with 17 CFR 230.504,
 39 no commission, fee, or other remuneration is paid or given,
 40 directly or indirectly, to any broker-dealer for soliciting
 41 any prospective purchaser in this state unless the
 42 broker-dealer is appropriately registered under this



1 article. It is a defense to a violation of this clause if the
 2 issuer sustains the burden of proof that the issuer did not
 3 know and, in the exercise of reasonable care could not have
 4 known, that the person who received the commission, fee,
 5 or other remuneration was not properly registered; and
 6 (C) in all sales to purchasers other than those described in
 7 subdivision (13) for offerings made in compliance with 17
 8 CFR 230.504, at least one (1) of the following is satisfied:

9 (i) The investment is suitable for the purchaser upon the
 10 basis of facts, if any facts are disclosed by the purchaser,
 11 as to the purchaser's other securities holdings, financial
 12 situation, and needs. For purposes of this item only, it is
 13 presumed that, if the investment does not exceed ten
 14 percent (10%) of the investor's net worth, the investment
 15 is suitable.

16 (ii) The purchaser, either alone or with the purchaser's
 17 representative or representatives, has the knowledge and
 18 experience in financial and business matters that
 19 demonstrate that the purchaser is capable of evaluating
 20 the merits and risks of the prospective investment.

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

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

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

33 (C) The issuer must pay the fee established by the
 34 commissioner. However, no filing fee is required to file
 35 amendments to Form D of the Securities and Exchange
 36 Commission.

37 (D) Within ten (10) days of receiving the form required by
 38 this subdivision, the commissioner may require the issuer
 39 to furnish any additional information considered necessary
 40 by the commissioner to determine the issuer's
 41 qualifications.

42 (27) An offer or sale of a security made after June 30, 2014, by



1 **an issuer if the offer or sale is conducted in accordance with**
2 **all the following requirements:**

3 **(A) The issuer of the security is a business entity organized**
4 **under the laws of Indiana and authorized to do business in**
5 **Indiana.**

6 **(B) The transaction meets the requirements of the federal**
7 **exemption for intrastate offerings in Section 3(a)(11) of the**
8 **Securities Act of 1933 (15 U.S.C. 77c(a)(11)) and Rule 147**
9 **adopted under the Securities Act of 1933 (17 CFR**
10 **230.147).**

11 **(C) Except as provided in clause (E), the sum of all cash**
12 **and other consideration to be received for all sales of the**
13 **security in reliance on the exemption under this**
14 **subdivision, excluding sales to any accredited investor or**
15 **institutional investor, does not exceed the following**
16 **amount:**

17 **(i) If the issuer has not undergone and made available to**
18 **each prospective investor and the commissioner the**
19 **documentation resulting from a financial audit of its**
20 **most recently completed fiscal year that complies with**
21 **generally accepted accounting principles, one million**
22 **dollars (\$1,000,000), less the aggregate amount received**
23 **for all sales of securities by the issuer within the twelve**
24 **(12) months before the first offer or sale made in reliance**
25 **on the exemption under this subdivision.**

26 **(ii) If the issuer has undergone and made available to**
27 **each prospective investor and the commissioner the**
28 **documentation resulting from a financial audit of its**
29 **most recently completed fiscal year that complies with**
30 **generally accepted accounting principles, two million**
31 **dollars (\$2,000,000), less the aggregate amount received**
32 **for all sales of securities by the issuer within the twelve**
33 **(12) months before the first offer or sale made in reliance**
34 **on the exemption under this subdivision.**

35 **(D) An offer or sale to an officer, director, partner, trustee,**
36 **or individual occupying similar status or performing**
37 **similar functions with respect to the issuer or to a person**
38 **owning ten percent (10%) or more of the outstanding**
39 **shares of any class or classes of securities of the issuer does**
40 **not count toward the monetary limitations in clause (C).**

41 **(E) The issuer does not accept more than ten thousand**
42 **dollars (\$10,000) from any single purchaser unless the**



1 purchaser is an accredited investor.

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

6 (i) Make a notice filing with the division on Form D of
7 the Securities and Exchange Commission.

8 (ii) Pay the fee established by the commissioner.
9 However, no filing fee is required to file amendments to
10 Form D of the Securities and Exchange Commission.

11 (iii) Provide the commissioner a copy of the disclosure
12 document to be provided to prospective investors under
13 clause (L).

14 (iv) Provide the commissioner a copy of an escrow
15 agreement with a bank, savings bank, savings and loan
16 association, or credit union authorized to do business in
17 Indiana in which the investor funds will be deposited,
18 providing that all offering proceeds will be released to
19 the issuer only when the aggregate capital raised from all
20 investors is equal to or greater than the minimum target
21 offering amount specified in the business plan as
22 necessary to implement the business plan and that all
23 investors may cancel their commitments to invest if that
24 target offering amount is not raised by the time stated in
25 the disclosure document.

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

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

42 "IN MAKING AN INVESTMENT DECISION,



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

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

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



- 1 **whether or not I have sold or otherwise disposed of my**
2 **investment or received any dividends or other**
3 **distributions from the company.".**
- 4 **(J) The issuer obtains from each purchaser of a security**
5 **offered under an exemption under this subdivision**
6 **evidence that the purchaser is a resident of Indiana and, if**
7 **applicable, is an accredited investor.**
- 8 **(K) All payments for purchase of securities offered under**
9 **an exemption under this subdivision are directed to and**
10 **held by the financial institution specified in clause (F)(iv).**
11 **The commissioner may request from the financial**
12 **institutions information necessary to ensure compliance**
13 **with this section. This information is not a public record**
14 **and is not available for public inspection.**
- 15 **(L) The issuer of securities offered under an exemption**
16 **under this subdivision provides a disclosure document to**
17 **each prospective investor at the time the offer of securities**
18 **is made to the prospective investor that contains all the**
19 **following:**
- 20 **(i) A description of the company, its type of entity, the**
21 **address and telephone number of its principal office, its**
22 **history, its business plan, and the intended use of the**
23 **offering proceeds, including any amounts to be paid, as**
24 **compensation or otherwise, to any owner, executive**
25 **officer, director, managing member, or other person**
26 **occupying a similar status or performing similar**
27 **functions on behalf of the issuer.**
- 28 **(ii) The identity of all persons owning more than twenty**
29 **percent (20%) of the ownership interests of any class of**
30 **securities of the company.**
- 31 **(iii) The identity of the executive officers, directors,**
32 **managing members, and other persons occupying a**
33 **similar status or performing similar functions in the**
34 **name of and on behalf of the issuer, including their titles**
35 **and their prior experience.**
- 36 **(iv) The terms and conditions of the securities being**
37 **offered and of any outstanding securities of the**
38 **company; the minimum and maximum amount of**
39 **securities being offered, if any; either the percentage**
40 **ownership of the company represented by the offered**
41 **securities or the valuation of the company implied by the**
42 **price of the offered securities; the price per share, unit,**



1 or interest of the securities being offered; any
 2 restrictions on transfer of the securities being offered;
 3 and a disclosure of any anticipated future issuance of
 4 securities that might dilute the value of securities being
 5 offered.

6 (v) The identity of any person who has been or will be
 7 retained by the issuer to assist the issuer in conducting
 8 the offering and sale of the securities, including any
 9 Internet web site operator but excluding persons acting
 10 solely as accountants or attorneys and employees whose
 11 primary job responsibilities involve the operating
 12 business of the issuer rather than assisting the issuer in
 13 raising capital.

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

17 (vii) A description of any litigation, legal proceedings, or
 18 pending regulatory action involving the company or its
 19 management.

20 (viii) The names and addresses, including the Uniform
 21 Resource Locator, of each Internet web site that will be
 22 used by the issuer to offer or sell securities under an
 23 exemption under this subdivision.

24 (ix) Any additional information material to the offering,
 25 including, if appropriate, a discussion of significant
 26 factors that make the offering speculative or risky. This
 27 discussion must be concise and organized logically and
 28 may not be limited to risks that could apply to any issuer
 29 or any offering.

30 (M) The exemption under this subdivision may not be used
 31 in conjunction with any other exemption under this article,
 32 except for offers and sales to individuals identified in the
 33 disclosure document, during the immediately preceding
 34 twelve (12) month period.

35 (N) The exemption described in this subdivision does not
 36 apply if an issuer or person affiliated with the issuer or
 37 offering is subject to disqualification established by the
 38 commissioner by rule or contained in the Securities Act of
 39 1933 (15 U.S.C. 77c(a)(11)) and Rule 147 adopted under
 40 the Securities Act of 1933 (17 CFR 230.262). However, this
 41 clause does not apply if both of the following are met:

42 (i) On a showing of good cause and without prejudice to



1 any other action by the commissioner, the commissioner
2 determines that it is not necessary under the
3 circumstances that an exemption is denied.

4 (ii) The issuer establishes that it made a factual inquiry
5 into whether any disqualification existed under this
6 subdivision but did not know, and in the exercise of
7 reasonable care, could not have known that a
8 disqualification existed under this subdivision. The
9 nature and scope of the requisite inquiry will vary based
10 on the circumstances of the issuer and the other offering
11 participants.

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

15 (i) Before any offer or sale of securities, the issuer must
16 provide to the Internet web site operator evidence that
17 the issuer is organized under the laws of Indiana and is
18 authorized to do business in Indiana.

19 (ii) Subject to items (iii) and (v), the Internet web site
20 operator must register with the division by filing a
21 statement, accompanied by the filing fee established by
22 the commissioner, that includes all the information
23 described in section 2.3(b) of this chapter.

24 (iii) The Internet web site operator is not required to
25 register as a broker-dealer if all the conditions in section
26 2.3(c) of this chapter apply with respect to the Internet
27 web site and its operator.

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

32 (v) The Internet web site operator is not required to
33 register as a broker-dealer under item (ii) if the Internet
34 web site operator is registered as a broker-dealer under
35 the Securities Exchange Act of 1934 (15 U.S.C. 78o) or is
36 a funding portal registered under the Securities Act of
37 1933 (15 U.S.C. 77d-1) and the Securities and Exchange
38 Commission has adopted rules under authority of
39 Section 3(h) of the Securities Exchange Act of 1934 (15
40 U.S.C. 78c(h)) and P.L.112-106, Section 304, governing
41 funding portals. This subdivision does not require an
42 Internet web site operator to register as a broker-dealer



1 under the Securities Exchange Act of 1934 or as a
2 funding portal under the Securities Act of 1933.

3 (vi) The issuer and the Internet web site operator must
4 maintain records of all offers and sales of securities
5 effected through the Internet web site and must provide
6 ready access to the records to the division, upon request.
7 The records of an Internet web site operator under this
8 clause are subject to the reasonable periodic, special, or
9 other audits or inspections by a representative of the
10 commissioner, in or outside Indiana, as the commissioner
11 considers necessary or appropriate in the public interest
12 and for the protection of investors. An audit or
13 inspection may be made at any time and without prior
14 notice. The commissioner may copy, and remove for
15 audit or inspection copies of, all records the
16 commissioner reasonably considers necessary or
17 appropriate to conduct the audit or inspection. The
18 commissioner may assess a reasonable charge for
19 conducting an audit or inspection under this item.

20 (vii) The Internet web site operator shall limit web site
21 access to the offer or sale of securities only to Indiana
22 residents.

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

38 (i) Compensation received by each director and
39 executive officer, including cash compensation earned
40 since the previous report and on an annual basis and any
41 bonuses, stock options, other rights to receive securities
42 of the issuer or any affiliate of the issuer, or other



1 compensation received.

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

4 (Q) In 2019 and every fifth year thereafter, the
5 commissioner shall cumulatively adjust the dollar
6 limitations provided in clause (C) to reflect the change in
7 the Consumer Price Index for all Urban Consumers
8 published by the federal Bureau of Labor Statistics
9 rounding each dollar limitation to the nearest fifty
10 thousand dollars (\$50,000).

11 SECTION 4. IC 23-19-2-2.3 IS ADDED TO THE INDIANA CODE
12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2014]: Sec. 2.3. (a) This section applies to an offering under
14 section 2(27)(O) of this chapter that is made exclusively through
15 one (1) or more Internet web sites and each Internet web site.

16 (b) As required by section 2(27)(O)(ii) of this chapter, the
17 Internet web site operator shall register with the division by filing
18 a statement, accompanied by the filing fee established by the
19 commissioner, that includes all the following:

20 (1) That the Internet web site operator is a business entity
21 organized under the laws of Indiana and authorized to do
22 business in Indiana.

23 (2) That the Internet web site is being used to offer and sell
24 securities pursuant to the exemption under section 2(27) of
25 this chapter.

26 (3) The identity and location of, and contact information for,
27 the Internet web site operator.

28 (4) Except as provided in subsection (c), that the Internet web
29 site operator is registered as a broker-dealer under
30 IC 23-19-4.

31 (c) The Internet web site operator is not required to register as
32 a broker-dealer if all the following apply with respect to the
33 Internet web site and its operator:

34 (1) It does not offer investment advice or recommendations.

35 (2) It does not solicit purchases, sales, or offers to buy the
36 securities offered or displayed on the Internet web site.

37 (3) It does not compensate employees, agents, or other persons
38 for the solicitation or based on the sale of securities displayed
39 or referenced on the Internet web site.

40 (4) It is not compensated based on the amount of securities
41 sold, and it does not hold, manage, possess, or otherwise
42 handle investor funds or securities.



- 1 **(5) The fee it charges an issuer for an offering of securities on**
 2 **the Internet web site is a fixed amount for each offering, a**
 3 **variable amount based on the length of time that the securities**
 4 **are offered on the Internet web site, or a combination of the**
 5 **fixed and variable amounts.**
- 6 **(6) It does not identify, promote, or otherwise refer to any**
 7 **individual security offered on the Internet web site in any**
 8 **advertising for the Internet web site.**
- 9 **(7) It does not engage in any other activities that the division,**
 10 **by rule, determines are prohibited of the Internet web site.**
- 11 **(8) Neither the Internet web site operator, nor any director,**
 12 **executive officer, general partner, managing member, or**
 13 **other person with management authority over the Internet**
 14 **web site operator, has been subject to any conviction, order,**
 15 **judgment, decree, or other action specified in Rule 506(d)(1)**
 16 **adopted under the Securities Act of 1933 (17 CFR**
 17 **230.506(d)(1)) that would disqualify an issuer under Rule**
 18 **506(d) adopted under the Securities Act of 1933 (17 CFR**
 19 **230.506(d)) from claiming an exemption specified in Rule**
 20 **506(a) to Rule 506(c) adopted under the Securities Act of 1933**
 21 **(17 CFR 230.506(a) to 17 CFR 230.506(c)).**
- 22 SECTION 5. IC 23-19-2-5 IS ADDED TO THE INDIANA CODE
 23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 24 1, 2014]: **Sec. 5. The commissioner may adopt emergency rules in**
 25 **the manner provided under IC 4-22-2-37.1 to implement this**
 26 **chapter.**



COMMITTEE REPORT

Madam President: The Senate Committee on Commerce, Economic Development and Technology, to which was referred Senate Bill No. 375, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 19, delete lines 13 through 28, begin a new line block indented and insert:

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

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

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

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

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

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

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

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



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

Page 19, line 36, delete "Form D of the Securities and Exchange Commission" and insert **"a form prescribed by the commissioner"**.

Page 20, between lines 2 and 3, begin a new line double block indented and insert:

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

Page 23, line 14, delete "bank or depository institution shall notify the".

Page 23, line 15, delete "of the receipt of payments for securities." and insert **"may request from the financial institutions information necessary to ensure compliance with this section."**

Page 26, line 9, after "request." insert **"The records of an Internet web site operator under this clause are subject to the reasonable periodic, special, or other audits or inspections by a representative of the commissioner, in or outside Indiana, as the commissioner considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The commissioner may copy, and remove for audit or inspection copies of, all records the commissioner reasonably considers necessary or appropriate to conduct the audit or inspection. The commissioner may assess a reasonable charge for conducting an audit or inspection under this item."**

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

Page 26, delete lines 10 through 12.

Page 26, delete lines 36 through 42.

Page 27, delete lines 1 through 10.

Page 27, line 11, delete "(R)" and insert **"(Q)"**.

Page 28, line 5, after "is" insert **"not"**.

Page 28, after line 28, begin a new paragraph and insert:

"SECTION 6. IC 23-19-2-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY



1, 2014]: **Sec. 5. The commissioner may adopt emergency rules in the manner provided under IC 4-22-2-37.1 to implement this chapter."**

and when so amended that said bill do pass and be reassigned to the Senate Committee on Appropriations.

(Reference is to SB 375 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 6, Nays 1.

Report of the President
Pro Tempore

Madam President: Pursuant to Senate Rule 68(b), I hereby report that, subsequent to the adoption of the Commerce and Economic Development and Technology Committee Report on January 24, 2014, which reassigned Senate Bill 375, to the Appropriations Committee, Senate Bill 375 was reassigned to the Committee on Tax and Fiscal Policy.

LONG

COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 375, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 16.

Page 2, delete lines 1 through 15.

Page 2, line 18, delete "or transferred".



Page 22, line 5, delete "chartered under the laws of" and insert **"authorized to do business in"**.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 375 as printed January 24, 2014.)

HERSHMAN, Chairperson

Committee Vote: Yeas 11, Nays 0.

