

SENATE BILL No. 375

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-24; IC 23-19.

Synopsis: Business financing arrangements. Permits a venture capital investment tax credit to be transferred to another taxpayer or pass through entity. Specifies that the following are 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.



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 6-3.1-24-11.5 IS ADDED TO THE INDIANA
2 CODE AS A NEW SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2014]: **Sec. 11.5. (a) Beginning July 1, 2014,**
4 **a tax credit under this chapter to which a person or entity is**
5 **entitled to under section 6 of this chapter, to the extent not**
6 **previously used, is freely transferable to and by subsequent**
7 **transferees, even if the person or entity was initially entitled to the**
8 **tax credit before July 1, 2014.**
9 **(b) Beginning July 1, 2014, the share of a tax credit to which a**
10 **shareholder, partner, or member of a pass through entity is**
11 **entitled under section 11 of this chapter, to the extent not**
12 **previously used, is freely transferable to and by subsequent**
13 **transferees, even if the shareholder, partner, or member was**
14 **initially entitled to the tax credit before July 1, 2014.**
15 **(c) A transferee to which a tax credit is transferred under this**
16 **section (or if the transferee is a pass through entity, a shareholder,**



1 partner, or member of the transferee) is entitled to use and carry
 2 forward a tax credit under this chapter to the same extent as if the
 3 transferee were the original holder of the tax credit. The period in
 4 which an unused tax credit under this chapter may be carried
 5 forward is not extended by a transfer. The last taxable year that a
 6 holder of an unused transferred tax credit under this chapter may
 7 use or carry forward the tax credit is the transferee's taxable year
 8 that contains part or all of the last taxable year that the original
 9 holder of the tax credit could have carried forward the unused tax
 10 credit.

11 (d) The Indiana economic development corporation may
 12 establish a system to verify that any transfer of a tax credit under
 13 this chapter is made in accordance with the requirements of this
 14 chapter and any guidelines, rules, or regulations applicable to this
 15 chapter.

16 SECTION 2. IC 6-3.1-24-14 IS ADDED TO THE INDIANA CODE
 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 18 1, 2014]: **Sec. 14. A certificate or tax credit issued or transferred
 19 under this chapter may not be considered to be a security for
 20 purposes of IC 23.**

21 SECTION 3. IC 23-19-1-2, AS ADDED BY P.L.27-2007,
 22 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2014]: Sec. 2. In this article, unless the context otherwise
 24 requires:

25 (1) "Agent" means an individual, other than a broker-dealer, who
 26 represents a broker-dealer in effecting or attempting to effect
 27 purchases or sales of securities or represents an issuer in effecting
 28 or attempting to effect purchases or sales of the issuer's securities.
 29 However, a partner, officer, or director of a broker-dealer or
 30 issuer, or an individual having a similar status or performing
 31 similar functions is an agent only if the individual otherwise
 32 comes within the term. The term does not include an individual
 33 excluded by rule adopted or order issued under this article.

34 (2) "Bank" means:

35 (A) a banking institution organized under the laws of the
 36 United States;

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

38 (C) any other banking institution, whether incorporated or not,
 39 doing business under the laws of a state or of the United
 40 States, a substantial portion of the business of which consists
 41 of receiving deposits or exercising fiduciary powers similar to
 42 those permitted to be exercised by national banks under the



- 1 authority of the Comptroller of the Currency under Section 1
 2 of Public Law 87-722 (12 U.S.C. 92a), and which is
 3 supervised and examined by a state or federal agency having
 4 supervision over banks, and which is not operated for the
 5 purpose of evading this article; and
 6 (D) a receiver, conservator, or other liquidating agent of any
 7 institution or firm included in clause (A), (B), or (C).
- 8 (3) "Broker-dealer" means a person engaged in the business of
 9 effecting transactions in securities for the account of others or for
 10 the person's own account. The term does not include:
 11 (A) an agent;
 12 (B) an issuer;
 13 (C) a bank, a savings institution, or a trust company that is a
 14 wholly owned subsidiary of a bank or savings institution if its
 15 activities as a broker-dealer are limited to those specified in
 16 subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and
 17 (xi) if limited to unsolicited transactions; 3(a)(5)(B); and
 18 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C.
 19 78c(a)(4) and 15 U.S.C. 78c(a)(5)) or a bank that satisfies the
 20 conditions described in subsection 3(a)(4)(E) of the Securities
 21 Exchange Act of 1934 (15 U.S.C. 78c(a)(4));
 22 (D) an international banking institution; or
 23 (E) a person excluded by rule adopted or order issued under
 24 this article.
- 25 (4) "Commissioner" means the securities commissioner appointed
 26 under IC 23-19-6-1(a).
- 27 (5) "Depository institution" means:
 28 (A) a bank; or
 29 (B) a savings institution, trust company, credit union, or
 30 similar institution that is organized or chartered under the laws
 31 of a state or of the United States, authorized to receive
 32 deposits, and supervised and examined by an official or
 33 agency of a state or the United States if its deposits or share
 34 accounts are insured to the maximum amount authorized by
 35 statute by the Federal Deposit Insurance Corporation, the
 36 National Credit Union Share Insurance Fund, or a successor
 37 authorized by federal law. The term does not include:
 38 (i) an insurance company or other organization primarily
 39 engaged in the business of insurance;
 40 (ii) a Morris Plan bank; or
 41 (iii) an industrial loan company that is not an insured
 42 depository institution as defined in Section 3(c)(2) of the



- 1 Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)) or any
 2 successor federal statute.
- 3 (6) "Federal covered investment adviser" means a person
 4 registered under the Investment Advisers Act of 1940.
- 5 (7) "Federal covered security" means a security that is, or upon
 6 completion of a transaction will be, a covered security under
 7 Section 18(b) of the Securities Act of 1933 (15 U.S.C. 77r(b)) or
 8 rules or regulations adopted under that provision.
- 9 (8) "Filing" means the receipt under this article of a record by the
 10 commissioner or a designee of the commissioner.
- 11 (9) "Fraud", "fraudulent", "deceit", and "defraud" mean a
 12 misrepresentation of a material fact, a promise, representation, or
 13 prediction not made honestly or in good faith, or the failure to
 14 disclose a material fact necessary in order to make the statements
 15 made, in light of the circumstances under which they were made,
 16 not misleading. This definition does not limit or diminish the full
 17 meaning of the terms as applied by or defined in courts of law or
 18 equity. The terms are not limited to common law deceit.
- 19 (10) "Guaranteed" means guaranteed as to payment of all
 20 principal, dividends, and interest.
- 21 (11) "Institutional investor" means any of the following, whether
 22 acting for itself or for others in a fiduciary capacity:
- 23 (A) a depository institution or international banking
 24 institution;
- 25 (B) an insurance company;
- 26 (C) a separate account of an insurance company;
- 27 (D) an investment company as defined in the Investment
 28 Company Act of 1940;
- 29 (E) a broker-dealer registered under the Securities Exchange
 30 Act of 1934;
- 31 (F) an employee pension, profit-sharing, or benefit plan if the
 32 plan has total assets in excess of ten million dollars
 33 (\$10,000,000) or its investment decisions are made by a
 34 named fiduciary, as defined in the Employee Retirement
 35 Income Security Act of 1974, that is a broker-dealer registered
 36 under the Securities Exchange Act of 1934, an investment
 37 adviser registered or exempt from registration under the
 38 Investment Advisers Act of 1940, an investment adviser
 39 registered under this article, a depository institution, or an
 40 insurance company;
- 41 (G) a plan established and maintained by a state, a political
 42 subdivision of a state, or an agency or instrumentality of a state



1 or a political subdivision of a state for the benefit of its
2 employees, if the plan has total assets in excess of ten million
3 dollars (\$10,000,000) or its investment decisions are made by
4 a duly designated public official or by a named fiduciary, as
5 defined in the Employee Retirement Income Security Act of
6 1974, that is a broker-dealer registered under the Securities
7 Exchange Act of 1934, an investment adviser registered or
8 exempt from registration under the Investment Advisers Act
9 of 1940, an investment adviser registered under this article, a
10 depository institution, or an insurance company;
11 (H) a trust, if it has total assets in excess of ten million dollars
12 (\$10,000,000), its trustee is a depository institution, and its
13 participants are exclusively plans of the types identified in
14 clause (F) or (G), regardless of the size of their assets, except
15 a trust that includes as participants self-directed individual
16 retirement accounts or similar self-directed plans;
17 (I) an organization described in Section 501(c)(3) of the
18 Internal Revenue Code (26 U.S.C. 501(c)(3)), corporation,
19 Massachusetts trust or similar business trust, limited liability
20 company, or partnership, not formed for the specific purpose
21 of acquiring the securities offered, with total assets in excess
22 of ten million dollars (\$10,000,000);
23 (J) a small business investment company licensed by the Small
24 Business Administration under Section 301(c) of the Small
25 Business Investment Act of 1958 (15 U.S.C. 681(c)) with total
26 assets in excess of ten million dollars (\$10,000,000);
27 (K) a private business development company, as defined in
28 Section 202(a)(22) of the Investment Advisers Act of 1940
29 (15 U.S.C. 80b-2(a)(22)) with total assets in excess of ten
30 million dollars (\$10,000,000);
31 (L) a federal covered investment adviser acting for its own
32 account;
33 (M) a "qualified institutional buyer", as defined in Rule
34 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under
35 the Securities Act of 1933 (17 CFR 230.144A);
36 (N) a "major U.S. institutional investor", as defined in Rule
37 15a-6(b)(4)(i) adopted under the Securities Exchange Act of
38 1934 (17 CFR 240.15a-6);
39 (O) any other person, other than an individual, of institutional
40 character with total assets in excess of ten million dollars
41 (\$10,000,000) not organized for the specific purpose of
42 evading this article; or



- 1 (P) any other person specified by rule adopted or order issued
2 under this article.
- 3 (12) "Insurance company" means a company organized as an
4 insurance company whose primary business is writing insurance
5 or reinsuring risks underwritten by insurance companies and
6 which is subject to supervision by the insurance commissioner or
7 a similar official or agency of a state.
- 8 (13) "Insured" means insured as to payment of all principal and
9 all interest.
- 10 (14) "International banking institution" means an international
11 financial institution of which the United States is a member and
12 whose securities are exempt from registration under the Securities
13 Act of 1933.
- 14 (15) "Investment adviser" means a person that, for compensation,
15 engages in the business of advising others, either directly or
16 through publications or writings, as to the value of securities or
17 the advisability of investing in, purchasing, or selling securities or
18 that, for compensation and as a part of a regular business, issues
19 or promulgates analyses or reports concerning securities. The
20 term includes a financial planner or other person that, as an
21 integral component of other financially related services, provides
22 investment advice to others for compensation as part of a business
23 or that holds itself out as providing investment advice to others
24 for compensation. The term does not include:
- 25 (A) an investment adviser representative;
- 26 (B) a lawyer, accountant, engineer, or teacher whose
27 performance of investment advice is solely incidental to the
28 practice of the person's profession;
- 29 (C) a broker-dealer or its agents whose performance of
30 investment advice is solely incidental to the conduct of
31 business as a broker-dealer and that does not receive special
32 compensation for the investment advice;
- 33 (D) a publisher of a bona fide newspaper, news magazine, or
34 business or financial publication of general and regular
35 circulation;
- 36 (E) a federal covered investment adviser;
- 37 (F) a bank, a savings institution, or a trust company that is a
38 wholly owned subsidiary of a bank or savings institution;
- 39 (G) any other person that is excluded by the Investment
40 Advisers Act of 1940 from the definition of investment
41 adviser; or
- 42 (H) any other person excluded by rule adopted or order issued



- 1 under this article.
- 2 (16) "Investment adviser representative" means an individual
 3 employed by or associated with an investment adviser or federal
 4 covered investment adviser and who makes any recommendations
 5 or otherwise gives investment advice regarding securities,
 6 manages accounts or portfolios of clients, determines which
 7 recommendation or advice regarding securities should be given,
 8 provides investment advice or holds herself or himself out as
 9 providing investment advice, receives compensation to solicit,
 10 offer, or negotiate for the sale of or for selling investment advice,
 11 or supervises employees who perform any of the foregoing. The
 12 term does not include an individual who:
- 13 (A) performs only clerical or ministerial acts;
 - 14 (B) is an agent whose performance of investment advice is
 15 solely incidental to the individual acting as an agent and who
 16 does not receive special compensation for investment advisory
 17 services;
 - 18 (C) is employed by or associated with a federal covered
 19 investment adviser, unless the individual has a "place of
 20 business" in this state, as that term is defined by rule adopted
 21 under Section 203A of the Investment Advisers Act of 1940
 22 (15 U.S.C. 80b-3a), and is:
 - 23 (i) an "investment adviser representative", as that term is
 24 defined by rule adopted under Section 203A of the
 25 Investment Advisers Act of 1940 (15 U.S.C. 80b-3a); or
 - 26 (ii) not a "supervised person", as that term is defined in
 27 Section 202(a)(25) of the Investment Advisers Act of 1940
 28 (15 U.S.C. 80b-2(a)(25)); or
 - 29 (D) is excluded by rule adopted or order issued under this
 30 article.
- 31 (17) "Issuer" means a person that issues or proposes to issue a
 32 security, subject to the following:
- 33 (A) The issuer of a voting trust certificate, collateral trust
 34 certificate, certificate of deposit for a security, or share in an
 35 investment company without a board of directors or
 36 individuals performing similar functions is the person
 37 performing the acts and assuming the duties of depositor or
 38 manager under the trust or other agreement or instrument
 39 under which the security is issued.
 - 40 (B) The issuer of an equipment trust certificate or similar
 41 security serving the same purpose is the person by which the
 42 property is or will be used or to which the property or



- 1 equipment is or will be leased or conditionally sold or that is
 2 otherwise contractually responsible for assuring payment of
 3 the certificate.
- 4 (C) The issuer of a fractional undivided interest in an oil, gas,
 5 or other mineral lease or in payments out of production under
 6 a lease, right, or royalty is the owner of an interest in the lease
 7 or in payments out of production under a lease, right, or
 8 royalty, whether whole or fractional, that creates fractional
 9 interests for the purpose of sale.
- 10 (18) "Nonissuer transaction" or "nonissuer distribution" means a
 11 transaction or distribution not directly or indirectly for the benefit
 12 of the issuer.
- 13 (19) "Offer to purchase" includes an attempt or offer to obtain, or
 14 solicitation of an offer to sell, a security or interest in a security
 15 for value. The term does not include a tender offer that is subject
 16 to Section 14(d) of the Securities Exchange Act of 1934
 17 (15 U.S.C. 78n(d)).
- 18 (20) "Person" means an individual; corporation; business trust;
 19 estate; trust; partnership; limited liability company; association;
 20 joint venture; government; governmental subdivision, agency, or
 21 instrumentality; public corporation; or any other legal or
 22 commercial entity.
- 23 (21) "Place of business" of a broker-dealer, an investment adviser,
 24 or a federal covered investment adviser means:
- 25 (A) an office at which the broker-dealer, investment adviser,
 26 or federal covered investment adviser regularly provides
 27 brokerage or investment advice or solicits, meets with, or
 28 otherwise communicates with customers or clients; or
- 29 (B) any other location that is held out to the general public as
 30 a location at which the broker-dealer, investment adviser, or
 31 federal covered investment adviser provides brokerage or
 32 investment advice or solicits, meets with, or otherwise
 33 communicates with customers or clients.
- 34 (22) "Predecessor act" means IC 23-2-1 (before its repeal).
- 35 (23) "Price amendment" means the amendment to a registration
 36 statement filed under the Securities Act of 1933 or, if an
 37 amendment is not filed, the prospectus or prospectus supplement
 38 filed under the Securities Act of 1933 that includes a statement of
 39 the offering price, underwriting and selling discounts or
 40 commissions, amount of proceeds, conversion rates, call prices,
 41 and other matters dependent upon the offering price.
- 42 (24) "Principal place of business" of a broker-dealer or an



- 1 investment adviser means the executive office of the
 2 broker-dealer or investment adviser from which the officers,
 3 partners, or managers of the broker-dealer or investment adviser
 4 direct, control, and coordinate the activities of the broker-dealer
 5 or investment adviser.
- 6 (25) "Record", except in the phrases "of record", "official record",
 7 and "public record", means information that is inscribed on a
 8 tangible medium or that is stored in an electronic or other medium
 9 and is retrievable in perceivable form.
- 10 (26) "Sale" includes every contract of sale, contract to sell, or
 11 disposition of a security or interest in a security for value, and
 12 "offer to sell" includes every attempt or offer to dispose of, or
 13 solicitation of an offer to purchase, a security or interest in a
 14 security for value. Both terms include:
- 15 (A) a security given or delivered with, or as a bonus on
 16 account of, a purchase of securities or any other thing
 17 constituting part of the subject of the purchase and having
 18 been offered and sold for value;
- 19 (B) a gift of assessable stock involving an offer and sale; and
- 20 (C) a sale or offer of a warrant or right to purchase or
 21 subscribe to another security of the same or another issuer and
 22 a sale or offer of a security that gives the holder a present or
 23 future right or privilege to convert the security into another
 24 security of the same or another issuer, including an offer of the
 25 other security.
- 26 (27) "Securities and Exchange Commission" means the United
 27 States Securities and Exchange Commission.
- 28 (28) "Security" means a note; stock; treasury stock; security
 29 future; bond; debenture; evidence of indebtedness; certificate of
 30 interest or participation in a profit-sharing agreement; collateral
 31 trust certificate; preorganization certificate or subscription;
 32 transferable share; investment contract; voting trust certificate;
 33 certificate of deposit for a security; fractional undivided interest
 34 in oil, gas, or other mineral rights; put, call, straddle, option, or
 35 privilege on a security, certificate of deposit, or group or index of
 36 securities, including an interest therein or based on the value
 37 thereof; put, call, straddle, option, or privilege entered into on a
 38 national securities exchange relating to foreign currency; or, in
 39 general, an interest or instrument commonly known as a
 40 "security"; or a certificate of interest or participation in, temporary
 41 or interim certificate for, receipt for, guarantee of, or warrant or
 42 right to subscribe to or purchase, any of the foregoing. The term:



- 1 (A) includes both a certificated and an uncertificated security;
 2 (B) does not include an insurance or endowment policy or
 3 annuity contract under which an insurance company promises
 4 to pay a fixed or variable sum of money either in a lump sum
 5 or periodically for life or another specified period;
 6 (C) does not include an interest in a contributory or
 7 noncontributory pension or welfare plan subject to the
 8 Employee Retirement Income Security Act of 1974;
 9 (D) includes as an "investment contract" an investment in a
 10 common enterprise with the expectation of profits to be
 11 derived primarily from the efforts of a person other than the
 12 investor and a "common enterprise" means an enterprise in
 13 which the fortunes of the investor are interwoven with those of
 14 either the person offering the investment, a third party, or other
 15 investors; and
 16 (E) includes as an "investment contract", among other
 17 contracts, an interest in a limited partnership and a limited
 18 liability company and an investment in a viatical settlement or
 19 similar agreement.
- 20 (29) "Self-regulatory organization" means a national securities
 21 exchange registered under the Securities Exchange Act of 1934,
 22 a national securities association of broker-dealers registered under
 23 the Securities Exchange Act of 1934, a clearing agency registered
 24 under the Securities Exchange Act of 1934, or the Municipal
 25 Securities Rulemaking Board established under the Securities
 26 Exchange Act of 1934.
- 27 (30) "Sign" means, with present intent to authenticate or adopt a
 28 record:
 29 (A) to execute or adopt a tangible symbol; or
 30 (B) to attach or logically associate with the record an
 31 electronic symbol, sound, or process.
- 32 (31) "State" means a state of the United States, the District of
 33 Columbia, Puerto Rico, the United States Virgin Islands, or any
 34 territory or insular possession subject to the jurisdiction of the
 35 United States.
- 36 **(32) "Accredited investor" has the meaning set forth in 17**
 37 **CFR 230.501(a).**
- 38 SECTION 4. IC 23-19-2-2, AS ADDED BY P.L.27-2007,
 39 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2014]: Sec. 2. The following transactions are exempt from the
 41 requirements of IC 23-19-3-1 through IC 23-19-3-6 and IC 23-19-5-4:
 42 (1) An isolated nonissuer transaction, whether effected by or



1 through a broker-dealer or not.

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

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

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

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

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

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

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

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

35 (iv) an audited income statement for each of the issuer's two
 36 (2) immediately previous fiscal years or for the period of
 37 existence of the issuer, whichever is shorter, or, in the case
 38 of a reorganization or merger when each party to the
 39 reorganization or merger had audited income statements, a
 40 pro forma income statement; and

41 (E) any one (1) of the following requirements is met:

42 (i) The issuer of the security has a class of equity securities



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



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



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



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



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



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

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

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

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

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

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

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

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

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

41 (i) the party subject to the disqualification is licensed or
 42 registered to conduct securities related business in the



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

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

16 (i) The name, address, and telephone number of the
 17 issuer of the securities.

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

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

22 (iv) The type, number, and aggregate amount of
 23 securities being offered.

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

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

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

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

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

42 (G) No telephone solicitation is permitted unless before



- 1 placing the call, the issuer reasonably believes that the
 2 prospective purchaser to be solicited is an accredited
 3 investor.
- 4 (H) Dissemination of the general announcement of the
 5 proposed offering to persons who are not accredited
 6 investors does not disqualify the issuer from claiming the
 7 exemption under this subdivision.
- 8 (I) The issuer shall file with the division a notice of
 9 transaction, a consent to service of process, a copy of the
 10 general announcement, and a fee established by the
 11 commissioner within fifteen (15) days after the first sale in
 12 Indiana.
- 13 (25) Any offer or sale of securities made after June 30, 2014,
 14 by an issuer that meets the exemption provided in Rule 504,
 15 505, or 506 of Regulation D under the Securities Act of 1933,
 16 and in accordance with Rules 501 through 503 of Regulation
 17 D under the Securities Act of 1933. However, all the following
 18 apply:
- 19 (A) The issuer must make a notice filing with the division
 20 on Form D of the Securities and Exchange Commission
 21 within thirty (30) days after the first sale in Indiana.
- 22 (B) Any commission, discount, or other remuneration for
 23 sales of securities in Indiana must be paid or given only to
 24 dealers or salespersons licensed under this article.
- 25 (C) The issuer must pay the fee established by the
 26 commissioner. However, no filing fee is required to file
 27 amendments to Form D of the Securities and Exchange
 28 Commission.
- 29 (26) Any offer or sale of securities after June 30, 2014, by an
 30 issuer that meets the requirements of the federal exemption
 31 for intrastate offerings in Section 3(a)(11) of the Securities Act
 32 of 1933, 15 U.S.C. 77c(a)(11), and Securities and Exchange
 33 Commission Rule 147, 17 CFR 230.147. However, all the
 34 following apply:
- 35 (A) The issuer must make a notice filing with the division
 36 on Form D of the Securities and Exchange Commission
 37 within thirty (30) days after the first sale in Indiana.
- 38 (B) Any commission, discount, or other remuneration for
 39 sales of securities in Indiana must be paid or given only to
 40 dealers or salespersons licensed under this article.
- 41 (C) The issuer must pay the fee established by the
 42 commissioner. However, no filing fee is required to file



- 1 amendments to Form D of the Securities and Exchange
2 Commission.
- 3 **(27) An offer or sale of a security made after June 30, 2014, by**
4 **an issuer if the offer or sale is conducted in accordance with**
5 **all the following requirements:**
- 6 **(A) The issuer of the security is a business entity organized**
7 **under the laws of Indiana and authorized to do business in**
8 **Indiana.**
- 9 **(B) The transaction meets the requirements of the federal**
10 **exemption for intrastate offerings in Section 3(a)(11) of the**
11 **Securities Act of 1933 (15 U.S.C. 77c(a)(11)) and Rule 147**
12 **adopted under the Securities Act of 1933 (17 CFR**
13 **230.147).**
- 14 **(C) Except as provided in clause (E), the sum of all cash**
15 **and other consideration to be received for all sales of the**
16 **security in reliance on the exemption under this**
17 **subdivision, excluding sales to any accredited investor or**
18 **institutional investor, does not exceed the following**
19 **amount:**
- 20 **(i) If the issuer has not undergone and made available to**
21 **each prospective investor and the commissioner the**
22 **documentation resulting from a financial audit of its**
23 **most recently completed fiscal year that complies with**
24 **generally accepted accounting principles, one million**
25 **dollars (\$1,000,000), less the aggregate amount received**
26 **for all sales of securities by the issuer within the twelve**
27 **(12) months before the first offer or sale made in reliance**
28 **on the exemption under this subdivision.**
- 29 **(ii) If the issuer has undergone and made available to**
30 **each prospective investor and the commissioner the**
31 **documentation resulting from a financial audit of its**
32 **most recently completed fiscal year that complies with**
33 **generally accepted accounting principles, two million**
34 **dollars (\$2,000,000), less the aggregate amount received**
35 **for all sales of securities by the issuer within the twelve**
36 **(12) months before the first offer or sale made in reliance**
37 **on the exemption under this subdivision.**
- 38 **(D) An offer or sale to an officer, director, partner, trustee,**
39 **or individual occupying similar status or performing**
40 **similar functions with respect to the issuer or to a person**
41 **owning ten percent (10%) or more of the outstanding**
42 **shares of any class or classes of securities of the issuer does**



1 not count toward the monetary limitations in clause (C).
2 (E) The issuer does not accept more than ten thousand
3 dollars (\$10,000) from any single purchaser unless the
4 purchaser is an accredited investor.

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

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

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

14 (iii) Provide the commissioner a copy of the disclosure
15 document to be provided to prospective investors under
16 clause (L).

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

29 (G) The issuer is not, either before or as a result of the
30 offering, an investment company, as defined in Section 3 of
31 the Investment Company Act of 1940 (15 U.S.C. 80a-3), an
32 entity that would be an investment company but for the
33 exclusions provided in Section 3(c) of the Investment
34 Company Act of 1940 (15 U.S.C. 80a-3(c)), or subject to the
35 reporting requirements of Section 13 or 15(d) of the
36 Securities Exchange Act of 1934 (15 U.S.C. 78m or
37 15 U.S.C. 78o(d)).

38 (H) The issuer informs all prospective purchasers of
39 securities offered under an exemption under this
40 subdivision that the securities have not been registered
41 under federal or state securities law and that the securities
42 are subject to limitations on resale. The issuer shall display



1 the following legend conspicuously on the cover page of the
2 disclosure document:

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

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

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



1 and, accordingly, I may be required to hold this
2 investment indefinitely. I may be subject to tax on my
3 share of the taxable income and losses of the company,
4 whether or not I have sold or otherwise disposed of my
5 investment or received any dividends or other
6 distributions from the company."

7 (J) The issuer obtains from each purchaser of a security
8 offered under an exemption under this subdivision
9 evidence that the purchaser is a resident of Indiana and, if
10 applicable, is an accredited investor.

11 (K) All payments for purchase of securities offered under
12 an exemption under this subdivision are directed to and
13 held by the financial institution specified in clause (F)(iv).
14 The bank or depository institution shall notify the
15 commissioner of the receipt of payments for securities.
16 This information is not a public record and is not available
17 for public inspection.

18 (L) The issuer of securities offered under an exemption
19 under this subdivision provides a disclosure document to
20 each prospective investor at the time the offer of securities
21 is made to the prospective investor that contains all the
22 following:

23 (i) A description of the company, its type of entity, the
24 address and telephone number of its principal office, its
25 history, its business plan, and the intended use of the
26 offering proceeds, including any amounts to be paid, as
27 compensation or otherwise, to any owner, executive
28 officer, director, managing member, or other person
29 occupying a similar status or performing similar
30 functions on behalf of the issuer.

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

34 (iii) The identity of the executive officers, directors,
35 managing members, and other persons occupying a
36 similar status or performing similar functions in the
37 name of and on behalf of the issuer, including their titles
38 and their prior experience.

39 (iv) The terms and conditions of the securities being
40 offered and of any outstanding securities of the
41 company; the minimum and maximum amount of
42 securities being offered, if any; either the percentage



1 ownership of the company represented by the offered
2 securities or the valuation of the company implied by the
3 price of the offered securities; the price per share, unit,
4 or interest of the securities being offered; any
5 restrictions on transfer of the securities being offered;
6 and a disclosure of any anticipated future issuance of
7 securities that might dilute the value of securities being
8 offered.

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

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

20 (vii) A description of any litigation, legal proceedings, or
21 pending regulatory action involving the company or its
22 management.

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

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

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

38 (N) The exemption described in this subdivision does not
39 apply if an issuer or person affiliated with the issuer or
40 offering is subject to disqualification established by the
41 commissioner by rule or contained in the Securities Act of
42 1933 (15 U.S.C. 77c(a)(11)) and Rule 147 adopted under



1 the Securities Act of 1933 (17 CFR 230.262). However, this
2 clause does not apply if both of the following are met:

3 (i) On a showing of good cause and without prejudice to
4 any other action by the commissioner, the commissioner
5 determines that it is not necessary under the
6 circumstances that an exemption is denied.

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

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

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

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

27 (iii) The Internet web site operator is not required to
28 register as a broker-dealer if all the conditions in section
29 2.3(c) of this chapter apply with respect to the Internet
30 web site and its operator.

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

35 (v) The Internet web site operator is not required to
36 register as a broker-dealer under item (ii) if the Internet
37 web site operator is registered as a broker-dealer under
38 the Securities Exchange Act of 1934 (15 U.S.C. 78o) or is
39 a funding portal registered under the Securities Act of
40 1933 (15 U.S.C. 77d-1) and the Securities and Exchange
41 Commission has adopted rules under authority of
42 Section 3(h) of the Securities Exchange Act of 1934 (15



1 U.S.C. 78c(h)) and P.L.112-106, Section 304, governing
 2 funding portals. This subdivision does not require an
 3 Internet web site operator to register as a broker-dealer
 4 under the Securities Exchange Act of 1934 or as a
 5 funding portal under the Securities Act of 1933.

6 (vi) The issuer and the Internet web site operator must
 7 maintain records of all offers and sales of securities
 8 effected through the Internet web site and must provide
 9 ready access to the records to the division, upon request.
 10 The division may access, inspect, and review any
 11 Internet web site registered under this subdivision as
 12 well as its records.

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

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

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

36 (Q) If the Securities and Exchange Commission adopts
 37 rules under authority of Section 3(h) of the Securities
 38 Exchange Act of 1934 (15 U.S.C. 78c(h)) and P.L.112-106,
 39 Section 304, that authorize funding portals to receive
 40 commissions without registering as broker-dealers under
 41 the Securities Exchange Act of 1934, the division shall
 42 adopt rules authorizing Internet web site operators



1 registered with the division under clause (O)(ii) that are
 2 not registered as broker-dealers under IC 23-19-4 to
 3 receive commissions. The division shall ensure that its
 4 rules authorizing commissions for Internet web site
 5 operators are consistent with rules adopted by the
 6 Securities and Exchange Commission. The division's rules
 7 must also ensure that Internet web site operators that do
 8 not satisfy rules adopted by the Securities and Exchange
 9 Commission have the opportunity to operate in compliance
 10 with the requirements of this subdivision.

11 (R) In 2019 and every fifth year thereafter, the
 12 commissioner shall cumulatively adjust the dollar
 13 limitations provided in clause (C) to reflect the change in
 14 the Consumer Price Index for all Urban Consumers
 15 published by the federal Bureau of Labor Statistics
 16 rounding each dollar limitation to the nearest fifty
 17 thousand dollars (\$50,000).

18 SECTION 5. IC 23-19-2-2.3 IS ADDED TO THE INDIANA CODE
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 20 1, 2014]: Sec. 2.3. (a) This section applies to an offering under
 21 section 2(27)(O) of this chapter that is made exclusively through
 22 one (1) or more Internet web sites and each Internet web site.

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

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

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

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

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

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

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

42 (2) It does not solicit purchases, sales, or offers to buy the



- 1 securities offered or displayed on the Internet web site.
2 (3) It does not compensate employees, agents, or other persons
3 for the solicitation or based on the sale of securities displayed
4 or referenced on the Internet web site.
5 (4) It is compensated based on the amount of securities sold,
6 and it does not hold, manage, possess, or otherwise handle
7 investor funds or securities.
8 (5) The fee it charges an issuer for an offering of securities on
9 the Internet web site is a fixed amount for each offering, a
10 variable amount based on the length of time that the securities
11 are offered on the Internet web site, or a combination of the
12 fixed and variable amounts.
13 (6) It does not identify, promote, or otherwise refer to any
14 individual security offered on the Internet web site in any
15 advertising for the Internet web site.
16 (7) It does not engage in any other activities that the division,
17 by rule, determines are prohibited of the Internet web site.
18 (8) Neither the Internet web site operator, nor any director,
19 executive officer, general partner, managing member, or
20 other person with management authority over the Internet
21 web site operator, has been subject to any conviction, order,
22 judgment, decree, or other action specified in Rule 506(d)(1)
23 adopted under the Securities Act of 1933 (17 CFR
24 230.506(d)(1)) that would disqualify an issuer under Rule
25 506(d) adopted under the Securities Act of 1933 (17 CFR
26 230.506(d)) from claiming an exemption specified in Rule
27 506(a) to Rule 506(c) adopted under the Securities Act of 1933
28 (17 CFR 230.506(a) to 17 CFR 230.506(c)).

