

HOUSE BILL No. 1473

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-21.5-3-6; IC 23-2-5-3; IC 24-5-24.7; IC 24-4.5-1-202.

Synopsis: Nonprofit facilitators of lending circle loans. Provides that after December 31, 2015, an eligible nonprofit organization may apply to the department of financial institutions (department) for a certificate of registration to facilitate the making of zero interest, low cost lending circle loans to eligible individuals who participate in lending circles in Indiana. Defines a "lending circle" as group of individuals that is voluntarily organized for the purpose of: (1) generating a source of funds by: (A) pooling or collecting contributions from individual group members; or (B) obtaining funds from other sources, including from lending circle loans; and (2) disbursing the funds to individual group members for personal, family, or household purposes. Sets forth requirements for: (1) obtaining a certificate of registration from the department; and (2) maintaining a surety bond in connection with a certificate. Sets forth certain: (1) prohibited actions; and (2) requirements; in connection with facilitating the making of a lending circle loan. Provides that an eligible nonprofit organization may charge only: (1) an administrative fee; and (2) an insufficient funds fee; in connection with facilitating the making of a lending circle loan. Allows a registered eligible nonprofit organization to cooperate with: (1) other registered eligible nonprofit organizations; and (2) nonregistered partnering organizations; in facilitating the making of a lending circle loan. Provides that the director of the department may adopt rules, policies, or guidance concerning facilitating the making of lending circle loans in Indiana. Specifies that: (1) an eligible nonprofit organization is not a loan broker for purposes of the statute concerning the licensure of mortgage loan brokers by the securities commissioner; and (2) facilitating the making of a lending circle loan is not subject to the Uniform Consumer Credit Code.

Effective: Upon passage.

Austin

January 14, 2015, read first time and referred to Committee on Financial Institutions.



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

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

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

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1473

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

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

- 1 SECTION 1. IC 4-21.5-3-6, AS AMENDED BY P.L.153-2011,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 6. (a) Notice shall be given under this section
4 concerning the following:
5 (1) A safety order under IC 22-8-1.1.
6 (2) Any order that:
7 (A) imposes a sanction on a person or terminates a legal right,
8 duty, privilege, immunity, or other legal interest of a person;
9 (B) is not described in section 4 or 5 of this chapter or
10 IC 4-21.5-4; and
11 (C) by statute becomes effective without a proceeding under
12 this chapter if there is no request for a review of the order
13 within a specified period after the order is issued or served.
14 (3) A notice of program reimbursement or equivalent
15 determination or other notice regarding a hospital's



1 reimbursement issued by the office of Medicaid policy and
 2 planning or by a contractor of the office of Medicaid policy and
 3 planning regarding a hospital's year end cost settlement.

4 (4) A determination of audit findings or an equivalent
 5 determination by the office of Medicaid policy and planning or by
 6 a contractor of the office of Medicaid policy and planning arising
 7 from a Medicaid postpayment or concurrent audit of a hospital's
 8 Medicaid claims.

9 (5) A license revocation **or suspension** under:

10 (A) IC 24-4.4-2;

11 (B) IC 24-4.5-3;

12 (C) IC 28-1-29;

13 (D) IC 28-7-5;

14 (E) IC 28-8-4; or

15 (F) IC 28-8-5.

16 (6) An order issued by the:

17 (A) division of aging or the bureau of aging services; or

18 (B) division of disability and rehabilitative services or the
 19 bureau of developmental disabilities services;

20 against providers regulated by the division of aging or the bureau
 21 of developmental disabilities services and not licensed by the
 22 state department of health under IC 16-27 or IC 16-28.

23 **(7) The denial, suspension, or revocation of a certificate of**
 24 **registration under IC 24-5-24.7.**

25 (b) When an agency issues an order described by subsection (a), the
 26 agency shall give notice to the following persons:

27 (1) Each person to whom the order is specifically directed.

28 (2) Each person to whom a law requires notice to be given.

29 A person who is entitled to notice under this subsection is not a party
 30 to any proceeding resulting from the grant of a petition for review
 31 under section 7 of this chapter unless the person is designated as a
 32 party in the record of the proceeding.

33 (c) The notice must include the following:

34 (1) A brief description of the order.

35 (2) A brief explanation of the available procedures and the time
 36 limit for seeking administrative review of the order under section
 37 7 of this chapter.

38 (3) Any other information required by law.

39 (d) An order described in subsection (a) is effective fifteen (15) days
 40 after the order is served, unless a statute other than this article specifies
 41 a different date or the agency specifies a later date in its order. This
 42 subsection does not preclude an agency from issuing, under



1 IC 4-21.5-4, an emergency or other temporary order concerning the
2 subject of an order described in subsection (a).

3 (e) If a petition for review of an order described in subsection (a) is
4 filed within the period set by section 7 of this chapter and a petition for
5 stay of effectiveness of the order is filed by a party or another person
6 who has a pending petition for intervention in the proceeding, an
7 administrative law judge shall, as soon as practicable, conduct a
8 preliminary hearing to determine whether the order should be stayed in
9 whole or in part. The burden of proof in the preliminary hearing is on
10 the person seeking the stay. The administrative law judge may stay the
11 order in whole or in part. The order concerning the stay may be issued
12 after an order described in subsection (a) becomes effective. The
13 resulting order concerning the stay shall be served on the parties and
14 any person who has a pending petition for intervention in the
15 proceeding. It must include a statement of the facts and law on which
16 it is based.

17 SECTION 2. IC 23-2-5-3, AS AMENDED BY P.L.127-2012,
18 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 UPON PASSAGE]: Sec. 3. (a) As used in this chapter, "loan broker
20 license" means a license issued by the commissioner authorizing a
21 person to engage in the loan brokerage business.

22 (b) As used in this chapter, "licensee" means a person that is issued
23 a license under this chapter.

24 (c) As used in this chapter, "loan broker" means any person who, in
25 return for any consideration from any source procures, attempts to
26 procure, or assists in procuring, a residential mortgage loan from a
27 third party or any other person, whether or not the person seeking the
28 loan actually obtains the loan. "Loan broker" does not include:

- 29 (1) any supervised financial organization (as defined in
30 IC 26-1-4-102.5), including a bank, savings bank, trust company,
31 savings association, or credit union;
32 (2) any other financial institution that is:
33 (A) regulated by any agency of the United States or any state;
34 and
35 (B) regularly actively engaged in the business of making
36 consumer loans that are not secured by real estate or taking
37 assignment of consumer sales contracts that are not secured by
38 real estate;
39 (3) any insurance company;
40 (4) any person arranging financing for the sale of the person's
41 product; ~~or~~
42 (5) a creditor that is licensed under IC 24-4.4-2-402; **or**



- 1 **(6) an eligible nonprofit organization (as defined in**
 2 **IC 24-5-24.7-6) with respect to facilitating the making of a**
 3 **lending circle loan under IC 24-5-24.7.**
- 4 (d) As used in this chapter, "loan brokerage business" means a
 5 person acting as a loan broker.
- 6 (e) As used in this chapter, "mortgage loan origination activities"
 7 means performing any of the following activities for compensation or
 8 gain in connection with a residential mortgage loan:
- 9 (1) Receiving or recording a borrower's or potential borrower's
 10 residential mortgage loan application information in any form for
 11 use in a credit decision by a creditor.
- 12 (2) Offering to negotiate or negotiating terms of a residential
 13 mortgage loan.
- 14 (f) As used in this chapter, "borrower's residential mortgage loan
 15 application information" means the address of the proposed residential
 16 real property to be mortgaged and borrower's essential personal and
 17 financial information necessary for an informed credit decision to be
 18 made on the borrower's mortgage loan application.
- 19 (g) As used in this chapter, "mortgage loan originator" means an
 20 individual engaged in mortgage loan origination activities. The term
 21 does not include a person who:
- 22 (1) performs purely administrative or clerical tasks on behalf of
 23 a mortgage loan originator or acts as a loan processor or
 24 underwriter;
- 25 (2) performs only real estate brokerage activities and is licensed
 26 in accordance with IC 25-34.1 or the applicable laws of another
 27 state, unless the person is compensated by a creditor, a loan
 28 broker, a mortgage loan originator, or any agent of a creditor, a
 29 loan broker, or a mortgage loan originator; or
- 30 (3) is involved only in extensions of credit relating to time share
 31 plans (as defined in 11 U.S.C. 101(53D)).
- 32 (h) As used in this chapter, "mortgage loan originator license"
 33 means a license issued by the commissioner authorizing an individual
 34 to act as a mortgage loan originator on behalf of a loan broker licensee.
- 35 (i) As used in this chapter, "person" means an individual, a
 36 partnership, a trust, a corporation, a limited liability company, a limited
 37 liability partnership, a sole proprietorship, a joint venture, a joint stock
 38 company, or another group or entity, however organized.
- 39 (j) As used in this chapter, "ultimate equitable owner" means a
 40 person who, directly or indirectly, owns or controls ten percent (10%)
 41 or more of the equity interest in a loan broker licensed or required to be
 42 licensed under this chapter, regardless of whether the person owns or



1 controls the equity interest through one (1) or more other persons or
 2 one (1) or more proxies, powers of attorney, or variances.

3 (k) As used in this chapter, "principal manager" means an individual
 4 who:

5 (1) has at least three (3) years of experience:

6 (A) as a mortgage loan originator; or

7 (B) in financial services;

8 that is acceptable to the commissioner; and

9 (2) is principally responsible for the supervision and management
 10 of the employees and business affairs of a loan broker licensee.

11 (l) As used in this chapter, "principal manager license" means a
 12 license issued by the commissioner authorizing an individual to act as:

13 (1) a principal manager; and

14 (2) a mortgage loan originator;

15 on behalf of a loan broker licensee.

16 (m) As used in this chapter, "bona fide third party fee", with respect
 17 to a residential mortgage loan, includes any of the following:

18 (1) Fees for real estate appraisals. However, if the residential
 19 mortgage loan is governed by Title XI of the Financial Institutions
 20 Reform, Recovery, and Enforcement Act (12 U.S.C. 3331 through
 21 3352), the fee for an appraisal performed in connection with the
 22 loan is not a bona fide third party fee unless the appraisal is
 23 performed by a person that is licensed or certified under
 24 IC 25-34.1-3-8.

25 (2) Fees for title examination, abstract of title, title insurance,
 26 property surveys, or similar purposes.

27 (3) Notary and credit report fees.

28 (4) Fees for the services provided by a loan broker in procuring
 29 possible business for a creditor if the fees are paid by the creditor.

30 (n) As used in this chapter, "branch office" means any fixed physical
 31 location from which a loan broker licensee holds itself out as engaging
 32 in the loan brokerage business.

33 (o) As used in this chapter, "loan processor or underwriter" means
 34 an individual who:

35 (1) is employed by a loan broker licensee and acts at the direction
 36 of, and subject to the supervision of, the loan broker licensee or
 37 a licensed principal manager employed by the loan broker
 38 licensee; and

39 (2) performs solely clerical or support duties on behalf of the loan
 40 broker licensee, including any of the following activities with
 41 respect to a residential mortgage loan application received by the
 42 loan broker licensee:



- 1 (A) The receipt, collection, distribution, and analysis of
 2 information commonly used in the processing or underwriting
 3 of a residential mortgage loan.
- 4 (B) Communicating with a borrower or potential borrower to
 5 obtain the information necessary for the processing or
 6 underwriting of a residential mortgage loan, to the extent that
 7 the communication does not include:
 8 (i) offering or negotiating loan rates or terms; or
 9 (ii) counseling borrowers or potential borrowers about
 10 residential mortgage loan rates or terms.
- 11 (p) As used in this chapter, "real estate brokerage activity" means
 12 any activity that involves offering or providing real estate brokerage
 13 services to the public, including any of the following:
 14 (1) Acting as a real estate broker for a buyer, seller, lessor, or
 15 lessee of real property.
 16 (2) Bringing together parties interested in the sale, lease, or
 17 exchange of real property.
 18 (3) Negotiating, on behalf of any party, any part of a contract
 19 concerning the sale, lease, or exchange of real property, other than
 20 in connection with obtaining or providing financing for the
 21 transaction.
 22 (4) Engaging in any activity for which the person performing the
 23 activity is required to be licensed under IC 25-34.1 or the
 24 applicable laws of another state.
 25 (5) Offering to engage in any activity, or to act in any capacity
 26 with respect to any activity, described in subdivisions (1) through
 27 (4).
- 28 (q) As used in this chapter, "registered mortgage loan originator"
 29 means a mortgage loan originator who:
 30 (1) is an employee of:
 31 (A) a depository institution;
 32 (B) a subsidiary that is:
 33 (i) owned and controlled by a depository institution; and
 34 (ii) regulated by a federal financial institution regulatory
 35 agency (as defined in 12 U.S.C. 3350(6)); or
 36 (C) an institution regulated by the Farm Credit Administration;
 37 and
 38 (2) is registered with and maintains a unique identifier with the
 39 Nationwide Mortgage Licensing System and Registry.
- 40 (r) As used in this chapter, "residential mortgage loan" means a loan
 41 that is or will be used primarily for personal, family, or household
 42 purposes and that is secured by a mortgage (or another equivalent



1 consensual security interest) on a dwelling (as defined in Section
2 103(w) of the federal Truth in Lending Act (15 U.S.C. 1602(w)) or on
3 residential real estate on which a dwelling is constructed or intended
4 to be constructed.

5 (s) As used in this chapter, "personal information" includes any of
6 the following:

7 (1) An individual's first and last names or first initial and last
8 name.

9 (2) Any of the following data elements:

10 (A) A Social Security number.

11 (B) A driver's license number.

12 (C) A state identification card number.

13 (D) A credit card number.

14 (E) A financial account number or debit card number in
15 combination with a security code, password, or access code
16 that would permit access to the person's account.

17 (3) With respect to an individual, any of the following:

18 (A) Address.

19 (B) Telephone number.

20 (C) Information concerning the individual's:

21 (i) income or other compensation;

22 (ii) credit history;

23 (iii) credit score;

24 (iv) assets;

25 (v) liabilities; or

26 (vi) employment history.

27 (t) As used in this chapter, personal information is "encrypted" if the
28 personal information:

29 (1) has been transformed through the use of an algorithmic
30 process into a form in which there is a low probability of
31 assigning meaning without use of a confidential process or key;
32 or

33 (2) is secured by another method that renders the personal
34 information unreadable or unusable.

35 (u) As used in this chapter, personal information is "redacted" if the
36 personal information has been altered or truncated so that not more
37 than the last four (4) digits of:

38 (1) a Social Security number;

39 (2) a driver's license number;

40 (3) a state identification number; or

41 (4) an account number;

42 are accessible as part of the personal information.



1 (v) As used in this chapter, "depository institution" has the meaning
 2 set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and
 3 includes any credit union.

4 (w) As used in this chapter, "state licensed mortgage loan
 5 originator" means any individual who:

6 (1) is a mortgage loan originator;

7 (2) is not an employee of:

8 (A) a depository institution;

9 (B) a subsidiary that is:

10 (i) owned and controlled by a depository institution; and

11 (ii) regulated by a federal financial institution regulatory
 12 agency (as defined in 12 U.S.C. 3350(6)); or

13 (C) an institution regulated by the Farm Credit Administration;

14 (3) is licensed by a state or by the Secretary of the United States
 15 Department of Housing and Urban Development under Section
 16 1508 of the S.A.F.E. Mortgage Licensing Act of 2008 (Title V of
 17 P.L.110-289); and

18 (4) is registered as a mortgage loan originator with, and maintains
 19 a unique identifier through, the Nationwide Mortgage Licensing
 20 System and Registry.

21 (x) As used in this chapter, "unique identifier" means a number or
 22 other identifier that:

23 (1) permanently identifies a mortgage loan originator; and

24 (2) is assigned by protocols established by the Nationwide
 25 Mortgage Licensing System and Registry and the federal financial
 26 institution regulatory agencies to facilitate:

27 (A) the electronic tracking of mortgage loan originators; and

28 (B) the uniform identification of, and public access to, the
 29 employment history of and the publicly adjudicated
 30 disciplinary and enforcement actions against mortgage loan
 31 originators.

32 (y) As used in this chapter, "residential real estate" means real
 33 property:

34 (1) that is located in Indiana; and

35 (2) upon which a dwelling is constructed or intended to be
 36 constructed.

37 SECTION 3. IC 24-5-24.7 IS ADDED TO THE INDIANA CODE
 38 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 39 UPON PASSAGE]:

40 **Chapter 24.7. Nonprofit Facilitators of Lending Circle Loans**

41 **Sec. 1. As used in this chapter, "consumer reporting agency that**
 42 **compiles and maintains files on consumers on a nationwide basis"**



1 has the meaning set forth in 15 U.S.C. 1681a(p).

2 **Sec. 2.** As used in this chapter, "department" refers to the
3 department of financial institutions.

4 **Sec. 3.** As used in this chapter, "director" refers to the director
5 of the department of financial institutions or the director's
6 designee.

7 **Sec. 4.** As used in this chapter, "eligible individual" means an
8 individual:

- 9 (1) who is at least eighteen (18) years of age;
- 10 (2) whose principal residence is in Indiana; and
- 11 (3) who is a member of a lending circle.

12 **Sec. 5.** As used in this chapter, "eligible nonprofit organization"
13 means an organization that:

- 14 (1) is exempt from federal income taxation under Section
- 15 501(c)(3) of the Internal Revenue Code; and
- 16 (2) meets the requirements set forth in section 11(c) of this
- 17 chapter to facilitate the making of lending circle loans to
- 18 eligible individuals.

19 **Sec. 6.** As used in this chapter, "facilitate the making of a
20 lending circle loan" means either of the following actions by an
21 eligible nonprofit organization to assist one (1) or more eligible
22 individuals in obtaining a lending circle loan:

- 23 (1) Doing all of the following:
 - 24 (A) Making a lending circle loan to one (1) or more eligible
 - 25 individuals.
 - 26 (B) Retaining the lending circle loan in the eligible
 - 27 nonprofit organization's loan portfolio.
 - 28 (C) Servicing the lending circle loan with respect to the
 - 29 borrowing eligible individuals.
- 30 (2) Brokering a lending circle loan on behalf of one (1) or
- 31 more eligible individuals by:
 - 32 (A) directly or indirectly soliciting, processing, placing, or
 - 33 negotiating a lending circle loan for the eligible
 - 34 individuals;
 - 35 (B) offering to solicit, process, place, or negotiate a lending
 - 36 circle loan for the eligible individuals; or
 - 37 (C) closing a lending circle loan that:
 - 38 (i) is made in the organization's own name but with
 - 39 funds that are provided by one (1) or more other
 - 40 persons; and
 - 41 (ii) is subsequently assigned to the persons providing the
 - 42 funding for the lending circle loan.



1 **Sec. 7. As used in this chapter, "lending circle" means a group**
 2 **of eligible individuals that:**

3 **(1) consists of at least six (6) members and not more than ten**
 4 **(10) members; and**

5 **(2) is voluntarily organized, whether formally or informally,**
 6 **by the members of the group for the purpose of:**

7 **(A) generating a source of funds by:**

8 **(i) pooling or collecting contributions from individual**
 9 **members of the group; or**

10 **(ii) obtaining funds from other sources, including by**
 11 **obtaining lending circle loans facilitated by eligible**
 12 **nonprofit organizations that are registered with the**
 13 **department under this chapter; and**

14 **(B) disbursing the funds to individual members of the**
 15 **group, either by turns or to two (2) or more members**
 16 **simultaneously, for use by the members primarily for**
 17 **personal, family, or household purposes.**

18 **Sec. 8. (a) As used in this chapter, "lending circle loan" means**
 19 **a zero (0) interest, low cost loan:**

20 **(1) that is unsecured;**

21 **(2) that is made to one (1) or more eligible individuals**
 22 **primarily for personal, family, or household purposes;**

23 **(3) that has a principal amount that is at least two hundred**
 24 **fifty dollars (\$250) and not more than two thousand five**
 25 **hundred dollars (\$2,500), subject to subsection (b);**

26 **(4) that is for a term that is:**

27 **(A) at least ninety (90) days if the principal amount of the**
 28 **loan at the time of origination is less than five hundred**
 29 **dollars (\$500);**

30 **(B) at least one hundred twenty (120) days if the principal**
 31 **amount of the loan at the time of origination is at least five**
 32 **hundred dollars (\$500) but less than one thousand five**
 33 **hundred dollars (\$1,500); or**

34 **(C) at least one hundred eighty (180) days if the principal**
 35 **amount of the loan at the time of origination is at least one**
 36 **thousand five hundred dollars (\$1,500);**

37 **subject to subsection (b); and**

38 **(5) the proceeds of which will be used by the eligible**
 39 **individuals in connection with their participation in a lending**
 40 **circle.**

41 **(b) The amounts of:**

42 **(1) two hundred fifty dollars (\$250) and two thousand five**



1 hundred dollars (\$2,500) set forth in subsection (a)(3); and
 2 (2) five hundred dollars (\$500) and one thousand five hundred
 3 dollars (\$1,500), set forth in subsection (a)(4);
 4 are subject to change under the provisions on adjustment of dollar
 5 amounts (IC 24-4.5-1-106). However, notwithstanding
 6 IC 24-4.5-1-106(1), the Reference Base Index for purposes of this
 7 subsection is the Index for October 2012.

8 **Sec. 9.** As used in this chapter, "nonregistered partnering
 9 organization" means an organization that:

- 10 (1) is exempt from federal income taxation under Section
 11 501(c)(3) of the Internal Revenue Code;
 12 (2) meets the requirements set forth in section 11(c) of this
 13 chapter to facilitate the making of lending circle loans to
 14 eligible individuals; and
 15 (3) enters into an agreement under section 16(c) of this
 16 chapter with one (1) or more eligible nonprofit organizations
 17 that hold a certificate of registration under this chapter;
 18 but does not hold a certificate of registration under this chapter.

19 **Sec. 10. (a)** As used in this chapter, "qualified credit education
 20 program" means a financial education program that:

- 21 (1) is approved by the director;
 22 (2) is offered by an eligible nonprofit organization to an
 23 eligible individual in connection with facilitating the making
 24 of a lending circle loan;
 25 (3) is provided at no cost to the eligible individual; and
 26 (4) has the purpose of educating eligible individuals about one
 27 (1) or more of the following:
 28 (A) Establishing a credit history.
 29 (B) Factors influencing an individual's credit score or debt
 30 to income ratio.
 31 (C) The functions of consumer reporting agencies.
 32 (D) Other subjects that concern consumer credit or
 33 consumer finance and are approved by the department.

34 **(b)** Subject to the approval of the director, the term referenced
 35 in subsection (a) includes the following:

- 36 (1) Credit education seminars or counseling sessions that are
 37 provided or sponsored by the eligible nonprofit organization
 38 or by a third party.
 39 (2) Free online credit education tools, applications, or
 40 programs.

41 **Sec. 11. (a)** Subject to an eligible nonprofit organization's
 42 compliance with:



1 (1) this chapter; and

2 (2) any rules, policies, or guidance adopted by the director
3 under section 17 of this chapter;

4 after December 31, 2015, an eligible nonprofit organization may
5 facilitate the making of lending circle loans to eligible individuals
6 if the eligible nonprofit organization is issued and maintains a
7 certificate of registration from the department under this chapter.

8 (b) An applicant for a certificate of registration under this
9 chapter shall file an application with the department in the form
10 and manner prescribed by the director. An application form
11 prescribed by the director under this chapter must require the
12 applicant to provide information that the director determines is
13 necessary to make the findings set forth in subsection (c).

14 (c) The department may issue a certificate of registration under
15 this chapter if the department finds that the applicant:

16 (1) maintains tax exempt status under Section 501(c)(3) of the
17 Internal Revenue Code;

18 (2) does not have shareholders;

19 (3) does not engage in any activities for the profit of its
20 trustees, directors, incorporators, or members;

21 (4) is organized and conducts its affairs for purposes other
22 than the pecuniary gain of its trustees, directors,
23 incorporators, or members;

24 (5) conducts the applicant's activities in a manner that serves
25 public or charitable purposes;

26 (6) receives funding and revenue in a manner that does not
27 encourage the applicant or the applicant's employees to act
28 other than in the best interests of eligible individuals; and

29 (7) compensates the applicant's employees in a manner that
30 does not encourage employees to act other than in the best
31 interests of eligible individuals.

32 If the department denies an application under this chapter, the
33 director shall provide to the applicant a written notice stating that
34 the application has been denied and setting forth the reasons for
35 the denial. The director may prescribe circumstances under which
36 a certificate issued under this chapter may be revoked or
37 suspended for cause, including the failure of any applicant or
38 certificate holder to pay an application fee or a renewal fee
39 described in subsection (g). A notice of a denial, revocation, or
40 suspension issued by the department under this subsection is
41 effective in accordance with IC 4-21.5-3-6(d).

42 (d) An applicant for a certificate of registration under this



1 chapter is entitled to an administrative review, in the manner
 2 provided in IC 4-21.5, of the issue of the applicant's qualifications
 3 for a certificate of registration under this chapter if either of the
 4 following applies:

5 (1) The director provides to the applicant a written notice that
 6 the applicant's application has been denied, as described in
 7 subsection (c), and the applicant files a timely request for a
 8 review under IC 4-21.5-3-7.

9 (2) The department does not issue a decision on the
 10 applicant's application not later than sixty (60) days after the
 11 date the application is filed, and the applicant files a request
 12 for an administrative review in accordance with the
 13 procedures set forth in IC 4-21.5-3-7 not later than
 14 seventy-five (75) days after the date the application is filed.

15 (e) A certificate of registration issued by the department under
 16 this chapter must be renewed with the department on the dates and
 17 in the manner and form prescribed by the director.

18 (f) If, at any time, any information contained in:

19 (1) an initial application under subsection (b); or

20 (2) a renewal form or application under subsection (e);

21 is or becomes inaccurate or incomplete in a material respect, the
 22 applicant or registered eligible nonprofit organization promptly
 23 shall file a correcting amendment with the department in the form
 24 and manner prescribed by the director.

25 (g) The department may establish, in an amount fixed by the
 26 department under IC 28-11-3-5, either of the following to cover the
 27 department's expenses in administering this chapter:

28 (1) An application fee that an applicant must submit with an
 29 initial application under subsection (b).

30 (2) A renewal fee that a registered eligible nonprofit
 31 organization must submit with a renewal form or application
 32 under subsection (e).

33 The department may impose a fee under IC 28-11-3-5 for each day
 34 that an application fee or a renewal fee, or any related documents
 35 that are required to be submitted with an initial application or a
 36 renewal application, are delinquent.

37 Sec. 12. (a) Each application for a certificate of registration
 38 under section 11 of this chapter must be accompanied by proof that
 39 the applicant has executed a surety bond in accordance with this
 40 section.

41 (b) A surety bond issued under this section must:

42 (1) be in a form prescribed by the director;



1 (2) be in effect during the term of the certificate of
2 registration issued under this chapter;

3 (3) be payable to the department for the benefit of:

4 (A) the state; and

5 (B) eligible individuals who may be aggrieved by the
6 applicant's or any of the applicant's employees' or agents'
7 noncompliance with or violation of this chapter or other
8 applicable federal or state laws or regulations;

9 (4) be in an amount determined by the director; and

10 (5) have payment conditioned upon the applicant's or any of
11 the applicant's employees' or agents' noncompliance with or
12 violation of this chapter or other applicable federal or state
13 laws or regulations.

14 (c) Beginning with the first renewal of a certificate of
15 registration under this chapter, for each renewal period that a
16 registered eligible nonprofit organization continues to offer to
17 facilitate the making of lending circle loans to eligible individuals,
18 the registered eligible nonprofit organization shall file a new or an
19 additional surety bond in an amount that ensures that the
20 registered eligible nonprofit organization's surety bond under this
21 section is equal to the amount determined by the director under
22 subsection (b)(4).

23 (d) If the principal amount of a surety bond required under this
24 section is reduced by payment of a claim or judgment, the
25 registered eligible nonprofit organization for whom the bond is
26 issued shall immediately notify the director of the reduction and,
27 not later than thirty (30) days after notice by the director, file a
28 new or an additional surety bond in an amount set by the director.
29 The amount of the new or additional bond set by the director must
30 be at least the amount of the bond before payment of the claim or
31 judgment.

32 (e) If for any reason a surety terminates a bond issued under
33 this section, the registered eligible nonprofit organization shall
34 immediately notify the department and file a new surety bond in
35 the amount determined by the director under subsection (b)(4).

36 (f) Cancellation of a surety bond issued under this section does
37 not affect any liability incurred or accrued during the period when
38 the surety bond was in effect.

39 (g) The director may obtain satisfaction from a surety bond
40 issued under this section if the director incurs expenses, issues a
41 final order, or recovers a final judgment under this chapter.

42 Sec. 13. An eligible nonprofit organization may not do any of the



- 1 following:
- 2 (1) Facilitate the refinancing or consolidation of a lending
- 3 circle loan.
- 4 (2) Contract for, assess, or collect:
- 5 (A) a loan origination fee;
- 6 (B) a broker's fee; or
- 7 (C) any other charge or fee, other than an administrative
- 8 fee or an insufficient funds fee authorized under section 15
- 9 of this chapter;
- 10 in connection with facilitating the making of lending circle
- 11 loans to eligible individuals.
- 12 (3) Disburse the proceeds of a lending circle loan to an eligible
- 13 individual unless the eligible individual has completed a
- 14 qualified credit education program offered by the eligible
- 15 nonprofit organization. The eligible nonprofit organization
- 16 shall maintain, and make available to the director upon
- 17 request, any documentation concerning:
- 18 (A) the qualified credit education program offered; and
- 19 (B) the eligible individual's completion of the program;
- 20 that the director may require.
- 21 (4) Except as provided in subdivision (5), sell, assign, pledge,
- 22 or transfer:
- 23 (A) a lending circle loan; or
- 24 (B) an interest in a lending circle loan;
- 25 that is made by the eligible nonprofit organization to one (1)
- 26 or more eligible individuals.
- 27 (5) Sell or assign to:
- 28 (A) a collection agency; or
- 29 (B) another independent third party for collection;
- 30 unpaid debt on a lending circle loan that is made by the
- 31 eligible nonprofit organization to one (1) or more eligible
- 32 individuals, until the debt is at least ninety (90) days
- 33 delinquent.
- 34 (6) In connection with, or as a condition of, facilitating the
- 35 making of a lending circle loan to an eligible individual:
- 36 (A) offer or sell consumer credit insurance to the eligible
- 37 individual; or
- 38 (B) require the eligible individual to obtain consumer
- 39 credit insurance;
- 40 to protect the eligible nonprofit organization against the
- 41 eligible individual's default or against other credit loss.
- 42 (7) Require in connection with, or as a condition of,



1 **facilitating the making of a lending circle loan to an eligible**
 2 **individual, that the eligible individual waive any right,**
 3 **remedy, forum, or procedure available to the eligible**
 4 **individual under this chapter, common law, or any other law.**

5 **Sec. 14. An eligible nonprofit organization shall do the**
 6 **following:**

7 **(1) Establish minimum loan underwriting criteria for use in**
 8 **facilitating the making of lending circle loans to eligible**
 9 **individuals. The underwriting criteria established by an**
 10 **eligible nonprofit organization under this subdivision:**

11 **(A) are subject to approval by the director;**

12 **(B) must use commercially reasonable verification**
 13 **practices, as determined by the director, to ensure that a**
 14 **lending circle loan is not made to an eligible individual**
 15 **without due regard to repayment ability; and**

16 **(C) shall be used by the eligible nonprofit organization in**
 17 **both:**

18 **(i) making lending circle loans to; and**

19 **(ii) brokering lending circle loans on behalf of;**

20 **eligible individuals.**

21 **(2) For each eligible individual to whom the eligible nonprofit**
 22 **organization makes a lending circle loan (as described in**
 23 **section 6(1) of this chapter), report, according to a schedule or**
 24 **on a periodic basis prescribed by the director, the eligible**
 25 **individual's payment performance with respect to the lending**
 26 **circle loan to at least one (1) consumer reporting agency that**
 27 **compiles and maintains files on consumers on a nationwide**
 28 **basis, subject to:**

29 **(A) the eligible nonprofit organization's acceptance as a**
 30 **data furnisher by the consumer reporting agency; and**

31 **(B) the requirements of the federal Fair Credit Reporting**
 32 **Act (15 U.S.C. 1681 et seq.).**

33 **(3) With respect to a lending circle loan that the eligible**
 34 **nonprofit organization makes to an eligible individual (as**
 35 **described in section 6(1) of this chapter), disclose to the**
 36 **eligible individual in writing and at the time of the loan**
 37 **application the following:**

38 **(A) The amount to be borrowed.**

39 **(B) The total dollar cost of the lending circle loan to the**
 40 **eligible individual if the lending circle loan is paid back on**
 41 **time, including the sum of the administrative fee (if the**
 42 **eligible nonprofit organization elects to assess an**



1 administrative fee authorized under section 15 of this
2 chapter) and the principal amount borrowed.

3 (C) The corresponding annual percentage rate, calculated
4 in accordance with Regulation Z (12 CFR 226.1 et seq.).

5 (D) The periodic payment amount and payment frequency.

6 (E) The insufficient funds fee, if the eligible nonprofit
7 organization elects to assess an insufficient funds fee
8 authorized under section 15 of this chapter.

9 (F) Whether and under what circumstances the eligible
10 individual may rescind the lending circle loan, subject to
11 any requirements concerning the rescission of a lending
12 circle loan that the director may prescribe.

13 (G) Any other information that the director may require.

14 The information required to be disclosed under this
15 subdivision must be printed in at least 12 point type.

16 Sec. 15. (a) Subject to subsection (b), in connection with
17 facilitating the making of a lending circle loan to an eligible
18 individual, an eligible nonprofit organization may contract for,
19 assess, and collect from the eligible individual an administrative fee
20 that does not exceed the following:

21 (1) For the first lending circle loan facilitated for an eligible
22 individual, the lesser of:

23 (A) seven percent (7%) of the outstanding principal
24 amount of the loan, excluding the administrative fee
25 authorized under this section; or

26 (B) ninety dollars (\$90).

27 (2) For a second or subsequent lending circle loan facilitated
28 for an eligible individual, the lesser of:

29 (A) six percent (6%) of the outstanding principal amount
30 of the loan, excluding the administrative fee authorized
31 under this section; or

32 (B) seventy-five dollars (\$75).

33 (b) An eligible nonprofit organization may not contract for or
34 assess:

35 (1) more than one (1) administrative fee, with respect to a
36 lending circle loan that the eligible nonprofit organization
37 brokers on behalf of an eligible individual; or

38 (2) more than one (1) administrative fee in any four (4) month
39 period, with respect to a lending circle loan that the eligible
40 nonprofit organization makes to an eligible individual (as
41 described in section 6(1) of this chapter).

42 For purposes of subdivision (1), the outstanding principal amount



1 of the loan is the principal amount of the loan at the time of
2 origination.

3 (c) Subject to subsection (d), in connection with a lending circle
4 loan that an eligible nonprofit organization makes to an eligible
5 individual (as described in section 6(1) of this chapter), the eligible
6 nonprofit organization may contract for, assess, and collect from
7 the eligible individual an insufficient funds fee, not to exceed ten
8 dollars (\$10), for each:

9 (1) return by a bank or other depository institution of a
10 dishonored:

11 (A) check;

12 (B) negotiable order of withdrawal; or

13 (C) share draft;

14 issued by the eligible individual; or

15 (2) time an authorization to debit the eligible individual's
16 account is dishonored;

17 in connection with the eligible individual's periodic payments on
18 the outstanding debt.

19 (d) An eligible nonprofit organization may not contract for or
20 assess more than two (2) insufficient funds fees with respect to the
21 same eligible individual in a single month.

22 Sec. 16. (a) Subject to the approval of the director, two (2) or
23 more eligible nonprofit organizations that hold a certificate of
24 registration under this chapter may:

25 (1) act in partnership;

26 (2) act as part of an organization whose members consist
27 solely of eligible nonprofit organizations that hold a certificate
28 of registration under this chapter; or

29 (3) otherwise collaborate or cooperate;

30 in facilitating the making of lending circle loans to eligible
31 individuals.

32 (b) Subject to subsections (c) and (d) and to the approval of the
33 director, one (1) or more eligible nonprofit organizations that hold
34 a certificate of registration under this chapter may:

35 (1) act in partnership with one (1) or more nonregistered
36 partnering organizations;

37 (2) act as part of an organization whose members consist
38 solely of:

39 (A) eligible nonprofit organizations that hold a certificate
40 of registration under this chapter; and

41 (B) nonregistered partnering organizations; or

42 (3) otherwise collaborate or cooperate with one (1) or more



1 nonregistered partnering organizations;
 2 in facilitating the making of lending circle loans to eligible
 3 individuals.

4 (c) One (1) or more eligible nonprofit organizations that hold a
 5 certificate of registration under this chapter and that seek to act as
 6 authorized under subsection (b) must do the following:

7 (1) Before acting as authorized under subsection (b), enter
 8 into a written agreement that:

9 (A) is signed by each participating:

10 (i) eligible nonprofit organization that holds a certificate
 11 of registration under this chapter; and

12 (ii) nonregistered partnering organization;

13 (B) sets forth the terms of the arrangement and the
 14 obligations of each party; and

15 (C) includes a statement that each participating:

16 (i) eligible nonprofit organization that holds a certificate
 17 of registration under this chapter; and

18 (ii) nonregistered partnering organization;

19 agrees to comply with this chapter and with any rules,
 20 policies, or guidance adopted by the director under section
 21 17 of this chapter.

22 The agreement required by this subdivision shall be made
 23 available to the director upon request.

24 (2) Not later than thirty (30) days after executing the written
 25 agreement required by subdivision (1), provide written notice
 26 of the arrangement to the department, in the form and
 27 manner prescribed by the director.

28 (d) A nonregistered partnering organization that participates in
 29 an arrangement authorized under subsection (b) shall, at the
 30 request of the director, submit to an examination by the
 31 department. If the director determines that an examination under
 32 this subsection is necessary or desirable, the examination may be
 33 made at the expense of the nonregistered partnering organization
 34 to be examined. If the nonregistered partnering organization to be
 35 examined under this subsection refuses to permit the examination
 36 to be made, the director may order any eligible nonprofit
 37 organization that holds a certificate of registration under this
 38 chapter to:

39 (1) discontinue any arrangement authorized under subsection

40 (b) with respect to the nonregistered partnering organization;
 41 or

42 (2) otherwise cease conducting business with the



1 **nonregistered partnering organization.**

2 **Sec. 17. (a) The director may do any of the following:**

3 **(1) Prescribe the form or manner in which an eligible**
 4 **nonprofit organization may seek a certificate of registration**
 5 **to facilitate the making of lending circle loans under this**
 6 **chapter.**

7 **(2) Adopt rules, policies, or guidance concerning facilitating**
 8 **the making of lending circle loans under this chapter.**

9 **(3) Conduct an examination of:**

10 **(A) an eligible nonprofit organization that holds a**
 11 **certificate of registration under this chapter;**

12 **(B) a nonregistered partnering organization; or**

13 **(C) the activities undertaken by:**

14 **(i) an eligible nonprofit organization that holds a**
 15 **certificate of registration under this chapter; or**

16 **(ii) a nonregistered partnering organization;**

17 **in connection with facilitating the making of lending circle**
 18 **loans.**

19 **(4) Issue cease and desist orders or otherwise exercise the**
 20 **department's enforcement powers under IC 28-11-4 for a**
 21 **violation of this chapter.**

22 **(b) Any initial action taken by the director under subsection**
 23 **(a)(1) or (a)(2) must be completed and take effect by a date that**
 24 **will enable a person to apply for a certificate of registration under**
 25 **this chapter beginning January 1, 2016.**

26 SECTION 4. IC 24-4.5-1-202, AS AMENDED BY P.L.27-2012,
 27 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 UPON PASSAGE]: Sec. 202. (a) As used in this section, "balloon
 29 payment", with respect to a mortgage transaction, means any payment
 30 that:

31 (1) the creditor requires the debtor to make at any time during the
 32 term of the mortgage;

33 (2) represents the entire amount of the outstanding balance with
 34 respect to the mortgage; and

35 (3) the entire amount of which is due as of a specified date or at
 36 the end of a specified period;

37 if the aggregate amount of the minimum periodic payments required
 38 under the mortgage would not fully amortize the outstanding balance
 39 by the specified date or at the end of the specified period. The term
 40 does not include a payment required by a creditor under a due-on-sale
 41 clause (as defined in 12 U.S.C. 1701j-3(a)) or a payment required by
 42 a creditor under a provision in the mortgage that permits the creditor



1 to accelerate the debt upon the debtor's default or failure to abide by the
2 material terms of the mortgage.

3 (b) This article does not apply to the following:

4 (1) Extensions of credit to government or governmental agencies
5 or instrumentalities.

6 (2) The sale of insurance by an insurer, except as otherwise
7 provided in the chapter on insurance (IC 24-4.5-4).

8 (3) Transactions under public utility, municipal utility, or
9 common carrier tariffs if a subdivision or agency of this state or
10 of the United States regulates the charges for the services
11 involved, the charges for delayed payment, and any discount
12 allowed for early payment.

13 (4) The rates and charges and the disclosure of rates and charges
14 of a licensed pawnbroker established in accordance with a statute
15 or ordinance concerning these matters.

16 (5) A sale of goods, services, or an interest in land in which the
17 goods, services, or interest in land are purchased primarily for a
18 purpose other than a personal, family, or household purpose.

19 (6) A loan in which the debt is incurred primarily for a purpose
20 other than a personal, family, or household purpose.

21 (7) An extension of credit primarily for a business, a commercial,
22 or an agricultural purpose.

23 (8) An installment agreement for the purchase of home fuels in
24 which a finance charge is not imposed.

25 (9) Loans made, insured, or guaranteed under a program
26 authorized by Title IV of the Higher Education Act of 1965 (20
27 U.S.C. 1070 et seq.).

28 (10) Transactions in securities or commodities accounts in which
29 credit is extended by a broker-dealer registered with the Securities
30 and Exchange Commission or the Commodity Futures Trading
31 Commission.

32 (11) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3,
33 IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a loan made:

34 (A) in compliance with the requirements of; and

35 (B) by a community development corporation (as defined in
36 IC 4-4-28-2) acting as a subrecipient of funds from;

37 the Indiana housing and community development authority
38 established by IC 5-20-1-3.

39 (12) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3,
40 IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a subordinate lien
41 mortgage transaction made by an entity that exclusively uses
42 funds provided by the United States Department of Housing and



1 Urban Development under Title 1 of the Housing and Community
 2 Development Act of 1974, Public Law 93-383, as amended (42
 3 U.S.C. 5301 et seq.).

4 (13) The United States, any state or local government, or any
 5 agency or instrumentality of any governmental entity, including
 6 United States government sponsored enterprises.

7 (14) A bona fide nonprofit organization not operating in a
 8 commercial context, as determined by the director, if the
 9 following criteria are satisfied:

10 (A) Subject to clause (B), the organization originates only one
 11 (1) or both of the following types of mortgage transactions:

12 (i) Zero (0) interest first lien mortgage transactions.

13 (ii) Zero (0) interest subordinate lien mortgage transactions.

14 (B) The organization does not require, under the terms of the
 15 mortgage or otherwise, balloon payments with respect to the
 16 mortgage transactions described in clause (A).

17 (C) The organization is exempt from federal income taxation
 18 under Section 501(c)(3) of the Internal Revenue Code.

19 (D) The organization's primary purpose is to serve the public
 20 by helping low income individuals and families build, repair,
 21 and purchase housing.

22 (E) The organization uses only:

23 (i) unpaid volunteers; or

24 (ii) employees whose compensation is not based on the
 25 number or size of any mortgage transactions that the
 26 employees originate;

27 to originate the mortgage transactions described in clause (A).

28 (F) The organization does not charge loan origination fees in
 29 connection with the mortgage transactions described in clause
 30 (A).

31 (15) A bona fide nonprofit organization (as defined in section
 32 301.5(45) of this chapter) if the following criteria are satisfied:

33 (a) For each calendar year that the organization seeks the
 34 exemption provided by this subdivision, the organization
 35 certifies, not later than December 31 of the preceding calendar
 36 year and on a form prescribed by the director and accompanied
 37 by such documentation as required by the director, that the
 38 organization is a bona fide nonprofit organization (as defined
 39 in section 301.5(45) of this chapter).

40 (b) The director determines that the organization originates
 41 only mortgage transactions that are favorable to the debtor. For
 42 purposes of this clause, a mortgage transaction is favorable to



1 the debtor if the director determines that the terms of the
2 mortgage transaction are consistent with terms of mortgage
3 transactions made in a public or charitable context, rather than
4 in a commercial context.

5 **(16) Facilitating the making of a lending circle loan under**
6 **IC 24-5-24.7.**

7 **SECTION 5. An emergency is declared for this act.**

