

## **IC 28-11-4**

### **Chapter 4. Enforcement Powers of the Department**

#### **IC 28-11-4-1**

##### **Application of IC 4-21.5**

Sec. 1. (a) Except as provided in subsection (b), IC 4-21.5 does not apply to a proceeding under this chapter.

(b) IC 4-21.5-5 applies to judicial review of a final order of the department under this chapter.

*As added by P.L.33-1991, SEC.56.*

#### **IC 28-11-4-2**

##### **Unsafe or unsound practices or violations of law; notice of charges; joint exercise of enforcement powers with federal regulators**

Sec. 2. If the director has reasonable cause to believe that a financial institution:

(1) has engaged, is engaging, or will engage in an unsafe or unsound practice in conducting the business of the financial institution; or

(2) has violated, is violating, or will violate a:

(A) statute;

(B) rule;

(C) condition imposed in writing by the director in connection with the granting of an application or other request by the financial institution; or

(D) written agreement entered into with the department;

the director may issue and serve upon the financial institution a notice of charges of the practice or violation. The department may, when appropriate, exercise enforcement powers under this chapter jointly with a financial institution's primary federal regulator.

*As added by P.L.33-1991, SEC.56. Amended by P.L.141-2005, SEC.22.*

#### **IC 28-11-4-3**

##### **Violations by certain individuals; director's notice of intent to issue order; felonies; civil penalties**

Sec. 3. (a) If the director determines that a current or former director, officer, or employee of a financial institution has:

(1) committed a violation of a statute, a rule, a final cease and desist order, any condition imposed in writing by the director in connection with the grant of any application or other request by the financial institution, or any written agreement between the financial institution and the director or the department;

(2) engaged or participated in an unsafe or unsound practice in connection with the financial institution;

(3) committed or engaged in an act, an omission, or a practice that constitutes a breach of fiduciary duty as director, officer, or employee; or

(4) been convicted of, has pleaded guilty or nolo contendere to, or is under indictment for, a felony involving fraud, deceit, or

misrepresentation under the laws of Indiana or any other jurisdiction;  
the director, subject to subsection (b), may issue and serve upon the officer, director, or employee a notice of the director's intent to issue an order removing the person from the person's office or employment, an order prohibiting any participation by the person in the conduct of the affairs of any financial institution, or an order both removing the person and prohibiting the person's participation.

(b) A violation, practice, or breach specified in subdivision (a) is subject to the authority of the director under subsection (a) if the director finds any of the following:

- (1) By reason of the violation, practice, or breach, the financial institution has suffered or will probably suffer substantial financial loss or other damage.
- (2) The interests of the financial institution's depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty.
- (3) The violation, practice, or breach involves personal dishonesty on the part of the officer, director, or employee involved.
- (4) The violation, practice, or breach demonstrates a willful or continuing disregard by the officer, director, or employee for the safety and soundness of the financial institution.

(c) A person who:

- (1) is under indictment for;
- (2) has been convicted of; or
- (3) has pleaded guilty or nolo contendere to;

a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction may not serve as a director, an officer, or an employee of a financial institution, or serve in any similar capacity, unless the person obtains the written consent of the director.

(d) A financial institution that willfully permits a person to serve the financial institution in violation of subsection (b) or (c) is subject to a civil penalty of five hundred dollars (\$500) for each day the violation continues. A civil penalty paid under this subsection must be deposited into the financial institutions fund established by IC 28-11-2-9.

*As added by P.L.33-1991, SEC.56. Amended by P.L.262-1995, SEC.76; P.L.258-2003, SEC.19; P.L.10-2006, SEC.74 and P.L.57-2006, SEC.74; P.L.213-2007, SEC.100; P.L.217-2007, SEC.98; P.L.35-2010, SEC.198.*

#### **IC 28-11-4-4**

**Director's notice of intent to issue order; contents; hearing; final order; removal of officer, director, or employee; suspension or prohibition pending final order; official record**

Sec. 4. (a) A notice issued under this chapter must:

- (1) contain a statement of the facts constituting the alleged practice, violation, or breach;

- (2) state the facts alleged in support of the violation, practice, or breach;
- (3) state the director's intention to enter an order under section 3(a) of this chapter;
- (4) be delivered to the board of directors of the financial institution;
- (5) be delivered to the officer, director, or employee concerned; and
- (6) specify the procedures that must be followed to initiate a hearing to contest the facts alleged.

(b) If a hearing is requested within ten (10) days after service of the written notice, the department shall hold a hearing concerning the alleged practice, violation, or breach. The hearing shall be held not later than forty-five (45) days after receipt of the request. The department, based on the evidence presented at the hearing, shall enter:

- (1) a final order under section 7 of this chapter for the immediate removal of the officer, director, or employee affected;
- (2) a final order under section 7 of this chapter prohibiting further participation by the officer, director, or employee, in any manner, in the conduct of affairs of any financial institution;
- (3) a final order under section 7 of this chapter requiring the financial institution and its directors, officers, employees, and agents to:
  - (A) cease and desist from the practice or violation; or
  - (B) take affirmative action to correct the conditions resulting from the practice or violation;
- (4) a final order consisting of any combination of orders described in subdivisions (1) through (3);
- (5) a reprimand of the individuals, entities, or other persons concerned; or
- (6) a dismissal of the entire matter.

(c) If no hearing is requested within the time specified in subsection (b), the director may proceed to issue a final order described in subsection (b)(1), (b)(2), (b)(3), or (b)(4) on the basis of the facts set forth in the written notice.

(d) An officer, director, or employee who is removed from a position under a removal order that has become final may not participate in the conduct of the affairs of any financial institution without the approval of the director.

(e) The director may, for the protection of the financial institution or the interests of its depositors, suspend from office or prohibit from participation in the affairs of the financial institution an officer, a director, or an employee of a financial institution who is the subject of a written notice served by the director under section 3(a) of this chapter. A suspension or prohibition under this subsection becomes effective upon service of the notice. Unless stayed by a court in a proceeding authorized by subsection (f), the suspension or prohibition shall remain in effect pending completion of the

proceedings related to the written notice served under section 3(a) of this chapter and until the effective date of an order entered by the department under subsection (b) or the director under subsection (c). Copies of the notice shall also be served upon the financial institution or subsidiary of which the person is an officer, a director, or an employee.

(f) Not more than ten (10) days after an officer, a director, or an employee has been suspended from office or prohibited from participation in the conduct of the affairs of the financial institution or subsidiary under subsection (e), the officer, director, or employee may apply to a court having jurisdiction for a stay of the suspension or prohibition pending completion of the proceedings related to the notice served under section 3(a) of this chapter, and the court may stay the suspension or prohibition.

(g) The department shall maintain an official record of a proceeding under this chapter.

*As added by P.L.33-1991, SEC.56. Amended by P.L.122-1994, SEC.109; P.L.258-2003, SEC.20; P.L.10-2006, SEC.75 and P.L.57-2006, SEC.75; P.L.35-2010, SEC.199.*

#### **IC 28-11-4-5**

##### **Consent to a final order**

Sec. 5. If the director of the department enters into a consent to a final order under section 7 of this chapter with a financial institution, director, officer, or employee, the director is not required to issue and serve a notice of charges upon the financial institution, director, or officer under section 2 or 3 of this chapter. A consent agreement may be negotiated and entered into before or after the issuance of a notice of charges.

*As added by P.L.33-1991, SEC.56. Amended by P.L.122-1994, SEC.110; P.L.262-1995, SEC.77; P.L.258-2003, SEC.21; P.L.141-2005, SEC.23.*

#### **IC 28-11-4-6**

##### **Temporary order**

Sec. 6. (a) If the director determines that an alleged practice, a violation, or an act specified in a notice served under this chapter is likely to:

- (1) cause insolvency of the financial institution;
- (2) cause substantial dissipation of assets or earnings of the financial institution; or
- (3) otherwise seriously prejudice the interests of the depositors of the financial institution;

the director may issue a temporary order without a hearing.

(b) A temporary order may:

- (1) require the financial institution to cease and desist from the practice or violation;
  - (2) require the financial institution to take affirmative action to correct the conditions resulting from the practice or violation;
- or

(3) suspend or prohibit a director, an officer, or an employee from participating in the conduct of the affairs of the financial institution.

(c) A temporary order is effective upon service and remains effective and enforceable until the earliest of the following:

(1) The issuance of an injunction by a court under subsection (d).

(2) The dismissal of the charges by the department.

(3) The effective date of a final order under section 7 of this chapter.

(d) A financial institution served with a temporary order under this section may apply to a court having jurisdiction for an injunction to stay, modify, or vacate the order.

*As added by P.L.33-1991, SEC.56. Amended by P.L.258-2003, SEC.22; P.L.35-2010, SEC.200.*

#### **IC 28-11-4-7**

##### **Final order; remedies; consent presumed; confidentiality**

Sec. 7. (a) If, after a hearing held under section 4(b) of this chapter, the department finds that the conditions specified in section 2 or 3 of this chapter have been established, the department may issue a final order. If a hearing is not requested within the time specified in section 4(b) of this chapter, the director may issue a final order on the basis of the facts set forth in the written notice served under section 3(a) of this chapter.

(b) Unless the director has entered into a consent agreement described in section 5 of this chapter, a final order must include separately stated findings of fact and conclusions of law for all aspects of the order.

(c) A final order may do any of the following:

(1) Require the financial institution and its directors, officers, employees, and agents to do any of the following:

(A) Cease and desist from the practice or violation.

(B) Take affirmative action to correct the conditions resulting from the practice or violation.

(2) Suspend or prohibit a director, an officer, or an employee from participating in the affairs of a financial institution or subsidiary.

(3) Impose a civil penalty not to exceed the amount specified in section 9 of this chapter.

(d) A final order shall be issued in writing within ninety (90) days after conclusion of a hearing held under section 4(b) of this chapter, unless this period is waived or extended with the written consent of all parties or for good cause shown.

(e) If the financial institution, director, or officer does not appear individually or by a duly authorized representative at a hearing held under section 4(b) of this chapter, the financial institution, director, or officer is considered to have consented to the issuance of a final order.

(f) The director may keep a final order confidential if the director

determines that the immediate release of the order would endanger:

- (1) the stability of the financial institution; or
- (2) the security of depositors' funds.

However, after two (2) years after the date of its issuance, a final order is no longer confidential under IC 28-1-2-30.

*As added by P.L.33-1991, SEC.56. Amended by P.L.258-2003, SEC.23; P.L.90-2008, SEC.71; P.L.35-2010, SEC.201.*

#### **IC 28-11-4-8**

##### **Final order; time in effect**

Sec. 8. (a) A final order issued under this chapter is effective:

- (1) on the date specified in the order; or
- (2) ten (10) days after service of the order, if an effective date is not specified in the order.

A final order issued upon consent under section 7(e) of this chapter is effective at the time specified in the order.

(b) A final order remains effective and enforceable as provided in the order.

(c) The department or a reviewing court may stay, modify, or vacate a final order.

*As added by P.L.33-1991, SEC.56. Amended by P.L.89-2011, SEC.70.*

#### **IC 28-11-4-9**

##### **Civil penalty**

Sec. 9. (a) A civil penalty imposed on a director or an officer under section 7 of this chapter may not exceed one thousand dollars (\$1,000) per day for each practice, violation, or act found to exist in the final order.

(b) In determining the amount of a civil penalty assessed under section 7 of this chapter, the following factors shall be considered:

- (1) The appropriateness of the civil penalty with respect to the financial resources and good faith of the individual charged.
- (2) The gravity of the practice, violation, or act.
- (3) The history of previous practices, violations, or acts.
- (4) The economic benefit derived by the individual from the practice, violation, or act.
- (5) Other factors that justice requires.

(c) A financial institution may not indemnify a director or an officer for a civil penalty imposed under section 7 of this chapter.

(d) Civil penalties shall be deposited in the financial institutions fund established by IC 28-11-2-9.

*As added by P.L.33-1991, SEC.56. Amended by P.L.89-2011, SEC.71.*

#### **IC 28-11-4-10**

##### **Enforcement of orders, agreements, and conditions**

Sec. 10. The director may enforce any of the following by applying for appropriate relief to a court having jurisdiction:

- (1) An order issued under this chapter.

(2) A written agreement entered into by the department or the director and:

(A) a financial institution; or

(B) any director, officer, employee, or agent of the financial institution.

(3) Any condition imposed in writing by the department or the director on:

(A) a financial institution; or

(B) any director, officer, employee, or agent of the financial institution;

in connection with any application, notice, or request concerning the financial institution.

*As added by P.L.33-1991, SEC.56. Amended by P.L.90-2008, SEC.72; P.L.35-2010, SEC.202.*

#### **IC 28-11-4-11 Version a**

##### **Persons suspended or prohibited from participation**

*Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.*

Sec. 11. An individual who:

(1) is suspended or prohibited from participating in the conduct of the affairs of a financial institution under section 6 or 7 of this chapter; and

(2) after the suspension or prohibition knowingly or intentionally participates, directly or indirectly, in the management of the financial institution;

commits a Class D felony.

*As added by P.L.33-1991, SEC.56. Amended by P.L.35-2010, SEC.203.*

#### **IC 28-11-4-11 Version b**

##### **Persons suspended or prohibited from participation**

*Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.*

Sec. 11. An individual who:

(1) is suspended or prohibited from participating in the conduct of the affairs of a financial institution under section 6 or 7 of this chapter; and

(2) after the suspension or prohibition knowingly or intentionally participates, directly or indirectly, in the management of the financial institution;

commits a Level 6 felony.

*As added by P.L.33-1991, SEC.56. Amended by P.L.35-2010, SEC.203; P.L.158-2013, SEC.302.*

#### **IC 28-11-4-12**

##### **Enforcement powers exercised against affiliate of financial institution**

Sec. 12. (a) The director of the department may exercise the enforcement powers of this chapter against an affiliate of a financial

institution, or against an officer, a director, or an employee of the affiliate, as if the affiliate were a financial institution if the director determines that a practice of the affiliate, or of the officer, director, or employee, could cause either:

(1) the financial institution to suffer substantial loss or other damage; or

(2) the interests of the financial institution's depositors to be seriously prejudiced by reason of a violation, practice, or breach of fiduciary duty.

(b) In exercising the director's enforcement powers under this chapter against an officer, a director, or an employee of an affiliate, the director may:

(1) remove the officer, director, or employee from the person's office, position, or employment;

(2) prohibit any participation by the officer, director, or employee in the conduct of the affairs of any financial institution; or

(3) take both of the actions set forth in subdivisions (1) and (2).

(c) The director of the department may issue and serve upon the officer, director, or employee of the affiliate a notice of charges of the practice, violation, or act.

(d) For purposes of this section, affiliate has the meaning set forth in IC 28-1-18.2.

*As added by P.L.215-1999, SEC.8. Amended by P.L.90-2008, SEC.73.*