

**IC 28-11-5**

**Chapter 5. Department Oversight of Organization of a Financial Institution**

**IC 28-11-5-1**

**Application of chapter**

Sec. 1. This chapter applies to the following financial institutions:

- (1) A bank.
- (2) A savings association.
- (3) A credit union.
- (4) A savings bank.
- (5) A trust company.
- (6) A corporate fiduciary.

*As added by P.L.42-1993, SEC.91. Amended by P.L.262-1995, SEC.78; P.L.79-1998, SEC.86.*

**IC 28-11-5-2**

**Approval of articles of incorporation and organization and establishment of financial institutions**

Sec. 2. (a) A financial institution may not be organized, incorporated, or engage in business in Indiana until the department has approved the following:

- (1) The articles of incorporation of the proposed financial institution.
- (2) The organization and establishment of the financial institution in the city or town in which the incorporators propose to establish the financial institution.

(b) A person who violates this section commits a Class A misdemeanor.

*As added by P.L.42-1993, SEC.91.*

**IC 28-11-5-3**

**Applications to establish financial institutions**

Sec. 3. (a) A request to establish a financial institution must be set forth in an application:

- (1) prescribed by the department; and
- (2) containing the information required by the department.

(b) Within twenty (20) business days after receiving an application under this section, the department shall:

- (1) accept the application for processing;
  - (2) request additional information to complete the application;
- or
- (3) return the application if it is incomplete.

*As added by P.L.42-1993, SEC.91. Amended by P.L.122-1994, SEC.111.*

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

**Investigation of applicant; disapproval of application; submission of fingerprints**

Sec. 4. (a) Upon the acceptance of an application under section 3

of this chapter, the department shall investigate and consider all of the following:

- (1) The financial standing and character of the incorporators, organizers, directors, principal shareholders, or controlling corporations.
- (2) The character, qualifications, and experience of the officers and directors of the proposed financial institution.
- (3) The future earnings prospects for the proposed financial institution.
- (4) The adequacy of the financial institution's proposed capital, if the financial institution is to be a bank, trust company, corporate fiduciary, or savings bank.

(b) The members of the department may disapprove the application if:

- (1) any of the factors listed in subsection (a) are determined to be unfavorable;
- (2) any of the incorporators, directors, principal shareholders, or officers of the proposed financial institution have been convicted of a felony under Indiana law, the laws of any other state, or the laws of the United States; or
- (3) the applicant has knowingly or intentionally submitted an application under this chapter that contains false information.

(c) The applicant shall submit to the department or to the Indiana state police, as appropriate, two (2) sets of fingerprints for each incorporator, director, principal shareholder, and officer, if requested by the department under section 4.5 of this chapter.

*As added by P.L.42-1993, SEC.91. Amended by P.L.122-1994, SEC.112; P.L.262-1995, SEC.79; P.L.192-1997, SEC.24; P.L.90-2008, SEC.74.*

#### **IC 28-11-5-4.5**

##### **Background checks; fingerprints**

Sec. 4.5. (a) To obtain additional information for the purposes of section 4 of this chapter, the director may require:

- (1) criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation;
- (2) credit histories; and
- (3) other background checks considered necessary by the director;

for any incorporator, director, principal shareholder, or officer of a proposed financial institution.

(b) If the director requests a national criminal history background check under subsection (a) for any individual described in subsection (a), the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate. The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. A national criminal history background check conducted under subsection (a) may be used by the department to:

- (1) conduct an investigation under section 4(a)(1) or 4(a)(2) of this chapter; or
- (2) disapprove an application under section 4(b)(2) of this chapter.

The director or the department may not release the results of the national criminal history background check to any private entity.  
*As added by P.L.192-1997, SEC.25. Amended by P.L.90-2008, SEC.75.*

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

##### **Hearings on applications**

Sec. 5. (a) The department may hold a hearing to determine whether to approve an application filed under section 3 of this chapter.

(b) A hearing may not be held until ten (10) days after the date of the publication of the notice required by section 6 of this chapter.

(c) If the department holds a hearing under this section, the hearing must be held within ninety (90) days after the application is accepted by the department for processing.

*As added by P.L.42-1993, SEC.91. Amended by P.L.122-1994, SEC.113.*

#### **IC 28-11-5-6**

##### **Notice of applications subject to hearings**

Sec. 6. (a) If a public hearing is held under section 5 of this chapter, the applicant shall give notice of the application by publication one (1) time in a newspaper of general circulation in the city or town in which the applicant proposes to establish the financial institution. If a newspaper is not published in the city or town, the notice shall be published in one (1) newspaper of general circulation published in the county in which the city or town is located.

(b) The notice required by this section must state the following:

- (1) The fact that the application has been filed.
- (2) The names of the applicants.
- (3) The place where the applicants propose to establish the financial institution.
- (4) The date and place of the hearing.
- (5) Other facts the department considers relevant.

*As added by P.L.42-1993, SEC.91.*

#### **IC 28-11-5-7**

##### **Hearing procedures**

Sec. 7. (a) This section applies only if the department holds a hearing under section 5 of this chapter.

(b) At the time and place designated in the notice, any of the following may conduct the hearing:

- (1) All the members of the department.
- (2) Any number of the members.
- (3) The director of the department.
- (4) A deputy director of the department.

(5) The supervisor in charge of the division of the department that would have jurisdiction of the financial institution, if it is established.

(c) Any person who is interested may appear and be heard, either in person or by the person's attorney.

(d) A report of the hearing, in the form and detail the department prescribes, shall be prepared and filed in the department.

*As added by P.L.42-1993, SEC.91. Amended by P.L.122-1994, SEC.114.*

#### **IC 28-11-5-8**

##### **Approval or disapproval of applications**

Sec. 8. Within a reasonable time after the application is accepted by the department for processing, but not more than one hundred twenty (120) days from the later of:

(1) the date on which the application is accepted by the department; or

(2) the date on which the hearing is held, if a hearing is held; the department shall either approve or disapprove the application.

*As added by P.L.42-1993, SEC.91. Amended by P.L.122-1994, SEC.115.*

#### **IC 28-11-5-9**

##### **Payment of expenses**

Sec. 9. (a) The applicants shall pay all expenses incurred by the department in performing its duty under this chapter.

(b) At the time of filing the application, the applicants shall deposit with the department the amount of money fixed by the department necessary to defray the expenses incurred by the department in implementing this chapter with respect to the application.

(c) The department shall return to the applicants any balance remaining after proceedings under this chapter are completed.

*As added by P.L.42-1993, SEC.91.*

#### **IC 28-11-5-10**

##### **Financial institutions organized as limited liability companies; treatment as financial institution organized in stock form; exclusive authority of department to regulate; prior approval of department required**

Sec. 10. (a) Subject to subsection (g), a financial institution described in section 1 of this chapter that is subject to this chapter may:

(1) be organized as a limited liability company;

(2) convert to a limited liability company; or

(3) merge with or into a limited liability company;

under the laws of Indiana or the United States, including any rules or regulations adopted or promulgated under the laws of Indiana or the United States.

(b) A financial institution organized as a limited liability company

is subject to:

- (1) IC 23-18; and
- (2) this title.

If a provision of IC 23-18 conflicts with a provision of this title or with any rule of the department, the provision of this title or the rule of the department controls.

(c) Any filing required to be made under IC 23-18 shall be made in the same manner as for a financial institution that is organizing or is organized in stock form.

(d) The department may prescribe any requirements for:

- (1) the articles of organization; and
- (2) the operating agreement;

of a financial institution that is organized and operates as a limited liability company.

(e) The department has the exclusive authority under this title to regulate a financial institution organized as a limited liability company. A financial institution that is a limited liability company is subject to the department's authority in the same manner as a bank that is organized in stock form.

(f) A financial institution that is a limited liability company is subject to the provisions of this title that apply to banks, except for the provisions concerning corporate governance (IC 28-13), in the same manner as a financial institution that is organized in stock form, subject to the following:

- (1) In the case of a manager managed limited liability company, "director" means a manager of the limited liability company.
- (2) In the case of a member managed limited liability company, "director" means a member of the limited liability company.

(g) A financial institution may not:

- (1) organize as;
- (2) convert to; or
- (3) merge with or into;

a limited liability company without the prior approval of the department under this title.

*As added by P.L.90-2008, SEC.76. Amended by P.L.27-2012, SEC.108; P.L.13-2013, SEC.74.*