



January 24, 2014

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## SENATE BILL No. 375

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DIGEST OF SB 375 (Updated January 24, 2014 11:15 am - DI 51)

**Citations Affected:** IC 6-3.1; 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.

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### Holdman

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

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

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SB 375—LS 6542/DI 51





January 24, 2014

Second Regular Session 118th General Assembly (2014)

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

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

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

## SENATE BILL No. 375

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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,**

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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 (15  
29 U.S.C. 80b-2(a)(22)) with total assets in excess of ten million  
30 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 (15  
 17 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) An offer to sell or a sale of a security of an issuer made  
 14 after June 30, 2014, if:
- 15 (A) the transaction is part of a single issue in which:
- 16 (i) the offer or sale is made in compliance with 17 CFR  
 17 230.504, 17 CFR 230.505, and 17 CFR 230.506, including  
 18 any offer or sale made exempt by the application of 17  
 19 CFR 508(a);
- 20 (ii) the issuer is required to submit a notice filing on a  
 21 Form D not later than fifteen (15) days after the first sale  
 22 of securities in this state; and
- 23 (iii) by submitting the notice described in item (ii), the  
 24 issuer agrees, upon written request by the commissioner,  
 25 to furnish to the commissioner any information the  
 26 issuer furnished to offerees;
- 27 (B) for offerings made in compliance with 17 CFR 230.504,  
 28 no commission, fee, or other remuneration is paid or given,  
 29 directly or indirectly, to any broker-dealer for soliciting  
 30 any prospective purchaser in this state unless the  
 31 broker-dealer is appropriately registered under this  
 32 article. It is a defense to a violation of this clause if the  
 33 issuer sustains the burden of proof that the issuer did not  
 34 know and, in the exercise of reasonable care could not have  
 35 known, that the person who received the commission, fee,  
 36 or other remuneration was not properly registered; and
- 37 (C) in all sales to purchasers other than those described in  
 38 subdivision (13) for offerings made in compliance with 17  
 39 CFR 230.504, at least one (1) of the following is satisfied:
- 40 (i) The investment is suitable for the purchaser upon the  
 41 basis of facts, if any facts are disclosed by the purchaser,  
 42 as to the purchaser's other securities holdings, financial



1 situation, and needs. For purposes of this item only, it is  
 2 presumed that, if the investment does not exceed ten  
 3 percent (10%) of the investor's net worth, the investment  
 4 is suitable.

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

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

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

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

22 (C) The issuer must pay the fee established by the  
 23 commissioner. However, no filing fee is required to file  
 24 amendments to Form D of the Securities and Exchange  
 25 Commission.

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

31 (27) An offer or sale of a security made after June 30, 2014, by  
 32 an issuer if the offer or sale is conducted in accordance with  
 33 all the following requirements:

34 (A) The issuer of the security is a business entity organized  
 35 under the laws of Indiana and authorized to do business in  
 36 Indiana.

37 (B) The transaction meets the requirements of the federal  
 38 exemption for intrastate offerings in Section 3(a)(11) of the  
 39 Securities Act of 1933 (15 U.S.C. 77c(a)(11)) and Rule 147  
 40 adopted under the Securities Act of 1933 (17 CFR  
 41 230.147).

42 (C) Except as provided in clause (E), the sum of all cash



1 and other consideration to be received for all sales of the  
 2 security in reliance on the exemption under this  
 3 subdivision, excluding sales to any accredited investor or  
 4 institutional investor, does not exceed the following  
 5 amount:

6 (i) If the issuer has not undergone and made available to  
 7 each prospective investor and the commissioner the  
 8 documentation resulting from a financial audit of its  
 9 most recently completed fiscal year that complies with  
 10 generally accepted accounting principles, one million  
 11 dollars (\$1,000,000), less the aggregate amount received  
 12 for all sales of securities by the issuer within the twelve  
 13 (12) months before the first offer or sale made in reliance  
 14 on the exemption under this subdivision.

15 (ii) If the issuer has undergone and made available to  
 16 each prospective investor and the commissioner the  
 17 documentation resulting from a financial audit of its  
 18 most recently completed fiscal year that complies with  
 19 generally accepted accounting principles, two million  
 20 dollars (\$2,000,000), less the aggregate amount received  
 21 for all sales of securities by the issuer within the twelve  
 22 (12) months before the first offer or sale made in reliance  
 23 on the exemption under this subdivision.

24 (D) An offer or sale to an officer, director, partner, trustee,  
 25 or individual occupying similar status or performing  
 26 similar functions with respect to the issuer or to a person  
 27 owning ten percent (10%) or more of the outstanding  
 28 shares of any class or classes of securities of the issuer does  
 29 not count toward the monetary limitations in clause (C).

30 (E) The issuer does not accept more than ten thousand  
 31 dollars (\$10,000) from any single purchaser unless the  
 32 purchaser is an accredited investor.

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

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

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

42 (iii) Provide the commissioner a copy of the disclosure



1 document to be provided to prospective investors under  
2 clause (L).

3 (iv) Provide the commissioner a copy of an escrow  
4 agreement with a bank, savings bank, savings and loan  
5 association, or credit union chartered under the laws of  
6 Indiana in which the investor funds will be deposited,  
7 providing that all offering proceeds will be released to  
8 the issuer only when the aggregate capital raised from all  
9 investors is equal to or greater than the minimum target  
10 offering amount specified in the business plan as  
11 necessary to implement the business plan and that all  
12 investors may cancel their commitments to invest if that  
13 target offering amount is not raised by the time stated in  
14 the disclosure document.

15 (G) The issuer is not, either before or as a result of the  
16 offering, an investment company, as defined in Section 3 of  
17 the Investment Company Act of 1940 (15 U.S.C. 80a-3), an  
18 entity that would be an investment company but for the  
19 exclusions provided in Section 3(c) of the Investment  
20 Company Act of 1940 (15 U.S.C. 80a-3(c)), or subject to the  
21 reporting requirements of Section 13 or 15(d) of the  
22 Securities Exchange Act of 1934 (15 U.S.C. 78m or 15  
23 U.S.C. 78o(d)).

24 (H) The issuer informs all prospective purchasers of  
25 securities offered under an exemption under this  
26 subdivision that the securities have not been registered  
27 under federal or state securities law and that the securities  
28 are subject to limitations on resale. The issuer shall display  
29 the following legend conspicuously on the cover page of the  
30 disclosure document:

31 "IN MAKING AN INVESTMENT DECISION,  
32 INVESTORS MUST RELY ON THEIR OWN  
33 EXAMINATION OF THE ISSUER AND THE TERMS  
34 OF THE OFFERING, INCLUDING THE MERITS AND  
35 RISKS INVOLVED. THESE SECURITIES HAVE NOT  
36 BEEN RECOMMENDED BY ANY FEDERAL OR  
37 STATE SECURITIES COMMISSION OR DIVISION  
38 OR OTHER REGULATORY AUTHORITY.  
39 FURTHERMORE, THE FOREGOING AUTHORITIES  
40 HAVE NOT CONFIRMED THE ACCURACY OR  
41 DETERMINED THE ADEQUACY OF THIS  
42 DOCUMENT. ANY REPRESENTATION TO THE





1           **CONTRARY IS A CRIMINAL OFFENSE. THESE**  
 2           **SECURITIES ARE SUBJECT TO RESTRICTIONS ON**  
 3           **TRANSFERABILITY AND RESALE AND MAY NOT**  
 4           **BE TRANSFERRED OR RESOLD EXCEPT AS**  
 5           **PERMITTED BY SUBSECTION (e) OF SEC RULE 147**  
 6           **(17 CFR 230.147(e)) AS PROMULGATED UNDER THE**  
 7           **SECURITIES ACT OF 1933, AS AMENDED, AND THE**  
 8           **APPLICABLE STATE SECURITIES LAWS,**  
 9           **PURSUANT TO REGISTRATION OR EXEMPTION**  
 10           **THEREFROM. INVESTORS SHOULD BE AWARE**  
 11           **THAT THEY WILL BE REQUIRED TO BEAR THE**  
 12           **FINANCIAL RISKS OF THIS INVESTMENT FOR AN**  
 13           **INDEFINITE PERIOD OF TIME."**

14           **(I) The issuer requires each purchaser to certify in writing**  
 15           **or electronically as follows:**

16           **"I UNDERSTAND AND ACKNOWLEDGE THAT I am**  
 17           **investing in a high-risk, speculative business venture. I**  
 18           **may lose all of my investment, or under some**  
 19           **circumstances more than my investment, and I can**  
 20           **afford this loss. This offering has not been reviewed or**  
 21           **approved by any state or federal securities commission**  
 22           **or division or other regulatory authority and no such**  
 23           **person or authority has confirmed the accuracy or**  
 24           **determined the adequacy of any disclosure made to me**  
 25           **relating to this offering. The securities I am acquiring in**  
 26           **this offering are illiquid, there is no ready market for the**  
 27           **sale of such securities, it may be difficult or impossible**  
 28           **for me to sell or otherwise dispose of this investment,**  
 29           **and, accordingly, I may be required to hold this**  
 30           **investment indefinitely. I may be subject to tax on my**  
 31           **share of the taxable income and losses of the company,**  
 32           **whether or not I have sold or otherwise disposed of my**  
 33           **investment or received any dividends or other**  
 34           **distributions from the company."**

35           **(J) The issuer obtains from each purchaser of a security**  
 36           **offered under an exemption under this subdivision**  
 37           **evidence that the purchaser is a resident of Indiana and, if**  
 38           **applicable, is an accredited investor.**

39           **(K) All payments for purchase of securities offered under**  
 40           **an exemption under this subdivision are directed to and**  
 41           **held by the financial institution specified in clause (F)(iv).**  
 42           **The commissioner may request from the financial**



1 institutions information necessary to ensure compliance  
2 with this section. This information is not a public record  
3 and is not available for public inspection.

4 (L) The issuer of securities offered under an exemption  
5 under this subdivision provides a disclosure document to  
6 each prospective investor at the time the offer of securities  
7 is made to the prospective investor that contains all the  
8 following:

9 (i) A description of the company, its type of entity, the  
10 address and telephone number of its principal office, its  
11 history, its business plan, and the intended use of the  
12 offering proceeds, including any amounts to be paid, as  
13 compensation or otherwise, to any owner, executive  
14 officer, director, managing member, or other person  
15 occupying a similar status or performing similar  
16 functions on behalf of the issuer.

17 (ii) The identity of all persons owning more than twenty  
18 percent (20%) of the ownership interests of any class of  
19 securities of the company.

20 (iii) The identity of the executive officers, directors,  
21 managing members, and other persons occupying a  
22 similar status or performing similar functions in the  
23 name of and on behalf of the issuer, including their titles  
24 and their prior experience.

25 (iv) The terms and conditions of the securities being  
26 offered and of any outstanding securities of the  
27 company; the minimum and maximum amount of  
28 securities being offered, if any; either the percentage  
29 ownership of the company represented by the offered  
30 securities or the valuation of the company implied by the  
31 price of the offered securities; the price per share, unit,  
32 or interest of the securities being offered; any  
33 restrictions on transfer of the securities being offered;  
34 and a disclosure of any anticipated future issuance of  
35 securities that might dilute the value of securities being  
36 offered.

37 (v) The identity of any person who has been or will be  
38 retained by the issuer to assist the issuer in conducting  
39 the offering and sale of the securities, including any  
40 Internet web site operator but excluding persons acting  
41 solely as accountants or attorneys and employees whose  
42 primary job responsibilities involve the operating



- 1                    **business of the issuer rather than assisting the issuer in**  
2                    **raising capital.**
- 3                    **(vi) For each person identified as required in this clause,**  
4                    **a description of the consideration being paid to the**  
5                    **person for such assistance.**
- 6                    **(vii) A description of any litigation, legal proceedings, or**  
7                    **pending regulatory action involving the company or its**  
8                    **management.**
- 9                    **(viii) The names and addresses, including the Uniform**  
10                   **Resource Locator, of each Internet web site that will be**  
11                   **used by the issuer to offer or sell securities under an**  
12                   **exemption under this subdivision.**
- 13                   **(ix) Any additional information material to the offering,**  
14                   **including, if appropriate, a discussion of significant**  
15                   **factors that make the offering speculative or risky. This**  
16                   **discussion must be concise and organized logically and**  
17                   **may not be limited to risks that could apply to any issuer**  
18                   **or any offering.**
- 19                   **(M) The exemption under this subdivision may not be used**  
20                   **in conjunction with any other exemption under this article,**  
21                   **except for offers and sales to individuals identified in the**  
22                   **disclosure document, during the immediately preceding**  
23                   **twelve (12) month period.**
- 24                   **(N) The exemption described in this subdivision does not**  
25                   **apply if an issuer or person affiliated with the issuer or**  
26                   **offering is subject to disqualification established by the**  
27                   **commissioner by rule or contained in the Securities Act of**  
28                   **1933 (15 U.S.C. 77c(a)(11)) and Rule 147 adopted under**  
29                   **the Securities Act of 1933 (17 CFR 230.262). However, this**  
30                   **clause does not apply if both of the following are met:**
- 31                   **(i) On a showing of good cause and without prejudice to**  
32                   **any other action by the commissioner, the commissioner**  
33                   **determines that it is not necessary under the**  
34                   **circumstances that an exemption is denied.**
- 35                   **(ii) The issuer establishes that it made a factual inquiry**  
36                   **into whether any disqualification existed under this**  
37                   **subdivision but did not know, and in the exercise of**  
38                   **reasonable care, could not have known that a**  
39                   **disqualification existed under this subdivision. The**  
40                   **nature and scope of the requisite inquiry will vary based**  
41                   **on the circumstances of the issuer and the other offering**  
42                   **participants.**



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

4           **(i) Before any offer or sale of securities, the issuer must**  
5 **provide to the Internet web site operator evidence that**  
6 **the issuer is organized under the laws of Indiana and is**  
7 **authorized to do business in Indiana.**

8           **(ii) Subject to items (iii) and (v), the Internet web site**  
9 **operator must register with the division by filing a**  
10 **statement, accompanied by the filing fee established by**  
11 **the commissioner, that includes all the information**  
12 **described in section 2.3(b) of this chapter.**

13           **(iii) The Internet web site operator is not required to**  
14 **register as a broker-dealer if all the conditions in section**  
15 **2.3(c) of this chapter apply with respect to the Internet**  
16 **web site and its operator.**

17           **(iv) If any change occurs that affects the Internet web**  
18 **site's registration exemption, the Internet web site**  
19 **operator must notify the division within thirty (30) days**  
20 **after the change occurs.**

21           **(v) The Internet web site operator is not required to**  
22 **register as a broker-dealer under item (ii) if the Internet**  
23 **web site operator is registered as a broker-dealer under**  
24 **the Securities Exchange Act of 1934 (15 U.S.C. 78o) or is**  
25 **a funding portal registered under the Securities Act of**  
26 **1933 (15 U.S.C. 77d-1) and the Securities and Exchange**  
27 **Commission has adopted rules under authority of**  
28 **Section 3(h) of the Securities Exchange Act of 1934 (15**  
29 **U.S.C. 78c(h)) and P.L.112-106, Section 304, governing**  
30 **funding portals. This subdivision does not require an**  
31 **Internet web site operator to register as a broker-dealer**  
32 **under the Securities Exchange Act of 1934 or as a**  
33 **funding portal under the Securities Act of 1933.**

34           **(vi) The issuer and the Internet web site operator must**  
35 **maintain records of all offers and sales of securities**  
36 **effected through the Internet web site and must provide**  
37 **ready access to the records to the division, upon request.**  
38 **The records of an Internet web site operator under this**  
39 **clause are subject to the reasonable periodic, special, or**  
40 **other audits or inspections by a representative of the**  
41 **commissioner, in or outside Indiana, as the commissioner**  
42 **considers necessary or appropriate in the public interest**



1 and for the protection of investors. An audit or  
 2 inspection may be made at any time and without prior  
 3 notice. The commissioner may copy, and remove for  
 4 audit or inspection copies of, all records the  
 5 commissioner reasonably considers necessary or  
 6 appropriate to conduct the audit or inspection. The  
 7 commissioner may assess a reasonable charge for  
 8 conducting an audit or inspection under this item.

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

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

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

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

35 (Q) In 2019 and every fifth year thereafter, the  
 36 commissioner shall cumulatively adjust the dollar  
 37 limitations provided in clause (C) to reflect the change in  
 38 the Consumer Price Index for all Urban Consumers  
 39 published by the federal Bureau of Labor Statistics  
 40 rounding each dollar limitation to the nearest fifty  
 41 thousand dollars (\$50,000).

42 SECTION 5. IC 23-19-2-2.3 IS ADDED TO THE INDIANA CODE



1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
2 1, 2014]: Sec. 2.3. (a) This section applies to an offering under  
3 section 2(27)(O) of this chapter that is made exclusively through  
4 one (1) or more Internet web sites and each Internet web site.

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

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

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

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

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

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

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

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

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

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

32 (5) The fee it charges an issuer for an offering of securities on  
33 the Internet web site is a fixed amount for each offering, a  
34 variable amount based on the length of time that the securities  
35 are offered on the Internet web site, or a combination of the  
36 fixed and variable amounts.

37 (6) It does not identify, promote, or otherwise refer to any  
38 individual security offered on the Internet web site in any  
39 advertising for the Internet web site.

40 (7) It does not engage in any other activities that the division,  
41 by rule, determines are prohibited of the Internet web site.

42 (8) Neither the Internet web site operator, nor any director,



1            executive officer, general partner, managing member, or  
2            other person with management authority over the Internet  
3            web site operator, has been subject to any conviction, order,  
4            judgment, decree, or other action specified in Rule 506(d)(1)  
5            adopted under the Securities Act of 1933 (17 CFR  
6            230.506(d)(1)) that would disqualify an issuer under Rule  
7            506(d) adopted under the Securities Act of 1933 (17 CFR  
8            230.506(d)) from claiming an exemption specified in Rule  
9            506(a) to Rule 506(c) adopted under the Securities Act of 1933  
10           (17 CFR 230.506(a) to 17 CFR 230.506(c)).

11           SECTION 6. IC 23-19-2-5 IS ADDED TO THE INDIANA CODE  
12           AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
13           1, 2014]: **Sec. 5. The commissioner may adopt emergency rules in  
14           the manner provided under IC 4-22-2-37.1 to implement this  
15           chapter.**



## COMMITTEE REPORT

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

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

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

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

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

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

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

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

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

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





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

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

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

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

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

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

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

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

Page 26, delete lines 10 through 12.

Page 26, delete lines 36 through 42.

Page 27, delete lines 1 through 10.

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

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

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

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



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

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

(Reference is to SB 375 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 6, Nays 1.

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Report of the President  
Pro Tempore

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

LONG

