

February 13, 1998

ENGROSSED HOUSE BILL No. 1186

DIGEST OF HB1186 (Updated February 11, 1998 4:09 pm - DI 77)

Citations Affected: IC 4-21.5-3-6; IC 24-4.5; IC 28-1-29-4; IC 28-1-29-5; IC 28-7-5; IC 28-8-4-48; IC 28-8-5.

Synopsis: Consumer sales and credit. Adds license revocation by the department of financial institutions to the list of items that require notice to parties involved. Changes the reference date to federal law from December 31, 1996, to December 31, 1997. Provides for the collection of certain charges, notwithstanding provisions of the Federal Consumer Credit Protection Act concerning disclosure. Allows the director of the department of financial institutions to require continuing proof that a licensee meets the requirements for a license issued by the department of financial institutions. Allows the director of the
(Continued next page)

Effective: July 1, 1998.

Tabaczynski, Ruppel

(SENATE SPONSORS — PAUL, LANANE)

January 8, 1998, read first time and referred to Committee on Financial Institutions.
January 27, 1998, reported — Do Pass.
February 2, 1998, read second time, ordered engrossed. Engrossed.
February 3, 1998, read third time, passed. Yeas 99, nays 0.
SENATE ACTION
February 9, 1998, read first time and referred to Committee on Insurance and Interstate Cooperation.
February 12, 1998, amended, reported favorably — Do Pass.

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department of financial institutions to proceed with the revocation of a license under the Uniform Consumer Credit Code to protect the public in an emergency or if the license was obtained for a person who would not qualify for the license. Requires the department of financial institutions to determine the financial responsibility, character, and fitness of an applicant for licensure as a budget service company. Requires the department of financial institutions to conduct an investigation of a check cashing service before issuing a license. (Current law only requires that an investigation be done.) Eliminates the requirement that a check cashing service have \$10,000 in operating funds before a license to operate may be issued. Eliminates the requirement that pawnbrokers have \$75,000 in assets for a location before the department of financial institutions issues a license. Requires the date of birth of a person for certain transactions involving pawnbrokers. Requires pawnbrokers to mail a notice of pending sale separate from other materials. Provides that for the purposes of financial services a check cashing transaction is a transaction in which there is no written or implied agreement to hold the check for more than three days. Prohibits the writing of multiple checks for purposes of collecting multiple or increased fees for cashing the checks.

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February 13, 1998

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

ENGROSSED HOUSE BILL No. 1186

A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

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

- 1 SECTION 1. IC 4-21.5-3-6, AS AMENDED BY P.L.42-1995,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 1998]: Sec. 6. (a) Notice shall be given under this section
4 concerning the following:
5 (1) A safety order under IC 22-8-1.1.
6 (2) Any order that:
7 (A) imposes a sanction on a person or terminates a legal right,
8 duty, privilege, immunity, or other legal interest of a person;
9 (B) is not described in section 4 or 5 of this chapter or
10 IC 4-21.5-4; and
11 (C) by statute becomes effective without a proceeding under
12 this chapter if there is no request for a review of the order
13 within a specified period after the order is issued or served.
14 (3) A notice of program reimbursement or equivalent
15 determination or other notice regarding a hospital's

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

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

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

10 **(A) IC 24-4.5-3;**

11 **(B) IC 28-1-29;**

12 **(C) IC 28-7-5;**

13 **(D) IC 28-8-4; or**

14 **(E) IC 28-8-5.**

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

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

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

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

23 (c) The notice must include the following:

24 (1) A brief description of the order.

25 (2) A brief explanation of the available procedures and the time
 26 limit for seeking administrative review of the order under section
 27 7 of this chapter.

28 (3) Any other information required by law.

29 (d) An order described in subsection (a) is effective fifteen (15) days
 30 after the order is served, unless a statute other than this article specifies
 31 a different date or the agency specifies a later date in its order. This
 32 subsection does not preclude an agency from issuing, under
 33 IC 4-21.5-4, an emergency or other temporary order concerning the
 34 subject of an order described in subsection (a).

35 (e) If a petition for review of an order described in subsection (a) is
 36 filed within the period set by section 7 of this chapter and a petition for
 37 stay of effectiveness of the order is filed by a party or another person
 38 who has a pending petition for intervention in the proceeding, an
 39 administrative law judge shall, as soon as practicable, conduct a
 40 preliminary hearing to determine whether the order should be stayed in
 41 whole or in part. The burden of proof in the preliminary hearing is on
 42 the person seeking the stay. The administrative law judge may stay the

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1 order in whole or in part. The order concerning the stay may be issued
2 after an order described in subsection (a) becomes effective. The
3 resulting order concerning the stay shall be served on the parties and
4 any person who has a pending petition for intervention in the
5 proceeding. It must include a statement of the facts and law on which
6 it is based.

7 SECTION 2. IC 24-4.5-1-102, AS AMENDED BY P.L.172-1997,
8 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 1998]: Sec. 102. Purposes; Rules of Construction) (1) This
10 article shall be liberally construed and applied to promote its
11 underlying purposes and policies.

- 12 (2) The underlying purposes and policies of this article are:
 - 13 (a) to simplify, clarify, and modernize the law governing retail
 - 14 installment sales, consumer credit, small loans, and usury;
 - 15 (b) to provide rate ceilings to assure an adequate supply of credit
 - 16 to consumers;
 - 17 (c) to further consumer understanding of the terms of credit
 - 18 transactions and to foster competition among suppliers of
 - 19 consumer credit so that consumers may obtain credit at
 - 20 reasonable cost;
 - 21 (d) to protect consumer buyers, lessees, and borrowers against
 - 22 unfair practices by some suppliers of consumer credit, having due
 - 23 regard for the interests of legitimate and scrupulous creditors;
 - 24 (e) to permit and encourage the development of fair and
 - 25 economically sound consumer credit practices;
 - 26 (f) to conform the regulation of consumer credit transactions to
 - 27 the policies of the Federal Consumer Credit Protection Act; and
 - 28 (g) to make uniform the law including administrative rules among
 - 29 the various jurisdictions.

30 (3) A reference to a requirement imposed by this article includes
31 reference to a related rule of the department adopted pursuant to this
32 article.

33 (4) A reference to a federal law in IC 24-4.5 is a reference to the law
34 in effect December 31, ~~1996~~ **1997**.

35 SECTION 3. IC 24-4.5-1-303, AS AMENDED BY P.L.122-1994,
36 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
37 JULY 1, 1998]: Sec. 303. Index of Definitions in Article) Definitions
38 in this Article and the sections in which they appear are:

- 39 "Agreement" Section 1-301 (1)
- 40 "Agricultural purpose" Section 1-301 (2)
- 41 "Amount financed" Section 2-111
- 42 "Average daily balance" Section 1-301 (3)

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1	"Cash price"	Section 2-110
2	"Civil court"	Section 6-117
3	"Closing costs"	Section 1-301 (4)
4	"Conspicuous"	Section 1-301 (5)
5	"Consumer credit"	Section 1-301 (6)
6	"Consumer Credit insurance"	Section 4-103
7	"Consumer Credit sale"	Section 2-104
8	"Consumer lease"	Section 2-106
9	"Consumer loan"	Section 3-104
10	"Consumer related loan"	Section 3-602
11	"Consumer related sale"	Section 2-602
12	"Credit"	Section 1-301 (7)
13	"Creditor"	Section 1-301 (8)
14	"Credit Insurance Act"	Section 4-102 (3)
15	"Credit service charge"	Section 2-109
16	"Department"	Section 6-103
17	"Director"	Section 6-103.5
18	"Earnings"	Section 1-301 (9)
19	"Federal Consumer Credit Protection Act"	Section 1-302
20	"Goods"	Section 2-105 (1)
21	"Home solicitation sale"	Section 2-501
22	"Lender"	Section 3-107 (1)
23	"Lender credit card or similar arrangement"	Section 1-301 (10)
24	"Loan"	Section 3-106
25	"Loan finance charge"	Section 3-109
26	"Loan Primarily Secured by an Interest in Land"	Section 3-105
27	"Merchandise certificate"	Section 2-105 (2)
28	"Mortgage transaction"	Section 1-301 (17)
29	"Official fees"	Section 1-301 (11)
30	"Organization"	Section 1-301 (12)
31	"Payable in installments"	Section 1-301 (13)
32	"Person"	Section 1-301 (14)
33	"Person related to"	Section 1-301 (15)
34	"Precomputed" (loan)	Section 3-107 (2)
35	"Precomputed" (sale)	Section 2-105 (7)
36	"Presumed" or "Presumption"	Section 1-301 (16)
37	"Principal"	Section 3-107 (3)
38	"Regularly engaged"	Section 1-301 (18)
39	"Revolving charge account"	Section 2-108
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- 1 "Revolving loan account" Section 3-108
- 2 "Sale of goods" Section 2-105 (4)
- 3 "Sale of an interest in land" Section 2-105 (6)
- 4 "Sale of services" Section 2-105 (5)
- 5 "Seller" Section 2-107
- 6 "Seller credit card" Section 1-301 (19)
- 7 "Services" Section 2-105 (3)
- 8 "Supervised financial
- 9 organization" Section 1-301 (20)
- 10 "Supervised lender" Section 3-501 (2)
- 11 "Supervised loan" Section 3-501 (1)
- 12 SECTION 4. IC 24-4.5-2-202, AS AMENDED BY P.L.45-1995,
- 13 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 14 JULY 1, 1998]: Sec. 202. (1) In addition to the credit service charge
- 15 permitted by IC 24-4.5-2-201 through IC 24-4.5-2-210, a seller may
- 16 contract for and receive any of the following additional charges in
- 17 connection with a consumer credit sale:
- 18 (a) Official fees and taxes.
- 19 (b) Charges for insurance as described in subsection (2).
- 20 (c) **Notwithstanding provisions of the Federal Consumer**
- 21 **Credit Protection Act concerning disclosure**, charges for other
- 22 benefits, including insurance, conferred on the buyer, if the
- 23 benefits are of value to him and if the charges are reasonable in
- 24 relation to the benefits, are of a type which is not for credit and
- 25 are excluded as permissible additional charges from the credit
- 26 service charge. With respect to any additional charge not
- 27 specifically provided for in this section, to be a permitted charge
- 28 under this subsection the seller must submit a written
- 29 explanation of the charge to the department indicating how the
- 30 charge would be assessed and the value or benefit to the buyer.
- 31 Supporting documents may be required by the department. The
- 32 department shall determine whether the charge would be of
- 33 benefit to the buyer and is reasonable in relation to the benefits.
- 34 (d) A charge not to exceed twenty dollars (\$20) for each return
- 35 by a bank or other depository institution of a dishonored check,
- 36 negotiable order of withdrawal, or share draft issued by the
- 37 debtor.
- 38 (e) Annual or periodic participation fees assessed in connection
- 39 with a revolving charge account.
- 40 (2) An additional charge may be made for insurance written in
- 41 connection with the sale, other than insurance protecting the seller
- 42 against the buyer's default or other credit loss:

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1 (a) with respect to insurance against loss of or damage to
 2 property, or against liability, if the seller furnishes a clear and
 3 specific statement in writing to the buyer, setting forth the cost
 4 of the insurance if obtained from or through the seller and stating
 5 that the buyer may choose the person, subject to the seller's
 6 reasonable approval, through whom the insurance is to be
 7 obtained; and

8 (b) with respect to consumer credit insurance providing life,
 9 accident, unemployment or other loss of income, or health
 10 coverage, if the insurance coverage is not a factor in the approval
 11 by the seller of the extension of credit and is clearly disclosed in
 12 writing to the buyer, and if, in order to obtain the insurance in
 13 connection with the extension of credit, the buyer gives specific,
 14 affirmative, written indication of the desire to do so after written
 15 disclosure of the cost.

16 (3) With respect to a debt secured by an interest in land, the
 17 following closing costs, if the costs are bona fide, reasonable in
 18 amount, and not for the purpose of circumvention or evasion of this
 19 article:

20 (a) fees for title examination, abstract of title, title insurance,
 21 property surveys, or similar purposes;

22 (b) fees for preparing deeds, mortgages, and reconveyance,
 23 settlement, and similar documents;

24 (c) notary and credit report fees;

25 (d) amounts required to be paid into escrow or trustee accounts
 26 if the amounts would not otherwise be included in the loan
 27 finance charge; and

28 (e) appraisal fees.

29 SECTION 5. IC 24-4.5-3-202, AS AMENDED BY P.L.45-1995,
 30 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 1998]: Sec. 202. (1) In addition to the loan finance charge
 32 permitted by IC 24-4.5-3-201 through IC 24-4.5-3-210, a lender may
 33 contract for and receive the following additional charges in connection
 34 with a consumer loan:

35 (a) Official fees and taxes.

36 (b) Charges for insurance as described in subsection (2).

37 (c) Annual or periodic participation fees assessed in connection
 38 with a revolving loan account.

39 (d) With respect to a debt secured by an interest in land, the
 40 following closing costs, if they are bona fide, reasonable in
 41 amount, and not for the purpose of circumvention or evasion of
 42 this article:

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- 1 (i) Fees for title examination, abstract of title, title
 2 insurance, property surveys, or similar purposes.
 3 (ii) Fees for preparing deeds, mortgages, and reconveyance,
 4 settlement, and similar documents.
 5 (iii) Notary and credit report fees.
 6 (iv) Amounts required to be paid into escrow or trustee
 7 accounts if the amounts would not otherwise be included in
 8 the loan finance charge.
 9 (v) Appraisal fees.
- 10 (e) **Notwithstanding provisions of the Federal Consumer**
 11 **Credit Protection Act concerning disclosure**, charges for other
 12 benefits, including insurance, conferred on the debtor, if the
 13 benefits are of value and if the charges are reasonable in relation
 14 to the benefits, are of a type which is not for credit and are
 15 excluded as permissible additional charges from the loan finance
 16 charge. With respect to any other additional charge not
 17 specifically provided for in this section to be a permitted charge
 18 under this subsection, the creditor must submit a written
 19 explanation of the charge to the department indicating how the
 20 charge would be assessed and the value or benefit to the debtor.
 21 Supporting documents may be required by the department. The
 22 department shall determine whether the charge would be of
 23 benefit to the debtor and is reasonable in relation to the benefits.
- 24 (f) A charge not to exceed twenty dollars (\$20) for each return
 25 by a bank or other depository institution of a dishonored check,
 26 negotiable order of withdrawal, or share draft issued by the
 27 debtor.
- 28 (g) With respect to a revolving loan account, a fee not to exceed
 29 twenty dollars (\$20) in each billing cycle during which the
 30 balance due under the revolving loan account exceeds by more
 31 than one hundred dollars (\$100) the maximum credit limit for
 32 the account established by the lender.
- 33 (h) With respect to a revolving loan account, a transaction fee
 34 that may not exceed the lesser of the following:
 35 (i) Two percent (2%) of the amount of the transaction.
 36 (ii) Ten dollars (\$10).
- 37 The additional charges provided for in paragraphs (f), (g), and (h) are
 38 not subject to refund or rebate.
- 39 (2) An additional charge may be made for insurance in connection
 40 with the loan, other than insurance protecting the lender against the
 41 debtor's default or other credit loss:
 42 (a) with respect to insurance against loss of or damage to

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1 property or against liability, if the lender furnishes a clear and
 2 specific statement in writing to the debtor, setting forth the cost
 3 of the insurance if obtained from or through the lender and
 4 stating that the debtor may choose the person, subject to the
 5 lender's reasonable approval, through whom the insurance is to
 6 be obtained; and

7 (b) with respect to consumer credit insurance providing life,
 8 accident, unemployment or other loss of income, or health
 9 coverage, if the insurance coverage is not a factor in the approval
 10 by the lender of the extension of credit and this fact is clearly
 11 disclosed in writing to the debtor, and if, in order to obtain the
 12 insurance in connection with the extension of credit, the debtor
 13 gives specific affirmative written indication of the desire to do
 14 so after written disclosure of the cost of the insurance.

15 SECTION 6. IC 24-4.5-3-503, AS AMENDED BY P.L. 122-1994,
 16 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 1998]: Sec. 503. License to Make Consumer Loans) (1) The
 18 department shall receive and act on all applications for licenses to
 19 make consumer loans. Applications must be as prescribed by the
 20 director of the department of financial institutions.

21 (2) A license shall not be issued unless the department finds that
 22 the financial responsibility, character, and fitness of the applicant and
 23 of the members of the applicant (if the applicant is a co-partnership or
 24 an association) and of the officers and directors of the applicant (if the
 25 applicant is a corporation) are such as to warrant belief that the
 26 business will be operated honestly and fairly within the purposes of this
 27 article. **The director is entitled to request evidence of compliance**
 28 **with this section.**

29 (3) Upon written request, the applicant is entitled to a hearing on
 30 the question of the qualifications of the applicant for a license as
 31 provided in IC 4-21.5.

32 (4) The applicant shall pay the following fees at the time
 33 designated by the department:

34 (a) An initial license fee as established by the department under
 35 IC 28-11-3-5.

36 (b) An initial investigation fee as established by the department
 37 under IC 28-11-3-5.

38 (c) An annual renewal fee as established by the department
 39 under IC 28-11-3-5.

40 (d) A fee as established by the department under IC 28-11-3-5
 41 may be charged for each day the annual renewal fee is
 42 delinquent.



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1 (5) The applicant may deduct the fees required under subsection
2 4(a) through 4(c) from the filing fees paid under IC 24-4.5-6-203.

3 SECTION 7. IC 24-4.5-3-504, AS AMENDED BY P.L.176-1996,
4 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 1998]: Sec. 504. Revocation or Suspension of License) (1)
6 The department may issue to a person licensed to make consumer loans
7 an order to show cause why the license should not be revoked or
8 suspended for a period determined by the department. The order shall
9 state the place for a hearing and set a time for the hearing that is no less
10 than ten (10) days from the date of the order. After the hearing, the
11 department shall revoke or suspend the license if the department finds
12 that:

13 (a) the licensee has repeatedly and willfully violated this article
14 or any rule or order lawfully made pursuant to this article; or

15 (b) facts or conditions exist which would clearly have justified
16 the department in refusing to grant a license had these facts or
17 conditions been known to exist at the time the application for the
18 license was made.

19 (2) Except as provided in section 503.5 of this chapter, no
20 revocation or suspension of a license is lawful unless prior to
21 institution of proceedings by the department notice is given to the
22 licensee of the facts or conduct which warrant the intended action, and
23 the licensee is given an opportunity to show compliance with all lawful
24 requirements for retention of the license.

25 (3) If the department finds that probable cause for revocation of a
26 license exists and that enforcement of this article requires immediate
27 suspension of the license pending investigation, the department may,
28 after a hearing upon five (5) days written notice, enter an order
29 suspending the license for not more than thirty (30) days.

30 (4) Whenever the department revokes or suspends a license, the
31 department shall enter an order to that effect and forthwith notify the
32 licensee of the revocation or suspension. Within five (5) days after the
33 entry of the order the department shall deliver to the licensee a copy of
34 the order and the findings supporting the order.

35 (5) Any person holding a license to make consumer loans may
36 relinquish the license by notifying the department in writing of its
37 relinquishment, but this relinquishment shall not affect the person's
38 liability for acts previously committed.

39 (6) No revocation, suspension, or relinquishment of a license shall
40 impair or affect the obligation of any preexisting lawful contract
41 between the licensee and any debtor.

42 (7) The department may reinstate a license, terminate a

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1 suspension, or grant a new license to a person whose license has been
2 revoked or suspended if no fact or condition then exists which clearly
3 would have justified the department in refusing to grant a license.

4 **(8) If the director:**

5 **(a) has just cause to believe an emergency exists from which**
6 **it is necessary to protect the interests of the public; or**

7 **(b) determines that the license was obtained for the benefit**
8 **of, or on behalf of, a person who does not qualify for a**
9 **license;**

10 **the director may proceed with the revocation of the license under**
11 **IC 4-21.5-3-6.**

12 SECTION 8. IC 24-4.5-6-103.5 IS ADDED TO THE INDIANA
13 CODE AS A NEW SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 1998]: **Sec. 103.5. Director - "Director"**
15 **means the director of the department of financial institutions.**

16 SECTION 9. IC 28-1-29-4, AS AMENDED BY P.L.196-1996,
17 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 1998]: Sec. 4. (a) The department may revoke or suspend any
19 license issued under this chapter for the following causes:

- 20 (1) Conviction of a felony or of a misdemeanor involving moral
21 turpitude.
- 22 (2) Violation of any of the provisions of this chapter.
- 23 (3) Fraud or deceit in procuring the issuance of a license or
24 renewal under this chapter.
- 25 (4) Indulging in a continuous course of unfair conduct.
- 26 (5) Insolvency, bankruptcy, receivership, or assignment for the
27 benefit of creditors by a licensee.
- 28 (6) Licensee lending money to any debtor that has subscribed to
29 the licensee's services.
- 30 (7) Except as provided in subsection (c), offering to pay or give
31 any cash, fee, gift, bonus, premiums, reward, or other
32 compensation to any person for referring any prospective
33 customer to the licensee.
- 34 (8) Except as provided in subsection (d), receiving any cash, fee,
35 gift, bonus, premium, reward, or other compensation from any
36 person other than the contract debtor in connection with his
37 activities as a licensee.
- 38 (9) Licensee requiring a debtor to purchase or agree to purchase
39 a policy of insurance from which licensee receives a fee or other
40 remuneration.
- 41 (10) If the licensee violates any reasonable rule or regulation
42 made by the department under and within the authority of this

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- 1 chapter.
- 2 (11) Misleading advertising or representing that the licensee can
- 3 provide protection from legal recourse or suits of creditors.
- 4 (b) Except as provided in section 4.1 of this chapter, the denial,
- 5 revocation, or suspension shall be made only after specific charges
- 6 have been filed in writing, under oath, with the department or by the
- 7 department, whereupon a hearing shall be had as to the reasons for
- 8 such denial, revocation, or suspension and a certified copy of the
- 9 charges shall be served on the licensee or the applicant for license not
- 10 less than ten (10) days prior to the hearing.
- 11 (c) Notwithstanding subsection (a)(7), a licensee may reduce the
- 12 fees of a contract debtor who is a client of the licensee if the contract
- 13 debtor refers a prospective customer to the licensee.
- 14 (d) Notwithstanding subsection (a)(8), a licensee may receive a
- 15 fair share creditor fee, based on disbursements made to the creditor,
- 16 from a debtor's creditors. If any creditor refuses to pay the fair share
- 17 creditor fee, the creditor must still be included in the contract debtor's
- 18 payment plan.
- 19 **(e) If the director of the department:**
- 20 **(1) has just cause to believe an emergency exists from which**
- 21 **it is necessary to protect the interests of the public; or**
- 22 **(2) determines that the license was obtained for the benefit**
- 23 **of, or on behalf of, a person who does not qualify for a**
- 24 **license;**
- 25 **the director may proceed with the revocation of the license under**
- 26 **IC 4-21.5-3-6.**
- 27 SECTION 10. IC 28-1-29-5 IS AMENDED TO READ AS
- 28 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. Every person doing
- 29 business as a budget service company shall make application to the
- 30 department for a license to engage in such business. Such application
- 31 shall be in the form prescribed by the department and shall contain the
- 32 following information together with such further information as the
- 33 department may require:
- 34 (1) ~~The name under which such business is to be conducted. The~~
- 35 **department may not issue a license unless the department**
- 36 **finds that the financial responsibility, character, and fitness**
- 37 **of:**
- 38 **(A) the applicant; and**
- 39 **(B) the:**
- 40 **(i) members of the applicant, if the applicant is a**
- 41 **partnership or association; or**
- 42 **(ii) officers and directors of the applicant, if the**

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**applicant is a corporation;
warrant belief that the business will be operated honestly
and fairly under this article. The department is entitled to
request evidence of a licensee's financial responsibility,
character, and fitness.**

(2) ~~The name and address of each owner, partner, or associate,
or in the case of a corporation, the names and addresses of all
officers, directors, and stockholders of the company.~~

(3) ~~A sworn statement that no owner, partner, associate or officer
has been convicted of a felony.~~

(4) ~~The address of each office of the business.~~

(5) ~~A sworn financial statement of the company.~~

(6) ~~Persons who are not residents of Indiana, making application
for a license, shall pay the fee fixed by the department under
IC 28-11-3-5 to the department, in addition to the license fee, to
cover the excess cost of investigation. Upon written request, an
applicant is entitled to a hearing under IC 4-21.5 on the
question of the qualifications of the applicant for a license.~~

SECTION 11. IC 28-7-5-5, AS AMENDED BY P.L.45-1995,
SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 1998]: Sec. 5. The initial application and renewal shall be
accompanied by a fee fixed by the department under IC 28-11-3-5 and
a financial statement prepared by a third party acceptable to the
director. ~~showing net assets of at least seventy-five thousand dollars
(\$75,000) for each place of business conducted by the licensee.~~

SECTION 12. IC 28-7-5-8, AS AMENDED BY P.L.45-1995,
SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 1998]: Sec. 8. Upon the filing of the application required by
section 4 of this chapter and the payment of the license fee, if the
department shall find the financial standing, competence, business
experience, and character of the applicant are such that the business
will be operated honestly, fairly, and efficiently and that the
convenience and needs of the public exist for the operation of such
business in the community wherein such applicant proposes to operate,
it shall issue and deliver a license to the applicant, which license shall
authorize the applicant to engage in the business of pawnbroking. **The
director is entitled to request evidence of compliance with the
requirements of this section by the licensee.** Such license shall
remain in effect until it is surrendered, revoked, or suspended. If the
department denies the application, it shall notify the applicant of the
denial and return the sum paid by the applicant as a license fee. The
department may hold a public hearing if the department considers the

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1 hearing necessary.

2 SECTION 13. IC 28-7-5-13, AS AMENDED BY P.L.176-1996,
3 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 1998]: Sec. 13. (a) The department shall, upon ten (10) days
5 notice to the licensee stating the contemplated action and in general the
6 grounds therefor, and upon reasonable opportunity to be heard, revoke,
7 by written order, any license issued under this chapter if it shall find
8 that:

- 9 ~~(a)~~ (1) the licensee has failed to comply with any ruling or
10 requirements of the department;
11 ~~(b)~~ (2) the licensee has violated any provision of this chapter or
12 any rule made by the department; or
13 ~~(c)~~ (3) any fact or condition exists which, if it had existed at the
14 time of the original application for such license, would have
15 warranted the department in refusing originally to issue such
16 license.

- 17 **(b) If the director of the department:**
18 **(1) has just cause to believe an emergency exists from which**
19 **it is necessary to protect the interests of the public; or**
20 **(2) determines that the license was obtained for the benefit**
21 **of, or on behalf of, a person who does not qualify for a**
22 **license;**

23 **the director may proceed with the revocation of the license under**
24 **IC 4-21.5-3-6.**

25 SECTION 14. IC 28-7-5-16 IS AMENDED TO READ AS
26 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 16. (a) The licensee
27 shall keep and use in his business such books, accounts, and records as
28 will enable the department to determine whether the licensee is
29 complying with this chapter and with the rules made by the department
30 under this chapter. Every licensee shall preserve such books, accounts,
31 and records, including cards used in the card system for at least two (2)
32 years after making the final entry on any loan recorded therein. The
33 books and records of the licensee shall be kept so that the pawnbroking
34 business transacted in Indiana may be readily separated and
35 distinguished from the business of the licensee transacted elsewhere
36 and from any other business in which the licensee may be engaged.

37 (b) If a pawnbroker, in the conduct of the business, purchases a
38 article from a seller, the purchase shall be evidenced by a bill of sale
39 properly signed by the seller. All bills of sale must be in duplicate and
40 must recite the following separate items:

- 41 (1) Date of bill of sale.
42 (2) Amount of consideration.



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- 1 (3) Name of pawnbroker.
- 2 (4) Description of each article sold.
- 3 (5) Signature of seller.
- 4 (6) Address of seller.
- 5 **(7) Date of birth of the seller.**
- 6 (c) If a pawnbroker, in the conduct of the business, purchases an
- 7 article from a seller on the condition of selling the property back at a
- 8 stipulated price, the transaction shall be evidenced by a bill of sale
- 9 properly signed by the seller. All such bills of sale must be in duplicate
- 10 and recite the information in subsection (b) and must also contain the
- 11 following information:
- 12 (1) Date of resale.
- 13 (2) Amount of resale.
- 14 (d) The original copy of the bill of sale shall be retained by the
- 15 pawnbroker. The second copy shall be delivered to the seller by the
- 16 pawnbroker at the time of sale. The heading on all bill of sale forms
- 17 must be in boldface type.
- 18 (e) Each licensee shall maintain a record of control indicating the
- 19 number of accounts and dollar value of all outstanding pawnbroking
- 20 receivables. Each licensee shall maintain a separate record of
- 21 transactions subject to subsection (c).
- 22 SECTION 15. IC 28-7-5-19 IS AMENDED TO READ AS
- 23 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 19. (a) Every
- 24 pawnbroker shall keep a record in ink that must include the following:
- 25 (1) The name, **date of birth**, and address of the pledger, or
- 26 where the pledge is made by a person acting as agent for a
- 27 disclosed principal, the names, **dates of birth**, and addresses of
- 28 principal and agent.
- 29 (2) The date of the transaction.
- 30 (3) The amount of the loan.
- 31 (4) The article or articles pledged.
- 32 (5) The serial number of the loan.
- 33 (6) The date on which each loan was paid in full, renewed, or
- 34 unredeemed.
- 35 (7) An itemization of principal, interest, and additional fees
- 36 collected.
- 37 (8) An itemization of fees authorized under IC 28-7-5-25.
- 38 (9) The total of all charges collected.
- 39 (b) Other methods of recording data, such as electronic or
- 40 computerized methods, may be used provided written printouts or hard
- 41 copies of the required data are readily available. The record keeping
- 42 system of a licensee shall be made available in Indiana for

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1 examination. The department shall determine the sufficiency of the
 2 records and whether the licensee has made the required information
 3 reasonably available.

4 SECTION 16. IC 28-7-5-21, AS AMENDED BY P.L.45-1995,
 5 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 1998]: Sec. 21. (a) The pawnbroker shall, at the time of
 7 making a loan, deliver to the pledger or the pledger's agent a
 8 memorandum or ticket on which shall be legibly written or printed:

- 9 (1) the name of the pledger;
 10 (2) the name of the pawnbroker and the place where the pledge
 11 is made;
 12 (3) the article or articles pledged;
 13 (4) the amount of the loan;
 14 (5) the date of the transaction;
 15 (6) the serial number of the loan;
 16 (7) the sum of the interest as provided in section 28 of this
 17 chapter and the charge as provided in section 28.5 of this chapter
 18 stated as an annual percentage rate computed in accordance with
 19 regulations issued by the Federal Reserve Board under the
 20 Federal Consumer Credit Protection Act (as defined in
 21 IC 24-4.5-1-302);
 22 (8) the amount of interest;
 23 (9) the amount of charge and principal due at maturity; **and**
 24 (10) a copy of sections 28, 28.5, and 30 of this chapter; **and**
 25 **(11) the date of birth of the pledger.**

26 (b) A pawnbroker may insert in such ticket any other terms and
 27 conditions not inconsistent with this chapter. However, nothing
 28 appearing on a pawn ticket shall relieve the pawnbroker of the
 29 obligations to exercise reasonable care in the safekeeping of articles
 30 pledged with him.

31 SECTION 17. IC 28-7-5-21.5, AS ADDED BY P.L.172-1997,
 32 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 1998]: Sec. 21.5. A pawnbroker is required to disclose to a
 34 debtor in a pawn transaction the information required by the Federal
 35 ~~Trade Commission~~ **Reserve Board under the Federal Consumer**
 36 **Credit Protection** Act, 15 U.S.C. ~~41~~ **1601** et seq., and its
 37 implementing regulations.

38 SECTION 18. IC 28-7-5-30 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 30. A pawnbroker may
 40 sell an article pawned after the expiration of ninety (90) days from the
 41 maturity of the loan, provided that not less than ten (10) days before
 42 making the sale the pawnbroker gives notice to the pledger by mail

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1 addressed to the post office address of the pledger as shown on the
 2 pawnbroker's records notifying the person that unless the person
 3 redeems the article within ten (10) days from the date of the mailing,
 4 the article becomes the property of the pawnbroker and subject to sale.
 5 The pawnbroker becomes owner of all unredeemed pledges held for
 6 one hundred eighty (180) days after the maturity of the loan and no
 7 notice need be mailed to the pledger. **A notice of pending sale mailed**
 8 **to a pledger under this section must be separate from other**
 9 **materials mailed.**

10 SECTION 19. IC 28-8-4-48 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 48. (a) After notice and
 12 hearing, the director may suspend or revoke a licensee's license if the
 13 director finds one (1) of the following conditions:

14 (1) A fact or condition exists that, if it had existed at the time the
 15 licensee applied for a license, would have been grounds for
 16 denying the application.

17 (2) The licensee's net worth becomes inadequate to meet the
 18 terms of sections 24 and 33 of this chapter and the licensee, after
 19 ten (10) days written notice from the director, fails to take steps
 20 that the director considers necessary to remedy the deficiency.

21 (3) The licensee violates a material provision of this chapter or
 22 order validly promulgated by the director under authority of this
 23 chapter.

24 (4) The licensee is conducting its business in an unsafe or
 25 unsound manner as determined by the director.

26 (5) The licensee is insolvent.

27 (6) The licensee has suspended payment of its obligations, has
 28 made an assignment for the benefit of its creditors, or has
 29 admitted in writing its inability to pay its debts as they become
 30 due.

31 (7) The licensee has applied for an adjudication of bankruptcy,
 32 reorganization, arrangement, or other relief under the federal
 33 bankruptcy code.

34 (8) The licensee refuses to permit the director to make any
 35 examination authorized by this chapter.

36 (9) The licensee fails to make a report required by this chapter.

37 **(b) If the director of the department:**

38 **(1) has just cause to believe an emergency exists from which**
 39 **it is necessary to protect the interests of the public; or**

40 **(2) determines that the license was obtained for the benefit**
 41 **of, or on behalf of, a person who does not qualify for a**
 42 **license;**



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1 **the director may proceed with the revocation of the license under**
 2 **IC 4-21.5-3-6.**

3 SECTION 20. IC 28-8-5-2.5 IS ADDED TO THE INDIANA
 4 CODE AS A NEW SECTION TO READ AS FOLLOWS
 5 [EFFECTIVE JULY 1, 1998]: **Sec. 2.5. As used in this chapter,**
 6 **"check cashing transaction" means a transaction under this**
 7 **chapter in which there is no written or implied agreement to hold**
 8 **the check for more than three (3) business days.**

9 SECTION 21. IC 28-8-5-12 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 12. (a) The department
 11 shall ~~conduct an investigation of each applicant to~~ determine the
 12 financial responsibility, business experience, character, and general
 13 fitness of the applicant **before issuing the license.**

14 (b) ~~The department shall grant the license if the department~~
 15 ~~determines the following:~~

16 (1) ~~That the applicant is financially responsible and will conduct~~
 17 ~~the business of cashing checks pursuant to the provisions of this~~
 18 ~~chapter.~~

19 (2) ~~That the applicant has assets of at least ten thousand dollars~~
 20 ~~(\$10,000) available for operating the business in each location~~
 21 ~~specified in the application.~~

22 (c) ~~(b) The department may refuse to issue a license if an applicant~~
 23 ~~who is an individual has been convicted of a felony.~~

24 **(c) The director of the department may request evidence of**
 25 **compliance with this section by the licensee.**

26 SECTION 22. IC 28-8-5-17 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 17. Except as otherwise
 28 provided in this chapter, a licensee may not charge check cashing fees
 29 in excess of the greater of five dollars (\$5) or ten percent (10%) of the
 30 face amount of a check. **Except as provided in this chapter, a**
 31 **licensee or the licensee's agent may not accept multiple checks**
 32 **from a:**

- 33 (1) **person;**
- 34 (2) **person's spouse; or**
- 35 (3) **person's agent;**

36 **drawn on the person's account with the intent that the licensee may**
 37 **collect multiple or increased fees for cashing the checks.**

38 SECTION 23. IC 28-8-5-18.5 IS ADDED TO THE INDIANA
 39 CODE AS A NEW SECTION TO READ AS FOLLOWS
 40 [EFFECTIVE JULY 1, 1998]: **Sec. 18.5. The check in a check**
 41 **cashing transaction, to the best of the licensee's knowledge, must**
 42 **be drawn on a valid, open, and active account and must be**



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1 **deposited by the licensee into a financial institution with the intent**
 2 **to draw the funds of that check.**
 3 SECTION 24. IC 28-8-5-22, AS AMENDED BY P.L.176-1996,
 4 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 1998]: Sec. 22. **(a)** The department may suspend or revoke a
 6 license issued under this chapter pursuant to the provisions in IC 4-21.5
 7 for:
 8 (1) violating this chapter; or
 9 (2) any reason that would be sufficient to deny an initial
 10 application for a license.
 11 **(b) If the director of the department:**
 12 **(1) has just cause to believe an emergency exists from which**
 13 **it is necessary to protect the interests of the public; or**
 14 **(2) determines that the license was obtained for the benefit**
 15 **of, or on behalf of, a person who does not qualify for a**
 16 **license;**
 17 **the director may proceed with the revocation of the license under**
 18 **IC 4-21.5-3-6.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1186, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

TABACZYNSKI, Chair

Committee Vote: yeas 10, nays 0.

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SENATE MOTION

Mr. President: I move that Senator Lanane be added as cosponsor of Engrossed House Bill 1186.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Financial Institutions, to which was referred House Bill 1186, 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 17, line 30, delete "A" and insert "**Except as provided in this chapter, a**".

Page 17, line 35, before "with" insert "**drawn on the person's account**".

Page 17, line 40, after "transaction" insert "**, to the best of the licensee's knowledge,**".

and when so amended that said bill do pass.

(Reference is to House Bill 1186 as printed January 28, 1998.)

PAUL, Chairperson

Committee Vote: Yeas 6, Nays 0.

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