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

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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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Digest Continued

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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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.

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HOUSE ENROLLED ACT No. 1186

AN ACT to amend the Indiana Code concerning financial institutions.

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

SECTION 1. IC 4-21.5-3-6, AS AMENDED BY P.L.42-1995, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 6. (a) Notice shall be given under this section concerning the following:

(1) A safety order under IC 22-8-1.1.

(2) Any order that:

(A) imposes a sanction on a person or terminates a legal right, duty, privilege, immunity, or other legal interest of a person;

(B) is not described in section 4 or 5 of this chapter or IC 4-21.5-4; and

(C) by statute becomes effective without a proceeding under this chapter if there is no request for a review of the order within a specified period after the order is issued or served.

(3) A notice of program reimbursement or equivalent determination or other notice regarding a hospital's reimbursement issued by the office of Medicaid policy and

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

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

(5) A license revocation under:

(A) IC 24-4.5-3;

(B) IC 28-1-29;

(C) IC 28-7-5;

(D) IC 28-8-4; or

(E) IC 28-8-5.

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

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

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

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

(c) The notice must include the following:

(1) A brief description of the order.

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

(3) Any other information required by law.

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

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

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after an order described in subsection (a) becomes effective. The resulting order concerning the stay shall be served on the parties and any person who has a pending petition for intervention in the proceeding. It must include a statement of the facts and law on which it is based.

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

(2) The underlying purposes and policies of this article are:

(a) to simplify, clarify, and modernize the law governing retail installment sales, consumer credit, small loans, and usury;

(b) to provide rate ceilings to assure an adequate supply of credit to consumers;

(c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;

(d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;

(e) to permit and encourage the development of fair and economically sound consumer credit practices;

(f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and

(g) to make uniform the law including administrative rules among the various jurisdictions.

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

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

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

"Agreement" . . . . . Section 1-301 (1)
"Agricultural purpose" . . . . . Section 1-301 (2)
"Amount financed" . . . . . Section 2-111
"Average daily balance" . . . . . Section 1-301 (3)
"Cash price" . . . . . Section 2-110

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"Civil court" . . . . . Section 6-117
"Closing costs" . . . . . Section 1-301 (4)
"Conspicuous" . . . . . Section 1-301 (5)
"Consumer credit" . . . . . Section 1-301 (6)
"Consumer Credit insurance" . . . . . Section 4-103
"Consumer Credit sale" . . . . . Section 2-104
"Consumer lease" . . . . . Section 2-106
"Consumer loan" . . . . . Section 3-104
"Consumer related loan" . . . . . Section 3-602
"Consumer related sale" . . . . . Section 2-602
"Credit" . . . . . Section 1-301 (7)
"Creditor" . . . . . Section 1-301 (8)
"Credit Insurance Act" . . . . . Section 4-102 (3)
"Credit service charge" . . . . . Section 2-109
"Department" . . . . . Section 6-103
"Director" . . . . . Section 6-103.5
"Earnings" . . . . . Section 1-301 (9)
"Federal Consumer Credit
Protection Act" . . . . . Section 1-302
"Goods" . . . . . Section 2-105 (1)
"Home solicitation sale" . . . . . Section 2-501
"Lender" . . . . . Section 3-107 (1)
"Lender credit card or similar
arrangement" . . . . . Section 1-301 (10)
"Loan" . . . . . Section 3-106
"Loan finance charge" . . . . . Section 3-109
"Loan Primarily Secured by an
Interest in Land" . . . . . Section 3-105
"Merchandise certificate" . . . . . Section 2-105 (2)
"Mortgage transaction" . . . . . Section 1-301 (17)
"Official fees" . . . . . Section 1-301 (11)
"Organization" . . . . . Section 1-301 (12)
"Payable in installments" . . . . . Section 1-301 (13)
"Person" . . . . . Section 1-301 (14)
"Person related to" . . . . . Section 1-301 (15)
"Precomputed" (loan) . . . . . Section 3-107 (2)
"Precomputed" (sale) . . . . . Section 2-105 (7)
"Presumed" or "Presumption" . . . . . Section 1-301 (16)
"Principal" . . . . . Section 3-107 (3)
"Regularly engaged" . . . . . Section 1-301 (18)
"Revolving charge account" . . . . . Section 2-108
"Revolving loan account" . . . . . Section 3-108

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"Sale of goods" . . . . . Section 2-105 (4)
"Sale of an interest in land" . . . . . Section 2-105 (6)
"Sale of services" . . . . . Section 2-105 (5)
"Seller" . . . . . Section 2-107
"Seller credit card" . . . . . Section 1-301 (19)
"Services" . . . . . Section 2-105 (3)
"Supervised financial
organization" . . . . . Section 1-301 (20)
"Supervised lender" . . . . . Section 3-501 (2)
"Supervised loan" . . . . . Section 3-501 (1)

SECTION 4. IC 24-4.5-2-201 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 201. Credit Service Charge for Consumer Credit Sales other than Revolving Charge Accounts-(1) With respect to a consumer credit sale, other than a sale pursuant to a revolving charge account, a seller may contract for and receive a credit service charge not exceeding that permitted by this section.

(2) The credit service charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

(a) the total of:

(i) thirty-six percent (36%) per year on that part of the unpaid balances of the amount financed which is three hundred dollars ($300) or less;

(ii) twenty-one percent (21%) per year on that part of the unpaid balances of the amount financed which is more than three hundred dollars ($300) but does not exceed one thousand dollars ($1,000); and

(iii) fifteen percent (15%) per year on that part of the unpaid balances of the amount financed which is more than one thousand dollars ($1,000); or

(b) twenty-one percent (21%) per year on the unpaid balances of the amount financed.

(3) This section does not limit or restrict the manner of contracting for the credit service charge, whether by way of add-on, discount, or otherwise, so long as the rate of the credit service charge does not exceed that permitted by this section. If the sale is precomputed:

(a) the credit service charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-2-210).

(4) For the purposes of this section, the term of a sale agreement

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commences with the date the credit is granted or, if goods are delivered or services performed ~~ten (10) days or~~ more **than thirty (30) days** after that date, with the date of commencement of delivery or performance **except as set forth below:**

(a) Delays attributable to the customer. Where the customer requests delivery after the thirty (30) day period or where delivery occurs after the thirty (30) day period for a reason attributable to the customer (including but not limited to failure to close on a residence or failure to obtain lease approval), the term of the sale agreement shall commence with the date credit is granted.

(b) Partial Deliveries. Where any portion of the order has been delivered within the thirty (30) day period, the term of the sale agreement shall commence with the date credit is granted.

Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the seller may reasonably establish, he may make the same credit service charge on all amounts financed within a specified range. A credit service charge so made does not violate subsection (2) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of credit service charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) Notwithstanding subsection (2), the seller may contract for and receive a minimum credit service charge of not more than thirty dollars ($30).

(7) The amounts of three hundred dollars ($300) and one thousand dollars ($1,000) in subsection (2) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106).

(8) The amount of thirty dollars ($30) in subsection (6) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for

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October 1992.

SECTION 5. IC 24-4.5-2-202, AS AMENDED BY P.L.45-1995, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 202. (1) In addition to the credit service charge permitted by IC 24-4.5-2-201 through IC 24-4.5-2-210, a seller may contract for and receive any of the following additional charges in connection with a consumer credit sale:

(a) Official fees and taxes.

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

(c) **Notwithstanding provisions of the Federal Consumer Credit Protection Act concerning disclosure,** charges for other benefits, including insurance, conferred on the buyer, if the benefits are of value to him and if the charges are reasonable in relation to the benefits, are of a type which is not for credit and are excluded as permissible additional charges from the credit service charge. With respect to any additional charge not specifically provided for in this section, to be a permitted charge under this subsection the seller must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit to the buyer. Supporting documents may be required by the department. The department shall determine whether the charge would be of benefit to the buyer and is reasonable in relation to the benefits.

(d) A charge not to exceed twenty dollars ($20) for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the debtor.

(e) Annual or periodic participation fees assessed in connection with a revolving charge account.

(2) An additional charge may be made for insurance written in connection with the sale, other than insurance protecting the seller against the buyer's default or other credit loss:

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

(b) with respect to consumer credit insurance providing life, accident, unemployment or other loss of income, or health coverage, if the insurance coverage is not a factor in the approval

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by the seller of the extension of credit and is clearly disclosed in writing to the buyer, and if, in order to obtain the insurance in connection with the extension of credit, the buyer gives specific, affirmative, written indication of the desire to do so after written disclosure of the cost.

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

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

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

(c) notary and credit report fees;

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

(e) appraisal fees.

SECTION 6. IC 24-4.5-3-202, AS AMENDED BY P.L.45-1995, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 202. (1) In addition to the loan finance charge permitted by IC 24-4.5-3-201 through IC 24-4.5-3-210, a lender may contract for and receive the following additional charges in connection with a consumer loan:

(a) Official fees and taxes.

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

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

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

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

(ii) Fees for preparing deeds, mortgages, and reconveyance, settlement, and similar documents.

(iii) Notary and credit report fees.

(iv) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the loan finance charge.

(v) Appraisal fees.

(e) **Notwithstanding provisions of the Federal Consumer**

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Credit Protection Act concerning disclosure, charges for other benefits, including insurance, conferred on the debtor, if the benefits are of value and if the charges are reasonable in relation to the benefits, are of a type which is not for credit and are excluded as permissible additional charges from the loan finance charge. With respect to any other additional charge not specifically provided for in this section to be a permitted charge under this subsection, the creditor must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit to the debtor. Supporting documents may be required by the department. The department shall determine whether the charge would be of benefit to the debtor and is reasonable in relation to the benefits.

(f) A charge not to exceed twenty dollars ($20) for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the debtor.

(g) With respect to a revolving loan account, a fee not to exceed twenty dollars ($20) in each billing cycle during which the balance due under the revolving loan account exceeds by more than one hundred dollars ($100) the maximum credit limit for the account established by the lender.

(h) With respect to a revolving loan account, a transaction fee that may not exceed the lesser of the following:

(i) Two percent (2%) of the amount of the transaction.

(ii) Ten dollars ($10).

The additional charges provided for in paragraphs (f), (g), and (h) are not subject to refund or rebate.

(2) An additional charge may be made for insurance in connection with the loan, other than insurance protecting the lender against the debtor's default or other credit loss:

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

(b) with respect to consumer credit insurance providing life, accident, unemployment or other loss of income, or health coverage, if the insurance coverage is not a factor in the approval by the lender of the extension of credit and this fact is clearly

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disclosed in writing to the debtor, and if, in order to obtain the insurance in connection with the extension of credit, the debtor gives specific affirmative written indication of the desire to do so after written disclosure of the cost of the insurance.

SECTION 7. IC 24-4.5-3-503, AS AMENDED BY P.L.122-1994, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 503. License to Make Consumer Loans) (1) The department shall receive and act on all applications for licenses to make consumer loans. Applications must be as prescribed by the director of the department of financial institutions.

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

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

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

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

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

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

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

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

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

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that:

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

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

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

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

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

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

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

(7) The department may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the department in refusing to grant a license.

(8) If the director:

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

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

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

SECTION 9. IC 24-4.5-6-103.5 IS ADDED TO THE INDIANA

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CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 103.5. Director - "Director" means the director of the department of financial institutions.**

SECTION 10. IC 28-1-29-4, AS AMENDED BY P.L.196-1996, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. (a) The department may revoke or suspend any license issued under this chapter for the following causes:

(1) Conviction of a felony or of a misdemeanor involving moral turpitude.

(2) Violation of any of the provisions of this chapter.

(3) Fraud or deceit in procuring the issuance of a license or renewal under this chapter.

(4) Indulging in a continuous course of unfair conduct.

(5) Insolvency, bankruptcy, receivership, or assignment for the benefit of creditors by a licensee.

(6) Licensee lending money to any debtor that has subscribed to the licensee's services.

(7) Except as provided in subsection (c), offering to pay or give any cash, fee, gift, bonus, premiums, reward, or other compensation to any person for referring any prospective customer to the licensee.

(8) Except as provided in subsection (d), receiving any cash, fee, gift, bonus, premium, reward, or other compensation from any person other than the contract debtor in connection with his activities as a licensee.

(9) Licensee requiring a debtor to purchase or agree to purchase a policy of insurance from which licensee receives a fee or other remuneration.

(10) If the licensee violates any reasonable rule or regulation made by the department under and within the authority of this chapter.

(11) Misleading advertising or representing that the licensee can provide protection from legal recourse or suits of creditors.

(b) Except as provided in section 4.1 of this chapter, the denial, revocation, or suspension shall be made only after specific charges have been filed in writing, under oath, with the department or by the department, whereupon a hearing shall be had as to the reasons for such denial, revocation, or suspension and a certified copy of the charges shall be served on the licensee or the applicant for license not less than ten (10) days prior to the hearing.

(c) Notwithstanding subsection (a)(7), a licensee may reduce the fees of a contract debtor who is a client of the licensee if the contract

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debtor refers a prospective customer to the licensee.

(d) Notwithstanding subsection (a)(8), a licensee may receive a fair share creditor fee, based on disbursements made to the creditor, from a debtor's creditors. If any creditor refuses to pay the fair share creditor fee, the creditor must still be included in the contract debtor's payment plan.

(e) If the director of the department:

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

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

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

SECTION 11. IC 28-1-29-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. Every person doing business as a budget service company shall make application to the department for a license to engage in such business. Such application shall be in the form prescribed by the department and shall contain the following information together with such further information as the department may require:

(1) ~~The name under which such business is to be conducted.~~ **The department may not issue a license unless the department finds that the financial responsibility, character, and fitness of:**

(A) the applicant; and

(B) the:

(i) members of the applicant, if the applicant is a partnership or association; or

(ii) officers and directors of the applicant, if the 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~~

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~~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 12. 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 13. 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 hearing necessary.

SECTION 14. IC 28-7-5-13, AS AMENDED BY P.L.176-1996, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 13. **(a)** The department shall, upon ten (10) days notice to the licensee stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, revoke, by written order, any license issued under this chapter if it shall find that:

~~(a)~~ **(1)** the licensee has failed to comply with any ruling or requirements of the department;

~~(b)~~ **(2)** the licensee has violated any provision of this chapter or any rule made by the department; or

~~(c)~~ **(3)** any fact or condition exists which, if it had existed at the

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time of the original application for such license, would have warranted the department in refusing originally to issue such license.

(b) If the director of the department:

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

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

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

SECTION 15. IC 28-7-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 16. (a) The licensee shall keep and use in his business such books, accounts, and records as will enable the department to determine whether the licensee is complying with this chapter and with the rules made by the department under this chapter. Every licensee shall preserve such books, accounts, and records, including cards used in the card system for at least two (2) years after making the final entry on any loan recorded therein. The books and records of the licensee shall be kept so that the pawnbroking business transacted in Indiana may be readily separated and distinguished from the business of the licensee transacted elsewhere and from any other business in which the licensee may be engaged.

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

(1) Date of bill of sale.

(2) Amount of consideration.

(3) Name of pawnbroker.

(4) Description of each article sold.

(5) Signature of seller.

(6) Address of seller.

(7) Date of birth of the seller.

(c) If a pawnbroker, in the conduct of the business, purchases an article from a seller on the condition of selling the property back at a stipulated price, the transaction shall be evidenced by a bill of sale properly signed by the seller. All such bills of sale must be in duplicate and recite the information in subsection (b) and must also contain the following information:

(1) Date of resale.

(2) Amount of resale.

(d) The original copy of the bill of sale shall be retained by the

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pawnbroker. The second copy shall be delivered to the seller by the pawnbroker at the time of sale. The heading on all bill of sale forms must be in boldface type.

(e) Each licensee shall maintain a record of control indicating the number of accounts and dollar value of all outstanding pawnbroking receivables. Each licensee shall maintain a separate record of transactions subject to subsection (c).

SECTION 16. IC 28-7-5-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 19. (a) Every pawnbroker shall keep a record in ink that must include the following:

(1) The name, **date of birth,** and address of the pledger, or where the pledge is made by a person acting as agent for a disclosed principal, the names, **dates of birth,** and addresses of principal and agent.

(2) The date of the transaction.

(3) The amount of the loan.

(4) The article or articles pledged.

(5) The serial number of the loan.

(6) The date on which each loan was paid in full, renewed, or unredeemed.

(7) An itemization of principal, interest, and additional fees collected.

(8) An itemization of fees authorized under IC 28-7-5-25.

(9) The total of all charges collected.

(b) Other methods of recording data, such as electronic or computerized methods, may be used provided written printouts or hard copies of the required data are readily available. The record keeping system of a licensee shall be made available in Indiana for examination. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available.

SECTION 17. IC 28-7-5-21, AS AMENDED BY P.L.45-1995, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 21. (a) The pawnbroker shall, at the time of making a loan, deliver to the pledger or the pledger's agent a memorandum or ticket on which shall be legibly written or printed:

(1) the name of the pledger;

(2) the name of the pawnbroker and the place where the pledge is made;

(3) the article or articles pledged;

(4) the amount of the loan;

(5) the date of the transaction;

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(6) the serial number of the loan;

(7) the sum of the interest as provided in section 28 of this chapter and the charge as provided in section 28.5 of this chapter stated as an annual percentage rate computed in accordance with regulations issued by the Federal Reserve Board under the Federal Consumer Credit Protection Act (as defined in IC 24-4.5-1-302);

(8) the amount of interest;

(9) the amount of charge and principal due at maturity; ~~and~~

(10) a copy of sections 28, 28.5, and 30 of this chapter; **and**

(11) the date of birth of the pledger.

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

SECTION 18. IC 28-7-5-21.5, AS ADDED BY P.L.172-1997, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 21.5. A pawnbroker is required to disclose to a debtor in a pawn transaction the information required by the Federal ~~Trade Commission~~ **Reserve Board under the Federal Consumer Credit Protection** Act, 15 U.S.C. ~~41~~ **1601** et seq., and its implementing regulations.

SECTION 19. IC 28-7-5-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 30. A pawnbroker may sell an article pawned after the expiration of ninety (90) days from the maturity of the loan, provided that not less than ten (10) days before making the sale the pawnbroker gives notice to the pledger by mail addressed to the post office address of the pledger as shown on the pawnbroker's records notifying the person that unless the person redeems the article within ten (10) days from the date of the mailing, the article becomes the property of the pawnbroker and subject to sale. The pawnbroker becomes owner of all unredeemed pledges held for one hundred eighty (180) days after the maturity of the loan and no notice need be mailed to the pledger. **A notice of pending sale mailed to a pledger under this section must be separate from other materials mailed.**

SECTION 20. IC 28-8-4-48 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 48. **(a)** After notice and hearing, the director may suspend or revoke a licensee's license if the director finds one (1) of the following conditions:

(1) A fact or condition exists that, if it had existed at the time the

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licensee applied for a license, would have been grounds for denying the application.

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

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

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

(5) The licensee is insolvent.

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

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

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

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

(b) If the director of the department:

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

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

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

SECTION 21. IC 28-8-5-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 2.5. As used in this chapter, "check cashing transaction" means a transaction under this chapter in which there is no written or implied agreement to hold the check for more than three (3) business days.**

SECTION 22. IC 28-8-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 12. (a) The department shall ~~conduct an investigation of each applicant to~~ determine the financial responsibility, business experience, character, and general fitness of the applicant **before issuing the license**.

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

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

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

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

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

SECTION 23. IC 28-8-5-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 17. Except as otherwise provided in this chapter, a licensee may not charge check cashing fees in excess of the greater of five dollars ($5) or ten percent (10%) of the face amount of a check. **Except as provided in this chapter, a licensee or the licensee's agent may not accept multiple checks from a:**

(1) person;

(2) person's spouse; or

(3) person's agent;

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

SECTION 24. IC 28-8-5-18.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 18.5. The check in a check cashing transaction, to the best of the licensee's knowledge, must be drawn on a valid, open, and active account and must be deposited by the licensee into a financial institution with the intent to draw the funds of that check.**

SECTION 25. IC 28-8-5-22, AS AMENDED BY P.L.176-1996, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 22. **(a)** The department may suspend or revoke a license issued under this chapter pursuant to the provisions in IC 4-21.5 for:

(1) violating this chapter; or

(2) any reason that would be sufficient to deny an initial application for a license.

(b) If the director of the department:

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

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

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

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