



Reprinted
March 30, 1999

ENGROSSED SENATE BILL No. 545

DIGEST OF SB 545 (Updated March 29, 1999 4:17 pm - DI 100)

Citations Affected: IC 24-4.5; noncode.

Synopsis: Consumer loan origination fees. Applies the loan origination fee of not more than two percent of the loan amount or line of credit to revolving and nonrevolving consumer loan accounts. (Current law applies the loan origination fee to a consumer loan that is primarily secured by an interest in land.) Provides that unsecured consumer loans are limited to an origination fee of 2% of the part of the loan that does not exceed \$2000. Allows a creditor that refinances a consumer loan during the first three months of the loan to charge an origination fee on the refinancing only on any new money advanced. Establishes a procedure that specifies when a creditor shall credit a payment to a
(Continued next page)

Effective: July 1, 1999.

Server, Lutz L
(HOUSE SPONSOR — GRUBB)

January 21, 1999, read first time and referred to Committee on Insurance and Financial Institutions.

February 11, 1999, reported favorably — Do Pass.

February 15, 1999, read second time, ordered engrossed. Engrossed.

February 18, 1999, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 3, 1999, read first time and referred to Committee on Financial Institutions.

March 22, 1999, amended, reported — Do Pass.

March 25, 1999, read second time, amended, call withdrawn.

March 29, 1999, reread second time, amended, ordered engrossed.

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consumer's account. Requires specific disclosures by a lender who solicits loans using a negotiable check, facsimile, or other negotiable instrument.

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March 30, 1999

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

ENGROSSED SENATE BILL No. 545

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

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

- 1 SECTION 1. IC 24-4.5-3-201 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 201. Loan Finance
3 Charge for Consumer Loans other than Supervised Loans— (1) Except
4 as provided in subsections (6) and (8), with respect to a consumer loan
5 other than a supervised loan (IC 24-4.5-3-501), a lender may contract
6 for a loan finance charge, calculated according to the actuarial method,
7 not exceeding twenty-one percent (21%) per year on the unpaid
8 balances of the principal.
9 (2) This section does not limit or restrict the manner of contracting
10 for the loan finance charge, whether by way of add-on, discount, or
11 otherwise, so long as the rate of the loan finance charge does not
12 exceed that permitted by this section. If the loan is precomputed:
13 (a) the loan finance charge may be calculated on the assumption
14 that all scheduled payments will be made when due; and
15 (b) the effect of prepayment is governed by the provisions on
16 rebate upon prepayment (IC 24-4.5-3-210).

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1 (3) For the purposes of this section, the term of a loan commences
2 with the date the loan is made. Differences in the lengths of months are
3 disregarded and a day may be counted as one-thirtieth (1/30) of a
4 month. Subject to classifications and differentiations the lender may
5 reasonably establish, a part of a month in excess of fifteen (15) days
6 may be treated as a full month if periods of fifteen (15) days or less are
7 disregarded and if that procedure is not consistently used to obtain a
8 greater yield than would otherwise be permitted. For purposes of
9 computing average daily balances, the creditor may elect to treat all
10 months as consisting of thirty (30) days.

11 (4) With respect to a consumer loan made pursuant to a revolving
12 loan account:

13 (a) the loan finance charge shall be deemed not to exceed the
14 maximum annual percentage rate if the loan finance charge
15 contracted for and received does not exceed a charge in each
16 monthly billing cycle which is one and three-fourths percent
17 (1 3/4%) of an amount no greater than:

- 18 (i) the average daily balance of the debt;
19 (ii) the unpaid balance of the debt on the same day of the
20 billing cycle; or
21 (iii) subject to subsection (5), the median amount within a
22 specified range within which the average daily balance or the
23 unpaid balance of the debt, on the same day of the billing
24 cycle, is included; for the purposes of this subparagraph and
25 subparagraph (ii), a variation of not more than four (4) days
26 from month to month is "the same day of the billing cycle";

27 (b) if the billing cycle is not monthly, the loan finance charge
28 shall be deemed not to exceed the maximum annual percentage
29 rate if the loan finance charge contracted for and received does
30 not exceed a percentage which bears the same relation to
31 one-twelfth (1/12) the maximum annual percentage rate as the
32 number of days in the billing cycle bears to thirty (30); and

33 (c) notwithstanding subsection (1), if there is an unpaid balance
34 on the date as of which the loan finance charge is applied, the
35 lender may contract for and receive a charge not exceeding fifty
36 cents (\$0.50) if the billing cycle is monthly or longer, or the pro
37 rata part of fifty cents (\$0.50) which bears the same relation to
38 fifty cents (\$0.50) as the number of days in the billing cycle bears
39 to thirty (30) if the billing cycle is shorter than monthly, but no
40 charge may be made pursuant to this paragraph if the lender has
41 made an annual charge for the same period as permitted by the
42 provisions on additional charges (paragraph (c) of subsection (1)

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1 of IC 24-4.5-3-202).

2 (5) Subject to classifications and differentiations, the lender may
3 reasonably establish and make the same loan finance charge on all
4 amounts financed within a specified range. A loan finance charge does
5 not violate subsection (1) if:

6 (a) when applied to the median amount within each range, it does
7 not exceed the maximum permitted by subsection (1); and

8 (b) when applied to the lowest amount within each range, it does
9 not produce a rate of loan finance charge exceeding the rate
10 calculated according to paragraph (a) by more than eight percent
11 (8%) of the rate calculated according to paragraph (a).

12 (6) With respect to a consumer loan not made pursuant to a
13 revolving loan account, the lender may contract for and receive a
14 minimum loan finance charge of not more than thirty dollars (\$30).

15 (7) The amount of thirty dollars (\$30) in subsection (6) is subject to
16 change under the provisions on adjustment of dollar amounts
17 (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the
18 Reference Base Index to be used under this subsection is the Index for
19 October 1992.

20 (8) In addition to the loan finance charge provided for in this
21 section, a lender may contract for the following:

22 (a) With respect to a consumer loan ~~that is primarily secured by~~
23 ~~an interest in land and~~ that is not made under a revolving loan
24 account, a loan origination fee of not more than two percent (2%)
25 of the loan amount.

26 (b) With respect to a consumer loan ~~that is primarily secured by~~
27 ~~an interest in land and~~ that is made under a revolving loan
28 account, a loan origination fee of not more than two percent (2%)
29 of the line of credit that was contracted for.

30 (9) The charges provided for in subsection (8):

31 (a) are not subject to refund or rebate; ~~and~~

32 (b) are not permitted if a lender makes a settlement charge under
33 IC 24-4.5-3-202(d)(ii); ~~and~~

34 (c) **are limited to two percent (2%) of the part of the loan that**
35 **does not exceed two thousand dollars (\$2,000), if the loan is**
36 **not primarily secured by an interest in land.**

37 **Notwithstanding subdivision (a), if a lender retains any part of a**
38 **loan origination fee charged on a loan that is paid in full by a new**
39 **loan from the same lender within three (3) months after the date of**
40 **the prior loan, the lender may charge a loan origination fee only on**
41 **that part of the new loan not used to pay the amount due on the**
42 **prior loan, or in the case of a revolving loan, the lender may charge**



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1 **a loan origination fee only on the difference between the amount of**
 2 **the existing credit line and the increased credit line.** This subsection
 3 does not prohibit a lender from contracting for and receiving a fee for
 4 preparing deeds, mortgages, reconveyance, and similar documents
 5 under IC 24-4.5-3-202(d)(ii), in addition to the charges provided for in
 6 subsection (8).

7 SECTION 2. IC 24-4.5-3-408 IS ADDED TO THE INDIANA
 8 CODE AS A NEW SECTION TO READ AS FOLLOWS
 9 [EFFECTIVE JULY 1, 1999]: **Sec. 408. (1) This section also applies**
 10 **to revolving loan accounts.**

11 (2) Except as provided in subsection (3) a creditor shall credit
 12 a payment to a consumer's account as of the date of receipt, except
 13 when a delay in crediting does not result in a finance charge or
 14 other charge, including a late charge. A delay in posting does not
 15 violate this section so long as the payment is credited as of the date
 16 of receipt.

17 (3) If a creditor specifies requirements for the consumer to
 18 follow in making payments of the contract, payment coupon book,
 19 payment coupon or statement, or periodic statement, but accepts
 20 a payment that does not conform to the requirements, the creditor
 21 shall credit the payment within two (2) days of receipt of the
 22 payment.

23 (4) If a creditor fails to credit a payment as required by this
 24 section in time to avoid the imposition of a finance or other charge,
 25 including a delinquency charge, the creditor shall adjust the
 26 consumer's account so that the charges imposed are credited to the
 27 consumer's account during the next payment period.

28 SECTION 3. IC 24-4.5-3-606 IS ADDED TO THE INDIANA
 29 CODE AS A NEW SECTION TO READ AS FOLLOWS
 30 [EFFECTIVE JULY 1, 1999]: **Sec. 606. (1) In addition to any**
 31 **disclosures otherwise provided by law, a lender soliciting loans**
 32 **using a negotiable check, facsimile, or other negotiable instrument**
 33 **that may be used by a consumer to activate a new loan shall**
 34 **disclose the following:**

35 "This is a solicitation for a loan. Read the enclosed disclosures
 36 before signing this agreement."

37 This notice shall be printed in at least ten point type and shall
 38 appear conspicuously on the offer.

39 (2) If a negotiable check, a facsimile, or another instrument is
 40 stolen or incorrectly received by someone other than the intended
 41 payee and the instrument is fraudulently cashed, the consumer who
 42 was the intended payee is not liable for the loan obligation.



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1 SECTION 4. [EFFECTIVE JULY 1, 1999] **IC 24-4.5-3-201, as**
2 **amended by this act, does not apply to consumer loans in existence**
3 **before July 1, 1999.**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 545, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 545 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 9, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred Senate Bill 545, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 30, strike "and".

Page 3, line 32, after "24-4.5-3-202(d)(ii)" delete "." and insert "; and".

Page 3, line 33 before "This", begin a new line block indented and insert:

"(c) are limited to two percent (2%) of the part of the loan that does not exceed two thousand dollars (\$2,000), if the loan is not primarily secured by an interest in land.

Notwithstanding subdivision (a), if a lender retains any part of a loan origination fee charged on a loan that is paid in full by a new loan from the same lender within three (3) months after the date of the prior loan, the lender may charge a loan origination fee only on that part of the new loan not used to pay the amount due on the prior loan, or in the case of a revolving loan, the lender may charge a loan origination fee only on the difference between the amount of the existing credit line and the increased credit line."

and when so amended that said bill do pass.

(Reference is to SB 545 as printed February 12, 1999.)

BODIKER, Chair

Committee Vote: yeas 11, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 545 be amended to read as follows:

Page 4, between lines 6 and 7, begin a new paragraph and insert:

"SECTION 2. IC 24-4.5-3-606 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 606. (1) In addition to any disclosures otherwise provided by law, a lender soliciting loans using a negotiable check, facsimile, or other negotiable instrument that may be used by a consumer to activate a new loan shall disclose the following:**

"This is a solicitation for a loan. Read the enclosed disclosures before signing this agreement."

This notice shall be printed in at least ten point type and shall appear conspicuously on the offer.

(2) If a negotiable check, a facsimile, or another instrument is stolen or incorrectly received by someone other than the intended payee and the instrument is fraudulently cashed, the consumer who was the intended payee is not liable for the loan obligation."

Renumber all SECTIONS consecutively.

(Reference is to SB 545 as printed March 23, 1999.)

GRUBB

 HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 545 be amended to read as follows:

Page 4, after line 6, begin a new paragraph and insert:

"SECTION 2. IC 24-4.5-3-408 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 408. (1) This section also applies to revolving loan accounts.**

(2) Except as provided in subsection (3) a creditor shall credit a payment to a consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance charge or other charge, including a late charge. A delay in posting does not violate this section so long as the payment is credited as of the date of receipt.

(3) If a creditor specifies requirements for the consumer to follow in making payments of the contract, payment coupon book,

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payment coupon or statement, or periodic statement, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within two (2) days of receipt of the payment.

(4) If a creditor fails to credit a payment as required by this section in time to avoid the imposition of a finance or other charge, including a delinquency charge, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next payment period."

Renumber all SECTIONS consecutively.

(Reference is to ESB 545 as printed March 23, 1999 and as amended on motion of Representative Grubb adopted March 25, 1999.)

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