



February 19, 1999

# HOUSE BILL No. 1715

DIGEST OF HB 1715 (Updated February 18, 1999 1:40 pm - DI 94)

**Citations Affected:** IC 24-4.5; IC 24-7; IC 28-1; IC 28-7; IC 28-8.

**Synopsis:** Consumer credit. Specifies that the maximum rate of interest may not be exceeded upon prepayment for the period a credit sale or loan was in effect for a simple interest transaction that includes prepaid credit service charges or finance charges. Requires a creditor to provide accurate payoff information to the debtor. Specifies that a person may not regularly engage in the business of making consumer loans unless the person is a supervised financial institution or is licensed by the department of financial institutions. Specifies that the three month window to operate without an approved license to make consumer loans applies only to lenders taking assignment of mortgages. Adds a  
(Continued next page)

**Effective:** July 1, 1999.

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**Bodiker, Burton, Crawford, Porter**

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January 26, 1999, read first time and referred to Committee on Financial Institutions.  
February 18, 1999, amended, reported — Do Pass.

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HB 1715—LS 7778/DI 94+



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Digest Continued

small loan chapter to the Uniform Consumer Credit Code. Limits the accrual of additional pawnbroker fees. Makes certain other changes. Makes conforming amendments.

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**HB 1715—LS 7778/DI 94+**



February 19, 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.

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## HOUSE BILL No. 1715

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 24-4.5-1-102 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 102. Purposes; Rules  
3 of Construction ) (1) This article shall be liberally construed and  
4 applied to promote its underlying purposes and policies.  
5 (2) The underlying purposes and policies of this article are:  
6 (a) to simplify, clarify, and modernize the law governing retail  
7 installment sales, consumer credit, small loans, and usury;  
8 (b) to provide rate ceilings to assure an adequate supply of credit  
9 to consumers;  
10 (c) to further consumer understanding of the terms of credit  
11 transactions and to foster competition among suppliers of  
12 consumer credit so that consumers may obtain credit at  
13 reasonable cost;  
14 (d) to protect consumer buyers, lessees, and borrowers against  
15 unfair practices by some suppliers of consumer credit, having due

HB 1715—LS 7778/DI 94+



- 1 regard for the interests of legitimate and scrupulous creditors;
- 2 (e) to permit and encourage the development of fair and
- 3 economically sound consumer credit practices;
- 4 (f) to conform the regulation of consumer credit transactions to
- 5 the policies of the Federal Consumer Credit Protection Act; and
- 6 (g) to make uniform the law including administrative rules among
- 7 the various jurisdictions.

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

11 (4) A reference to a federal law in IC 24-4.5 is a reference to the law  
 12 in effect December 31, ~~1997~~ **1998**.

13 SECTION 2. IC 24-4.5-1-303 IS AMENDED TO READ AS  
 14 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 303. Index of  
 15 Definitions in Article ) Definitions in this article and the sections in  
 16 which they appear are:

- 17 "Agreement" ..... Section 1-301 (1)
- 18 "Agricultural purpose" ..... Section 1-301 (2)
- 19 "Amount financed" ..... Section 2-111
- 20 "Average daily balance" ..... Section 1-301 (3)
- 21 "Cash price" ..... Section 2-110
- 22 **"Check" ..... Section 7-106**
- 23 "Civil court" ..... Section 6-117
- 24 "Closing costs" ..... Section 1-301 (4)
- 25 "Conspicuous" ..... Section 1-301 (5)
- 26 "Consumer credit" ..... Section 1-301 (6)
- 27 "Consumer credit insurance" ..... Section 4-103
- 28 "Consumer credit sale" ..... Section 2-104
- 29 "Consumer lease" ..... Section 2-106
- 30 "Consumer loan" ..... Section 3-104
- 31 "Consumer related loan" ..... Section 3-602
- 32 "Consumer related sale" ..... Section 2-602
- 33 "Credit" ..... Section 1-301 (7)
- 34 "Creditor" ..... Section 1-301 (8)
- 35 "Credit insurance act" ..... Section 4-102 (3)
- 36 "Credit service charge" ..... Section 2-109
- 37 **"Deferred deposit transaction" ..... Section 7-105**
- 38 "Department" ..... Section 6-103
- 39 "Director" ..... Section 6-103.5
- 40 "Earnings" ..... Section 1-301 (9)
- 41 "Federal Consumer Credit
- 42 Protection Act" ..... Section 1-302

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1 "Goods" . . . . . Section 2-105 (1)  
 2 "Home solicitation sale" . . . . . Section 2-501  
 3 "Lender" . . . . . Section 3-107 (1)  
 4 "Lender credit card or similar  
 5 arrangement" . . . . . Section 1-301 (10)  
 6 "Loan" . . . . . Section 3-106  
 7 "Loan finance charge" . . . . . Section 3-109  
 8 "Loan primarily secured by an  
 9 interest in land" . . . . . Section 3-105  
 10 "Merchandise certificate" . . . . . Section 2-105 (2)  
 11 "Mortgage transaction" . . . . . Section 1-301 (17)  
 12 "Official fees" . . . . . Section 1-301 (11)  
 13 "Organization" . . . . . Section 1-301 (12)  
 14 "Payable in installments" . . . . . Section 1-301 (13)  
 15 "Person" . . . . . Section 1-301 (14)  
 16 "Person related to" . . . . . Section 1-301 (15)  
 17 "Precomputed" (loan) . . . . . Section 3-107 (2)  
 18 "Precomputed" (sale) . . . . . Section 2-105 (7)  
 19 "Presumed" or "Presumption" . . . . . Section 1-301 (16)  
 20 "Principal" . . . . . Section 3-107 (3)  
 21 "Regularly engaged" . . . . . Section 1-301 (18)  
 22 **"Renewal" . . . . . Section 7-107**  
 23 "Revolving charge account" . . . . . Section 2-108  
 24 "Revolving loan account" . . . . . Section 3-108  
 25 "Sale of goods" . . . . . Section 2-105 (4)  
 26 "Sale of an interest in land" . . . . . Section 2-105 (6)  
 27 "Sale of services" . . . . . Section 2-105 (5)  
 28 "Seller" . . . . . Section 2-107  
 29 "Seller credit card" . . . . . Section 1-301 (19)  
 30 "Services" . . . . . Section 2-105 (3)  
 31 **"Small loan" . . . . . Section 7-104**  
 32 "Supervised financial  
 33 organization" . . . . . Section 1-301 (20)  
 34 "Supervised lender" . . . . . Section 3-501 (2)  
 35 "Supervised loan" . . . . . Section 3-501 (1)

36 SECTION 3. IC 24-4.5-2-209 IS AMENDED TO READ AS  
 37 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 209. Right to Prepay -  
 38 (1) Subject to the provisions on rebate upon prepayment  
 39 (IC 24-4.5-2-210), the buyer may prepay in full the unpaid balance of  
 40 a consumer credit sale, refinancing, or consolidation at any time  
 41 without penalty.  
 42 (2) At the time of prepayment of a credit sale not subject to the

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1 provisions of rebate upon prepayment (IC 24-4.5-2-210), the total  
 2 credit service charge, including the prepaid credit service charge,  
 3 may not exceed the maximum charge allowed under this chapter  
 4 for the period the credit sale was in effect.

5 (3) The creditor shall provide an accurate payoff of the  
 6 consumer credit sale to the debtor within ten (10) calendar days  
 7 after the creditor receives the debtor's written request for the  
 8 accurate consumer credit sale payoff amount. A creditor who fails  
 9 to provide the accurate consumer credit sale payoff amount is  
 10 liable for:

11 (A) one hundred dollars (\$100) if an accurate consumer  
 12 credit sale payoff amount is not provided by the creditor  
 13 within ten (10) calendar days after the creditor receives the  
 14 debtor's first written request; and

15 (B) the greater of:

16 (i) one hundred dollars (\$100); or

17 (ii) the credit service charge that accrues on the sale  
 18 from the date the creditor receives the first written  
 19 request until the date on which the accurate consumer  
 20 credit sale payoff amount is provided;

21 if an accurate consumer credit sale payoff amount is not  
 22 provided by the creditor within ten (10) calendar days  
 23 after the creditor receives the debtor's second written  
 24 request, and the creditor failed to comply with clause (A)  
 25 of this subdivision.

26 SECTION 4. IC 24-4.5-3-102 IS AMENDED TO READ AS  
 27 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 102. This chapter  
 28 applies to consumer loans, including regulated and supervised loans.  
 29 In addition, IC 24-4.5-3-601 through IC 24-4.5-3-605, and IC 24-4.5-7  
 30 apply to consumer related loans.

31 SECTION 5. IC 24-4.5-3-209 IS AMENDED TO READ AS  
 32 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 209. Right to Prepay -

33 (1) Subject to the provisions on rebate upon prepayment  
 34 (IC 24-4.5-3-210), the debtor may prepay in full the unpaid balance of  
 35 a consumer loan, refinancing, or consolidation at any time without  
 36 penalty. With respect to a consumer loan that is primarily secured by  
 37 an interest in land, a lender may contract for a penalty for prepayment  
 38 of the loan in full, not to exceed two percent (2%) of the net unpaid  
 39 balance after deducting all refunds and rebates as of the date of the  
 40 prepayment. However, the penalty may not be imposed:

41 (†) (a) if the loan is refinanced or consolidated with the same  
 42 creditor;



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1           (2) (b) for prepayment by proceeds of any insurance or  
2           acceleration after default; or

3           (3) (c) after three (3) years from the contract date.

4           **(2) At the time of prepayment of a consumer loan not subject to**  
5           **the provisions of rebate upon prepayment (IC 24-4.5-3-210), the**  
6           **total finance charge, including the prepaid finance charge, may not**  
7           **exceed the maximum charge allowed under this chapter for the**  
8           **period the loan was in effect.**

9           **(3) The creditor shall provide an accurate payoff of the**  
10           **consumer loan to the debtor within ten (10) calendar days after the**  
11           **creditor receives the debtor's written request for the accurate**  
12           **consumer loan payoff amount. A creditor who fails to provide the**  
13           **accurate consumer loan payoff amount is liable for:**

14           **(A) one hundred dollars (\$100) if an accurate consumer**  
15           **loan payoff amount is not provided by the creditor within**  
16           **ten (10) calendar days after the creditor receives the**  
17           **debtor's first written request; and**

18           **(B) the greater of:**

19           **(i) one hundred dollars (\$100); or**

20           **(ii) the loan finance charge that accrues on the loan from**  
21           **the date the creditor receives the first written request**  
22           **until the date on which the accurate consumer loan**  
23           **payoff amount is provided;**

24           **if an accurate consumer loan payoff amount is not**  
25           **provided by the creditor within ten (10) calendar days**  
26           **after the creditor receives the debtor's second written**  
27           **request, and the creditor failed to comply with clause (A)**  
28           **of this subdivision.**

29           SECTION 6. IC 24-4.5-3-502 IS AMENDED TO READ AS  
30           FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 502. Authority to Make  
31           Consumer Loans ) Unless a person is a supervised financial  
32           organization or has first obtained a license from the department, the  
33           person shall not **regularly** engage in this state in the business of:

34           (1) (a) making consumer loans; or

35           (2) (b) taking assignments of and undertaking direct collection of  
36           payments from or enforcement of rights against debtors arising  
37           from consumer loans. ~~but the person~~

38           **However, an assignee** may collect and enforce for three (3) months  
39           without a license if the ~~person~~ **assignee** promptly applies for a license  
40           and the ~~person's~~ **assignee's** application has not been denied.

41           SECTION 7. IC 24-4.5-3-503 IS AMENDED TO READ AS  
42           FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 503. License to Make



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1 Consumer Loans ) (1) The department shall receive and act on all  
 2 applications for licenses to make consumer loans. Applications must  
 3 be as prescribed by the director of the department of financial  
 4 institutions.

5 (2) A license shall not be issued unless the department finds that the  
 6 financial responsibility, character, and fitness of the applicant and of  
 7 the members of the applicant (if the applicant is a co-partnership or an  
 8 association) and of the officers and directors of the applicant (if the  
 9 applicant is a corporation) are such as to warrant belief that the  
 10 business will be operated honestly and fairly within the purposes of this  
 11 article. The director is entitled to request evidence of compliance with  
 12 this section **at the time of application or after a license is issued. The**  
 13 **evidence requested includes, but is not limited to, an official report**  
 14 **of criminal activity of the applicant from the state law enforcement**  
 15 **agency of the state in which the applicant resides.**

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

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

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

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

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

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

29 (5) The applicant may deduct the fees required under subsection  
 30 4(a) through 4(c) from the filing fees paid under IC 24-4.5-6-203.

31 **(6) A loan license issued under this section is not assignable or**  
 32 **transferable.**

33 SECTION 8. IC 24-4.5-5-203 IS AMENDED TO READ AS  
 34 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 203. Civil Liability for  
 35 Violation of Disclosure Provisions ) (1) Except as otherwise provided  
 36 in this section, a creditor who, in violation of the provisions on  
 37 disclosure (Part 3) of the Chapter on Credit Sales (Chapter 2), ~~and~~  
 38 the Chapter on Loans (Chapter 3), **and the Chapter on Small Loans**  
 39 **(Chapter 7)**, fails to disclose information to a person entitled to the  
 40 information under this article is liable to that person in an amount equal  
 41 to the sum of:

42 (a) the following:



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- 1 (1) in the case of an individual action, twice the amount of the  
2 credit service or loan finance charge in connection with the  
3 transaction, but the liability pursuant to this subdivision shall be  
4 not less than one hundred dollars (\$100) nor more than one  
5 thousand dollars (\$1,000); or  
6 (2) in the case of a class action, an amount the court allows,  
7 except that as to each member of the class no minimum recovery  
8 is applicable, and the total recovery under this subdivision in any  
9 class action or series of class actions arising out of the same  
10 failure to comply by the same creditor may not be more than the  
11 lesser of:  
12 (i) five hundred thousand dollars (\$500,000); or  
13 (ii) one percent (1%) of the net worth of the creditor; and  
14 (b) in the case of a successful action to enforce the liability under  
15 paragraph (a), the costs of the action together with reasonable attorney's  
16 fees as determined by the court. In determining the amount of the  
17 award in a class action, the court shall consider, among other relevant  
18 factors, the amount of any award granted under the federal Consumer  
19 Credit Protection Act (15 U.S.C. 1601 et seq.), the frequency and  
20 persistence of failures of compliance by the creditor, the resources of  
21 the creditor, the number of persons adversely affected, and the extent  
22 to which the creditor's failure of compliance was intentional.  
23 (2) A creditor has no liability under this section if within sixty (60)  
24 days after discovering an error, and prior to the institution of an action  
25 under this section or the receipt of written notice of the error, the  
26 creditor notifies the person concerned of the error and makes whatever  
27 adjustments in the appropriate account are necessary to assure that the  
28 person will not be required to pay a credit service charge or loan  
29 finance charge in excess of the amount or percentage rate actually  
30 disclosed.  
31 (3) A creditor may not be held liable in any action brought under  
32 this section for a violation of this Article if the creditor shows by a  
33 preponderance of evidence that the violation was not intentional and  
34 resulted from a bona fide error notwithstanding the maintenance of  
35 procedures reasonably adapted to avoid the error.  
36 (4) If there are multiple obligors in a consumer credit transaction or  
37 consumer lease, there may not be more than one (1) recovery of  
38 damages under subdivision (a)(1) for one (1) violation of this article  
39 with respect to that consumer credit transaction or consumer lease.  
40 (5) The multiple failure to disclose to any person any information  
41 required under this article to be disclosed in connection with a single  
42 account under an open end consumer credit plan, a single consumer

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1 credit sale, a consumer loan, a consumer lease, or another extension of  
 2 consumer credit entitles that person to a single recovery under this  
 3 section. However, continued failure to disclose after a recovery has  
 4 been granted gives rise to rights to additional recoveries.

5 (6) Any action which may be brought under this section against the  
 6 original creditor in any credit transaction involving a security interest  
 7 in land may be maintained against any subsequent assignee of the  
 8 original creditor where the assignee, its subsidiaries, or affiliates were  
 9 in a continuing business relationship with the original creditor either at  
 10 the time the credit was extended or at the time of the assignment,  
 11 unless the assignment was involuntary, or the assignee shows by a  
 12 preponderance of evidence that it did not have reasonable grounds to  
 13 believe that the original creditor was engaged in violations of this  
 14 Article, and that it maintained procedures reasonably adapted to  
 15 apprise it of the existence of the violations.

16 (7) No action pursuant to this section may be brought more than one  
 17 (1) year after the date of the occurrence of the violations.

18 (8) In this section, creditor includes a person who in the ordinary  
 19 course of business regularly extends or arranges for the extension of  
 20 credit, or offers to arrange for the extension of credit.

21 SECTION 9. IC 24-4.5-5-204 IS AMENDED TO READ AS  
 22 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 204. Debtor's Right to  
 23 Rescind Certain Transactions ) (1) A violation by a creditor of Section  
 24 125 of the Federal Consumer Credit Protection Act (IC 24-4.5-1-302)  
 25 concerning the debtor's right to rescind a transaction that is a consumer  
 26 credit sale or a consumer loan constitutes a violation of IC 24-4.5. A  
 27 creditor may not accrue interest during the period when a consumer  
 28 loan may be rescinded under Section 125 of the Federal Consumer  
 29 Protection Act (15 U.S.C. 1635).

30 (2) **A creditor must make available for disbursement the**  
 31 **proceeds of a transaction subject to subsection (1) on the first**  
 32 **business day after the expiration of the rescission period under**  
 33 **subsection (1).**

34 SECTION 10. IC 24-4.5-7 IS ADDED TO THE INDIANA CODE  
 35 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 36 JULY 1, 1999]:

37 **Chapter 7. Small Loans**

38 **Sec. 101. Short Title - This chapter shall be known and may be**  
 39 **cited as Uniform Consumer Credit Code - Small Loans.**

40 **Sec. 102. Except as otherwise provided, all provisions of this**  
 41 **article applying to consumer loans apply to small loans, as defined**  
 42 **in this chapter.**



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1           **Sec. 103.** The following definitions apply to this chapter:  
2           "Small loan" ..... Section 7-104  
3           "Deferred deposit transaction" ..... Section 7-105  
4           "Check" ..... Section 7-106  
5           "Renewal" ..... Section 7-107  
6           **Sec. 104.** "Small loan" means a deferred deposit transaction  
7 with a principal loan amount of five hundred dollars (\$500) or less  
8 with a term of less than thirty (30) days.  
9           **Sec. 105.** "Deferred deposit transaction" means, for  
10 consideration, accepting a check and holding the check for a period  
11 of time before deposit or presentment in accordance with an  
12 agreement between the maker and the lender. The agreement may  
13 be expressed or implied.  
14           **Sec. 106.** For purposes of this chapter, "check" has the meaning  
15 set forth in IC 26-1-3.1-104.  
16           **Sec. 107.** "Renewal" refers to a deferred deposit transaction  
17 that takes the place of an existing deferred deposit transaction,  
18 where a check held as security is not deposited into an account of  
19 the lender at a depository institution.  
20           **Sec. 201.** Loan finance charges on a small loan and subsequent  
21 renewals are limited to twenty dollars (\$20) per transaction.  
22           **Sec. 202.** (1) Notwithstanding any other law, only the following  
23 fees may be contracted for and received by the lender on a small  
24 loan or subsequent refinancing:  
25           (a) The parties may contract for a delinquency charge of not  
26 more than five dollars (\$5) on any installment not paid in full  
27 within ten (10) days after its scheduled due date.  
28           (b) A delinquency charge under this section may be collected  
29 only once on an installment, however long it remains in  
30 default. A delinquency charge may be collected any time after  
31 it accrues.  
32           (c) The amount of five dollars (\$5) in subdivision (a) is subject  
33 to change pursuant to the section on adjustment of dollar  
34 amounts (IC 24-4.5-1-106).  
35           (d) If the parties provide by contract for a delinquency charge  
36 that is subject to change, the lender shall disclose that the  
37 amount of the delinquency charge is subject to change as  
38 allowed by IC 24-4.5-1-106.  
39           (2) The agreement may provide for the payment by the debtor  
40 of reasonable attorney's fees after default and referral to an  
41 attorney who is not a salaried employee of the lender. A provision  
42 in violation of this section is unenforceable.

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1 (3) An additional charge may be made not to exceed twenty  
2 dollars (\$20) for each return by a bank or other depository  
3 institution of a dishonored check, negotiable order of withdrawal,  
4 or share draft issued by the debtor.

5 Sec. 301. (1) For purposes of this section, the lender shall  
6 disclose to the debtor to whom credit is extended with respect to a  
7 small loan or subsequent refinancing the information required by  
8 the Federal Consumer Credit Protection Act.

9 (2) In addition to the requirements of subsection (1), the lender  
10 must conspicuously display in bold type a notice to the public both  
11 in the lending area of each business location and in the loan  
12 documents the following statement:

13 "WARNING: The cost of your transaction may be higher  
14 than similar transactions offered by other lending institutions.  
15 The transactions are regulated by the State of Indiana,  
16 Department of Financial Institutions. The transaction may be  
17 refinanced only one time, after which payment in full is  
18 required."

19 Sec. 401. A small loan cannot be made for a term of less than  
20 fourteen (14) days.

21 Sec. 402. A small loan may be secured by only one (1) check per  
22 deferred deposit transaction. The check may not exceed the  
23 amount advanced to or on behalf of the consumer, plus loan  
24 finance charges contracted for.

25 Sec. 403. A small loan may not be secured by personal property  
26 other than a check.

27 Sec. 404. Use of Multiple Agreements - With respect to a small  
28 loan or subsequent refinancing, no lender may permit a person to  
29 become obligated under more than one (1) loan agreement. The  
30 excess amount of loan finance charge provided for in agreements  
31 in violation of this section is an excess charge for purposes of the  
32 provisions on effect of violations on rights of parties  
33 (IC 24-4.5-5-202) and the provisions on civil actions by the  
34 department (IC 24-4.5-6-113).

35 Sec. 405. Conduct of Business Other Than Making Loans - A  
36 licensee may carry on other business at a location where the  
37 licensee makes small loans unless the licensee carries on other  
38 business to evade or violate this article.

39 Sec. 406. No Assignment of Earnings - (1) A lender may not take  
40 an assignment of earnings of the debtor for payment or as security  
41 for payment of a debt arising out of a small loan or otherwise. An  
42 assignment of earnings in violation of this section is unenforceable



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1 by the assignee of the earnings and revocable by the debtor. This  
 2 section does not prohibit an employee from authorizing deductions  
 3 from the employee's earnings if the authorization is revocable and  
 4 is permitted by law.

5 (2) A sale of unpaid earnings made in consideration of the  
 6 payment of money to or for the account of the seller of the earnings  
 7 is considered to be a loan to the seller secured by an assignment of  
 8 earnings.

9 **Sec. 407. Limitation on Default Charges - An agreement with**  
 10 **respect to a small loan may not provide for charges as a result of**  
 11 **default by the debtor other than those authorized by this chapter.**  
 12 **A provision in violation of this section is unenforceable.**

13 **Sec. 408. No lender may permit a debtor to refinance the same**  
 14 **small loan more than one (1) time.**

15 **Sec. 409. (1) A renewal or a refinancing of a small loan requires:**

16 (a) a new contractual agreement;

17 (b) a new check as security; and

18 (c) new disclosures under IC 24-4.5-7-301.

19 (2) **If a customer pays off the small loan in cash or its equivalent,**  
 20 **the check that was held as security must be returned to the**  
 21 **customer.**

22 **Sec. 410. Except when a customer has written a check on a**  
 23 **account that is closed prior to the agreed upon negotiation date for**  
 24 **the check, a civil or criminal penalty does not apply to small loan**  
 25 **transactions under IC 26-2-7, IC 34-24-3, IC 34-4-30 (before its**  
 26 **repeal), or IC 35-43-5. A contractual agreement in a small loan**  
 27 **transaction must include the above language.**

28 SECTION 11. IC 24-7-1-5 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. ~~This article does not~~  
 30 ~~apply to~~ Rental purchase agreements **under this article** involving  
 31 motor vehicles (as defined in IC 9-13-2-105(a)) **are prohibited.**

32 SECTION 12. IC 28-1-29-3 IS AMENDED TO READ AS  
 33 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) No person shall  
 34 operate a budget service company in the state of Indiana without  
 35 having obtained a license from the department. **The director is**  
 36 **entitled to request evidence of compliance with this section at the**  
 37 **time of application or after a license is issued. The evidence**  
 38 **requested includes, but is not limited to, an official report of**  
 39 **criminal activity of the applicant from the state law enforcement**  
 40 **agency of the state in which the applicant resides.** The fee for a  
 41 license or renewal shall be fixed by the department under IC 28-11-3-5  
 42 and shall be nonrefundable. A licensee failing to renew annually shall



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1 be required to pay a fee fixed by the department under IC 28-11-3-5 for  
2 a new application.

3 (b) If a person knowingly acts as a budget service company in  
4 violation of this chapter, any agreement the person has made under this  
5 chapter is void and the debtor under the agreement is not obligated to  
6 pay any fees. If the debtor has paid any amounts to the person, the  
7 debtor, or the department on behalf of the debtor, may recover the  
8 payment from the person that violated this section.

9 (c) **A license issued under this section is not assignable or**  
10 **transferable.**

11 SECTION 13. IC 28-1-29-8 IS AMENDED TO READ AS  
12 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. A licensee:

13 (1) Shall deliver to every contract debtor, at the time the contract  
14 is made, a copy of the contract, showing:

15 (A) the date executed;

16 (B) the ~~maximum~~ rate of charge **the licensee will impose;**

17 (C) ~~the~~ initial set up fee;

18 (D) the cancellation fee; ~~and~~

19 (E) **the total fee to be assessed by the licensee, including the**  
20 **initial set up fee but excluding the cancellation fee;**

21 (F) ~~the~~ amount of debts claimed by the contract debtor to be  
22 due ~~his~~ **the contract debtor's** creditors; ~~and~~

23 (G) **the total debt to be repaid under the contract;**

24 and shall immediately notify all creditors of the licensee's and  
25 **contract** debtor's relationship. The contract shall specify the  
26 schedule of payments from the **contract** debtor under the debt  
27 program **and the total amount to be paid under the payment**  
28 **schedule.**

29 (2) May take no fee unless a debt program, or finance program, or  
30 both agreed upon by the licensee and the contract debtor has been  
31 arranged. All creditors must be notified of the **contract** debtor's  
32 and licensee's relationship. Acceptance of a program payment  
33 constitutes agreement by the creditor.

34 (3) Shall give to the contract debtor a dated receipt for each  
35 payment, at the time of the payment, unless the payment is made  
36 by check, money order, or direct deposit.

37 (4) Shall, upon cancellation by ~~the~~ contract debtor of the contract,  
38 notify immediately in writing all creditors of ~~the~~ contract debtor.

39 (5) Shall maintain in ~~his~~ **the licensee's** business such books,  
40 accounts, and records as will enable the department or the state's  
41 attorney general to determine whether such license is complying  
42 with this chapter. Such books, accounts, and records shall be

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1 preserved for at least three (3) years after making the final entry  
 2 of any contract recorded therein.  
 3 (6) May not, except as provided in subdivision (7), receive a fee  
 4 from the contract debtor for services in excess of fifteen percent  
 5 (15%) of the amount the debtor agrees to pay through the  
 6 licensee, divided into equal monthly payments over the term of  
 7 the contract. The total monthly amount of fees paid by the  
 8 contract debtor to the licensee plus the fair share fees paid by the  
 9 contract debtor's creditors to the licensee shall not exceed twenty  
 10 percent (20%) of the monthly amount the debtor agrees to pay  
 11 through the licensee. The accrual method of accounting shall  
 12 apply to the creditor's fair share fees received by the licensee. The  
 13 program fee may be charged for any one (1) month or part of a  
 14 month. As a portion of the total fees and charges stated in the  
 15 contract, the licensee may require the debtor to pay a maximum  
 16 initial payment of fifty dollars (\$50). The initial payment must be  
 17 deducted from the total contract fees and charges to determine the  
 18 monthly amortizable amount for subsequent fees. Unless  
 19 approved by the department, the licensee may not retain in the  
 20 debtor's trust account, for charges, an amount more than one (1)  
 21 month's fee plus the close-out fee. Any fee charged by the  
 22 licensee to the debtor under this section for services rendered by  
 23 the licensee, other than the amount pursuant to subdivision (7), is  
 24 not considered a debt owed by the debtor to the licensee.  
 25 (7) Upon cancellation by a contract debtor or termination of  
 26 payments by a contract debtor, may not withhold for ~~his~~ **the**  
 27 **licensee's** own benefit, in addition to the amounts specified in  
 28 subdivision (6), more than one hundred dollars (\$100), which may  
 29 be accrued as a close-out fee. The licensee may not charge the  
 30 contract debtor more than one (1) set up fee, or cancellation fee,  
 31 or both unless the contract debtor leaves the services of the  
 32 licensee for more than six (6) months.  
 33 (8) May not accept an account unless a thorough, written budget  
 34 analysis of the debtor indicates that the debtor can reasonably  
 35 meet the payments required in the budget analysis.  
 36 (9) May not enter into a contract with a contract debtor for a  
 37 period longer than twenty-four (24) months.  
 38 SECTION 14. IC 28-7-5-4 IS AMENDED TO READ AS  
 39 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. Application for a  
 40 pawnbroker's license shall be submitted on a form prescribed by the  
 41 department and must include all information required by the  
 42 department. **The director is entitled to request evidence of**

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1 compliance with this section at the time of application or after a  
 2 license is issued. The evidence requested includes, but is not limited  
 3 to, an official report of criminal activity of the applicant from the  
 4 state law enforcement agency of the state in which the applicant  
 5 resides.

6 SECTION 15. IC 28-7-5-28.5 IS AMENDED TO READ AS  
 7 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 28.5. In addition to the  
 8 loan finance charge authorized by section 28 of this chapter, a  
 9 pawnbroker may charge, contract for, and receive a fee not to exceed  
 10 one-fifth (1/5) of the principal amount of the loan per month or any  
 11 fractional part of a month for servicing the pledge that may include  
 12 investigating the title, storing, providing security, appraisal, handling,  
 13 making daily reports to local law enforcement officers, and for other  
 14 expenses and costs associated with servicing the pledge. **The fee for**  
 15 **each month after the second month of the loan transaction is**  
 16 **limited to one-thirtieth (1/30) of the monthly fee for each day the**  
 17 **loan is outstanding.** Such a charge when made and collected is not  
 18 interest and is not a rate under IC 35-45-7-1.

19 SECTION 16. IC 28-8-4-20 IS AMENDED TO READ AS  
 20 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 20. A person may not  
 21 engage in the business of money transmission without a license  
 22 required by this chapter. **Application for a license shall be submitted**  
 23 **on a form prescribed by the department and must include all**  
 24 **information required by the department. The director is entitled**  
 25 **to request evidence of compliance with this section at the time of**  
 26 **application or after a license is issued. The evidence requested**  
 27 **includes, but is not limited to, an official report of criminal activity**  
 28 **of the applicant from the state law enforcement agency of the state**  
 29 **in which the applicant resides.**

30 SECTION 17. IC 28-8-5-12 IS AMENDED TO READ AS  
 31 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12. (a) The department  
 32 shall determine the financial responsibility, business experience,  
 33 character, and general fitness of the applicant before issuing the  
 34 license.

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

37 (c) The director of the department may request evidence of  
 38 compliance with this section by the licensee **at the time of application**  
 39 **or after a license is issued. The evidence requested includes, but is**  
 40 **not limited to, an official report of criminal activity of the applicant**  
 41 **from the state law enforcement agency of the state in which the**  
 42 **applicant resides.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1715, 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 2, delete line 33.

Page 2, delete line 41.

Page 4, line 5, delete "rate" and insert "**charge**".

Page 4, line 8, delete "if requested by" and insert "**to**".

Page 4, line 8, delete "in writing or in" and insert "**within ten (10) calendar days after the creditor receives the debtor's written request for the accurate consumer credit sale payoff amount. A creditor who fails to provide the accurate consumer credit sale payoff amount is liable for:**

(A) one hundred dollars (\$100) if an accurate consumer credit sale payoff amount is not provided by the creditor within ten (10) calendar days after the creditor receives the debtor's first written request; and

(B) the greater of:

(i) one hundred dollars (\$100); or

(ii) the credit service charge that accrues on the sale from the date the creditor receives the first written request until the date on which the accurate consumer credit sale payoff amount is provided;

if an accurate consumer credit sale payoff amount is not provided by the creditor within ten (10) calendar days after the creditor receives the debtor's second written request, and the creditor failed to comply with clause (A) of this subdivision."

Page 4, delete lines 9 through 11.

Page 4, line 13, delete "FOLLOWS:" and insert "FOLLOWS [EFFECTIVE JULY 1, 1999]:".

Page 4, line 35, delete "rate" and insert "**charge**".

Page 4, line 38, delete "if requested by" and insert "**to**".

Page 4, line 38, delete "in writing or in person." and insert "**within ten (10) calendar days after the creditor receives the debtor's written request for the accurate consumer loan payoff amount. A creditor who fails to provide the accurate consumer loan payoff amount is liable for:**

(A) one hundred dollars (\$100) if an accurate consumer loan payoff amount is not provided by the creditor within ten (10) calendar days after the creditor receives the

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debtor's first written request; and

(B) the greater of:

(i) one hundred dollars (\$100); or

(ii) the loan finance charge that accrues on the loan from the date the creditor receives the first written request until the date on which the accurate consumer loan payoff amount is provided;

if an accurate consumer loan payoff amount is not provided by the creditor within ten (10) calendar days after the creditor receives the debtor's second written request, and the creditor failed to comply with clause (A) of this subdivision."

Page 4, delete lines 39 through 41.

Page 6, delete lines 4 through 15.

Page 8, line 13, delete "disburse" and insert "**make available for disbursement**".

Page 8, line 13, delete "consummated" and insert "**transaction subject to subsection (1)**".

Page 8, line 14, delete "transaction".

Page 8, line 15, delete "." and insert "**under subsection (1)**".

Page 13, line 38, delete "A loan in" and insert "**The fee for each month after the second month of the loan transaction is limited to one-thirtieth (1/30) of the monthly fee for each day the loan is outstanding.**".

Page 13, delete lines 39 through 41.

Page 13, line 42, delete "period past original maturity".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1715 as introduced.)

BODIKER, Chair

Committee Vote: yeas 9, nays 5.

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