

# HOUSE BILL No. 1715

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-4.5; IC 24-7-1-5; IC 28-1-29; IC 28-7-5; 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 small loan chapter to the Uniform Consumer Credit Code. Limits

(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.

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Digest Continued

the accrual of additional pawnbroker fees to one-fifth of the principal amount per month on a per day basis for loans over \$150. Makes conforming amendments.

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Introduced

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



- 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 **"Consummation" ..... Section 5-102.2**
- 34 "Credit" ..... Section 1-301 (7)
- 35 "Creditor" ..... Section 1-301 (8)
- 36 "Credit insurance act" ..... Section 4-102 (3)
- 37 "Credit service charge" ..... Section 2-109
- 38 **"Deferred deposit transaction" ..... Section 7-105**
- 39 "Department" ..... Section 6-103
- 40 "Director" ..... Section 6-103.5
- 41 **"Disbursement of proceeds" ..... Section 5-102.3**
- 42 "Earnings" ..... Section 1-301 (9)

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1 "Federal Consumer Credit  
 2 Protection Act" ..... Section 1-302  
 3 "Goods" ..... Section 2-105 (1)  
 4 "Home solicitation sale" ..... Section 2-501  
 5 "Lender" ..... Section 3-107 (1)  
 6 "Lender credit card or similar  
 7 arrangement" ..... Section 1-301 (10)  
 8 "Loan" ..... Section 3-106  
 9 "Loan finance charge" ..... Section 3-109  
 10 "Loan primarily secured by an  
 11 interest in land" ..... Section 3-105  
 12 "Merchandise certificate" ..... Section 2-105 (2)  
 13 "Mortgage transaction" ..... Section 1-301 (17)  
 14 "Official fees" ..... Section 1-301 (11)  
 15 "Organization" ..... Section 1-301 (12)  
 16 "Payable in installments" ..... Section 1-301 (13)  
 17 "Person" ..... Section 1-301 (14)  
 18 "Person related to" ..... Section 1-301 (15)  
 19 "Precomputed" (loan) ..... Section 3-107 (2)  
 20 "Precomputed" (sale) ..... Section 2-105 (7)  
 21 "Presumed" or "Presumption" ..... Section 1-301 (16)  
 22 "Principal" ..... Section 3-107 (3)  
 23 "Regularly engaged" ..... Section 1-301 (18)  
 24 **"Renewal" ..... Section 7-107**  
 25 "Revolving charge account" ..... Section 2-108  
 26 "Revolving loan account" ..... Section 3-108  
 27 "Sale of goods" ..... Section 2-105 (4)  
 28 "Sale of an interest in land" ..... Section 2-105 (6)  
 29 "Sale of services" ..... Section 2-105 (5)  
 30 "Seller" ..... Section 2-107  
 31 "Seller credit card" ..... Section 1-301 (19)  
 32 "Services" ..... Section 2-105 (3)  
 33 **"Small loan" ..... Section 7-104**  
 34 "Supervised financial  
 35 organization" ..... Section 1-301 (20)  
 36 "Supervised lender" ..... Section 3-501 (2)  
 37 "Supervised loan" ..... Section 3-501 (1)  
 38 SECTION 3. IC 24-4.5-2-209 IS AMENDED TO READ AS  
 39 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 209. Right to Prepay -  
 40 (1) Subject to the provisions on rebate upon prepayment  
 41 (IC 24-4.5-2-210), the buyer may prepay in full the unpaid balance of  
 42 a consumer credit sale, refinancing, or consolidation at any time

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1 without penalty.

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

7 **(3) The creditor shall provide an accurate payoff of the**  
 8 **consumer credit sale if requested by the debtor in writing or in**  
 9 **person. If not provided within five (5) business days after the**  
 10 **creditor receives the request, any additional credit service charge**  
 11 **retained by the creditor is a disallowed charge.**

12 SECTION 4. IC 24-4.5-3-102 IS AMENDED TO READ AS  
 13 FOLLOWS: Sec. 102. This chapter applies to consumer loans,  
 14 including regulated and supervised loans. In addition, IC 24-4.5-3-601  
 15 through IC 24-4.5-3-605, and IC 24-4.5-7 apply to consumer related  
 16 loans.

17 SECTION 5. IC 24-4.5-3-209 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 209. Right to Prepay -  
 19 **(1) Subject to the provisions on rebate upon prepayment**  
 20 **(IC 24-4.5-3-210), the debtor may prepay in full the unpaid balance of**  
 21 **a consumer loan, refinancing, or consolidation at any time without**  
 22 **penalty. With respect to a consumer loan that is primarily secured by**  
 23 **an interest in land, a lender may contract for a penalty for prepayment**  
 24 **of the loan in full, not to exceed two percent (2%) of the net unpaid**  
 25 **balance after deducting all refunds and rebates as of the date of the**  
 26 **prepayment. However, the penalty may not be imposed:**

27 ~~(1)~~ **(a) if the loan is refinanced or consolidated with the same**  
 28 **creditor;**

29 ~~(2)~~ **(b) for prepayment by proceeds of any insurance or**  
 30 **acceleration after default; or**

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

32 **(2) At the time of prepayment of a consumer loan not subject to**  
 33 **the provisions of rebate upon prepayment (IC 24-4.5-3-210), the**  
 34 **total finance charge, including the prepaid finance charge, may not**  
 35 **exceed the maximum rate allowed under this chapter for the period**  
 36 **the loan was in effect.**

37 **(3) The creditor shall provide an accurate payoff of the**  
 38 **consumer loan if requested by the debtor in writing or in person.**  
 39 **If not provided within five (5) business days after the creditor**  
 40 **receives the request, any additional finance charge retained by the**  
 41 **creditor is a disallowed charge.**

42 SECTION 6. IC 24-4.5-3-502 IS AMENDED TO READ AS



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1 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 502. Authority to Make  
 2 Consumer Loans ) Unless a person is a supervised financial  
 3 organization or has first obtained a license from the department, the  
 4 person shall not **regularly** engage in this state in the business of:

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

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

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

12 SECTION 7. IC 24-4.5-3-503 IS AMENDED TO READ AS  
 13 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 503. License to Make  
 14 Consumer Loans ) (1) The department shall receive and act on all  
 15 applications for licenses to make consumer loans. Applications must  
 16 be as prescribed by the director of the department of financial  
 17 institutions.

18 (2) A license shall not be issued unless the department finds that the  
 19 financial responsibility, character, and fitness of the applicant and of  
 20 the members of the applicant (if the applicant is a co-partnership or an  
 21 association) and of the officers and directors of the applicant (if the  
 22 applicant is a corporation) are such as to warrant belief that the  
 23 business will be operated honestly and fairly within the purposes of this  
 24 article. The director is entitled to request evidence of compliance with  
 25 this section **at the time of application or after a license is issued. The**  
 26 **evidence requested includes, but is not limited to, an official report**  
 27 **of criminal activity of the applicant from the state law enforcement**  
 28 **agency of the state in which the applicant resides.**

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

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

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

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

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

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

42 (5) The applicant may deduct the fees required under subsection



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1 4(a) through 4(c) from the filing fees paid under IC 24-4.5-6-203.

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

4 SECTION 8. IC 24-4.5-5-102.2 IS ADDED TO THE INDIANA  
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 6 [EFFECTIVE JULY 1, 1999]: **Sec. 102.2. Definition:**  
 7 **"Consummation" - "Consummation", as used in this chapter, is**  
 8 **that point in time when a credit agreement becomes a legally**  
 9 **binding contract between a creditor and a borrower.**

10 SECTION 9. IC 24-4.5-5-102.3 IS ADDED TO THE INDIANA  
 11 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 12 [EFFECTIVE JULY 1, 1999]: **Sec. 102.3. Definition: "Disbursement**  
 13 **of proceeds" - "Disbursement of proceeds", as used in this chapter,**  
 14 **means the payment of all proceeds of a transaction by the creditor**  
 15 **to the persons entitled to receive the payment of all proceeds.**

16 SECTION 10. IC 24-4.5-5-203 IS AMENDED TO READ AS  
 17 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 203. Civil Liability for  
 18 Violation of Disclosure Provisions ) (1) Except as otherwise provided  
 19 in this section, a creditor who, in violation of the provisions on  
 20 disclosure (Part 3) of the Chapter on Credit Sales (Chapter 2), ~~and~~ the  
 21 Chapter on Loans (Chapter 3), **and the Chapter on Small Loans**  
 22 **(Chapter 7),** fails to disclose information to a person entitled to the  
 23 information under this article is liable to that person in an amount equal  
 24 to the sum of:

25 (a) the following:

26 (1) in the case of an individual action, twice the amount of the  
 27 credit service or loan finance charge in connection with the  
 28 transaction, but the liability pursuant to this subdivision shall be  
 29 not less than one hundred dollars (\$100) nor more than one  
 30 thousand dollars (\$1,000); or

31 (2) in the case of a class action, an amount the court allows,  
 32 except that as to each member of the class no minimum recovery  
 33 is applicable, and the total recovery under this subdivision in any  
 34 class action or series of class actions arising out of the same  
 35 failure to comply by the same creditor may not be more than the  
 36 lesser of:

37 (i) five hundred thousand dollars (\$500,000); or

38 (ii) one percent (1%) of the net worth of the creditor; and

39 (b) in the case of a successful action to enforce the liability under  
 40 paragraph (a), the costs of the action together with reasonable attorney's  
 41 fees as determined by the court. In determining the amount of the  
 42 award in a class action, the court shall consider, among other relevant



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1 factors, the amount of any award granted under the federal Consumer  
2 Credit Protection Act (15 U.S.C. 1601 et seq.), the frequency and  
3 persistence of failures of compliance by the creditor, the resources of  
4 the creditor, the number of persons adversely affected, and the extent  
5 to which the creditor's failure of compliance was intentional.

6 (2) A creditor has no liability under this section if within sixty (60)  
7 days after discovering an error, and prior to the institution of an action  
8 under this section or the receipt of written notice of the error, the  
9 creditor notifies the person concerned of the error and makes whatever  
10 adjustments in the appropriate account are necessary to assure that the  
11 person will not be required to pay a credit service charge or loan  
12 finance charge in excess of the amount or percentage rate actually  
13 disclosed.

14 (3) A creditor may not be held liable in any action brought under  
15 this section for a violation of this Article if the creditor shows by a  
16 preponderance of evidence that the violation was not intentional and  
17 resulted from a bona fide error notwithstanding the maintenance of  
18 procedures reasonably adapted to avoid the error.

19 (4) If there are multiple obligors in a consumer credit transaction or  
20 consumer lease, there may not be more than one (1) recovery of  
21 damages under subdivision (a)(1) for one (1) violation of this article  
22 with respect to that consumer credit transaction or consumer lease.

23 (5) The multiple failure to disclose to any person any information  
24 required under this article to be disclosed in connection with a single  
25 account under an open end consumer credit plan, a single consumer  
26 credit sale, a consumer loan, a consumer lease, or another extension of  
27 consumer credit entitles that person to a single recovery under this  
28 section. However, continued failure to disclose after a recovery has  
29 been granted gives rise to rights to additional recoveries.

30 (6) Any action which may be brought under this section against the  
31 original creditor in any credit transaction involving a security interest  
32 in land may be maintained against any subsequent assignee of the  
33 original creditor where the assignee, its subsidiaries, or affiliates were  
34 in a continuing business relationship with the original creditor either at  
35 the time the credit was extended or at the time of the assignment,  
36 unless the assignment was involuntary, or the assignee shows by a  
37 preponderance of evidence that it did not have reasonable grounds to  
38 believe that the original creditor was engaged in violations of this  
39 Article, and that it maintained procedures reasonably adapted to  
40 apprise it of the existence of the violations.

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

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

4 SECTION 11. IC 24-4.5-5-204 IS AMENDED TO READ AS  
5 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 204. Debtor's Right to  
6 Rescind Certain Transactions ) (1) A violation by a creditor of Section  
7 125 of the Federal Consumer Credit Protection Act (IC 24-4.5-1-302)  
8 concerning the debtor's right to rescind a transaction that is a consumer  
9 credit sale or a consumer loan constitutes a violation of IC 24-4.5. A  
10 creditor may not accrue interest during the period when a consumer  
11 loan may be rescinded under Section 125 of the Federal Consumer  
12 Protection Act (15 U.S.C. 1635).

13 (2) **A creditor must disburse the proceeds of a consummated**  
14 **transaction on the first business day after the expiration of the**  
15 **rescission period.**

16 SECTION 12. IC 24-4.5-7 IS ADDED TO THE INDIANA CODE  
17 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
18 JULY 1, 1999]:

19 **Chapter 7. Small Loans**

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

22 **Sec. 102. Except as otherwise provided, all provisions of this**  
23 **article applying to consumer loans apply to small loans, as defined**  
24 **in this chapter.**

25 **Sec. 103. The following definitions apply to this chapter:**

26 "Small loan" ..... Section 7-104

27 "Deferred deposit transaction" ..... Section 7-105

28 "Check" ..... Section 7-106

29 "Renewal" ..... Section 7-107

30 **Sec. 104. "Small loan" means a deferred deposit transaction**  
31 **with a principal loan amount of five hundred dollars (\$500) or less**  
32 **with a term of less than thirty (30) days.**

33 **Sec. 105. "Deferred deposit transaction" means, for**  
34 **consideration, accepting a check and holding the check for a period**  
35 **of time before deposit or presentment in accordance with an**  
36 **agreement between the maker and the lender. The agreement may**  
37 **be expressed or implied.**

38 **Sec. 106. For purposes of this chapter, "check" has the meaning**  
39 **set forth in IC 26-1-3.1-104.**

40 **Sec. 107. "Renewal" refers to a deferred deposit transaction**  
41 **that takes the place of an existing deferred deposit transaction,**  
42 **where a check held as security is not deposited into an account of**

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1 the lender at a depository institution.

2 **Sec. 201. Loan finance charges on a small loan and subsequent**  
 3 **renewals are limited to twenty dollars (\$20) per transaction.**

4 **Sec. 202. (1) Notwithstanding any other law, only the following**  
 5 **fees may be contracted for and received by the lender on a small**  
 6 **loan or subsequent refinancing:**

7 (a) The parties may contract for a delinquency charge of not  
 8 more than five dollars (\$5) on any installment not paid in full  
 9 within ten (10) days after its scheduled due date.

10 (b) A delinquency charge under this section may be collected  
 11 only once on an installment, however long it remains in  
 12 default. A delinquency charge may be collected any time after  
 13 it accrues.

14 (c) The amount of five dollars (\$5) in subdivision (a) is subject  
 15 to change pursuant to the section on adjustment of dollar  
 16 amounts (IC 24-4.5-1-106).

17 (d) If the parties provide by contract for a delinquency charge  
 18 that is subject to change, the lender shall disclose that the  
 19 amount of the delinquency charge is subject to change as  
 20 allowed by IC 24-4.5-1-106.

21 (2) The agreement may provide for the payment by the debtor  
 22 of reasonable attorney's fees after default and referral to an  
 23 attorney who is not a salaried employee of the lender. A provision  
 24 in violation of this section is unenforceable.

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

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

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

37 **"WARNING: The cost of your transaction may be higher**  
 38 **than similar transactions offered by other lending institutions.**  
 39 **The transactions are regulated by the State of Indiana,**  
 40 **Department of Financial Institutions. The transaction may be**  
 41 **refinanced only one time, after which payment in full is**  
 42 **required."**



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

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

7           **Sec. 403.** A small loan may not be secured by personal property  
8 other than a check.

9           **Sec. 404. Use of Multiple Agreements -** With respect to a small  
10 loan or subsequent refinancing, no lender may permit a person to  
11 become obligated under more than one (1) loan agreement. The  
12 excess amount of loan finance charge provided for in agreements  
13 in violation of this section is an excess charge for purposes of the  
14 provisions on effect of violations on rights of parties  
15 (IC 24-4.5-5-202) and the provisions on civil actions by the  
16 department (IC 24-4.5-6-113).

17           **Sec. 405. Conduct of Business Other Than Making Loans -** A  
18 licensee may carry on other business at a location where the  
19 licensee makes small loans unless the licensee carries on other  
20 business to evade or violate this article.

21           **Sec. 406. No Assignment of Earnings - (1)** A lender may not take  
22 an assignment of earnings of the debtor for payment or as security  
23 for payment of a debt arising out of a small loan or otherwise. An  
24 assignment of earnings in violation of this section is unenforceable  
25 by the assignee of the earnings and revocable by the debtor. This  
26 section does not prohibit an employee from authorizing deductions  
27 from the employee's earnings if the authorization is revocable and  
28 is permitted by law.

29           (2) A sale of unpaid earnings made in consideration of the  
30 payment of money to or for the account of the seller of the earnings  
31 is considered to be a loan to the seller secured by an assignment of  
32 earnings.

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

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

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

- 40           (a) a new contractual agreement;  
41           (b) a new check as security; and  
42           (c) new disclosures under IC 24-4.5-7-301.

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

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

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

14           SECTION 14. IC 28-1-29-3 IS AMENDED TO READ AS  
 15 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) No person shall  
 16 operate a budget service company in the state of Indiana without  
 17 having obtained a license from the department. **The director is**  
 18 **entitled to request evidence of compliance with this section at the**  
 19 **time of application or after a license is issued. The evidence**  
 20 **requested includes, but is not limited to, an official report of**  
 21 **criminal activity of the applicant from the state law enforcement**  
 22 **agency of the state in which the applicant resides.** The fee for a  
 23 license or renewal shall be fixed by the department under IC 28-11-3-5  
 24 and shall be nonrefundable. A licensee failing to renew annually shall  
 25 be required to pay a fee fixed by the department under IC 28-11-3-5 for  
 26 a new application.

27           (b) If a person knowingly acts as a budget service company in  
 28 violation of this chapter, any agreement the person has made under this  
 29 chapter is void and the debtor under the agreement is not obligated to  
 30 pay any fees. If the debtor has paid any amounts to the person, the  
 31 debtor, or the department on behalf of the debtor, may recover the  
 32 payment from the person that violated this section.

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

35           SECTION 15. IC 28-1-29-8 IS AMENDED TO READ AS  
 36 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. A licensee:

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

39           (A) the date executed;

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

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

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



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1           **(E) the total fee to be assessed by the licensee, including the**  
 2           **initial set up fee but excluding the cancellation fee;**  
 3           **(F) the amount of debts claimed by the contract debtor to be**  
 4           **due his the contract debtor's creditors; and**  
 5           **(G) the total debt to be repaid under the contract;**  
 6           and shall immediately notify all creditors of the licensee's and  
 7           **contract** debtor's relationship. The contract shall specify the  
 8           schedule of payments from the **contract** debtor under the debt  
 9           program **and the total amount to be paid under the payment**  
 10           **schedule.**  
 11           (2) May take no fee unless a debt program, or finance program, or  
 12           both agreed upon by the licensee and the contract debtor has been  
 13           arranged. All creditors must be notified of the **contract** debtor's  
 14           and licensee's relationship. Acceptance of a program payment  
 15           constitutes agreement by the creditor.  
 16           (3) Shall give to the contract debtor a dated receipt for each  
 17           payment, at the time of the payment, unless the payment is made  
 18           by check, money order, or direct deposit.  
 19           (4) Shall, upon cancellation by **the** contract debtor of the contract,  
 20           notify immediately in writing all creditors of **the** contract debtor.  
 21           (5) Shall maintain in **his the licensee's** business such books,  
 22           accounts, and records as will enable the department or the state's  
 23           attorney general to determine whether such license is complying  
 24           with this chapter. Such books, accounts, and records shall be  
 25           preserved for at least three (3) years after making the final entry  
 26           of any contract recorded therein.  
 27           (6) May not, except as provided in subdivision (7), receive a fee  
 28           from the contract debtor for services in excess of fifteen percent  
 29           (15%) of the amount the debtor agrees to pay through the  
 30           licensee, divided into equal monthly payments over the term of  
 31           the contract. The total monthly amount of fees paid by the  
 32           contract debtor to the licensee plus the fair share fees paid by the  
 33           contract debtor's creditors to the licensee shall not exceed twenty  
 34           percent (20%) of the monthly amount the debtor agrees to pay  
 35           through the licensee. The accrual method of accounting shall  
 36           apply to the creditor's fair share fees received by the licensee. The  
 37           program fee may be charged for any one (1) month or part of a  
 38           month. As a portion of the total fees and charges stated in the  
 39           contract, the licensee may require the debtor to pay a maximum  
 40           initial payment of fifty dollars (\$50). The initial payment must be  
 41           deducted from the total contract fees and charges to determine the  
 42           monthly amortizable amount for subsequent fees. Unless

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1 approved by the department, the licensee may not retain in the  
 2 debtor's trust account, for charges, an amount more than one (1)  
 3 month's fee plus the close-out fee. Any fee charged by the  
 4 licensee to the debtor under this section for services rendered by  
 5 the licensee, other than the amount pursuant to subdivision (7), is  
 6 not considered a debt owed by the debtor to the licensee.

7 (7) Upon cancellation by a contract debtor or termination of  
 8 payments by a contract debtor, may not withhold for ~~his~~ **the**  
 9 **licensee's** own benefit, in addition to the amounts specified in  
 10 subdivision (6), more than one hundred dollars (\$100), which may  
 11 be accrued as a close-out fee. The licensee may not charge the  
 12 contract debtor more than one (1) set up fee, or cancellation fee,  
 13 or both unless the contract debtor leaves the services of the  
 14 licensee for more than six (6) months.

15 (8) May not accept an account unless a thorough, written budget  
 16 analysis of the debtor indicates that the debtor can reasonably  
 17 meet the payments required in the budget analysis.

18 (9) May not enter into a contract with a contract debtor for a  
 19 period longer than twenty-four (24) months.

20 SECTION 16. IC 28-7-5-4 IS AMENDED TO READ AS  
 21 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. Application for a  
 22 pawnbroker's license shall be submitted on a form prescribed by the  
 23 department and must include all information required by the  
 24 department. **The director is entitled to request evidence of**  
 25 **compliance with this section at the time of application or after a**  
 26 **license is issued. The evidence requested includes, but is not limited**  
 27 **to, an official report of criminal activity of the applicant from the**  
 28 **state law enforcement agency of the state in which the applicant**  
 29 **resides.**

30 SECTION 17. IC 28-7-5-28.5 IS AMENDED TO READ AS  
 31 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 28.5. In addition to the  
 32 loan finance charge authorized by section 28 of this chapter, a  
 33 pawnbroker may charge, contract for, and receive a fee not to exceed  
 34 one-fifth (1/5) of the principal amount of the loan per month or any  
 35 fractional part of a month for servicing the pledge that may include  
 36 investigating the title, storing, providing security, appraisal, handling,  
 37 making daily reports to local law enforcement officers, and for other  
 38 expenses and costs associated with servicing the pledge. **A loan in**  
 39 **excess of one hundred fifty dollars (\$150) that is subject to an**  
 40 **additional fee beyond the initial loan period is limited to**  
 41 **one-thirtieth (1/30) of the fee per day for each subsequent loan**  
 42 **period past original maturity.** Such a charge when made and



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1 collected is not interest and is not a rate under IC 35-45-7-1.

2 SECTION 18. IC 28-8-4-20 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 20. A person may not  
4 engage in the business of money transmission without a license  
5 required by this chapter. **Application for a license shall be submitted**  
6 **on a form prescribed by the department and must include all**  
7 **information required by the department. The director is entitled**  
8 **to request evidence of compliance with this section at the time of**  
9 **application or after a license is issued. The evidence requested**  
10 **includes, but is not limited to, an official report of criminal activity**  
11 **of the applicant from the state law enforcement agency of the state**  
12 **in which the applicant resides.**

13 SECTION 19. IC 28-8-5-12 IS AMENDED TO READ AS  
14 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12. (a) The department  
15 shall determine the financial responsibility, business experience,  
16 character, and general fitness of the applicant before issuing the  
17 license.

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

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

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