



January 25, 2000

# HOUSE BILL No. 1009

DIGEST OF HB 1009 (Updated January 24, 2000 3:28 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. Provides that the loan origination fee allowed under the Uniform Consumer Credit Code is not considered in the calculation of total credit service charge or total finance charge for the purposes of rebate upon prepayment. Specifies that the three month window to operate without an approved license to make consumer loans applies only to lenders taking assignment of mortgages. Limits the accrual of additional pawnbroker fees. Defines mortgage servicer. Adds mortgage servicer to creditor penalty provisions concerning a failure to provide accurate payoff information. Adds a loan primarily secured by an interest in land to the definition of consumer loan for the purposes of the accurate payoff provision. Provides that a penalty for a creditor or mortgage servicer who fails to provide accurate payoff information to a debtor is an excess charge under the Uniform Consumer Credit Code. Allows the department of financial institutions to obtain a criminal record history from certain license applicants. Makes conforming amendments.

**Effective:** July 1, 2000.

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## Bodiker, Burton, Ruppel

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November 23, 1999, read first time and referred to Committee on Financial Institutions.  
January 24, 2000, amended, reported — Do Pass.

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HB 1009—LS 6226/DI 94+



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January 25, 2000

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

## HOUSE BILL No. 1009

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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, 2000]: 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  
16 regard for the interests of legitimate and scrupulous creditors;  
17 (e) to permit and encourage the development of fair and

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1 economically sound consumer credit practices;  
 2 (f) to conform the regulation of consumer credit transactions to  
 3 the policies of the Federal Consumer Credit Protection Act; and  
 4 (g) to make uniform the law including administrative rules among  
 5 the various jurisdictions.

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

9 (4) A reference to a federal law in IC 24-4.5 is a reference to the law  
 10 in effect December 31, ~~1997~~ **1999**.

11 SECTION 2. IC 24-4.5-1-301 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 301. General  
 13 Definitions) In addition to definitions appearing in subsequent chapters  
 14 in this article:

15 (1) "Agreement" means the bargain of the parties in fact as found in  
 16 their language or by implication from other circumstances, including  
 17 course of dealing or usage of trade or course of performance.

18 (2) "Agricultural purpose" means a purpose related to the  
 19 production, harvest, exhibition, marketing, transportation, processing,  
 20 or manufacture of agricultural products by a natural person who  
 21 cultivates, plants, propagates, or nurtures the agricultural products;  
 22 "Agricultural products" includes agricultural, horticultural, viticultural,  
 23 and dairy products, livestock, wildlife, poultry, bees, forest products,  
 24 fish and shellfish, and any and all products raised or produced on farms  
 25 and any processed or manufactured products thereof.

26 (3) "Average daily balance" means the sum of each of the daily  
 27 balances in a billing cycle divided by the number of days in the billing  
 28 cycle, and if the billing cycle is a month, the creditor may elect to treat  
 29 the number of days in each billing cycle as thirty (30).

30 (4) "Closing costs" with respect to a debt secured by an interest in  
 31 land includes:

- 32 (a) fees or premiums for title examination, title insurance, or
- 33 similar purposes, including surveys;
- 34 (b) fees for preparation of a deed, settlement statement, or other
- 35 documents;
- 36 (c) escrows for future payments of taxes and insurance;
- 37 (d) fees for notarizing deeds and other documents;
- 38 (e) appraisal fees; and
- 39 (f) credit reports.

40 (5) "Conspicuous": A term or clause is conspicuous when it is so  
 41 written that a reasonable person against whom it is to operate ought to  
 42 have noticed it.



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- 1 (6) "Consumer credit" means credit offered or extended to a  
2 consumer primarily for a personal, family, or household purpose.
- 3 (7) "Credit" means the right granted by a creditor to a debtor to  
4 defer payment of debt or to incur debt and defer its payment.
- 5 (8) "Creditor" means a person:  
6 (a) who regularly engages in the extension of consumer credit that  
7 is subject to a credit service charge or loan finance charge, as  
8 applicable, or is payable in installments; and  
9 (b) to whom the obligation is initially payable, either on the face  
10 of the note or contract, or by agreement when there is not a note  
11 or contract.
- 12 (9) "Earnings" means compensation paid or payable for personal  
13 services, whether denominated as wages, salary, commission, bonus,  
14 or otherwise, and includes periodic payments under a pension or  
15 retirement program.
- 16 (10) "Lender credit card or similar arrangement" means an  
17 arrangement or loan agreement, other than a seller credit card, pursuant  
18 to which a lender gives a debtor the privilege of using a credit card,  
19 letter of credit, or other credit confirmation or identification in  
20 transactions out of which debt arises:  
21 (a) by the lender's honoring a draft or similar order for the  
22 payment of money drawn or accepted by the debtor;  
23 (b) by the lender's payment or agreement to pay the debtor's  
24 obligations; or  
25 (c) by the lender's purchase from the obligee of the debtor's  
26 obligations.
- 27 (11) "Official fees" means:  
28 (a) fees and charges prescribed by law which actually are or will  
29 be paid to public officials for determining the existence of or for  
30 perfecting, releasing, or satisfying a security interest related to a  
31 consumer credit sale, consumer lease, or consumer loan; or  
32 (b) premiums payable for insurance in lieu of perfecting a security  
33 interest otherwise required by the creditor in connection with the  
34 sale, lease, or loan, if the premium does not exceed the fees and  
35 charges described in paragraph (a) which would otherwise be  
36 payable.
- 37 (12) "Organization" means a corporation, government or  
38 governmental subdivision or agency, trust, estate, partnership, limited  
39 liability company, cooperative, or association.
- 40 (13) "Payable in installments" means that payment is required or  
41 permitted by written agreement to be made in more than four (4)  
42 installments not including a down payment.

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- 1 (14) "Person" includes a natural person or an individual, and an  
 2 organization.
- 3 (15) "Person related to" with respect to an individual means:  
 4 (a) the spouse of the individual;  
 5 (b) a brother, brother-in-law, sister, sister-in-law of the individual;  
 6 (c) an ancestor or lineal descendants of the individual or the  
 7 individual's spouse; and  
 8 (d) any other relative, by blood or marriage, of the individual or  
 9 the individual's spouse who shares the same home with the  
 10 individual.
- 11 "Person related to" with respect to an organization means:  
 12 (a) a person directly or indirectly controlling, controlled by, or  
 13 under common control with the organization;  
 14 (b) an officer or director of the organization or a person  
 15 performing similar functions with respect to the organization or  
 16 to a person related to the organization;  
 17 (c) the spouse of a person related to the organization; and  
 18 (d) a relative by blood or marriage of a person related to the  
 19 organization who shares the same home with him.
- 20 (16) "Presumed" or "presumption" means that the trier of fact must  
 21 find the existence of the fact presumed unless and until evidence is  
 22 introduced which would support a finding of its nonexistence.
- 23 (17) "Mortgage transaction" means a transaction in which a first  
 24 mortgage or a land contract which constitutes a first lien is created or  
 25 retained against land.
- 26 (18) "Regularly engaged" means a person who extends consumer  
 27 credit more than:  
 28 (a) twenty-five (25) times; or  
 29 (b) five (5) times for transactions secured by a dwelling;  
 30 in the preceding calendar year. If a person did not meet these numerical  
 31 standards in the preceding calendar year, the numerical standards shall  
 32 be applied to the current calendar year.
- 33 (19) "Seller credit card" means an arrangement which gives to a  
 34 buyer or lessee the privilege of using a credit card, letter of credit, or  
 35 other credit confirmation or identification for the purpose of purchasing  
 36 or leasing goods or services from that person, a person related to that  
 37 person, or from that person and any other person. The term includes a  
 38 card that is issued by a person, that is in the name of the seller, and that  
 39 can be used by the buyer or lessee only for purchases or leases at  
 40 locations of the named seller.
- 41 (20) "Supervised financial organization" means a person, other than  
 42 an insurance company or other organization primarily engaged in an

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1 insurance business:

- 2 (a) organized, chartered, or holding an authorization certificate  
 3 under the laws of a state or of the United States which authorizes  
 4 the person to make loans and to receive deposits, including a  
 5 savings, share, certificate, or deposit account; and  
 6 (b) subject to supervision by an official or agency of a state or of  
 7 the United States.

8 **(21) "Mortgage servicer" means the last person to whom a**  
 9 **mortgagor or the mortgagor's successor in interest has been**  
 10 **instructed by a mortgagee to send payments on a loan secured by**  
 11 **a mortgage.**

12 SECTION 3. IC 24-4.5-2-104 IS AMENDED TO READ AS  
 13 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 104. (1) Except as  
 14 provided in subsection (2), "consumer credit sale" is a sale of goods,  
 15 services, or an interest in land in which:

- 16 (a) credit is granted by a person who regularly engages as a seller  
 17 in credit transactions of the same kind;  
 18 (b) the buyer is a person other than an organization;  
 19 (c) the goods, services, or interest in land are purchased primarily  
 20 for a personal, family, or household purpose;  
 21 (d) either the debt is payable in installments or a credit service  
 22 charge is made; and  
 23 (e) with respect to a sale of goods or services, either the amount  
 24 financed does not exceed fifty thousand dollars (\$50,000) or the  
 25 debt is secured by personal property used or expected to be used  
 26 as the principal dwelling of the buyer.

27 (2) Unless the sale is made subject to this article by agreement  
 28 (IC 24-4.5-2-601), "consumer credit sale" does not include:

- 29 (a) a sale in which the seller allows the buyer to purchase goods  
 30 or services pursuant to a lender credit card or similar  
 31 arrangement; or  
 32 (b) except as provided with respect to disclosure  
 33 (IC 24-4.5-2-301), debtors' remedies (IC 24-4.5-5-201),  
 34 **providing payoff amounts (IC 24-4.5-3-209)**, and powers and  
 35 functions of the department (IC 24-4.5-6-101), a sale of an  
 36 interest in land which is a mortgage transaction (as defined in  
 37 IC 24-4.5-1-301(17)).

38 SECTION 4. IC 24-4.5-3-105 IS AMENDED TO READ AS  
 39 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 105. Unless the loan is  
 40 made subject to IC 24-4.5-3 by agreement (IC 24-4.5-3-601), and  
 41 except with respect to disclosure (IC 24-4.5-3-301), debtors' remedies  
 42 (IC 24-4.5-5-201), **providing payoff amounts (IC 24-4.5-3-209)**, and



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1 powers and functions of the department (IC 24-4.5-6-101), "consumer  
2 loan" does not include a loan primarily secured by an interest in land  
3 which is a mortgage transaction (as defined in IC 24-4.5-1-301(17)).

4 SECTION 5. IC 24-4.5-2-209 IS AMENDED TO READ AS  
5 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 209. Right to Prepay -

6 (1) Subject to the provisions on rebate upon prepayment  
7 (IC 24-4.5-2-210), the buyer may prepay in full the unpaid balance of  
8 a consumer credit sale, refinancing, or consolidation at any time  
9 without penalty.

10 (2) At the time of prepayment of a credit sale not subject to the  
11 provisions of rebate upon prepayment (IC 24-4.5-2-210), the total  
12 credit service charge, including the prepaid credit service charge  
13 but excluding the loan origination fee allowed under  
14 IC 24-4.5-3-201, may not exceed the maximum charge allowed  
15 under this chapter for the period the credit sale was in effect.

16 (3) The creditor or mortgage servicer shall provide an accurate  
17 payoff of the consumer credit sale to the debtor within ten (10)  
18 calendar days after the creditor or mortgage servicer receives the  
19 debtor's written request for the accurate consumer credit sale  
20 payoff amount. A creditor or mortgage servicer who fails to  
21 provide the accurate consumer credit sale payoff amount is liable  
22 for:

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

28 (B) the greater of:

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

30 (ii) the credit service charge that accrues on the sale  
31 from the date the creditor or mortgage servicer receives  
32 the first written request until the date on which the  
33 accurate consumer credit sale payoff amount is  
34 provided;

35 if an accurate consumer credit sale payoff amount is not  
36 provided by the creditor or mortgage servicer within ten  
37 (10) calendar days after the creditor or mortgage servicer  
38 receives the debtor's second written request, and the  
39 creditor or mortgage servicer failed to comply with clause  
40 (A).

41 A liability under this subsection is an excess charge under  
42 IC 24-4.5-5-202.



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1 SECTION 6. IC 24-4.5-3-209 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 209. Right to Prepay -

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

11 ~~(1)~~ (a) if the loan is refinanced or consolidated with the same  
 12 creditor;

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

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

16 **(2) At the time of prepayment of a consumer loan not subject to**  
 17 **the provisions of rebate upon prepayment (IC 24-4.5-3-210), the**  
 18 **total finance charge, including the prepaid finance charge but**  
 19 **excluding the loan origination fee allowed under IC 24-4.5-3-201,**  
 20 **may not exceed the maximum charge allowed under this chapter**  
 21 **for the period the loan was in effect.**

22 **(3) The creditor or mortgage servicer shall provide an accurate**  
 23 **payoff of the consumer loan to the debtor within ten (10) calendar**  
 24 **days after the creditor or mortgage servicer receives the debtor's**  
 25 **written request for the accurate consumer loan payoff amount. A**  
 26 **creditor or mortgage servicer who fails to provide the accurate**  
 27 **consumer loan payoff amount is liable for:**

28 **(A) one hundred dollars (\$100) if an accurate consumer**  
 29 **loan payoff amount is not provided by the creditor or**  
 30 **mortgage servicer within ten (10) calendar days after the**  
 31 **creditor or mortgage servicer receives the debtor's first**  
 32 **written request; and**

33 **(B) the greater of:**

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

35 **(ii) the loan finance charge that accrues on the loan from**  
 36 **the date the creditor or mortgage servicer receives the**  
 37 **first written request until the date on which the accurate**  
 38 **consumer loan payoff amount is provided;**

39 **if an accurate consumer loan payoff amount is not**  
 40 **provided by the creditor or mortgage servicer within ten**  
 41 **(10) calendar days after the creditor or mortgage servicer**  
 42 **receives the debtor's second written request, and the**

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1                    **creditor or mortgage servicer failed to comply with clause**  
 2                    **(A).**

3                    **A liability under this subsection is an excess charge under**  
 4                    **IC 24-4.5-5-202.**

5                    SECTION 7. IC 24-4.5-3-502 IS AMENDED TO READ AS  
 6                    FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 502. Authority to Make  
 7                    Consumer Loans - Unless a person is a supervised financial  
 8                    organization or has first obtained a license from the department, the  
 9                    person shall not **regularly** engage in this state in the business of:

- 10                    (1) **(a)** making consumer loans; or  
 11                    (2) **(b)** taking assignments of and undertaking direct collection of  
 12                    payments from or enforcement of rights against debtors arising  
 13                    from consumer loans. **but the person**

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

17                    SECTION 8. IC 24-4.5-3-503 IS AMENDED TO READ AS  
 18                    FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 503. License to Make  
 19                    Consumer Loans ) (1) The department shall receive and act on all  
 20                    applications for licenses to make consumer loans. Applications must  
 21                    be as prescribed by the director of the department of financial  
 22                    institutions.

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

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

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

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



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1 under IC 28-11-3-5.

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

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

6 (5) The applicant may deduct the fees required under subsection  
7 4(a) through 4(c) from the filing fees paid under IC 24-4.5-6-203.

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

10 SECTION 9. IC 24-4.5-5-204 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 204. Debtor's Right to  
12 Rescind Certain Transactions ) (1) A violation by a creditor of Section  
13 125 of the Federal Consumer Credit Protection Act (IC 24-4.5-1-302)  
14 concerning the debtor's right to rescind a transaction that is a consumer  
15 credit sale or a consumer loan constitutes a violation of IC 24-4.5. A  
16 creditor may not accrue interest during the period when a consumer  
17 loan may be rescinded under Section 125 of the Federal Consumer  
18 Protection Act (15 U.S.C. 1635).

19 **(2) A creditor must make available for disbursement the**  
20 **proceeds of a transaction subject to subsection (1) on the later of:**

21 **(A) the date the creditor is reasonably satisfied that the**  
22 **consumer has not rescinded the transaction; or**

23 **(B) the first business day after the expiration of the rescission**  
24 **period under subsection (1).**

25 SECTION 10. IC 24-7-1-5 IS AMENDED TO READ AS  
26 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 5. ~~This article does not~~  
27 ~~apply to~~ Rental purchase agreements **under this article** involving  
28 motor vehicles (as defined in IC 9-13-2-105(a)) **are prohibited.**

29 SECTION 11. IC 28-1-29-3 IS AMENDED TO READ AS  
30 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 3. (a) No person shall  
31 operate a budget service company in the state of Indiana without  
32 having obtained a license from the department. **The director is**  
33 **entitled to request evidence of compliance with this section at the**  
34 **time of application or after a license is issued. The evidence**  
35 **requested includes, but is not limited to, an official report of**  
36 **criminal activity of the applicant from the state law enforcement**  
37 **agency or criminal history records repository of the state in which**  
38 **the applicant resides.** The fee for a license or renewal shall be fixed  
39 by the department under IC 28-11-3-5 and shall be nonrefundable. A  
40 licensee failing to renew annually shall be required to pay a fee fixed  
41 by the department under IC 28-11-3-5 for a new application.

42 (b) If a person knowingly acts as a budget service company in



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1 violation of this chapter, any agreement the person has made under this  
2 chapter is void and the debtor under the agreement is not obligated to  
3 pay any fees. If the debtor has paid any amounts to the person, the  
4 debtor, or the department on behalf of the debtor, may recover the  
5 payment from the person that violated this section.

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

8 SECTION 12. IC 28-1-29-8 IS AMENDED TO READ AS  
9 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 8. A licensee:

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

- 12 (A) the date executed;
- 13 (B) the ~~maximum~~ rate of charge **the licensee will impose;**
- 14 (C) ~~the~~ initial set up fee;
- 15 (D) the cancellation fee; ~~and~~
- 16 (E) **the total fee to be assessed by the licensee, including the**  
17 **initial set up fee but excluding the cancellation fee;**
- 18 (F) ~~the~~ amount of debts claimed by the contract debtor to be  
19 due ~~his~~ **the contract debtor's** creditors; ~~and~~
- 20 (G) **the total debt to be repaid under the contract;**

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

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

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

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

36 (5) Shall maintain in ~~his~~ **the licensee's** business such books,  
37 accounts, and records as will enable the department or the state's  
38 attorney general to determine whether such license is complying  
39 with this chapter. Such books, accounts, and records shall be  
40 preserved for at least three (3) years after making the final entry  
41 of any contract recorded therein.

42 (6) May not, except as provided in subdivision (7), receive a fee

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1 from the contract debtor for services in excess of fifteen percent  
 2 (15%) of the amount the debtor agrees to pay through the  
 3 licensee, divided into equal monthly payments over the term of  
 4 the contract. The total monthly amount of fees paid by the  
 5 contract debtor to the licensee plus the fair share fees paid by the  
 6 contract debtor's creditors to the licensee shall not exceed twenty  
 7 percent (20%) of the monthly amount the debtor agrees to pay  
 8 through the licensee. The accrual method of accounting shall  
 9 apply to the creditor's fair share fees received by the licensee. The  
 10 program fee may be charged for any one (1) month or part of a  
 11 month. As a portion of the total fees and charges stated in the  
 12 contract, the licensee may require the debtor to pay a maximum  
 13 initial payment of fifty dollars (\$50). The initial payment must be  
 14 deducted from the total contract fees and charges to determine the  
 15 monthly amortizable amount for subsequent fees. Unless  
 16 approved by the department, the licensee may not retain in the  
 17 debtor's trust account, for charges, an amount more than one (1)  
 18 month's fee plus the close-out fee. Any fee charged by the  
 19 licensee to the debtor under this section for services rendered by  
 20 the licensee, other than the amount pursuant to subdivision (7), is  
 21 not considered a debt owed by the debtor to the licensee.

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

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

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

35 SECTION 13. IC 28-7-5-4 IS AMENDED TO READ AS  
 36 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 4. Application for a  
 37 pawnbroker's license shall be submitted on a form prescribed by the  
 38 department and must include all information required by the  
 39 department. **The director is entitled to request evidence of**  
 40 **compliance with this section at the time of application or after a**  
 41 **license is issued. The evidence requested includes, but is not limited**  
 42 **to, an official report of criminal activity of the applicant from the**



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1 **state law enforcement agency or criminal history records**  
 2 **repository of the state in which the applicant resides.**

3 SECTION 14. IC 28-7-5-28.5 IS AMENDED TO READ AS  
 4 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 28.5. In addition to the  
 5 loan finance charge authorized by section 28 of this chapter, a  
 6 pawnbroker may charge, contract for, and receive a fee not to exceed  
 7 one-fifth (1/5) of the principal amount of the loan per month or any  
 8 fractional part of a month for servicing the pledge that may include  
 9 investigating the title, storing, providing security, appraisal, handling,  
 10 making daily reports to local law enforcement officers, and for other  
 11 expenses and costs associated with servicing the pledge. **The fee for**  
 12 **each month after the second month of the loan transaction is**  
 13 **limited to one-thirtieth (1/30) of the monthly fee for each day the**  
 14 **loan is outstanding.** Such a charge when made and collected is not  
 15 interest and is not a rate under IC 35-45-7-1.

16 SECTION 15. IC 28-8-4-20 IS AMENDED TO READ AS  
 17 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 20. A person may not  
 18 engage in the business of money transmission without a license  
 19 required by this chapter. **Application for a license shall be submitted**  
 20 **on a form prescribed by the department and must include all**  
 21 **information required by the department. The director is entitled**  
 22 **to request evidence of compliance with this section at the time of**  
 23 **application or after a license is issued. The evidence requested**  
 24 **includes, but is not limited to, an official report of criminal activity**  
 25 **of the applicant from the state law enforcement agency or criminal**  
 26 **history records repository of the state in which the applicant**  
 27 **resides.**

28 SECTION 16. IC 28-8-5-12 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 12. (a) The department  
 30 shall determine the financial responsibility, business experience,  
 31 character, and general fitness of the applicant before issuing the  
 32 license.

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

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

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1009, 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, between lines 10 and 11, begin a new paragraph and insert:

"SECTION 2. IC 24-4.5-1-301 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 301. General Definitions) In addition to definitions appearing in subsequent chapters in this article:

(1) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(2) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products; "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(3) "Average daily balance" means the sum of each of the daily balances in a billing cycle divided by the number of days in the billing cycle, and if the billing cycle is a month, the creditor may elect to treat the number of days in each billing cycle as thirty (30).

(4) "Closing costs" with respect to a debt secured by an interest in land includes:

- (a) fees or premiums for title examination, title insurance, or similar purposes, including surveys;
- (b) fees for preparation of a deed, settlement statement, or other documents;
- (c) escrows for future payments of taxes and insurance;
- (d) fees for notarizing deeds and other documents;
- (e) appraisal fees; and
- (f) credit reports.

(5) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it.

(6) "Consumer credit" means credit offered or extended to a consumer primarily for a personal, family, or household purpose.

(7) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

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(8) "Creditor" means a person:

- (a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable in installments; and
- (b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.

(9) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program.

(10) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

- (a) by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;
- (b) by the lender's payment or agreement to pay the debtor's obligations; or
- (c) by the lender's purchase from the obligee of the debtor's obligations.

(11) "Official fees" means:

- (a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or
- (b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

(12) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, limited liability company, cooperative, or association.

(13) "Payable in installments" means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(14) "Person" includes a natural person or an individual, and an organization.

(15) "Person related to" with respect to an individual means:

- (a) the spouse of the individual;



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- (b) a brother, brother-in-law, sister, sister-in-law of the individual;
- (c) an ancestor or lineal descendants of the individual or the individual's spouse; and
- (d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

"Person related to" with respect to an organization means:

- (a) a person directly or indirectly controlling, controlled by, or under common control with the organization;
- (b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;
- (c) the spouse of a person related to the organization; and
- (d) a relative by blood or marriage of a person related to the organization who shares the same home with him.

(16) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(17) "Mortgage transaction" means a transaction in which a first mortgage or a land contract which constitutes a first lien is created or retained against land.

(18) "Regularly engaged" means a person who extends consumer credit more than:

- (a) twenty-five (25) times; or
- (b) five (5) times for transactions secured by a dwelling;

in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year.

(19) "Seller credit card" means an arrangement which gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or from that person and any other person. The term includes a card that is issued by a person, that is in the name of the seller, and that can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

(20) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business:

- (a) organized, chartered, or holding an authorization certificate under the laws of a state or of the United States which authorizes the person to make loans and to receive deposits, including a

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savings, share, certificate, or deposit account; and

(b) subject to supervision by an official or agency of a state or of the United States.

**(21) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.**

SECTION 3. IC 24-4.5-2-104 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 104. (1) Except as provided in subsection (2), "consumer credit sale" is a sale of goods, services, or an interest in land in which:

(a) credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;

(b) the buyer is a person other than an organization;

(c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;

(d) either the debt is payable in installments or a credit service charge is made; and

(e) with respect to a sale of goods or services, either the amount financed does not exceed fifty thousand dollars (\$50,000) or the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

(2) Unless the sale is made subject to this article by agreement (IC 24-4.5-2-601), "consumer credit sale" does not include:

(a) a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement; or

(b) except as provided with respect to disclosure (IC 24-4.5-2-301), debtors' remedies (IC 24-4.5-5-201), **providing payoff amounts (IC 24-4.5-3-209)**, and powers and functions of the department (IC 24-4.5-6-101), a sale of an interest in land which is a mortgage transaction (as defined in IC 24-4.5-1-301(17)).

SECTION 4. IC 24-4.5-3-105 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 105. Unless the loan is made subject to IC 24-4.5-3 by agreement (IC 24-4.5-3-601), and except with respect to disclosure (IC 24-4.5-3-301), debtors' remedies (IC 24-4.5-5-201), **providing payoff amounts (IC 24-4.5-3-209)**, and powers and functions of the department (IC 24-4.5-6-101), "consumer loan" does not include a loan primarily secured by an interest in land which is a mortgage transaction (as defined in IC 24-4.5-1-301(17))."

Page 2, line 19, after "prepaid credit service charge" delete ", " and



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insert **"but excluding the loan origination fee allowed under IC 24-4.5-3-201,"**.

Page 2, line 22, after "creditor" insert **"or mortgage servicer"**.

Page 2, line 24, after "creditor" insert **"or mortgage servicer"**.

Page 2, line 25, after "creditor" insert **"or mortgage servicer"**.

Page 2, line 29, after "creditor" insert **"or mortgage servicer"**.

Page 2, line 30, after "creditor" insert **"or mortgage servicer"**.

Page 2, line 35, after "creditor" insert **"or mortgage servicer"**.

Page 2, line 39, after "creditor" insert **"or mortgage servicer"**.

Page 2, line 40, after "creditor" insert **"or mortgage servicer"**.

Page 2, line 41, after "creditor" insert **"or mortgage servicer"**.

Page 2, between lines 41 and 42, begin a new line blocked left and insert:

**"A liability under this subsection is an excess charge under IC 24-4.5-5-202."**

Page 3, line 17, after "prepaid finance charge" delete "," and insert **"but excluding the loan origination fee allowed under IC 24-4.5-3-201,"**.

Page 3, line 20, after "creditor" insert **"or mortgage servicer"**.

Page 3, line 22, after "creditor" insert **"or mortgage servicer"**.

Page 3, line 23, after "creditor" insert **"or mortgage servicer"**.

Page 3, line 26, after "creditor" insert **"or mortgage servicer"**.

Page 3, line 27, after "creditor" insert **"or mortgage servicer"**.

Page 3, line 32, after "creditor" insert **"or mortgage servicer"**.

Page 3, line 36, after "creditor" insert **"or mortgage servicer"**.

Page 3, line 37, after "creditor" insert **"or mortgage servicer"**.

Page 3, line 38, after "creditor" insert **"or mortgage servicer"**.

Page 3, between lines 38 and 39, begin a new line blocked left and insert the following:

**"A liability under this subsection is an excess charge under IC 24-4.5-5-202."**

Page 4, line 25, after "agency" insert **"or criminal history records repository"**.

Page 5, line 11, after "the" insert **"later of:**

**(A) the date the creditor is reasonably satisfied that the consumer has not rescinded the transaction; or**

**(B) the"**.

Page 5, line 26, after "agency" insert **"or criminal history records repository"**.

Page 7, line 32, after "agency" insert **"or criminal history records repository"**.

Page 8, line 14, after "agency" insert **"or criminal history records**



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**repository".**

Page 8, line 27, after "agency" insert "**or criminal history records repository**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1009 as introduced.)

BODIKER, Chair

Committee Vote: yeas 12, nays 0.

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