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# HOUSE BILL No. 1009

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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. Limits the accrual of additional pawnbroker fees. Makes certain other changes. Makes conforming amendments.

**Effective:** July 1, 2000.

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## Bodiker, Burton

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January 10, 2000, read first time and referred to Committee on Financial Institutions.

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Introduced

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

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

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

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

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

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

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

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

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

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

42 SECTION 3. IC 24-4.5-3-209 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 209. Right to Prepay -  
 2 (1) Subject to the provisions on rebate upon prepayment  
 3 (IC 24-4.5-3-210), the debtor may prepay in full the unpaid balance of  
 4 a consumer loan, refinancing, or consolidation at any time without  
 5 penalty. With respect to a consumer loan that is primarily secured by  
 6 an interest in land, a lender may contract for a penalty for prepayment  
 7 of the loan in full, not to exceed two percent (2%) of the net unpaid  
 8 balance after deducting all refunds and rebates as of the date of the  
 9 prepayment. However, the penalty may not be imposed:

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

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

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

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

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

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

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

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

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

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

39 SECTION 4. IC 24-4.5-3-502 IS AMENDED TO READ AS  
 40 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 502. Authority to Make  
 41 Consumer Loans - Unless a person is a supervised financial  
 42 organization or has first obtained a license from the department, the

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1 person shall not **regularly** engage in this state in the business of:

2 ~~(1)~~ (a) making consumer loans; or

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

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

9 SECTION 5. IC 24-4.5-3-503 IS AMENDED TO READ AS  
10 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 503. License to Make  
11 Consumer Loans ) (1) The department shall receive and act on all  
12 applications for licenses to make consumer loans. Applications must  
13 be as prescribed by the director of the department of financial  
14 institutions.

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

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

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

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

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

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

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

39 (5) The applicant may deduct the fees required under subsection  
40 4(a) through 4(c) from the filing fees paid under IC 24-4.5-6-203.

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



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1 SECTION 6. IC 24-4.5-5-204 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 204. Debtor's Right to  
 3 Rescind Certain Transactions ) (1) A violation by a creditor of Section  
 4 125 of the Federal Consumer Credit Protection Act (IC 24-4.5-1-302)  
 5 concerning the debtor's right to rescind a transaction that is a consumer  
 6 credit sale or a consumer loan constitutes a violation of IC 24-4.5. A  
 7 creditor may not accrue interest during the period when a consumer  
 8 loan may be rescinded under Section 125 of the Federal Consumer  
 9 Protection Act (15 U.S.C. 1635).

10 **(2) A creditor must make available for disbursement the**  
 11 **proceeds of a transaction subject to subsection (1) on the first**  
 12 **business day after the expiration of the rescission period under**  
 13 **subsection (1).**

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

18 SECTION 8. IC 28-1-29-3 IS AMENDED TO READ AS  
 19 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 3. (a) No person shall  
 20 operate a budget service company in the state of Indiana without  
 21 having obtained a license from the department. **The director is**  
 22 **entitled to request evidence of compliance with this section at the**  
 23 **time of application or after a license is issued. The evidence**  
 24 **requested includes, but is not limited to, an official report of**  
 25 **criminal activity of the applicant from the state law enforcement**  
 26 **agency of the state in which the applicant resides.** The fee for a  
 27 license or renewal shall be fixed by the department under IC 28-11-3-5  
 28 and shall be nonrefundable. A licensee failing to renew annually shall  
 29 be required to pay a fee fixed by the department under IC 28-11-3-5 for  
 30 a new application.

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

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

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

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

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

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1 contract, the licensee may require the debtor to pay a maximum  
 2 initial payment of fifty dollars (\$50). The initial payment must be  
 3 deducted from the total contract fees and charges to determine the  
 4 monthly amortizable amount for subsequent fees. Unless  
 5 approved by the department, the licensee may not retain in the  
 6 debtor's trust account, for charges, an amount more than one (1)  
 7 month's fee plus the close-out fee. Any fee charged by the  
 8 licensee to the debtor under this section for services rendered by  
 9 the licensee, other than the amount pursuant to subdivision (7), is  
 10 not considered a debt owed by the debtor to the licensee.

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

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

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

24 SECTION 10. IC 28-7-5-4 IS AMENDED TO READ AS  
 25 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 4. Application for a  
 26 pawnbroker's license shall be submitted on a form prescribed by the  
 27 department and must include all information required by the  
 28 department. **The director is entitled to request evidence of**  
 29 **compliance with this section at the time of application or after a**  
 30 **license is issued. The evidence requested includes, but is not limited**  
 31 **to, an official report of criminal activity of the applicant from the**  
 32 **state law enforcement agency of the state in which the applicant**  
 33 **resides.**

34 SECTION 11. IC 28-7-5-28.5 IS AMENDED TO READ AS  
 35 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 28.5. In addition to the  
 36 loan finance charge authorized by section 28 of this chapter, a  
 37 pawnbroker may charge, contract for, and receive a fee not to exceed  
 38 one-fifth (1/5) of the principal amount of the loan per month or any  
 39 fractional part of a month for servicing the pledge that may include  
 40 investigating the title, storing, providing security, appraisal, handling,  
 41 making daily reports to local law enforcement officers, and for other  
 42 expenses and costs associated with servicing the pledge. **The fee for**



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1 **each month after the second month of the loan transaction is**  
2 **limited to one-thirtieth (1/30) of the monthly fee for each day the**  
3 **loan is outstanding.** Such a charge when made and collected is not  
4 interest and is not a rate under IC 35-45-7-1.

5 SECTION 12. IC 28-8-4-20 IS AMENDED TO READ AS  
6 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 20. A person may not  
7 engage in the business of money transmission without a license  
8 required by this chapter. **Application for a license shall be submitted**  
9 **on a form prescribed by the department and must include all**  
10 **information required by the department. The director is entitled**  
11 **to request evidence of compliance with this section at the time of**  
12 **application or after a license is issued. The evidence requested**  
13 **includes, but is not limited to, an official report of criminal activity**  
14 **of the applicant from the state law enforcement agency of the state**  
15 **in which the applicant resides.**

16 SECTION 13. IC 28-8-5-12 IS AMENDED TO READ AS  
17 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 12. (a) The department  
18 shall determine the financial responsibility, business experience,  
19 character, and general fitness of the applicant before issuing the  
20 license.

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

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

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