Reprinted
February 6, 2004

HOUSE BILL No. 1229

DIGEST OF HB 1229 (Updated February 5, 2004 6:28 pm - DI 84)

Citations Affected: IC 4-6; IC 5-20; IC 23-2; IC 24-9; IC 34-7; IC 36-2; noncode.

Synopsis: Home loan practices. Restricts certain lending acts and practices. Establishes the homeowner protection unit in the office of the attorney general. Provides enforcement procedures for deceptive mortgage acts. Establishes a $3 mortgage recording fee. Requires the Indiana housing finance authority to provide home ownership training programs. Provides that certain provisions do not apply to certain financial institutions. Makes changes to the definition of a high cost home loan. Prohibits certain lending practices.

Effective: Upon passage; July 1, 2004.

Bardon, Crawford, Pond, Burton

(SENATE SPONSORS — BRAY, LANANE)

January 20, 2004, read first time and referred to Committee on Judiciary.
January 29, 2004, amended, reported — Do Pass.
February 4, 2004, read second time, amended, ordered engrossed.
February 5, 2004, engrossed. Read third time, recommitted to Committee of One, amended; passed. Yeas 96, nays 0.

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Second Regular Session 113th General Assembly (2004)

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 2003 Regular Session of the General Assembly.

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HOUSE BILL No. 1229

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

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

SECTION 1. IC 4-6-3-3, AS AMENDED BY P.L.2-2002, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. If the attorney general has reasonable cause to believe that a person may be in possession, custody, or control of documentary material, or may have knowledge of a fact that is relevant to an investigation conducted to determine if a person is or has been engaged in a violation of IC 4-6-9, IC 4-6-10, IC 13-14-10, IC 13-14-12, IC 13-24-2, IC 13-30-4, IC 13-30-5, IC 13-30-6, IC 13-30-8, IC 23-7-8, IC 24-1-2, IC 24-5-0.5, IC 24-5-7, IC 24-5-8, **IC 24-9,** IC 25-1-7, IC 32-34-1, or any other statute enforced by the attorney general, only the attorney general may issue in writing, and cause to be served upon the person or the person's representative or agent, an investigative demand that requires that the person served do any combination of the following:

(1) Produce the documentary material for inspection and copying or reproduction.

(2) Answer under oath and in writing written interrogatories.

(3) Appear and testify under oath before the attorney general or the attorney general's duly authorized representative.

SECTION 2. IC 4-6-12 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 12. Homeowner Protection Unit

Sec. 1. As used in this chapter, "unit" refers to the homeowner protection unit established under this chapter.

Sec. 2. The attorney general shall establish a homeowner protection unit to enforce IC 24-9 and to carry out this chapter.

Sec. 3. The unit shall do the following:

(1) Investigate deceptive acts in connection with mortgage lending.

(2) Investigate violations of IC 24-9.

(3) Institute appropriate administrative and civil actions to redress:

(A) deceptive acts in connection with mortgage lending; and

(B) violations of IC 24-5-0.5 and IC 24-9.

(4) Cooperate with federal, state, and local law enforcement agencies in the investigation of:

(A) deceptive acts in connection with mortgage lending;

(B) criminal violations involving deceptive acts in connection with mortgage lending; and

(C) violations of IC 24-5-0.5 and IC 24-9.

(5) Adopt rules under IC 4-22-2 to the extent necessary to organize the unit.

Sec. 4. (a) The following may cooperate with the unit to implement this chapter:

(1) The Indiana professional licensing agency and the appropriate licensing boards with respect to persons licensed under IC 25.

(2) The department of financial institutions.

(3) The department of insurance with respect to the sale of insurance in connection with mortgage lending.

(4) The securities division of the office of the secretary of state.

(5) The supreme court disciplinary commission with respect to attorney misconduct.

(6) The Indiana housing finance authority.

(7) The department of state revenue.

(8) The state police department.

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(9) A prosecuting attorney.

(10) Local law enforcement agencies.

(b) Notwithstanding IC 5-14-3, the entities listed in subsection (a) may share information with the unit.

Sec. 5. The attorney general may file complaints with any of the entities listed in section 4 of this chapter to carry out this chapter and IC 24-9.

Sec. 6. The establishment of the unit and the unit's powers does not limit the jurisdiction of an entity described in section 4 of this chapter.

Sec. 7. The attorney general and an investigator of the unit may do any of the following when conducting an investigation under section 3 of this chapter:

(1) Issue and serve a subpoena for the production of records, including records stored in electronic data processing systems, for inspection by the attorney general or the investigator.

(2) Issue and serve a subpoena for the appearance of a person to provide testimony under oath.

(3) Apply to a court with jurisdiction to enforce a subpoena described in subdivision (1) or (2).

Sec. 8. The unit shall cooperate with the Indiana housing finance authority in the development and implementation of the home ownership training programs established under IC 5-20-1-15.5.

Sec. 9. (a) The homeowner protection unit account within the general fund is established to support the operations of the unit. The account is administered by the attorney general.

(b) The homeowner protection unit account consists of fees collected under IC 24-9-9.

(c) The expenses of administering the homeowner protection unit account shall be paid from money in the account.

(d) The treasurer of state shall invest the money in the homeowner protection unit account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.

(e) Interest earned on investments under subsection (d) shall be credited to the homeowner protection unit account when received.

(f) Money in the homeowner protection unit account at the end of a state fiscal year does not revert to the state general fund.

(g) There is annually appropriated to the attorney general from the homeowner protection unit account money sufficient for carrying out the purposes of this chapter and IC 24-9.

SECTION 3. IC 5-20-1-4 IS AMENDED TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2004]: Sec. 4. (a) The authority has all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter including the power:

(1) to make or participate in the making of construction loans to sponsors of multiple family residential housing that is federally assisted or assisted by a government sponsored enterprise, such as the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Agricultural Mortgage Corporation, the Federal Home Loan Bank, and other similar entities approved by the authority;

(2) to make or participate in the making of mortgage loans to sponsors of multiple family residential housing that is federally assisted or assisted by a government sponsored enterprise, such as the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Agricultural Mortgage Corporation, the Federal Home Loan Bank, and other similar entities approved by the authority;

(3) to purchase or participate in the purchase from mortgage lenders of mortgage loans made to persons of low and moderate income for residential housing;

(4) to make loans to mortgage lenders for the purpose of furnishing funds to such mortgage lenders to be used for making mortgage loans for persons and families of low and moderate income. However, the obligation to repay loans to mortgage lenders shall be general obligations of the respective mortgage lenders and shall bear such date or dates, shall mature at such time or times, shall be evidenced by such note, bond, or other certificate of indebtedness, shall be subject to prepayment, and shall contain such other provisions consistent with the purposes of this chapter as the authority shall by rule or resolution determine;

(5) to collect and pay reasonable fees and charges in connection with making, purchasing, and servicing of its loans, notes, bonds, commitments, and other evidences of indebtedness;

(6) to acquire real property, or any interest in real property, by conveyance, including purchase in lieu of foreclosure, or foreclosure, to own, manage, operate, hold, clear, improve, and rehabilitate such real property and sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber such real property where such use of real property is necessary or appropriate to the purposes of the authority;

(7) to sell, at public or private sale, all or any part of any mortgage

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or other instrument or document securing a construction loan, a land development loan, a mortgage loan, or a loan of any type permitted by this chapter;

(8) to procure insurance against any loss in connection with its operations in such amounts and from such insurers as it may deem necessary or desirable;

(9) to consent, subject to the provisions of any contract with noteholders or bondholders which may then exist, whenever it deems it necessary or desirable in the fulfillment of its purposes to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms of any mortgage loan, mortgage loan commitment, construction loan, loan to lender, or contract or agreement of any kind to which the authority is a party;

(10) to enter into agreements or other transactions with any federal, state, or local governmental agency for the purpose of providing adequate living quarters for such persons and families in cities and counties where a need has been found for such housing;

(11) to include in any borrowing such amounts as may be deemed necessary by the authority to pay financing charges, interest on the obligations (for a period not exceeding the period of construction and a reasonable time thereafter or if the housing is completed, two (2) years from the date of issue of the obligations), consultant, advisory, and legal fees and such other expenses as are necessary or incident to such borrowing;

(12) to make and publish rules respecting its lending programs and such other rules as are necessary to effectuate the purposes of this chapter;

(13) to provide technical and advisory services to sponsors, builders, and developers of residential housing and to residents and potential residents, including housing selection and purchase procedures, family budgeting, property use and maintenance, household management, and utilization of community resources;

(14) to promote research and development in scientific methods of constructing low cost residential housing of high durability;

(15) to encourage community organizations to participate in residential housing development;

(16) to make, execute, and effectuate any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, limited liability company, or other organization or entity necessary or convenient to

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accomplish the purposes of this chapter;

(17) to accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source whatsoever and to agree to, and to comply with, conditions attached thereto;

(18) to sue and be sued in its own name, plead and be impleaded;

(19) to maintain an office in the city of Indianapolis and at such other place or places as it may determine;

(20) to adopt an official seal and alter the same at pleasure;

(21) to adopt and from time to time amend and repeal bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules and policies in connection with the performance of its functions and duties;

(22) to employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor;

(23) to invest any funds held in reserve or in sinking fund accounts or any money not required for immediate disbursement in obligations of the state, the United States, or their agencies or instrumentalities and such other obligors as may be permitted under the terms of any resolution authorizing the issuance of the authority's obligations;

(24) to make or participate in the making of construction loans, mortgage loans, or both, to individuals, partnerships, limited liability companies, corporations, and organizations for the construction of residential facilities for the developmentally disabled or for the mentally ill or for the acquisition or renovation, or both, of a facility to make it suitable for use as a new residential facility for the developmentally disabled or for the mentally ill;

(25) to make or participate in the making of construction and mortgage loans to individuals, partnerships, corporations, limited liability companies, and organizations for the construction, rehabilitation, or acquisition of residential facilities for children;

(26) to purchase or participate in the purchase of mortgage loans from:

(A) public utilities (as defined in IC 8-1-2-1); or

(B) municipally owned gas utility systems organized under IC 8-1.5;

if those mortgage loans were made for the purpose of insulating

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and otherwise weatherizing single family residences in order to conserve energy used to heat and cool those residences;

(27) to provide financial assistance to mutual housing associations (IC 5-20-3) in the form of grants, loans, or a combination of grants and loans for the development of housing for low and moderate income families; ~~and~~

(28) to service mortgage loans made or acquired by the authority and to impose and collect reasonable fees and charges in connection with such servicing; **and**

(29) to identify, promote, assist, and fund home ownership training programs throughout Indiana, and adopt rules under IC 4-22-2 governing certification procedures and counseling requirements for nonprofit home ownership counselors.

(b) The authority shall structure and administer any program conducted under subsection (a)(3) or (a)(4) in order to assure that no mortgage loan shall knowingly be made to a person whose adjusted family income shall exceed one hundred twenty-five percent (125%) of the median income for the geographic area within which the person resides and at least forty percent (40%) of the mortgage loans so financed shall be for persons whose adjusted family income shall be below eighty percent (80%) of the median income for such area.

(c) In addition to the powers set forth in subsection (a), the authority may, with the proceeds of bonds and notes sold to retirement plans covered by IC 5-10-1.7, structure and administer a program of purchasing or participating in the purchasing from mortgage lenders of mortgage loans made to qualified members of retirement plans and other individuals. The authority shall structure and administer any program conducted under this subsection to assure that:

(1) each mortgage loan is made as a first mortgage loan for real property:

(A) that is a single family dwelling, including a condominium or townhouse, located in Indiana;

(B) for a purchase price of not more than ninety-five thousand dollars ($95,000);

(C) to be used as the purchaser's principal residence; and

(D) for which the purchaser has made a down payment in an amount determined by the authority;

(2) no mortgage loan exceeds seventy-five thousand dollars ($75,000);

(3) any bonds or notes issued which are backed by mortgage loans purchased by the authority under this subsection shall be offered for sale to the retirement plans covered by IC 5-10-1.7; and

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(4) qualified members of a retirement plan shall be given preference with respect to the mortgage loans that in the aggregate do not exceed the amount invested by their retirement plan in bonds and notes issued by the authority that are backed by mortgage loans purchased by the authority under this subsection.

(d) As used in this section, "a qualified member of a retirement plan" means an active or retired member:

(1) of a retirement plan covered by IC 5-10-1.7 that has invested in bonds and notes issued by the authority that are backed by mortgage loans purchased by the authority under subsection (c); and

(2) who for a minimum of two (2) years preceding the member's application for a mortgage loan has:

(A) been a full-time state employee, teacher, judge, police officer, or firefighter;

(B) been a full-time employee of a political subdivision participating in the public employees' retirement fund;

(C) been receiving retirement benefits from the retirement plan; or

(D) a combination of employment and receipt of retirement benefits equaling at least two (2) years.

(e) Beginning with the 1991 program year, the authority, when directed by the governor, shall administer:

(1) the rental rehabilitation program established by the Housing Assistance Act of 1937 (42 U.S.C. 1437o); and

(2) federal funds allocated to the rental rehabilitation program under the Housing Assistance Act of 1937 (42 U.S.C. 1437o).

(f) The authority may contract with the division of family and children and the department of commerce so that the authority may administer the program and funds described under subsection (e) for program years before 1991.

SECTION 4. IC 5-20-1-15.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 15.5. (a) The authority shall:**

(1) identify, promote, assist, and fund home ownership training programs throughout Indiana; and

(2) adopt rules under IC 4-22-2 governing certification procedures and counseling requirements for nonprofit home ownership counselors operating under programs under subdivision (1).

(b) The following shall cooperate with the authority to implement this section:

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(1) The Indiana professional licensing agency and the appropriate licensing boards with respect to persons licensed under IC 25.

(2) The department of financial institutions.

(3) The department of insurance with respect to the sale of insurance in connection with mortgage lending.

(4) The securities division of the office of the secretary of state.

(5) The attorney general.

(6) The department of state revenue.

(7) The state police department.

SECTION 5. IC 5-20-1-15.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 15.6. (a) The home ownership training account within the state general fund is established to support the home ownership training programs established under section 15.5 of this chapter. The account is administered by the authority.**

(b) The home ownership training account consists of fees collected under IC 24-9-9.

(c) The expenses of administering the home ownership training account shall be paid from money in the fund.

(d) The treasurer of state shall invest the money in the home ownership training account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.

(e) Interest earned on investments under subsection (d) shall be credited to the home ownership training account when received.

(f) Money in the home ownership training account at the end of a state fiscal year does not revert to the state general fund.

(g) There is annually appropriated to the authority from the home ownership training account an amount sufficient for carrying out the purposes of section 15.5 of this chapter.

SECTION 6. IC 23-2-5-3, AS AMENDED BY P.L.115-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) As used in this chapter, "certificate of registration" means a certificate issued by the commissioner authorizing an individual to engage in origination activities on behalf of a licensee.

(b) As used in this chapter, "creditor" means a person:

(1) that loans funds of the person in connection with a loan; and

(2) to whom the loan is initially payable on the face of the note or contract evidencing the loan.

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(c) As used in this chapter, "license" means a license issued by the commissioner authorizing a person to engage in the loan brokerage business.

(d) As used in this chapter, "licensee" means a person that is issued a license under this chapter.

(e) As used in this chapter, "loan broker" means any person who, in return for any consideration from any person, promises to procure a loan for any person or assist any person in procuring a loan from any third party, or who promises to consider whether or not to make a loan to any person. "Loan broker" does not include:

(1) any bank, savings bank, trust company, savings association, credit union, or any other financial institution that is:

(A) regulated by any agency of the United States or any state; and

(B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;

(2) any person authorized to sell and service loans for **the Indiana housing finance authority,** the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, issue securities backed by the Government National Mortgage Association, make loans insured by the United States Department of Housing and Urban Development, act as a supervised lender or nonsupervised automatic lender of the United States Department of Veterans Affairs, or act as a correspondent of loans insured by the United States Department of Housing and Urban Development;

(3) any insurance company; ~~or~~

(4) any person arranging financing for the sale of the person's product; **or**

(5) any community development corporation (as defined in IC 4-4-28-2).

(f) As used in this chapter, "loan brokerage business" means a person acting as a loan broker.

(g) As used in this chapter, "origination activities" means establishing the terms or conditions of a loan with a borrower or prospective borrower.

(h) As used in this chapter, "person" means an individual, a partnership, a trust, a corporation, a limited liability company, a limited liability partnership, a sole proprietorship, a joint venture, a joint stock company, or another group or entity, however organized.

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(i) As used in this chapter, "registrant" means an individual who is registered to engage in origination activities under this chapter.

(j) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls any ownership interest in a person, regardless of whether the person owns or controls the ownership interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

SECTION 7. IC 23-2-5-19, AS AMENDED BY P.L.230-1999, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19. (a) The following persons are exempt from the requirements of sections 4, 5, 6, 9, 10, 17, and 18 of this chapter:

(1) Any attorney while engaging in the practice of law.

(2) Any certified public accountant, public accountant, or accountant practitioner holding a certificate or registered under IC 25-2.1 while performing the practice of accountancy (as defined by IC 25-2.1-1-10).

(3) Any person licensed as a real estate broker or salesperson under IC 25-34.1 to the extent that the person is rendering loan related services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required.

(4) Any broker-dealer, agent, or investment advisor registered under IC 23-2-1.

(5) Any person that:

(A) procures;

(B) promises to procure; or

(C) assists in procuring;

a loan that is not subject to the Truth in Lending Act (15 U.S.C. 1601 through 1667e).

(6) **Any community development corporation (as defined in IC 4-4-28-2).**

(7) The Indiana housing finance authority.

(8) Any person who is a creditor, or proposed to be a creditor, for any loan.

(b) As used in this chapter, "bona fide third party fee" includes fees for the following:

(1) Credit reports, investigations, and appraisals performed by a person who holds a license or certificate as a real estate appraiser under IC 25-34.1-8.

(2) If the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey, and similar purposes.

(3) The services provided by a loan broker in procuring possible

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business for a lending institution if the fees are paid by the lending institution.

(c) As used in this section, "successful procurement of a loan" means that a binding commitment from a creditor to advance money has been received and accepted by the borrower.

(d) The burden of proof of any exemption or classification provided in this chapter is on the party claiming the exemption or classification.

SECTION 8. IC 24-9 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

ARTICLE 9. HOME LOAN PRACTICES

Chapter 1. Application

Sec. 1. Except for the provisions of IC 24-9-3-7(3), this article does not apply to:

(1) a loan made or acquired by a person organized or chartered under the laws of this state, any other state, or the United States relating to banks, trust companies, savings associations, savings banks, credit unions, or industrial loan and investment companies; or

(2) a loan:

(A) that can be purchased by the Federal National Mortgage Association, the Federal Home Loan Mortgage Association, or the Federal Home Loan Bank;

(B) to be insured by the United States Department of Housing and Urban Development;

(C) to be guaranteed by the United States Department of Veterans Affairs;

(D) to be made or guaranteed by the United States Department of Agriculture Rural Housing Service;

(E) to be funded by the Indiana housing finance authority; or

(F) with a principal amount that exceeds the conforming loan size limit for a single family dwelling as established by the Federal National Mortgage Association.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Benchmark rate" means the interest rate established under Section 152 of the Federal Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1602 (aa)) and the regulations adopted under that Act by the Federal Reserve Board, including 12 CFR 226.32 and the Official Staff Commentary to the regulations

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as amended.

Sec. 3. "Bona fide discount points" means loan discount points that:

(1) are knowingly paid by the borrower;

(2) are paid for the express purpose of reducing the interest rate applicable to the loan;

(3) reduce the interest rate from an interest rate that does not exceed the benchmark rate; and

(4) are recouped within the first four (4) years of the scheduled loan payments;

if the reduction in the interest rate that is achieved by the payment of the loan discount points reduces the interest charged on the scheduled payments so that the borrower's dollar amount of savings in interest during the first four (4) years of the loan is equal to or greater than the dollar amount of loan discount points paid by the borrower.

Sec. 4. "Borrower" means a person obligated to repay a home loan, including a coborrower, cosigner, or guarantor.

Sec. 5. "Bridge loan" means temporary or short term financing with a maturity of less than eighteen (18) months that requires payments of interest only until the entire unpaid balance is due and payable.

Sec. 6. (a) "Creditor" means:

(1) a person:

(A) who regularly extends consumer credit that is subject to a finance charge or that is payable by written agreement in more than four (4) installments; and

(B) to whom the debt arising from a home loan transaction is initially payable; or

(2) a person who brokers a home loan, including a person who:

(A) directly or indirectly solicits, processes, places, or negotiates home loans for others;

(B) offers to solicit, process, place, or negotiate home loans for others; or

(C) closes home loans that may be in the person's own name with funds provided by others and that are thereafter assigned to the person providing funding for the loans.

(b) The term does not include:

(1) a servicer;

(2) a state or local housing finance authority;

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(3) any other state or local governmental or quasi-governmental entity; or

(4) an attorney providing legal services in association with the closing of a home loan.

Sec. 7. (a) "Deceptive act" means an act or a practice as part of a consumer credit mortgage transaction involving real property located in Indiana in which a person at the time of the transaction knowingly or intentionally:

(1) makes a material misrepresentation; or

(2) conceals material information regarding the terms or conditions of the transaction.

(b) For purposes of this section, "knowingly" means having actual knowledge at the time of the transaction.

Sec. 8. (a) "High cost home loan" means a home loan with:

(1) a trigger rate that exceeds the benchmark rate; or

(2) total points and fees that exceed:

(A) five percent (5%) of the loan principal for a home loan having a loan principal of at least forty thousand dollars ($40,000); or

(B) six percent (6%) of the loan principal for a home loan having a loan principal of less than forty thousand dollars ($40,000).

(b) Beginning July 1, 2006, the dollar amounts set forth in this section are subject to change at the times and according to the procedure set forth in the provisions of IC 24-4.5-1-106 concerning the adjustment of dollar amounts in IC 24-4.5 regarding consumer credit transactions. The department of financial institutions shall adopt rules under IC 4-22-2 to establish procedures to implement this subsection, and shall issue an emergency rule announcing a change required under this subsection by April 30 of each year in which dollar amounts are to change.

Sec. 9. "Home loan" means a loan, other than an open end credit plan or a reverse mortgage transaction, that is secured by a mortgage or deed of trust on real estate in Indiana on which there is located or will be located a structure or structures:

(1) designed primarily for occupancy of one (1) to four (4) families; and

(2) that is or will be occupied by a borrower as the borrower's principal dwelling.

Sec. 10. (a) Except as provided in subsection (b), "points and fees" means the total of the following:

(1) Points and fees (as defined in 12 CFR 226.32(b)(1) on

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January 1, 2004).

(2) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in the broker's own name. January 1, 2004).

As used in subdivision (2), "compensation" does not include a payment included in subdivision (1).

(b) The term does not include the following:

(1) Bona fide discount points.

(2) An amount not to exceed one and one-half (1 1/2) points in indirect broker compensation; if the terms of the loan do not include a prepayment penalty that exceeds two percent (2%) of the home loan principle.

(3) Reasonable fees paid to an affiliate of the creditor.

(4) Interest prepaid by the borrower for the month in which the home loan is closed.

Sec. 11. "Political subdivision" means a municipality, school district, public library, local housing authority, fire protection district, public transportation corporation, local building authority, local hospital authority or corporation, local airport authority, special service district, special taxing district, or any other type of local governmental corporate entity.

Sec. 12. "Rate" means the interest rate charged on a home loan, based on an annual simple interest yield.

Sec. 13. "Total loan amount" means the principal of the home loan minus the points and fees that are included in the principal amount of the loan.

Sec. 14. "Trigger rate" means:

(1) for fixed rate home loans in which the interest rate will not vary during the term of the loan, the rate as of the date of closing;

(2) for home loans in which the interest varies according to an index, the sum of the index rate as of the date of closing plus the maximum margin permitted at any time under the loan agreement; or

(3) for all other home loans in which the rate may vary at any time during the term of the loan, the maximum rate that may be charged during the term of the home loan.

Chapter 3. Prohibited Lending Practices Generally

Sec. 1. (a) A creditor making a home loan may not finance, directly or indirectly, any:

(1) credit life insurance;

(2) credit disability insurance;

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(3) credit unemployment insurance;

(4) credit property insurance; or

(5) payments directly or indirectly for any cancellation suspension agreement or contract.

(b) Insurance premiums, debt cancellation fees, or suspension fees calculated and paid on a monthly basis are not considered to be financed by the creditor for purposes of this chapter.

Sec. 2. (a) A creditor may not knowingly or intentionally replace or consolidate a zero (0) interest rate or other subsidized low rate loan made by a governmental or nonprofit lender with a high cost home loan within the first ten (10) years of the subsidized low rate loan unless the current holder of the loan consents in writing to the refinancing.

(b) For purposes of this section, a "subsidized low rate loan" is a loan that carries a current interest rate of at least two (2) percentage points below the current yield on treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped up rate, as appropriate, should be used instead of the current rate to determine whether a loan is a subsidized low rate loan.

(c) Each mortgage or deed of trust securing a zero (0) interest rate or other subsidized low rate loan executed after January 1, 2005, must prominently display the following on the face of the instrument:

"This instrument secures a zero (0) interest rate or other subsidized low rate loan subject to IC 24-9-3-2.".

(d) A creditor may reasonably rely on the presence or absence of the statement described in subsection (c) on the face of an instrument executed after January 1, 2005, as conclusive proof of the existence or nonexistence of a zero (0) interest rate or other subsidized low rate loan.

Sec. 3. A creditor may not recommend or encourage default on an existing loan or other debt before and in connection with the closing or planned closing of a home loan that refinances all or part of the existing loan or debt.

Sec. 4. A creditor shall treat each payment made by a borrower in regards to a home loan as posted on the same business day as the payment was received by the creditor, servicer, or creditor's agent, or at the address provided to the borrower by the creditor, servicer, or creditor's agent for making payments.

Sec. 5. (a) A home loan agreement may not contain a provision

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that permits the creditor, in the creditor's sole discretion, to accelerate the indebtedness without material cause.

(b) This section does not prohibit acceleration of a home loan in good faith due to the borrower's failure to abide by the material terms of the loan.

Sec. 6. (a) A creditor may not charge a fee for informing or transmitting to a person the balance due to pay off a home loan or to provide a written release upon prepayment. A creditor must provide a payoff balance not later than ten (10) business days after the request is received by the creditor.

(b) For purposes of this section, "fee" does not include actual charges incurred by a creditor for express or priority delivery requested by the borrower of home loan documents to the borrower.

Sec. 7. A person may not:

(1) divide a loan transaction into separate parts with the intent of evading a provision of this article;

(2) structure a home loan transaction as an open-end loan with the intent of evading the provisions of this article if the loan would be a high cost home loan if the home loan had been structured as a closed-end loan; or

(3) engage in a deceptive act in connection with a home loan.

Sec. 8. A person, in seeking to enforce the person's rights under section 7(3) of this chapter, may not knowingly or intentionally intimidate, coerce, or harass another person.

Sec. 9. It is unlawful for a creditor to discriminate against any applicant with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age, if the applicant has the ability to contract.

Chapter 4. Additional Prohibitions for High Cost Home Loans

Sec. 1. The following additional limitations and prohibited practices apply to a high cost home loan:

(1) A creditor making a high cost home loan may not directly or indirectly finance any points and fees.

(2) Prepayment fees or penalties may not be included in the loan documents for a high cost home loan or charged to the borrower if the fees or penalties exceed in total two percent (2%) of the high cost home loan amount prepaid during the first twenty-four (24) months after the high cost home loan closing.

(3) A prepayment penalty may not be contracted for after the second year following the high cost home loan closing.

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(4) A creditor may not include a prepayment penalty fee in a high cost home loan unless the creditor offers the borrower the option of choosing a loan product without a prepayment fee. The terms of the offer must be made in writing and must be initialed by the borrower. The document containing the offer must be clearly labeled in large bold type and must include the following disclosure:

"LOAN PRODUCT CHOICE

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty.".

(5) A creditor shall not sell or otherwise assign a high cost home loan without furnishing the following statement to the purchaser or assignee:

"NOTICE: This is a loan subject to special rules under IC 24-9. Purchasers or assignees may be liable for all claims and defenses with respect to the loan that the borrower could assert against the lender.".

(6) A mortgage or deed of trust that secures a high cost home loan at the time the mortgage or deed of trust is recorded must prominently display the following on the face of the instrument:

"This instrument secures a high cost home loan as defined in IC 24-9-2-8.".

(7) A creditor making a high cost home loan may not finance, directly or indirectly, any life or health insurance.

Sec. 2. A creditor may not knowingly or intentionally:

(1) refinance a high cost home loan by charging points and fees on the part of the proceeds of the new high cost home loan that is used to refinance the existing high cost loan within four (4) years of the origination of the existing high cost home loan; or

(2) divide a home loan transaction into multiple transactions with the effect of evading this article. Where multiple transactions are involved, the total points and fees charged in all transactions shall be considered when determining whether the protections of this section apply.

Sec. 3. Notwithstanding IC 24-4.5-3-402, a high cost home loan agreement may not require a scheduled payment that is more than twice as large as the average of earlier scheduled monthly payments under the high cost home loan agreement unless the payment becomes due and payable at least one hundred twenty

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(120) months after the date of the high cost home loan. This prohibition does not apply if:

(1) the payment schedule is adjusted to account for the seasonal or irregular income of the borrower; or

(2) the loan is a bridge loan connected with or related to the acquisition or construction of a dwelling intended to become the borrower's principal dwelling.

Sec. 4. (a) Except as provided in subsection (b), a high cost home loan may not include payment terms under which the outstanding principal balance will increase at any time over the course of the high cost home loan because the regular periodic payments do not cover the full amount of interest due.

(b) This section does not apply to a temporary forbearance that is requested by a borrower regarding a high cost home loan.

Sec. 5. A high cost home loan may not contain a provision that increases the interest rate after default. However, this section does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the high cost home loan documents if the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

Sec. 6. A high cost home loan may not include terms under which more than two (2) periodic payments required under the high cost home loan are consolidated and paid in advance from the high cost home loan proceeds provided to the borrower.

Sec. 7. A creditor may not make a high cost home loan without first providing the borrower information to facilitate contact with a nonprofit counseling agency certified by:

(1) the United States Department of Housing and Urban Development; or

(2) the Indiana housing finance authority under IC 5-20-1-15.5;

at the same time as the good faith estimates are provided to the borrower in accordance with the requirements of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) as amended.

Sec. 8. (a) A creditor may not make a high cost home loan without regard to repayment ability.

(b) If a creditor presents evidence that the creditor followed commercially reasonable practices in determining the borrower's debt to income ratio, there is a rebuttable presumption that the creditor made the high cost home loan with due regard to repayment ability. For purposes of this section, there is a

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rebuttable presumption that the borrower's statement of income provided to the creditor is true and complete.

(c) Commercially reasonable practices include the use of:

(1) the debt to income ratio:

(A) listed in 38 CFR 36.4337(c)(1); and

(B) defined in 38 CFR 36.4337(d); and

(2) the residual income guidelines established under:

(A) 38 CFR 36.4337(e); and

(B) United States Department of Veterans Affairs form 26-6393.

Sec. 9. A creditor may not pay a contractor under a home improvement contract from the proceeds of a high cost home loan unless:

(1) the creditor is presented with a signed and dated completion certificate showing that the home improvements have been completed; and

(2) the instrument is payable to the borrower or jointly to the borrower and the contractor or, at the election of the borrower, through a third party escrow agent under a written agreement signed by the borrower, the creditor, and the contractor before the disbursement.

Sec. 10. A creditor may not charge a borrower any fees or other charges to modify, renew, extend, or amend a high cost home loan or to defer a payment due under the terms of a high cost home loan.

Sec. 11. A creditor may not make a high cost home loan unless the creditor has given the following notice, in writing, to the borrower not later than the time that notice is required under 12 CFR 226.31(c):

"NOTICE TO BORROWER

YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD COMPARE LOAN RATES, COSTS, AND FEES. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED, AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE, COSTS, AND FEES COULD ALSO VARY BASED ON WHICH CREDITOR OR BROKER YOU SELECT.

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IF YOU ACCEPT THE TERMS OF THIS LOAN, THE CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU HAVE PAID IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS UNDER THE LOAN.

YOU SHOULD CONSULT AN ATTORNEY AND A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISER REGARDING THE RATE, FEES, AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. A LIST OF QUALIFIED COUNSELORS IS AVAILABLE FROM THE INDIANA HOUSING FINANCE AUTHORITY. YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION. REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL CREDITORS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR CREDITOR ABOUT THESE SERVICES.

ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS.".

Sec. 12. Without regard to whether a borrower is acting individually or on behalf of others similarly situated, a provision of a high cost home loan agreement that:

(1) requires arbitration of a claim or defense;

(2) allows a party to require a borrower to assert a claim or defense in a forum that is:

(A) less convenient;

(B) more costly; or

(C) more dilatory;

for the resolution of the dispute than an Indiana court in which the borrower may otherwise bring a claim or defense; or

(3) limits in any way any claim or defense the borrower may have;

is unconscionable and void.

Chapter 5. Claims, Defenses, Remedies

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Sec. 1. (a) A person who purchases or is otherwise assigned a high cost home loan is subject to all affirmative claims and any defenses with respect to the high cost home loan that the borrower could assert against a creditor or broker of the high cost home loan. However, this section does not apply if the purchaser or assignee demonstrates by a preponderance of the evidence that a reasonable person exercising ordinary due diligence could not determine that the loan was a high cost home loan. A purchaser or an assignee is presumed to have exercised reasonable due diligence if the purchaser or assignee:

(1) has in place at the time of the purchase or assignment of the subject loans, policies that expressly prohibit the purchase or acceptance of the assignment of any high cost home loans;

(2) requires by contract that a seller or an assignor of home loans to the purchaser or assignee represents and warrants to the purchaser or assignee that either:

(A) the seller or assignor will not sell or reassign any high cost home loans to the purchaser or assignee; or

(B) the seller or assignor is a beneficiary of a representation and warranty from a previous seller or assignor to that effect;

(3) exercises reasonable due diligence:

(A) at the time of purchase or assignment of home loans; or

(B) within a reasonable period after the purchase or assignment of home loans;

intended by the purchaser or assignee to prevent the purchaser or assignee from purchasing or taking assignment of any high cost home loans; or

(4) satisfies the requirements of subdivisions (1) and (2) and establishes that a reasonable person exercising ordinary due diligence could not determine that the loan was a high cost home loan based on the:

(A) documentation required by the federal Truth in Lending Act (15 U.S.C. 1601 et seq.); and

(B) itemization of the amount financed and other disbursement disclosures.

(b) A borrower acting only in an individual capacity may assert against the creditor or any subsequent holder or assignee of a high cost home loan:

(1) a violation of IC 24-9-4-2 as a defense, claim, or counterclaim, after:

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(A) an action to enjoin foreclosure or to preserve or obtain possession of the dwelling that secures the loan is initiated;
(B) an action to collect on the loan or foreclose on the collateral securing the loan is initiated; or
(C) the loan is more than sixty (60) days in default;
within three (3) years after the closing of a home loan;
(2) a violation of this article in connection to the high cost home loan as a defense, claim, or counterclaim in an original action within five (5) years after the closing of a high cost home loan; and
(3) any defense, claim, counterclaim, or action to enjoin foreclosure or preserve or obtain possession of the home that secures the loan, including a violation of this article after:
(A) an action to collect on the loan or foreclose on the collateral securing the loan is initiated;
(B) the debt arising from the loan is accelerated; or
(C) the loan is more than sixty (60) days in default;
at any time during the term of a high cost home loan.

(c) In an action, a claim, or a counterclaim brought under subsection (b), the borrower may recover only amounts required to reduce or extinguish the borrower's liability under a home loan plus amounts required to recover costs, including reasonable attorney's fees.

(d) The provisions of this section are effective notwithstanding any other provision of law. This section shall not be construed to limit the substantive rights, remedies, or procedural rights available to a borrower against any creditor, assignee, or holder under any other law. The rights conferred on borrowers by subsections (a) and (b) are independent of each other and do not limit each other.

Sec. 2. (a) If a creditor asserts that grounds for acceleration under the terms of a high cost home loan exist and requires the payment in full of all sums secured by the security instrument, the borrower or a person authorized to act on the borrower's behalf at any time before the title is transferred by means of foreclosure, judicial proceeding and sale, or otherwise may cure the default and reinstate the high cost home loan by tendering the amount or performance as specified in the security instrument.

(b) If the borrower cures the default on a high cost home loan, the original loan terms shall be reinstated, and any acceleration of any obligation under the security instrument or note arising from the default is nullified as of the date of the cure.

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Sec. 3. (a) A creditor making a high cost home loan that has the right to foreclose must use the judicial foreclosure procedures of the state in which the property securing the high cost home loan is located. The borrower has the right to assert in the proceeding the nonexistence of a default and any other claim or defense to acceleration and foreclosure, including any claim or defense based on any violations of this article.

(b) This section is not intended and shall not be construed to allow any claim or defense otherwise barred by any statute of limitation or repose.

Sec. 4. (a) A person who violates this article is liable to a person who is a party to the home loan transaction that gave rise to the violation for the following:

(1) Actual damages, including consequential damages. A person is not required to demonstrate reliance in order to receive actual damages.

(2) Statutory damages equal to two (2) times the finance charges agreed to in the home loan agreement.

(3) Costs and reasonable attorney's fees.

(b) A person may be granted injunctive, declaratory, and other equitable relief as the court determines appropriate in an action to enforce compliance with this chapter.

(c) The right of rescission granted under 15 U.S.C. 1601 et seq. for a violation of law is available to a person acting only in an individual capacity by way of recoupment as a defense against a party foreclosing on a home loan at any time during the term of the loan. Any recoupment claim asserted under this provision is limited to the amount required to reduce or extinguish the person's liability under the home loan plus amounts required to recover costs, including reasonable attorney's fees. This article shall not be construed to limit the recoupment rights available to a person under any other law.

(d) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a person. Except as provided in subsection (e), a person is not required to exhaust any administrative remedies under this article or under any other applicable law.

(e) Before bringing an action regarding an alleged deceptive act under this chapter, a person must:

(1) notify the homeowner protection unit established by IC 4-6-12-2 of the alleged violation giving rise to the action; and

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(2) allow the homeowner protection unit at least ninety (90) days to institute appropriate administrative and civil action to redress a violation.

(f) An action under this chapter must be brought within five (5) years after the date that the person knew, or by the exercise of reasonable diligence should have known, of the violation of this article.

(g) An award of damages under subsection (a) has priority over a civil penalty imposed under this article.

Sec. 5. (a) If the creditor or an assignee establishes by a preponderance of evidence that a violation of this article is unintentional or the result of a bona fide error of law or fact notwithstanding the maintenance of procedures reasonably adopted to avoid any such violation or error, the validity of the transaction is not affected, and no liability is imposed under section 4 of this chapter except in the case of a refusal to make a refund.

(b) Except as provided in subsection (c), a creditor in a high cost home loan who in good faith fails to comply with this article is not considered to have violated this article if the creditor does the following before receiving notice of the failure from the borrower:

(1) Not later than ninety (90) days after the date of the loan closing:

(A) makes appropriate restitution to the borrower of any amounts collected in error; and

(B) takes necessary action to make all appropriate adjustments to the loan to correct the error.

(2) Not later than one hundred twenty (120) days after the date of the loan closing, notifies the borrower of:

(A) the error; and

(B) the amount of the required restitution or adjustment.

(c) Subsection (b) does not apply unless the creditor establishes that the compliance failure was not intentional and resulted from a bona fide error of fact or law, notwithstanding the maintenance of procedures reasonably adopted to avoid the errors.

Sec. 6. The rights conferred by this article are in addition to rights granted under any other law.

Chapter 6. Reporting Requirements

Sec. 1. (a) A servicer of a high cost home loan shall report at least once each calendar quarter to a nationally recognized consumer credit reporting agency both the favorable and unfavorable payment history information of the borrower on payments due to the creditor on a high cost home loan.

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(b) This section does not prohibit a servicer from agreeing with the borrower not to report specified payment history information in the event of a resolved or an unresolved dispute with a borrower and does not apply to high cost home loans held or serviced by a lender for less than ninety (90) days.

Chapter 7. State Power to Regulate Lending

Sec. 1. The state solely shall regulate the business of originating, granting, servicing, and collecting loans and other forms of credit in Indiana and the manner in which any business is conducted. This regulation preempts all other regulation of these activities by any political subdivision.

Sec. 2. Political subdivisions may not:

(1) enact, issue, or enforce ordinances, resolutions, regulations, orders, requests for proposals, or requests for bids pertaining to financial or lending activities, including ordinances, resolutions, and rules disqualifying persons from doing business with a municipality that are based upon lending terms or practices; or

(2) impose reporting requirements or any other obligations upon persons regarding financial services or lending practices or upon subsidiaries or affiliates that:

(A) are subject to the jurisdiction of the department of financial institutions;

(B) are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission, or the United States Department of Housing and Urban Development;

(C) are chartered by the United States Congress to engage in secondary market mortgage transactions;

(D) are created by the Indiana housing finance authority; or

(E) originate, purchase, sell, assign, securitize, or service property interests or obligations created by financial transactions or loans made, executed, originated, or purchased by persons referred to in clauses (A), (B), (C), or (D).

Chapter 8. Penalties and Enforcement

Sec. 1. A person who knowingly or intentionally violates this article commits:

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(1) a Class A misdemeanor; and

(2) an act that is actionable by the attorney general under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

Sec. 2. (a) The attorney general and the attorney general's homeowner protection unit established under IC 4-6-12 shall enforce this article for any violation occurring within five (5) years after the making of a home loan.

(b) The attorney general may refer a matter under section 1 of this chapter to a prosecuting attorney for enforcement.

Sec. 3. (a) The attorney general may bring an action to enjoin a violation of this article. A court in which the action is brought may:

(1) issue an injunction;

(2) order a person to make restitution;

(3) order a person to reimburse the state for reasonable costs of the attorney general's investigation and prosecution of the violation of this article; and

(4) impose a civil penalty of not more than ten thousand dollars ($10,000) per violation.

(b) A person who violates an injunction under this section is subject to a civil penalty of not more than ten thousand dollars ($10,000) per violation.

(c) The court that issues an injunction retains jurisdiction over a proceeding seeking the imposition of a civil penalty under this section.

Sec. 4. The attorney general may file complaints with any of the agencies listed in IC 4-6-12-4 to implement this chapter.

Chapter 9. Fees

Sec. 1. The county recorder shall assess a fee of three dollars ($3) under IC 36-2-7-10(b)(11) for each mortgage recorded. The fee shall be paid to the county treasurer at the end of each calendar month as provided in IC 36-2-7-10(a).

Sec. 2. The county treasurer shall credit fifty cents ($0.50) of the fee collected under IC 36-2-7-10(b)(11) for each mortgage recorded to the county recorder's records perpetuation fund established under IC 36-2-7-10(c).

Sec. 3. On or before June 20 and December 20 of each year, after completing an audit of the county treasurer's monthly reports required by IC 36-2-10-16, the county auditor shall distribute to the auditor of state two dollars and fifty cents ($2.50) of the mortgage recording fee collected under IC 36-2-7-10(b)(11) for each mortgage recorded by the county recorder.

Sec. 4. The auditor of state shall distribute one dollar and

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twenty-five cents ($1.25) of the mortgage recording fee to the home ownership training account established by IC 5-20-1-15.6. The auditor of state shall credit one dollar and twenty-five cents ($1.25) of the mortgage recording fee to the homeowner protection unit account established by IC 4-6-12-9.

SECTION 9. IC 34-7-4-2, AS AMENDED BY P.L.2-2002, SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. Statutes outside IC 34 providing causes of action or procedures include the following:

(1) IC 4-21.5-5 (Judicial review of administrative agency actions).

(2) IC 22-3-4 (Worker's compensation administration and procedures).

(3) IC 22-4-17 (Unemployment compensation system, employee's claims for benefits).

(4) IC 22-4-32 (Unemployment compensation system, employer's appeal process).

(5) IC 22-9 (Civil rights actions).

(6) **IC 24-9 (Home loans).**

(7) IC 31-14 (Paternity).

~~(7)~~ **(8)** IC 31-15 (Dissolution of marriage and legal separation).

~~(8)~~ **(9)** IC 31-16 (Support of children and other dependants).

~~(9)~~ **(10)** IC 31-17 (Custody and visitation).

~~(10)~~ **(11)** IC 31-19 (Adoption).

~~(11)~~ **(12)** IC 32-27-2, IC 32-30-1, IC 32-30-2, ~~IC 32-30-2.1, IC 32-30-2,~~ IC 32-30-4, IC 32-30-9, IC 32-30-10, IC 32-30-12, IC 32-30-13, and IC 32-30-14 (Real property).

~~(12)~~ **(13)** IC 33-1-3 (Attorney liens).

SECTION 10. IC 36-2-7-10, AS AMENDED BY P.L.2-2003, SECTION 101, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) The county recorder shall tax and collect the fees prescribed by this section for recording, filing, copying, and other services the recorder renders, and shall pay them into the county treasury at the end of each calendar month. The fees prescribed and collected under this section supersede all other recording fees required by law to be charged for services rendered by the county recorder.

(b) The county recorder shall charge the following:

(1) Six dollars ($6) for the first page and two dollars ($2) for each additional page of any document the recorder records if the pages are not larger than eight and one-half (8 1/2) inches by fourteen (14) inches.

(2) Fifteen dollars ($15) for the first page and five dollars ($5) for

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each additional page of any document the recorder records, if the pages are larger than eight and one-half (8 1/2) inches by fourteen (14) inches.

(3) For attesting to the release, partial release, or assignment of any mortgage, judgment, lien, or oil and gas lease contained on a multiple transaction document, the fee for each transaction after the first is the amount provided in subdivision (1) plus the amount provided in subdivision (4) and one dollar ($1) for marginal mortgage assignments or marginal mortgage releases.

(4) One dollar ($1) for each cross-reference of a recorded document.

(5) One dollar ($1) per page not larger than eight and one-half (8 1/2) inches by fourteen (14) inches for furnishing copies of records produced by a photographic process, and two dollars ($2) per page that is larger than eight and one-half (8 1/2) inches by fourteen (14) inches.

(6) Five dollars ($5) for acknowledging or certifying to a document.

(7) Five dollars ($5) for each deed the recorder records, in addition to other fees for deeds, for the county surveyor's corner perpetuation fund for use as provided in IC 32-19-4-3 or IC 36-2-12-11(e).

(8) A fee in an amount authorized under IC 5-14-3-8 for transmitting a copy of a document by facsimile machine.

(9) A fee in an amount authorized by an ordinance adopted by the county legislative body for duplicating a computer tape, a computer disk, an optical disk, microfilm, or similar media. This fee may not cover making a handwritten copy or a photocopy or using xerography or a duplicating machine.

(10) A supplemental fee of three dollars ($3) for recording a document that is paid at the time of recording. The fee under this subdivision is in addition to other fees provided by law for recording a document.

(11) Three dollars ($3) for each mortgage on real estate recorded, in addition to other fees required by this section, distributed as follows:

(A) Fifty cents ($0.50) is to be deposited in the recorder's record perpetuation fund.

(B) Two dollars and fifty cents ($2.50) is to be distributed to the auditor of state on or before June 20 and December 20 of each year as provided in IC 24-9-9-3.

(c) The county treasurer shall establish a recorder's records

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perpetuation fund. All revenue received under subsection (b)(5), (b)(8), (b)(9), and (b)(10), **and fifty cents ($0.50) from revenue received under subsection (b)(11),** shall be deposited in this fund. The county recorder may use any money in this fund without appropriation for the preservation of records and the improvement of record keeping systems and equipment.

(d) As used in this section, "record" or "recording" includes the functions of recording, filing, and filing for record.

(e) The county recorder shall post the fees set forth in subsection (b) in a prominent place within the county recorder's office where the fee schedule will be readily accessible to the public.

(f) The county recorder may not tax or collect any fee for:

(1) recording an official bond of a public officer, a deputy, an appointee, or an employee; or

(2) performing any service under any of the following:

(A) IC 6-1.1-22-2(c).

(B) IC 8-23-7.

(C) IC 8-23-23.

(D) IC 10-17-2-3.

(E) IC 10-17-3-2.

(F) IC 12-14-13.

(G) IC 12-14-16.

(g) The state and its agencies and instrumentalities are required to pay the recording fees and charges that this section prescribes.

SECTION 11. [EFFECTIVE UPON PASSAGE] **Beginning January 1, 2005, the attorney general shall carry out the duties imposed on the attorney general under IC 4-6-12 and IC 24-9, both as added by this act.**

SECTION 12. [EFFECTIVE UPON PASSAGE] **(a) Notwithstanding IC 5-20-1-15.5, as added by this act, the Indiana housing finance authority shall carry out the duties imposed on it under IC 5-20-1-15.5, as added by this act, under interim written guidelines approved by the executive director of the Indiana housing finance authority.**

(b) This SECTION expires on the earlier of the following:

(1) The date rules are adopted under IC 5-20-1-15.5(a)(2), as added by this act.

(2) January 1, 2005.

SECTION 13. [EFFECTIVE UPON PASSAGE] **Notwithstanding IC 24-9-3 and IC 24-9-4, both as added by this act, a person is not subject to a prohibition or requirement of IC 24-9-3 and IC 24-9-4, both as added by this act, before January 1, 2005.**

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SECTION 14. [EFFECTIVE UPON PASSAGE] **Notwithstanding IC 24-9, as added by this act, a person may not file a civil action under IC 24-9, as added by this act, before January 1, 2005.**

SECTION 15. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1229, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 20, delete "to develop and implement" and insert "**in the development and implementation of**".

Page 3, line 29, after "The" insert "**homeowner protection unit**".

Page 3, line 30, after "administering the" insert "**homeowner protection unit**".

Page 3, line 32, after "in the" insert "**homeowner protection unit**".

Page 3, line 36, after "the" insert "**homeowner protection unit**".

Page 3, line 37, after "in the" insert "**homeowner protection unit**".

Page 9, line 18, after "The" insert "**home ownership training**".

Page 9, line 19, after "administering the" insert "**home ownership training**".

Page 9, line 21, after "in the" insert "**home ownership training**".

Page 9, line 25, after "the" insert "**home ownership training**".

Page 9, line 26, after "in the" insert "**home ownership training**".

Page 9, line 27, delete "However, if the amount of money".

Page 9, delete lines 28 through 31.

Page 12, delete lines 15 through 23, begin a new paragraph and insert:

"**Sec. 1. This article does not apply to:**

(1) a loan made or acquired by a person organized or chartered under the laws of this state, any other state, or the United States relating to banks, trust companies, savings associations, saving banks, credit unions, or industrial loan and investment companies; or

(2) a loan:

(A) that can be purchased by the Federal National Mortgage Association, the Federal Home Loan Mortgage Association, or the Federal Home Loan Bank;

(B) to be insured by the United States Department of Housing and Urban Development;

(C) to be guaranteed by the United States Department of Veterans Affairs;

(D) to be funded by the Indiana housing finance authority; or

(E) with a principal amount that exceeds the conforming loan size limit for a single family dwelling as established by the Federal National Mortgage Association.".

Copy

Page 13, delete lines 36 through 42

Page 14, delete lines 1 through 15, begin a new paragraph and insert:

Sec. 7. "Deceptive act" means an act or a practice as part of a consumer credit mortgage transaction involving real property located in Indiana in which a person:

(1) knowingly or intentionally makes a material misrepresentation;

(2) knowingly or intentionally conceals material information regarding the terms or conditions of the transaction; or

(3) knowingly or intentionally consummates the credit mortgage transaction with the knowledge that the borrower will be unable to successfully fulfill the terms or conditions of the mortgage loan based upon the borrower's finances at the time of the consummation.

Page 14, line 16, delete "9." and insert "**8.**".

Page 14, line 20, delete "10." and insert "**9.**".

Page 14, line 20, after "than" insert "**an open end credit plan or"**

Page 14, line 31, delete "11." and insert "**10.**".

Page 15, delete lines 15 though 38, begin a new paragraph and insert:

"**Sec. 11. (a) Except as provided in subsection (b), "points and fees" means the total of the following:**

(1) Points and fees (as defined in 12 CFR 226.32(b)(1) on January 1, 2004).

(2) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in the broker's own name.

(b) The term does not include the following:

(1) Not more than two (2) bona fide discount points.

(2) Interest prepaid by the borrower for the month in which the home loan is closed.".

Page 15, line 39, delete "13." and insert "**12.**".

Page 15, line 41, delete "14." and insert "**13.**".

Page 15, line 41, delete "means:" and insert "**means**".

Page 15, line 42, delete "(1)".

Page 15, run in lines 41 through 42

Page 16, line 1, delete "loan; or" and insert "**loan.**".

Page 16, delete lines 2 through 3.

Page 16, line 4, delete "15." and insert "**14.**".

Page 16, line 21, after "insurance;" insert "**or**".

Page 16, delete line 22.

C o p y

Page 16, line 23, delete "(6)" and insert "**(5)**".

Page 16, delete lines 28 through 38, begin a new paragraph and insert:

"**Sec. 2. (a) A creditor may not replace or consolidate a zero (0) interest rate or other subsidized low rate loan made by a governmental or nonprofit lender with a high cost home loan within the first ten (10) years of the subsidized low rate loan unless the current holder of the loan consents in writing to the refinancing.**

(b) For purposes of this section, a "subsidized low rate loan" is a loan that carries a current interest rate of at least two (2) percentage points below the current yield on treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped up rate, as appropriate, should be used instead of the current rate to determine whether a loan is a subsidized low rate loan.".

Page 17, line 1, delete "(a) Notwithstanding IC 24-4.5-3-203.5, a creditor may"

Page 17, delete lines 2 through 25.

Page 17, line 26, delete "(b)".

Page 17, run in lines 1 and 26.

Page 17, line 26, after "payment" insert "**made by a borrower in regards to a home loan**".

Page 17, line 27, delete "date" and insert "**business day**".

Page 17, line 32, delete "indebtedness." and insert "**indebtedness without material cause.**".

Page 17, delete lines 41 through 42.

Page 18, delete lines 1 through 13.

Page 18, line 14, delete "8." and insert "**7.**".

Page 18, line 19, after "the" insert "**home**".

Page 18, line 24, delete "9." and insert "**8.**".

Page 19, between lines 9 and 10, begin a new line block indented and insert:

"**(5) A creditor making a high cost home loan may not finance, directly or indirectly, any life or health insurance.**

Sec. 2. A creditor may not knowingly or intentionally:

(1) refinance a high cost home loan by charging points and fees on the part of the proceeds of the new high cost home loan that is used to refinance the existing high cost loan within four (4) years of the origination of the existing high cost home loan; or

C o p y

(2) divide a home loan transaction into multiple transactions with the effect of evading this article. Where multiple transactions are involved, the total points and fees charged in all transactions shall be considered when determining whether the protections of this section apply.".

Page 19, line 10, delete "2." and insert "**3.**".

Page 19, line 21, delete "obligor's" and insert "**borrower's**".

Page 19, line 22, delete "3. A" and insert "**4. (a) Except as provided in subsection (b), a**".

Page 19, between lines 25 and 26, begin a new paragraph and insert:

"**(b) This section does not apply to a temporary forbearance that is requested by a borrower regarding a high cost home loan.**".

Page 19, line 26, delete "4." and insert "**5.**".

Page 19, line 32, delete "5." and insert "**6.**".

Page 19, line 36, delete "6." and insert "**7.**".

Page 20, line 5, delete "7." and insert "**8.**".

Page 20, line 22, delete "8." and insert "**9.**".

Page 20, line 33, delete "9." and insert "**10.**".

Page 20, line 37, delete "10." and insert "**11.**".

Page 21, between lines 37 and 38, begin a new paragraph and insert:

"**Sec. 12. Without regard to whether a borrower is acting individually or on behalf of others similarly situated, a provision of a high cost home loan agreement that:**

(1) requires arbitration of a claim or defense;

(2) allows a party to require a borrower to assert a claim or defense in a forum that is:

(A) less convenient;

(B) more costly; or

(C) more dilatory;

for the resolution of the dispute than an Indiana court in which the borrower may otherwise bring a claim or defense; or

(3) limits in any way any claim or defense the borrower may have;

is unconscionable and void.".

Page 22, line 35, after "of a" insert "**high cost**".

Page 22, line 37, delete "IC 24-9-3-2" and insert "**IC 24-9-4-2**".

Page 23, delete line 36.

Page 23, line 37, delete "default had not occurred," and insert "**the original loan terms shall be reinstated,**".

Page 23, run in lines 35 and 37.

Page 24, line 15, delete "malicious or" and insert "**malicious.**".

C o p y

Page 24, delete line 16.

Page 24, delete lines 35 through 40, begin a new paragraph and insert:

"**(e) An action under this chapter must be brought within five (5) years after the date that the borrower knew, or by the exercise of reasonable diligence should have known, of the violation of this article.**".

Page 25, line 11, delete "compliance".

Page 25, line 13, delete "thirty (30)" and insert "**ninety (90)**".

Page 25, line 14, delete "closing, makes:" and insert "**closing:**".

Page 25, line 15, after "(A)" insert "**makes**".

Page 25, line 17, after "(B)" insert "**takes necessary action to make**".

Page 25, line 19, delete "sixty (60)" and insert "**one hundred twenty (120)**".

Page 25, line 21, delete "compliance".

Page 25, line 25, delete "error," and insert "**error of fact or law,**".

Page 25, line 26, delete "For purposes of this".

Page 25, delete lines 27 through 31.

Page 25, line 36, delete "monthly" and insert "**once each calendar quarter**".

Page 26, line 27, delete "that fifteen" and insert "**than ten**".

Page 26, line 28, delete "($15,000)" and insert "**($10,000)**".

Page 29, delete lines 32 through 42.

Page 30, delete lines 1 through 24.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1229 as introduced.)

LAWSON L, Chair

Committee Vote: yeas 9, nays 3.

C o p y

HOUSE MOTION

Mr. Speaker: I move that House Bill 1229 be amended to read as follows:

Page 14, line 18, delete "five" and insert "**six**".

Page 14, line 18, delete "(5%)" and insert "**(6%)**".

Page 15, line 16, delete "the total of the following:".

Page 15, line 17, delete "(1) Points" and insert "**points**".

Run in lines 16 through 17.

Page 15, delete lines 19 through 21.

Page 15, line 23, delete "Not more than two (2) bona" and insert "**Bona**".

(Reference is to HB 1229 as printed January 30, 2004.)

BURTON

HOUSE MOTION

Mr. Speaker: I move that House Bill 1229 be amended to read as follows:

Page 2, line 26, delete "implement this chapter." and insert "**the extent necessary to organize the unit.**".

Page 2, line 27, delete "shall" and insert "**may**".

Page 2, after line 42, begin a new line block indented and insert:

"**(10) Local law enforcement agencies.**".

Page 3, delete lines 22 through 25.

Page 3, line 26, delete "10." and insert "**9.**".

Page 3, line 30, delete "IC 24-9-8." and insert "**IC 24-9-9.**".

Page 9, line 21, delete "IC 24-9-8." and insert "**IC 24-9-9.**".

Page 12, line 15, delete "This" and insert "**Except for the provisions of IC 24-9-3-7(3), this**".

Page 12, line 19, delete "saving" and insert "**savings**".

Page 12, between line 28 and 29, begin a new line double block indented and insert:

"**(D) to be made or guaranteed by the United States Department of Agriculture Rural Housing Service;**".

Page 12, line 29, delete "(D)" and insert "**(E)**".

Page 12, line 31, delete "(E)" and insert "**(F)**".

Page 14, line 4, after "7." insert "**(a)**".

Page 14, line 6, delete "person:" and insert "**person at the time of the transaction knowingly or intentionally:**".

C o p y

Page 14, line 7, delete "knowingly or intentionally".

Page 14, line 8, after ";" insert "**or**".

Page 14, line 9, delete "knowingly or intentionally".

Page 14, line 10, delete "; or" and insert "**.**".

Page 14, delete lines 11 through 15, begin a new paragraph and insert:

"**(b) For purposes of this section, "knowingly" means having actual knowledge at the time of the transaction.**".

Page 14, line 21, after "by a" delete ":".

Page 14, line 22, delete "(1)".

Page 14, run in lines 21 through 22.

Page 14, line 25, delete "(A)", begin a new line block indented and insert:

"**(1)**".

Page 14, line 27, delete "(B)", begin a new line block indented and insert:

"**(2)**".

Page 14, line 28, delete "dwelling; or" and insert "**dwelling.**".

Page 14, delete lines 29 through 42.

Page 15, delete lines 1 through 14.

Page 15, line 15, delete "11." and insert "**10.**".

Page 15, line 21, after "name." insert "**As used in this subdivision, "compensation" does not include a payment included in subdivision (1).**".

Page 15, line 23, delete "Not more than two (2) bona" and insert "**Bona**".

Page 15, between lines 25 and 26, begin a new line block indented and insert:

"**(3) Reasonable fees paid to an affiliate of the creditor.**

Sec. 11. "Political subdivision" means a municipality, school district, public library, local housing authority, fire protection district, public transportation corporation, local building authority, local hospital authority or corporation, local airport authority, special service district, special taxing district, or any other type of local governmental corporate entity.".

Page 16, line 12, after "not" insert "**knowingly or intentionally**".

Page 16, between lines 25 and 26, begin a new paragraph and insert:

"**(c) Each mortgage or deed of trust securing a zero (0) interest rate or other subsidized low rate loan executed after January 1, 2005, must prominently display the following on the face of the instrument:**

"This instrument secures a zero (0) interest rate or other

C o p y

subsidized low rate loan subject to IC 24-9-3-2.".

(d) A creditor may reasonably rely on the presence or absence of the statement described in subsection (c) on the face of an instrument executed after January 1, 2005, as conclusive proof of the existence or nonexistence of a zero (0) interest rate or other subsidized low rate loan.".

Page 16, line 41, after "6." insert "**(a)**".

Page 17, between lines 3 and 4, begin a new paragraph and insert:

"**(b) For purposes of this section, "fee" does not include actual charges incurred by a creditor for express or priority delivery requested by the borrower of home loan documents to the borrower.**".

Page 17, line 4, delete "creditor" and insert "**person**".

Page 17, line 10, after "loan;" insert "**or**".

Page 17, line 11, delete "when making" and insert "**in connection with**".

Page 17, line 11, delete "; or" and insert "**.**".

Page 17, delete lines 12 through 13, begin a new paragraph and insert:

"**Sec. 8. A person, in seeking to enforce the person's rights under section 7(3) of this chapter, may not knowingly or intentionally intimidate, coerce, or harass another person.**".

Page 17, line 14, delete "8." and insert "**9.**".

Page 17, between lines 41 and 42, begin a new line block indented and insert:

"**(5) A creditor shall not sell or otherwise assign a high cost home loan without furnishing the following statement to the purchaser or assignee:**

"NOTICE: This is a loan subject to special rules under IC 24-9. Purchasers or assignees may be liable for all claims and defenses with respect to the loan that the borrower could assert against the lender.".

(6) A mortgage or deed of trust that secures a high cost home loan at the time the mortgage or deed of trust is recorded must prominently display the following on the face of the instrument:

"This instrument secures a high cost home loan as defined in IC 24-9-2-8.".".

Page 17, line 42, delete "(5)" and insert "**(7)**".

Page 23, line 28, delete "the".

Page 23, line 29, delete "borrower" and insert "**a person who is a party to the home loan transaction that gave rise to the violation**".

C o p y

Page 23, line 30, delete "The" and insert "**A person**".

Page 23, line 31, delete "borrower".

Page 23, line 37, delete "borrower" and insert "**person**".

Page 23, line 41, delete "borrower" and insert "**person**".

Page 24, line 4, delete "borrower's" and insert "**person's**".

Page 24, line 7, delete "borrower" and insert "**person**".

Page 24, line 9, delete "consumer." and insert "**person.**".

Page 24, line 10, delete "A consumer" and insert "**Except as provided in subsection (e), a person**".

Page 24, between lines 11 and 12, begin a new paragraph and insert:

"**(e) Before bringing an action regarding an alleged deceptive act under this chapter, a person must:**

(1) notify the homeowner protection unit established by IC 4-6-12-2 of the alleged violation giving rise to the action; and

(2) allow the homeowner protection unit at least ninety (90) days to institute appropriate administrative and civil action to redress a violation.".

Page 24, line 12, delete "(e)" and insert "**(f)**".

Page 24, line 13, delete "borrower" and insert "**person**".

Page 24, line 16, delete "(f)" and insert "**(g)**".

Page 25, between lines 13 and 14, begin a new paragraph and insert:

"**Chapter 7. State Power to Regulate Lending**

Sec. 1. The state solely shall regulate the business of originating, granting, servicing, and collecting loans and other forms of credit in Indiana and the manner in which any business is conducted. This regulation preempts all other regulation of these activities by any political subdivision.

Sec. 2. Political subdivisions may not:

(1) enact, issue, or enforce ordinances, resolutions, regulations, orders, requests for proposals, or requests for bids pertaining to financial or lending activities, including ordinances, resolutions, and rules disqualifying persons from doing business with a municipality that are based upon lending terms or practices; or

(2) impose reporting requirements or any other obligations upon persons regarding financial services or lending practices or upon subsidiaries or affiliates that:

(A) are subject to the jurisdiction of the department of financial institutions;

(B) are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System,

C o p y

the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission, or the United States Department of Housing and Urban Development;

(C) are chartered by the United States Congress to engage in secondary market mortgage transactions;

(D) are created by the Indiana housing finance authority; or

(E) originate, purchase, sell, assign, securitize, or service property interests or obligations created by financial transactions or loans made, executed, originated, or purchased by persons referred to in clauses (A), (B), (C), or (D).".

Page 25, line 14, delete "7." and insert "**8.**".

Page 25, delete lines 30 through 31.

Page 25, line 32, delete "(4)" and insert "**(3)**".

Page 25, line 35, delete "(5)" and insert "**(4)**".

Page 25, line 35, delete "fifteen" and insert "**ten**".

Page 25, line 36, delete "($15,000)" and insert "**($10,000)**".

Page 26, line 3, delete "8." and insert "**9.**".

Page 26, line 23, delete "IC 4-6-12-10" and insert "**IC 4-6-12-9.**".

Page 28, line 17, delete "IC 24-9-8-4." and insert "**IC 24-9-9-3.**".

Page 29, between lines 14 and 15, begin a new paragraph and insert:

"SECTION 13. [EFFECTIVE UPON PASSAGE] **Notwithstanding IC 24-9-3 and IC 24-9-4, both as added by this act, a person is not subject to a prohibition or requirement of IC 24-9-3 and IC 24-9-4, both as added by this act, before January 1, 2005.**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1229 as printed January 30, 2004.)

BARDON

C o p y

HOUSE MOTION

Mr. Speaker: I move that House Bill 1229 be recommitted to a Committee of One, its author, with specific instructions to amend as follows:

Page 14, line14, after "8." insert "**(a)**".

Page 14, line 16, delete "exceed six percent (6%) of the" and insert "**exceed:**

(A) five percent (5%) of the loan principal for a home loan having a loan principal of at least forty thousand dollars ($40,000); or

(B) six percent (6%) of the loan principal for a home loan having a loan principal of less than forty thousand dollars ($40,000).

(b) Beginning July 1, 2006, the dollar amounts set forth in this section are subject to change at the times and according to the procedure set forth in the provisions of IC 24-4.5-1-106 concerning the adjustment of dollar amounts in IC 24-4.5 regarding consumer credit transactions. The department of financial institutions shall adopt rules under IC 4-22-2 to establish procedures to implement this subsection, and shall issue an emergency rule announcing a change required under this subsection by April 30 of each year in which dollar amounts are to change.".

Page 14, delete line 17.

Page 14, line 27, delete "points and fees (as defined in 12 CFR 226.32(b)(1) on" and insert "**the total of the following:**

(1) Points and fees (as defined in 12 CFR 226.32(b)(1) on January 1, 2004).

(2) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in the broker's own name.".

Page 14, line 28, beginning with "As" begin a new line blocked left.

Page 14, line 28, delete "this subdivision," and insert "**subdivision (2),**".

Page 14, delete lines 32 through 34, begin a new line block indented and insert:

"**(2) An amount not to exceed one and one-half (1 1/2) points in indirect broker compensation; if the terms of the loan do not include a prepayment penalty that exceeds two percent (2%) of the home loan principle.**

(3) Reasonable fees paid to an affiliate of the creditor.

(4) Interest prepaid by the borrower for the month in which the home loan is closed.".

C o p y

Page 23, delete line 38.
Page 23, line 39, delete "(4)" and insert "**(3)**".

(Reference is to HB 1229 as reprinted February 5, 2004.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee of One, to which was referred House Bill 1229, begs leave to report that said bill has been amended as directed.

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