
SENATE BILL No. 456

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-6; IC 5-20-1; IC 23-2-5; IC 24-9; IC 34-7-4-2; IC 36-2-7-10.

Synopsis: Home loan practices. Restricts certain lending acts and practices. Establishes the homeowner protection unit under 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. Appropriates \$75,000 to the legislative council to contract for a study of predatory lending and the high rate of foreclosure in Indiana. Establishes an interim study committee on mortgage lending policies.

Effective: Upon passage; July 1, 2004.

**Lanane, Bray, Breaux. Brpdem.
Dembowski**

January 12, 2004, read first time and referred to Committee on Rules and Legislative Procedure.

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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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SENATE BILL No. 456



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:

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



1 (3) Appear and testify under oath before the attorney general or
 2 the attorney general's duly authorized representative.
 3 SECTION 2. IC 4-6-12 IS ADDED TO THE INDIANA CODE AS
 4 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 5 1, 2004]:
 6 **Chapter 12. Homeowner Protection Unit**
 7 **Sec. 1. As used in this chapter, "unit" refers to the homeowner**
 8 **protection unit established under this chapter.**
 9 **Sec. 2. The attorney general shall establish a homeowner**
 10 **protection unit to enforce IC 24-9 and to carry out this chapter.**
 11 **Sec. 3. The unit shall do the following:**
 12 (1) Investigate deceptive acts in connection with mortgage
 13 lending.
 14 (2) Investigate violations of IC 24-9.
 15 (3) Institute appropriate administrative and civil actions to
 16 redress:
 17 (A) deceptive acts in connection with mortgage lending;
 18 and
 19 (B) violations of IC 24-5-0.5 and IC 24-9.
 20 (4) Cooperate with federal, state, and local law enforcement
 21 agencies in the investigation of:
 22 (A) deceptive acts in connection with mortgage lending;
 23 (B) criminal violations involving deceptive acts in
 24 connection with mortgage lending; and
 25 (C) violations of IC 24-5-0.5 and IC 24-9.
 26 (5) Adopt rules under IC 4-22-2 to implement this chapter.
 27 **Sec. 4. (a) The following shall cooperate with the unit to**
 28 **implement this chapter:**
 29 (1) The Indiana professional licensing agency and the
 30 appropriate licensing boards with respect to persons licensed
 31 under IC 25.
 32 (2) The department of financial institutions.
 33 (3) The department of insurance with respect to the sale of
 34 insurance in connection with mortgage lending.
 35 (4) The securities division of the office of the secretary of
 36 state.
 37 (5) The supreme court disciplinary commission with respect
 38 to attorney misconduct.
 39 (6) The Indiana housing finance authority.
 40 (7) The department of state revenue.
 41 (8) The Indiana state police.
 42 (9) A prosecuting attorney.

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1 (b) Notwithstanding IC 5-14-3, the entities listed in subsection
 2 (a) may share information with the unit.
 3 Sec. 5. The attorney general may file complaints with any entity
 4 listed in section 4 of this chapter to carry out this chapter and
 5 IC 24-9.
 6 Sec. 6. The establishment of the unit and the unit's powers does
 7 not limit the jurisdiction of an entity described in section 4 of this
 8 chapter.
 9 Sec. 7. The attorney general and an investigator of the unit may
 10 do any of the following when conducting an investigation under
 11 section 3 of this chapter:
 12 (1) Issue and serve a subpoena for the production of records,
 13 including records stored in electronic data processing systems,
 14 for inspection by the attorney general or the investigator.
 15 (2) Issue and serve a subpoena for the appearance of a person
 16 to provide testimony under oath.
 17 (3) Apply to a court with jurisdiction to enforce a subpoena
 18 described in subdivision (1) or (2).
 19 Sec. 8. The unit shall cooperate with the Indiana housing finance
 20 authority to develop and implement the home ownership training
 21 programs established under IC 5-20-1-15.5.
 22 Sec. 9. The attorney general shall make recommendations to the
 23 general assembly for appropriate legislation to address:
 24 (1) deceptive acts in connection with mortgage lending; and
 25 (2) violations of IC 24-9.
 26 Sec. 10. (a) The homeowner protection unit account within the
 27 state general fund is established for the purpose of supporting the
 28 operations of the unit. The account is administered by the attorney
 29 general.
 30 (b) The account consists of fees collected under IC 24-9-8.
 31 (c) The expenses of administering the account shall be paid from
 32 money in the account.
 33 (d) The treasurer of state shall invest the money in the account
 34 not currently needed to meet the obligations of the account in the
 35 same manner as other public money may be invested.
 36 (e) Interest earned on investments under subsection (d) shall be
 37 credited to the account when received.
 38 (f) Money in the account at the end of a state fiscal year does not
 39 revert to the state general fund.
 40 (g) There is annually appropriated to the attorney general from
 41 the homeowner protection unit account money sufficient for
 42 carrying out the purposes of this chapter and IC 24-9.

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1 SECTION 3. IC 5-20-1-4 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) The authority has all of the
3 powers necessary or convenient to carry out and effectuate the purposes
4 and provisions of this chapter including the power:

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

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

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

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

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

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

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- 1 (7) to sell, at public or private sale, all or any part of any mortgage
2 or other instrument or document securing a construction loan, a
3 land development loan, a mortgage loan, or a loan of any type
4 permitted by this chapter;
- 5 (8) to procure insurance against any loss in connection with its
6 operations in such amounts and from such insurers as it may deem
7 necessary or desirable;
- 8 (9) to consent, subject to the provisions of any contract with
9 noteholders or bondholders which may then exist, whenever it
10 deems it necessary or desirable in the fulfillment of its purposes
11 to the modification of the rate of interest, time of payment of any
12 installment of principal or interest, or any other terms of any
13 mortgage loan, mortgage loan commitment, construction loan,
14 loan to lender, or contract or agreement of any kind to which the
15 authority is a party;
- 16 (10) to enter into agreements or other transactions with any
17 federal, state, or local governmental agency for the purpose of
18 providing adequate living quarters for such persons and families
19 in cities and counties where a need has been found for such
20 housing;
- 21 (11) to include in any borrowing such amounts as may be deemed
22 necessary by the authority to pay financing charges, interest on
23 the obligations (for a period not exceeding the period of
24 construction and a reasonable time thereafter or if the housing is
25 completed, two (2) years from the date of issue of the
26 obligations), consultant, advisory, and legal fees and such other
27 expenses as are necessary or incident to such borrowing;
- 28 (12) to make and publish rules respecting its lending programs
29 and such other rules as are necessary to effectuate the purposes of
30 this chapter;
- 31 (13) to provide technical and advisory services to sponsors,
32 builders, and developers of residential housing and to residents
33 and potential residents, including housing selection and purchase
34 procedures, family budgeting, property use and maintenance,
35 household management, and utilization of community resources;
- 36 (14) to promote research and development in scientific methods
37 of constructing low cost residential housing of high durability;
- 38 (15) to encourage community organizations to participate in
39 residential housing development;
- 40 (16) to make, execute, and effectuate any and all agreements or
41 other documents with any governmental agency or any person,
42 corporation, association, partnership, limited liability company,

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1 or other organization or entity necessary or convenient to
 2 accomplish the purposes of this chapter;
 3 (17) to accept gifts, devises, bequests, grants, loans,
 4 appropriations, revenue sharing, other financing and assistance,
 5 and any other aid from any source whatsoever and to agree to, and
 6 to comply with, conditions attached thereto;
 7 (18) to sue and be sued in its own name, plead and be impleaded;
 8 (19) to maintain an office in the city of Indianapolis and at such
 9 other place or places as it may determine;
 10 (20) to adopt an official seal and alter the same at pleasure;
 11 (21) to adopt and from time to time amend and repeal bylaws for
 12 the regulation of its affairs and the conduct of its business and to
 13 prescribe rules and policies in connection with the performance
 14 of its functions and duties;
 15 (22) to employ fiscal consultants, engineers, attorneys, real estate
 16 counselors, appraisers, and such other consultants and employees
 17 as may be required in the judgment of the authority and to fix and
 18 pay their compensation from funds available to the authority
 19 therefor;
 20 (23) to invest any funds held in reserve or in sinking fund
 21 accounts or any money not required for immediate disbursement
 22 in obligations of the state, the United States, or their agencies or
 23 instrumentalities and such other obligors as may be permitted
 24 under the terms of any resolution authorizing the issuance of the
 25 authority's obligations;
 26 (24) to make or participate in the making of construction loans,
 27 mortgage loans, or both, to individuals, partnerships, limited
 28 liability companies, corporations, and organizations for the
 29 construction of residential facilities for the developmentally
 30 disabled or for the mentally ill or for the acquisition or renovation,
 31 or both, of a facility to make it suitable for use as a new
 32 residential facility for the developmentally disabled or for the
 33 mentally ill;
 34 (25) to make or participate in the making of construction and
 35 mortgage loans to individuals, partnerships, corporations, limited
 36 liability companies, and organizations for the construction,
 37 rehabilitation, or acquisition of residential facilities for children;
 38 (26) to purchase or participate in the purchase of mortgage loans
 39 from:
 40 (A) public utilities (as defined in IC 8-1-2-1); or
 41 (B) municipally owned gas utility systems organized under
 42 IC 8-1.5;

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1 if those mortgage loans were made for the purpose of insulating
 2 and otherwise weatherizing single family residences in order to
 3 conserve energy used to heat and cool those residences;

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

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

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

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

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

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

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

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

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

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

39 (2) no mortgage loan exceeds seventy-five thousand dollars
 40 (\$75,000);

41 (3) any bonds or notes issued which are backed by mortgage loans
 42 purchased by the authority under this subsection shall be offered

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1 for sale to the retirement plans covered by IC 5-10-1.7; and
2 (4) qualified members of a retirement plan shall be given
3 preference with respect to the mortgage loans that in the
4 aggregate do not exceed the amount invested by their retirement
5 plan in bonds and notes issued by the authority that are backed by
6 mortgage loans purchased by the authority under this subsection.

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

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

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

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

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

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

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

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

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

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

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

33 SECTION 4. IC 5-20-1-15.5 IS ADDED TO THE INDIANA CODE
34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
35 1, 2004]: **Sec. 15.5. (a) The authority shall:**

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

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

42 **(b) The following shall cooperate with the authority to**

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implement this section:

- (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 Indiana state police.**

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 account consists of fees collected under IC 24-9-8.

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

(d) The treasurer of state shall invest the money in the 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 account when received.

(f) Money in the account at the end of a state fiscal year does not revert to the state general fund. However, if the amount of money in the account at the end of a particular state fiscal year exceeds one hundred thousand dollars (\$100,000), the treasurer of state shall transfer the amount that exceeds one hundred thousand dollars (\$100,000) from the account into the state general fund.

(g) There is annually appropriated to the authority from the 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:

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- 1 (1) that loans funds of the person in connection with a loan; and
- 2 (2) to whom the loan is initially payable on the face of the note or
- 3 contract evidencing the loan.
- 4 (c) As used in this chapter, "license" means a license issued by the
- 5 commissioner authorizing a person to engage in the loan brokerage
- 6 business.
- 7 (d) As used in this chapter, "licensee" means a person that is issued
- 8 a license under this chapter.
- 9 (e) As used in this chapter, "loan broker" means any person who, in
- 10 return for any consideration from any person, promises to procure a
- 11 loan for any person or assist any person in procuring a loan from any
- 12 third party, or who promises to consider whether or not to make a loan
- 13 to any person. "Loan broker" does not include:
- 14 (1) any bank, savings bank, trust company, savings association,
- 15 credit union, or any other financial institution that is:
- 16 (A) regulated by any agency of the United States or any state;
- 17 and
- 18 (B) regularly actively engaged in the business of making
- 19 consumer loans that are not secured by real estate or taking
- 20 assignment of consumer sales contracts that are not secured by
- 21 real estate;
- 22 (2) any person authorized to sell and service loans for **the**
- 23 **Indiana housing finance authority**, the Federal National
- 24 Mortgage Association, or the Federal Home Loan Mortgage
- 25 Corporation, issue securities backed by the Government National
- 26 Mortgage Association, make loans insured by the United States
- 27 Department of Housing and Urban Development, act as a
- 28 supervised lender or nonsupervised automatic lender of the
- 29 United States Department of Veterans Affairs, or act as a
- 30 correspondent of loans insured by the United States Department
- 31 of Housing and Urban Development;
- 32 (3) any insurance company; **or**
- 33 (4) any person arranging financing for the sale of the person's
- 34 product; **or**
- 35 **(5) any community development corporation (as defined in**
- 36 **IC 4-4-28-2).**
- 37 (f) As used in this chapter, "loan brokerage business" means a
- 38 person acting as a loan broker.
- 39 (g) As used in this chapter, "origination activities" means
- 40 establishing the terms or conditions of a loan with a borrower or
- 41 prospective borrower.
- 42 (h) As used in this chapter, "person" means an individual, a

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1 partnership, a trust, a corporation, a limited liability company, a limited
2 liability partnership, a sole proprietorship, a joint venture, a joint stock
3 company, or another group or entity, however organized.

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

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

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

- 15 (1) Any attorney while engaging in the practice of law.
- 16 (2) Any certified public accountant, public accountant, or
17 accountant practitioner holding a certificate or registered under
18 IC 25-2.1 while performing the practice of accountancy (as
19 defined by IC 25-2.1-1-10).
- 20 (3) Any person licensed as a real estate broker or salesperson
21 under IC 25-34.1 to the extent that the person is rendering loan
22 related services in the ordinary course of a transaction in which a
23 license as a real estate broker or salesperson is required.
- 24 (4) Any broker-dealer, agent, or investment advisor registered
25 under IC 23-2-1.
- 26 (5) Any person that:
27 (A) procures;
28 (B) promises to procure; or
29 (C) assists in procuring;
30 a loan that is not subject to the Truth in Lending Act (15 U.S.C.
31 1601 through 1667e).
- 32 (6) **Any community development corporation (as defined in**
33 **IC 4-4-28-2).**
- 34 (7) **The Indiana housing finance authority.**
- 35 (8) Any person who is a creditor, or proposed to be a creditor, for
36 any loan.

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

- 39 (1) Credit reports, investigations, and appraisals performed by a
40 person who holds a license or certificate as a real estate appraiser
41 under IC 25-34.1-8.
- 42 (2) If the loan is to be secured by real property, title examinations,

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1 an abstract of title, title insurance, a property survey, and similar
2 purposes.

3 (3) The services provided by a loan broker in procuring possible
4 business for a lending institution if the fees are paid by the
5 lending institution.

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

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

11 SECTION 8. IC 24-9 IS ADDED TO THE INDIANA CODE AS A
12 NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
13 2004]:

14 **ARTICLE 9. HOME LOAN PRACTICES**

15 **Chapter 1. Application**

16 **Sec. 1. This article does not apply to a bank, trust company,**
17 **savings association, savings bank, or credit union that is chartered**
18 **under Indiana law to the extent federal law precludes or preempts**
19 **the application of the provisions of this article to a federally**
20 **chartered bank, trust company, savings and loan, savings bank, or**
21 **credit union.**

22 **Sec. 2. The preclusion or preemption under section 1 applies**
23 **only to the same type of state chartered entity as the federally**
24 **chartered entity affected by the federal preclusion or preemption.**

25 **Chapter 2. Definitions**

26 **Sec. 1. The definitions in this chapter apply throughout this**
27 **article.**

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

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

- 36 (1) are knowingly paid by the borrower;
- 37 (2) are paid for the express purpose of reducing the interest
- 38 rate applicable to the loan;
- 39 (3) reduce the interest rate from an interest rate that does not
- 40 exceed the benchmark rate; and
- 41 (4) are recouped within the first four (4) years of the
- 42 scheduled loan payments;

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

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

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

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

- 14 (1) a person:
 - 15 (A) who regularly extends consumer credit that is subject
 - 16 to a finance charge or that is payable by written agreement
 - 17 in more than four (4) installments; and
 - 18 (B) to whom the debt arising from a home loan transaction
 - 19 is initially payable; or

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

- 22 (A) directly or indirectly solicits, processes, places, or
- 23 negotiates home loans for others;
- 24 (B) offers to solicit, process, place, or negotiate home loans
- 25 for others; or
- 26 (C) closes home loans that may be in the person's own
- 27 name with funds provided by others and that are
- 28 thereafter assigned to the person providing funding for the
- 29 loans.

30 (b) The term does not include:

- 31 (1) a servicer;
- 32 (2) a state or local housing finance authority;
- 33 (3) any other state or local governmental or
- 34 quasi-governmental entity; or
- 35 (4) an attorney providing legal services in association with the
- 36 closing of a home loan.

37 Sec. 7. "Deceptive act" means an act or a practice as part of a
38 consumer credit mortgage transaction involving real property
39 located in Indiana in which a creditor, mortgage broker, or real
40 estate appraiser who assists in or is a part of the consumer credit
41 mortgage transaction knowingly or intentionally:

- 42 (1) makes a material misrepresentation to a borrower;

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- 1 (2) conceals or obscures material information from the
- 2 borrower regarding the terms or conditions of the
- 3 transaction;
- 4 (3) consummates the consumer credit mortgage transaction
- 5 with the knowledge that the borrower will be unable to
- 6 successfully fulfill the terms or conditions of the mortgage
- 7 loan based on the borrower's finances at the time of the
- 8 consummation; or
- 9 (4) includes terms or conditions in the mortgage loan that
- 10 substantially increase the likelihood of default.

11 **Sec. 8. "Flipping" means the refinancing of an existing home**
 12 **loan, resulting in a new home loan that does not have a reasonable**
 13 **tangible net benefit to the borrower considering all the**
 14 **circumstances, including the terms of both the new and refinanced**
 15 **home loans, the cost of the new home loan, and the borrower's**
 16 **circumstances.**

17 **Sec. 9. "High cost home loan" means a home loan with:**
 18 **(1) a trigger rate that exceeds the benchmark rate; or**
 19 **(2) total points and fees that exceed five percent (5%) of the**
 20 **loan principal.**

21 **Sec. 10. "Home loan" means a loan, other than a reverse**
 22 **mortgage transaction, that is secured by a:**

- 23 **(1) mortgage or deed of trust on real estate in Indiana on**
 24 **which there is located or will be located a structure or**
 25 **structures:**
 - 26 **(A) designed primarily for occupancy of one (1) to four (4)**
 27 **families; and**
 - 28 **(B) that are or will be occupied by a borrower as the**
 29 **borrower's principal dwelling; or**
- 30 **(2) security interest on a manufactured home that is or will be**
 31 **occupied by a borrower as the borrower's principal dwelling.**

32 **Sec. 11. (a) "Manufactured home" means a structure that is:**

- 33 **(1) transportable in one (1) or more sections that are greater**
 34 **than or equal to:**
 - 35 **(A) eight (8) body feet in width; or**
 - 36 **(B) forty (40) body feet in length;**
- 37 **(2) built on a permanent chassis; and**
- 38 **(3) designed to be used as a dwelling:**
 - 39 **(A) with a permanent foundation when erected on land**
 40 **secured in conjunction with the real property on which the**
 41 **manufactured home is located;**
 - 42 **(B) that is connected to utilities; and**

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- 1 (C) that contains plumbing, heating, and electrical systems.
- 2 **(b) The term includes a structure:**
- 3 **(1) that meets the requirements of subsection (a)(1); and**
- 4 **(2) with respect to which the manufacturer:**
- 5 **(A) voluntarily files a certification required by the United**
- 6 **States Department of Housing and Urban Development;**
- 7 **and**
- 8 **(B) complies with the standards established under the**
- 9 **federal National Manufactured Housing Construction and**
- 10 **Safety Standards Act (42 U.S.C. 5401 et seq.).**
- 11 **(c) The term does not include:**
- 12 **(1) rental property;**
- 13 **(2) second homes; or**
- 14 **(3) manufactured homes if not secured in conjunction with the**
- 15 **real property on which the manufactured home is located.**
- 16 **Sec. 12. "Points and fees" means any of the following:**
- 17 **(1) An amount payable under a point, a discount, or other**
- 18 **system of additional charges that is not a bona fide discount**
- 19 **point.**
- 20 **(2) A service or carrying charge.**
- 21 **(3) A loan fee, finder's fee, or similar charge.**
- 22 **(4) A fee for an investigation report.**
- 23 **(5) A prepayment fee or penalty.**
- 24 **(6) All compensation paid directly or indirectly to a mortgage**
- 25 **broker, including a broker that originates a loan in the**
- 26 **broker's own name.**
- 27 **(7) The following items, if charged in connection with an**
- 28 **extension of credit secured by an interest in real property, if**
- 29 **the creditor receives direct or indirect compensation in**
- 30 **connection with the charge or the charge is paid directly or**
- 31 **indirectly to an affiliate of the creditor:**
- 32 **(A) Fees or premiums for title examination, title insurance,**
- 33 **or similar purposes.**
- 34 **(B) Fees for preparation of loan related documents.**
- 35 **(C) Fees for notarizing deeds and other documents.**
- 36 **(D) Appraisal fees, including fees related to a pest**
- 37 **infestation or flood hazard inspection conducted before**
- 38 **closing.**
- 39 **(E) Credit reports.**
- 40 **Sec. 13. "Rate" means the interest rate charged on a home loan,**
- 41 **based on an annual simple interest yield.**
- 42 **Sec. 14. "Total loan amount" means:**

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- 1 (1) the principal of the home loan minus the points and fees
- 2 that are included in the principal amount of the loan; or
- 3 (2) the total line of credit allowed under the home loan for an
- 4 open-end loan.

5 **Sec. 15. "Trigger rate" means:**

- 6 (1) for fixed rate home loans in which the interest rate will not
- 7 vary during the term of the loan, the rate as of the date of
- 8 closing;
- 9 (2) for home loans in which the interest varies according to an
- 10 index, the sum of the index rate as of the date of closing plus
- 11 the maximum margin permitted at any time under the loan
- 12 agreement; or
- 13 (3) for all other home loans in which the rate may vary at any
- 14 time during the term of the loan, the maximum rate that may
- 15 be charged during the term of the home loan.

16 **Chapter 3. Prohibited Lending Practices Generally**

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

- 19 (1) credit life insurance;
- 20 (2) credit disability insurance;
- 21 (3) credit unemployment insurance;
- 22 (4) credit property insurance;
- 23 (5) other life or health insurance; or
- 24 (6) payments directly or indirectly for a cancellation
- 25 suspension agreement or contract.

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

29 **Sec. 2. A creditor may not engage in the act or practice of**
30 **flipping a home loan. A creditor is presumed not to be engaged in**
31 **the act or practice of flipping a home loan if the creditor refinances**
32 **an existing home loan and:**

- 33 (1) no points and fees are payable in connection with the part
- 34 of the proceeds of the new home loan that is used to refinance
- 35 the existing home loan; and
- 36 (2) the points and fees payable in connection with the part of
- 37 the proceeds of the new home loan that exceeds the proceeds
- 38 described in subdivision (1) are not more than five percent
- 39 (5%) of the proceeds described in this subdivision.

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

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of the existing loan or debt.

Sec. 4. (a) Notwithstanding IC 24-4.5-3-203.5, a creditor may not charge a late payment fee except as follows:

(1) A late payment fee may not exceed four percent (4%) of the amount of the payment past due.

(2) A late payment fee may be assessed only for a payment past due for at least fifteen (15) days.

(3) A late payment fee may not be charged more than one (1) time with respect to a single late payment. If a late payment charge is deducted from a payment made on the loan and the deduction causes a subsequent default on a subsequent payment, a late payment charge may not be imposed for the subsequent default. If a late payment fee has been imposed one (1) time with respect to a particular late payment, a late payment fee may not be imposed with respect to a future payment that would have been timely and sufficient, but for the previous default.

(4) A late payment fee may not be charged unless the creditor notifies the borrower not more than forty-five (45) days after the date the payment was due that a late payment fee has been imposed for a particular late payment. A late payment fee may not be collected from the borrower if the borrower informs the creditor that nonpayment of an installment is in dispute and presents proof of payment not more than forty-five (45) days after receipt of the creditor's notice of the late fee.

(b) A creditor shall treat each payment as posted on the same date 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 that permits the creditor, in the creditor's sole discretion, to accelerate the indebtedness.

(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 home loan.

Sec. 6. 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.

Sec. 7. Without regard to whether a borrower is acting

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1 individually or on behalf of others similarly situated, a provision
 2 of a home loan agreement that:
 3 (1) requires arbitration of a claim or defense;
 4 (2) allows a party to require a borrower to assert a claim or
 5 defense in a forum that is:
 6 (A) less convenient;
 7 (B) more costly; or
 8 (C) more dilatory;
 9 for the resolution of the dispute than an Indiana court in
 10 which the borrower may otherwise bring a claim or defense;
 11 or
 12 (3) limits in any way a claim or defense the borrower may
 13 have;

14 is unconscionable and void.

15 Sec. 8. A creditor may not:

- 16 (1) divide a loan transaction into separate parts with the
- 17 intent of evading a provision of this article;
- 18 (2) structure a home loan transaction as an open-end loan
- 19 with the intent of evading a provision of this article if the loan
- 20 would be a high cost home loan if the loan had been
- 21 structured as a closed-end loan;
- 22 (3) engage in a deceptive act when making a home loan; or
- 23 (4) engage in any other subterfuge with the intent of evading
- 24 a provision of this article.

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

29 Chapter 4. Additional Prohibitions for High Cost Home Loans

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

- 32 (1) A creditor making a high cost home loan may not directly
- 33 or indirectly finance points and fees.
- 34 (2) Prepayment fees or penalties may not be included in the
- 35 loan documents for a high cost home loan or charged to the
- 36 borrower if the fees or penalties exceed in total two percent
- 37 (2%) of the high cost home loan amount prepaid during the
- 38 first twenty-four (24) months after the high cost home loan
- 39 closing.
- 40 (3) A prepayment penalty may not be contracted for after the
- 41 second year following the high cost home loan closing.
- 42 (4) A creditor may not include a prepayment penalty fee in a

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1 high cost home loan unless the creditor offers the borrower
2 the option of choosing a loan product without a prepayment
3 fee. The terms of the offer must be made in writing and must
4 be initialed by the borrower. The document containing the
5 offer must be clearly labeled in large bold type and must
6 include the following disclosure:

7 "LOAN PRODUCT CHOICE

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

11 Sec. 2. Notwithstanding IC 24-4.5-3-402, a high cost home loan
12 agreement may not require a scheduled payment that is more than
13 twice as large as the average of earlier scheduled monthly
14 payments under the high cost home loan agreement unless the
15 payment becomes due and payable at least one hundred twenty
16 (120) months after the date of the high cost home loan. This
17 prohibition does not apply if:

- 18 (1) the payment schedule is adjusted to account for the
19 seasonal or irregular income of the borrower; or
- 20 (2) the loan is a bridge loan connected with or related to the
21 acquisition or construction of a dwelling intended to become
22 the obligor's principal dwelling.

23 Sec. 3. A high cost home loan may not include payment terms
24 under which the outstanding principal balance will increase at any
25 time over the course of the high cost home loan because the regular
26 periodic payments do not cover the full amount of interest due.

27 Sec. 4. A high cost home loan may not contain a provision that
28 increases the interest rate after default. However, this section does
29 not apply to interest rate changes in a variable rate loan otherwise
30 consistent with the provisions of the high cost home loan
31 documents if the change in the interest rate is not triggered by the
32 event of default or the acceleration of the indebtedness.

33 Sec. 5. A high cost home loan may not include terms under
34 which more than two (2) periodic payments required under the
35 high cost home loan are consolidated and paid in advance from the
36 high cost home loan proceeds provided to the borrower.

37 Sec. 6. A creditor may not make a high cost home loan without
38 first providing the borrower information to facilitate contact with
39 a nonprofit counseling agency certified by:

- 40 (1) the United States Department of Housing and Urban
41 Development; or
- 42 (2) the Indiana housing finance authority under

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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. 7. (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 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. 8. 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. 9. A creditor may not charge a borrower 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. 10. 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

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

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

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

34 **ALSO, YOUR PAYMENTS ON EXISTING DEBTS**
 35 **CONTRIBUTE TO YOUR CREDIT RATINGS. YOU**
 36 **SHOULD NOT ACCEPT ANY ADVICE TO IGNORE**
 37 **YOUR REGULAR PAYMENTS TO YOUR EXISTING**
 38 **CREDITORS."**

39 **Chapter 5. Claims, Defenses, Remedies**

40 **Sec. 1. (a) A person who purchases or is otherwise assigned a**
 41 **high cost home loan is subject to all affirmative claims and any**
 42 **defenses with respect to the high cost home loan that the borrower**

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1 could assert against a creditor or broker of the high cost home
 2 loan. However, this section does not apply if the purchaser or
 3 assignee demonstrates by a preponderance of the evidence that a
 4 reasonable person exercising ordinary due diligence could not
 5 determine that the loan was a high cost home loan. A purchaser or
 6 assignee is presumed to have exercised reasonable due diligence if
 7 the purchaser or assignee:

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

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

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

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

19 (3) exercises reasonable due diligence:

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

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

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

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

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

33 (2) itemization of the amount financed and other
 34 disbursement disclosures.

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

38 (1) a violation of IC 24-9-3-2 as a defense, claim, or
 39 counterclaim, after:

40 (A) an action to enjoin foreclosure or to preserve or obtain
 41 possession of the dwelling that secures the loan is initiated;

42 (B) an action to collect on the loan or foreclose on the

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1 collateral securing the loan is initiated; or
 2 (C) the loan is more than sixty (60) days in default;
 3 within three (3) years after the closing of a home loan;
 4 (2) a violation of this article in connection to the high cost
 5 home loan as a defense, claim, or counterclaim in an original
 6 action within five (5) years after the closing of a high cost
 7 home loan; and
 8 (3) any defense, claim, counterclaim, or action to enjoin
 9 foreclosure or preserve or obtain possession of the home that
 10 secures the loan, including a violation of this article after:
 11 (A) an action to collect on the loan or foreclose on the
 12 collateral securing the loan is initiated;
 13 (B) the debt arising from the loan is accelerated; or
 14 (C) the loan is more than sixty (60) days in default;
 15 at any time during the term of a high cost home loan.
 16 (c) In an action, a claim, or a counterclaim brought under
 17 subsection (b), the borrower may recover only amounts required
 18 to reduce or extinguish the borrower's liability under a home loan
 19 plus amounts required to recover costs, including reasonable
 20 attorney's fees.
 21 (d) The provisions of this section are effective notwithstanding
 22 any other provision of law. However, this section shall not be
 23 construed to limit the substantive rights, remedies, or procedural
 24 rights available to a borrower against any creditor, assignee, or
 25 holder under any other law. The rights conferred on borrowers by
 26 subsections (a) and (b) are independent of each other and do not
 27 limit each other.
 28 Sec. 2. (a) If a creditor asserts that grounds for acceleration
 29 under the terms of a high cost home loan exist and requires the
 30 payment in full of all sums secured by the security instrument, the
 31 borrower or a person authorized to act on the borrower's behalf at
 32 any time before the title is transferred by means of foreclosure,
 33 judicial proceeding and sale, or otherwise may cure the default and
 34 reinstate the high cost home loan by tendering the amount or
 35 performance as specified in the security instrument.
 36 (b) If the borrower cures the default on a high cost home loan,
 37 the borrower must be reinstated to the same position as if the
 38 default had not occurred, and any acceleration of an obligation
 39 under the security instrument or note arising from the default is
 40 nullified as of the date of the cure.
 41 Sec. 3. (a) A creditor making a high cost home loan that has the
 42 right to foreclose must use the judicial foreclosure procedures of

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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 a claim or defense based on any violations of this article.

(b) This section is not intended or 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 the borrower for the following:

(1) Actual damages, including consequential damages. The borrower 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) Punitive damages, if the violation was malicious or reckless.

(4) Costs and reasonable attorney's fees.

(b) A borrower 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 borrower 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. A recoupment claim asserted under this provision is limited to the amount required to reduce or extinguish the borrower'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 borrower 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 consumer. A consumer is not required to exhaust any administrative remedies under this article or under any other applicable law.

(e) The knowing or intentional violation of this article or a rule adopted under the authority of this article renders the home loan agreement void, and the creditor has no right to collect, receive, or retain any principal, interest, or other charges with respect to the loan. The borrower may recover any payments made under the agreement.

(f) An award of damages under subsection (a) has priority over

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1 a civil penalty imposed under this article.

2 Sec. 5. (a) If the creditor or an assignee establishes by a
3 preponderance of evidence that a violation of this article is
4 unintentional or the result of a bona fide error of law or fact
5 notwithstanding the maintenance of procedures reasonably
6 adopted to avoid any such violation or error, the validity of the
7 transaction is not affected, and no liability is imposed under section
8 4 of this chapter except in the case of a refusal to make a refund.

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

14 (1) Not later than thirty (30) days after the date of the loan
15 closing, makes:

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

18 (B) all appropriate adjustments to the loan to correct the
19 error.

20 (2) Not later than sixty (60) days after the date of the loan
21 closing, notifies the borrower of:

22 (A) the compliance error; and

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

24 (c) Subsection (b) does not apply unless the creditor establishes
25 that the compliance failure was not intentional and resulted from
26 a bona fide error, notwithstanding the maintenance of procedures
27 reasonably adopted to avoid the errors. For purposes of this
28 subsection, "bona fide errors" include clerical errors, calculation
29 errors, computer malfunction and programming errors, and
30 printing errors. An error of legal judgment with respect to a
31 person's obligations under this article is not a bona fide error for
32 purposes of this subsection.

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

35 Chapter 6. Reporting Requirements

36 Sec. 1. (a) A servicer of a high cost home loan shall report at
37 least monthly to a nationally recognized consumer credit reporting
38 agency both the favorable and unfavorable payment history
39 information of the borrower on payments due to the creditor on a
40 high cost home loan.

41 (b) This section does not prohibit a servicer from agreeing with
42 the borrower not to report specified payment history information

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1 in the event of a resolved or an unresolved dispute with a borrower
2 and does not apply to high cost home loans held or serviced by a
3 lender for less than ninety (90) days.

4 Chapter 7. Penalties and Enforcement

5 Sec. 1. A person who knowingly or intentionally violates this
6 article commits an act that is actionable by the attorney general
7 under IC 24-5-0.5 and is subject to the penalties listed in
8 IC 24-5-0.5.

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

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

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

- 17 (1) issue an injunction;
- 18 (2) order a person to make restitution;
- 19 (3) void or limit the application of obligations that violate this
20 article;
- 21 (4) order a person to reimburse the state for reasonable costs
22 of the attorney general's investigation and prosecution of the
23 violation of this article; and
- 24 (5) impose a civil penalty of not more than fifteen thousand
25 dollars (\$15,000) per violation.

26 (b) A person who violates an injunction under this section is
27 subject to a civil penalty of not more than fifteen thousand dollars
28 (\$15,000) per violation.

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

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

34 Chapter 8. Fees

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

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

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

7 **Sec. 4. The auditor of state shall distribute one dollar and**
8 **twenty-five cents (\$1.25) of the mortgage recording fee to the home**
9 **ownership training account established by IC 5-20-1-15.6. The**
10 **auditor of state shall credit one dollar and twenty-five cents (\$1.25)**
11 **of the mortgage recording fee to the homeowner protection unit**
12 **account established by IC 4-6-12-10.**

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

- 17 (1) IC 4-21.5-5 (Judicial review of administrative agency actions).
- 18 (2) IC 22-3-4 (Worker's compensation administration and
- 19 procedures).
- 20 (3) IC 22-4-17 (Unemployment compensation system, employee's
- 21 claims for benefits).
- 22 (4) IC 22-4-32 (Unemployment compensation system, employer's
- 23 appeal process).
- 24 (5) IC 22-9 (Civil rights actions).
- 25 (6) **IC 24-9 (Home loans).**
- 26 (7) IC 31-14 (Paternity).
- 27 ~~(7)~~ **(8)** IC 31-15 (Dissolution of marriage and legal separation).
- 28 ~~(8)~~ **(9)** IC 31-16 (Support of children and other dependants).
- 29 ~~(9)~~ **(10)** IC 31-17 (Custody and visitation).
- 30 ~~(10)~~ **(11)** IC 31-19 (Adoption).
- 31 ~~(11)~~ **(12)** IC 32-27-2, IC 32-30-1, IC 32-30-2, ~~IC 32-30-2.1,~~
- 32 ~~IC 32-30-2,~~ IC 32-30-4, IC 32-30-9, IC 32-30-10, IC 32-30-12,
- 33 IC 32-30-13, and IC 32-30-14 (Real property).
- 34 ~~(12)~~ **(13)** IC 33-1-3 (Attorney liens).

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

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- 1 the county recorder.
- 2 (b) The county recorder shall charge the following:
- 3 (1) Six dollars (\$6) for the first page and two dollars (\$2) for each
- 4 additional page of any document the recorder records if the pages
- 5 are not larger than eight and one-half (8 1/2) inches by fourteen
- 6 (14) inches.
- 7 (2) Fifteen dollars (\$15) for the first page and five dollars (\$5) for
- 8 each additional page of any document the recorder records, if the
- 9 pages are larger than eight and one-half (8 1/2) inches by fourteen
- 10 (14) inches.
- 11 (3) For attesting to the release, partial release, or assignment of
- 12 any mortgage, judgment, lien, or oil and gas lease contained on a
- 13 multiple transaction document, the fee for each transaction after
- 14 the first is the amount provided in subdivision (1) plus the amount
- 15 provided in subdivision (4) and one dollar (\$1) for marginal
- 16 mortgage assignments or marginal mortgage releases.
- 17 (4) One dollar (\$1) for each cross-reference of a recorded
- 18 document.
- 19 (5) One dollar (\$1) per page not larger than eight and one-half
- 20 (8 1/2) inches by fourteen (14) inches for furnishing copies of
- 21 records produced by a photographic process, and two dollars (\$2)
- 22 per page that is larger than eight and one-half (8 1/2) inches by
- 23 fourteen (14) inches.
- 24 (6) Five dollars (\$5) for acknowledging or certifying to a
- 25 document.
- 26 (7) Five dollars (\$5) for each deed the recorder records, in
- 27 addition to other fees for deeds, for the county surveyor's corner
- 28 perpetuation fund for use as provided in IC 32-19-4-3 or
- 29 IC 36-2-12-11(e).
- 30 (8) A fee in an amount authorized under IC 5-14-3-8 for
- 31 transmitting a copy of a document by facsimile machine.
- 32 (9) A fee in an amount authorized by an ordinance adopted by the
- 33 county legislative body for duplicating a computer tape, a
- 34 computer disk, an optical disk, microfilm, or similar media. This
- 35 fee may not cover making a handwritten copy or a photocopy or
- 36 using xerography or a duplicating machine.
- 37 (10) A supplemental fee of three dollars (\$3) for recording a
- 38 document that is paid at the time of recording. The fee under this
- 39 subdivision is in addition to other fees provided by law for
- 40 recording a document.
- 41 **(11) Three dollars (\$3) for each mortgage on real estate**
- 42 **recorded, in addition to other fees required by this section,**

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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 24-9-8-3.

(c) The county treasurer shall establish a recorder's records 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 JULY 1, 2004] (a) Notwithstanding IC 4-6-12-10, as added by this act, there is appropriated to the legislative council seventy-five thousand dollars (\$75,000) for the state fiscal year beginning July 1, 2005, and ending June 30, 2006, from the homeowner protection unit account under IC 4-6-12-10, as added by this act. The legislative council shall use this appropriation to contract with an independent organization to conduct a study of predatory lending and the causes of the high rate of mortgage foreclosure in Indiana during 2001, 2002, 2003, and 2004.

(b) No expenditures from the homeowner protection unit

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1 account established by IC 4-6-12-10, as added by this act, may be
 2 made by the attorney general before the transfer of the
 3 seventy-five thousand dollars (\$75,000) appropriated by this
 4 SECTION to the legislative council.

5 (c) The results of the study must be reported in an electronic
 6 format under IC 5-14-6 to the legislative council not later than
 7 December 31, 2006.

8 (d) This SECTION expires on January 1, 2007.

9 SECTION 12. [EFFECTIVE JULY 1, 2004] (a) As used in this
 10 SECTION, "committee" refers to the interim study committee on
 11 mortgage lending policies established by subsection (b).

12 (b) The interim study committee on mortgage lending policies
 13 is established. The committee shall:

14 (1) study predatory lending practices;

15 (2) study the high rate of mortgage foreclosure in Indiana;
 16 and

17 (3) issue a report to the legislative council in an electronic
 18 format under IC 5-14-6 not later than November 1, 2004,
 19 suggesting the subject matter and parameters for the study to
 20 be conducted by an independent organization selected by the
 21 legislative council under SECTION 11 of this act.

22 (c) The committee shall operate under the policies governing
 23 study committees adopted by the legislative council.

24 (d) This SECTION expires January 1, 2005.

25 SECTION 13. [EFFECTIVE UPON PASSAGE] Beginning
 26 January 1, 2005, the attorney general shall carry out the duties
 27 imposed on the attorney general under IC 4-6-12 and IC 24-9, both
 28 as added by this act.

29 SECTION 14. [EFFECTIVE UPON PASSAGE] (a)
 30 Notwithstanding IC 5-20-1-15.5, as added by this act, the Indiana
 31 housing finance authority shall carry out the duties imposed on it
 32 under IC 5-20-1-15.5, as added by this act, under interim written
 33 guidelines approved by the executive director of the Indiana
 34 housing finance authority.

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

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

38 (2) January 1, 2005.

39 SECTION 15. [EFFECTIVE UPON PASSAGE] Notwithstanding
 40 IC 24-9, as added by this act, a person may not file a civil action
 41 under IC 24-9, as added by this act, before January 1, 2005.

42 SECTION 16. An emergency is declared for this act.

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