January 25, 2008

HOUSE BILL No. 1211

DIGEST OF HB 1211 (Updated January 23, 2008 4:09 pm - DI 101)

Citations Affected: IC 6-1.1; IC 6-3.1; IC 24-4.5; IC 24-9; IC 34-30; noncode.

Synopsis: Various home loan matters. Requires the department of local government finance to revise the sales disclosure form for real estate conveyances to include the application forms for the homestead credit and the mortgage property tax exemption. Requires a closing agent to: (1) provide to a customer, at least 48 hours before the closing of a home loan transaction, a form prescribed by the department of local government finance that describes certain property tax deductions and credits; (2) require the customer, at the time of the closing, to complete and sign either a sales disclosure form, in the case of a first lien purchase money mortgage transaction, or the application form for the mortgage property tax exemption, in the case of a refinancing; and (3) collect and file the completed and signed form with the appropriate county official. Provides that at the time of the closing, the closing agent must: (1) inform the customer of certain other property tax deductions for which the customer may be eligible; (2) offer to provide the customer with the forms necessary for the person to claim the deductions; and (3) provide to the customer any forms requested by the customer. Provides a credit against the financial institutions tax or the adjusted gross income tax for a taxpayer that: (1) issues or brokers at least 25 home loans during the taxable year; and (2) incurs certain qualified home loan costs. Provides that the amount of the credit is the lesser of: (1) the taxpayer's qualified home loan costs; or (2) the amount of the taxpayer's tax liability. Provides that: (1) purchase money mortgage transactions; and (2) refinancings of first lien

(Continued next page)

Effective: Upon passage; July 1, 2008; January 1, 2009.

Murphy, Bardon

January 14, 2008, read first time and referred to Committee on Financial Institutions.
January 24, 2008, reported — Do Pass.

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mortgage transactions; are subject to regulation under the Uniform Consumer Credit Code (UCCC). Provides that not more than 25% of the credit service charge or loan finance charge for a mortgage transaction may be precomputed. Provides that for a purchase money mortgage transaction or the refinancing of a first lien mortgage transaction, the parties may contract for a delinquency charge of not more than 5% of the contracted payment amount. Provides that prepayment penalties and fees may not be charged with respect to a subprime mortgage transaction. Requires a creditor that offers a subprime mortgage transaction to establish an escrow account for the payment of real estate taxes and insurance owed in connection with the subprime mortgage. Requires a person regularly engaged as a creditor in mortgage transactions to post a bond of at least $300,000 with the department of financial institutions. Requires settlement service providers to make closing documents available to borrowers at least 48 hours before the closing. Prohibits a creditor from recommending or issuing a home loan to a prospective borrower if the creditor does not have reasonable grounds to believe the home loan is suitable for the prospective borrower based on a reasonable inquiry into the prospective borrower's creditworthiness. Provides that if a creditor conducts a reasonable inquiry, the creditor is not liable for determining that a home loan is suitable for a borrower, if the borrower later defaults on the home loan issued by the creditor. Requires creditors to offer: (1) a temporary forbearance, subject to terms agreed upon by the creditor and the borrower; (2) a payment plan; or (3) an option for the refinancing, restructuring, or workout of existing indebtedness; whenever a home loan becomes 60 days past due. Requires various state agencies to form the mortgage lending and fraud prevention task force to coordinate the state's efforts to: (1) regulate the various participants involved in originating, issuing, and closing home loans; (2) enforce state laws and rules concerning mortgage lending practices and mortgage fraud; and (3) prevent fraudulent practices in the home loan industry and investigate and prosecute cases involving mortgage fraud. Requires the securities commissioner and the director of the department of financial institutions to cooperate to determine the appropriate state agency or department to regulate a person subject to regulation, licensure, or registration under both the loan broker statute and the UCCC. Repeals provisions that exclude mortgage transactions from the UCCC.

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Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

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HOUSE BILL No. 1211

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

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

SECTION 1. IC 6-1.1-5.5-5, AS AMENDED BY P.L.154-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) The department of local government finance shall prescribe a sales disclosure form for use under this chapter. The form prescribed by the department of local government finance must include at least the following: ~~information.~~

(1) The key number of the parcel (as defined in IC 6-1.1-1-8.5).

(2) Whether the entire parcel is being conveyed.

(3) The address of the property.

(4) The date of the execution of the form.

(5) The date the property was transferred.

(6) Whether the transfer includes an interest in land or improvements, or both.

(7) Whether the transfer includes personal property.

(8) An estimate of any personal property included in the transfer.

(9) The name, address, and telephone number of:

(A) each transferor and transferee; and

(B) the person that prepared the form.

(10) The mailing address to which the property tax bills or other official correspondence should be sent.

(11) The ownership interest transferred.

(12) The classification of the property (as residential, commercial, industrial, agricultural, vacant land, or other).

(13) The total price actually paid or required to be paid in exchange for the conveyance, whether in terms of money, property, a service, an agreement, or other consideration, but excluding tax payments and payments for legal and other services that are incidental to the conveyance.

(14) The terms of seller provided financing, such as interest rate, points, type of loan, amount of loan, and amortization period, and whether the borrower is personally liable for repayment of the loan.

(15) Any family or business relationship existing between the transferor and the transferee.

(16) The form prescribed by the department of local government finance under IC 6-1.1-12-2 to allow a person to claim the deduction provided by IC 6-1.1-12-1.

(17) The form prescribed by the department of local government finance under IC 6-1.1-20.9-3 to allow a person to claim the deduction provided by IC 6-1.1-20.9-2.

~~(16)~~ **(18)** Other information as required by the department of local government finance to carry out this chapter.

If a form under this section includes the telephone number or the Social Security number of a party, the telephone number or the Social Security number is confidential.

(b) The instructions for completing the form described in subsection (a) must include the information described in IC 6-1.1-12-43(c)(1).

SECTION 2. IC 6-1.1-12-2, AS AMENDED BY P.L.183-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) Except as provided in section 17.8 of this chapter **and subject to subsection (d),** a person who desires to claim the deduction provided by section 1 of this chapter must file a statement in duplicate, on forms prescribed by the department of local government finance, with the auditor of the county in which the real property, mobile home not assessed as real property, or manufactured home not assessed as real property is located. With respect to real property, the statement must be filed during the twelve (12) months before June 11 of each year for which the person wishes to obtain the deduction. With respect to a mobile home that is not assessed as real

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property or a manufactured home that is not assessed as real property, the statement must be filed during the twelve (12) months before March 31 of each year for which the individual wishes to obtain the deduction. The statement may be filed in person or by mail. If mailed, the mailing must be postmarked on or before the last day for filing. In addition to the statement required by this subsection, a contract buyer who desires to claim the deduction must submit a copy of the recorded contract or recorded memorandum of the contract, which must contain a legal description sufficient to meet the requirements of IC 6-1.1-5, with the first statement that the buyer files under this section with respect to a particular parcel of real property. Upon receipt of the statement and the recorded contract or recorded memorandum of the contract, the county auditor shall assign a separate description and identification number to the parcel of real property being sold under the contract.

(b) The statement referred to in subsection (a) must be verified under penalties for perjury, and the statement must contain the following information:

(1) The balance of the person's mortgage or contract indebtedness on the assessment date of the year for which the deduction is claimed.

(2) The assessed value of the real property, mobile home, or manufactured home.

(3) The full name and complete residence address of the person and of the mortgagee or contract seller.

(4) The name and residence of any assignee or bona fide owner or holder of the mortgage or contract, if known, and if not known, the person shall state that fact.

(5) The record number and page where the mortgage, contract, or memorandum of the contract is recorded.

(6) A brief description of the real property, mobile home, or manufactured home which is encumbered by the mortgage or sold under the contract.

(7) If the person is not the sole legal or equitable owner of the real property, mobile home, or manufactured home, the exact share of the person's interest in it.

(8) The name of any other county in which the person has applied for a deduction under this section and the amount of deduction claimed in that application.

(c) The authority for signing a deduction application filed under this section may not be delegated by the real property, mobile home, or manufactured home owner or contract buyer to any person except upon

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an executed power of attorney. The power of attorney may be contained in the recorded mortgage, contract, or memorandum of the contract, or in a separate instrument.

(d) For use in transactions involving a first lien purchase money mortgage for residential property, the department of local government finance shall combine the form prescribed under subsection (a) with the form prescribed by the department under IC 6-1.1-5.5-5. With respect to a single family residential:

(1) first lien purchase money mortgage transaction; or

(2) refinancing transaction;

described in IC 6-1.1-12-43, a closing agent may file the form prescribed by the department under this section with the appropriate county official on behalf of the person who desires to claim the deduction provided by section 1 of this chapter, as provided in IC 6-1.1-12-43.

SECTION 3. IC 6-1.1-12-43 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 43. (a) For purposes of this section:

(1) "benefit" refers to:

(A) a deduction under section 1, 9, 11, 13, 14, 16, 17.4, 26, 29, 31, 33, or 34 of this chapter; or

(B) the homestead credit under IC 6-1.1-20.9-2.

(2) "closing agent" means a person that closes a transaction;

(3) "customer" means an individual who obtains a loan in a transaction; and

(4) "transaction" means a single family residential:

(A) first lien purchase money mortgage transaction; or

(B) refinancing transaction.

~~(b) Before closing a transaction after December 31, 2004, a closing agent must provide to the customer the form referred to in subsection (c).~~

~~(c) Before June 1, 2004,~~ **(b)** The department of local government finance shall prescribe ~~the~~ **a** form to be provided by closing agents to customers under subsection ~~(b)~~ **(d)(1).** The department shall make the form available to closing agents, county assessors, county auditors, and county treasurers in hard copy and electronic form. County assessors, county auditors, and county treasurers shall make the form available to the general public. The form must:

(1) on one (1) side:

(A) list each benefit;

(B) list the eligibility criteria for each benefit; and

(C) indicate that a new application for a deduction under

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section 1 of this chapter is required when residential real property is refinanced;

(2) on the other side indicate:

(A) each action by; and

(B) each type of documentation from;

the customer required to file for each benefit; and

(3) be printed in one (1) of two (2) or more colors prescribed by the department of local government finance that distinguish the form from other documents typically used in a closing. ~~referred to in subsection (b).~~

~~(d)~~ **(c)** A closing agent:

(1) may reproduce the form referred to in subsection ~~(c),~~ **(b);**

(2) in reproducing the form, must use a print color prescribed by the department of local government finance; and

(3) is not responsible for the content of the form referred to in subsection ~~(c)~~ **(b)** and shall be held harmless by the department of local government finance from any liability for the content of the form.

(d) A closing agent must do the following with respect to a transaction that is closed after June 30, 2008:

(1) Provide to the customer the form prescribed by the department under subsection (b) not later than forty-eight (48) hours before the closing of the transaction, in accordance with IC 24-9-4.5.

(2) At the time of closing:

(A) provide the customer with:

(i) the sales disclosure form prescribed by the department under IC 6-1.1-5.5-5, if the transaction involves a first lien purchase money mortgage transaction; or

(ii) the form prescribed by the department under section 2(a) of this chapter to allow a person to claim the deduction provided by section 1 of this chapter, if the transaction is a refinancing transaction;

(B) subject to subsection (f), require the customer to complete and sign the form provided under clause (A); and

(C) subject to subsection (f), collect the form signed and completed under clause (B) for filing under subsection (e).

(3) At the time of the closing:

(A) inform the customer of the deductions available under sections 9, 11, 13, 14, 16, 17.4, 26, 29, 31, 33, and 34 of this chapter, as described in the form prescribed by the

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department under subsection (b);

(B) offer to provide the customer with any forms prescribed by the department to allow a person to claim the deductions described in clause (A); and

(C) provide to the customer any forms requested by the customer under clause (B).

(e) This subsection applies to a transaction that is closed after June 30, 2008. The closing agent shall file a form completed and signed by the customer under subsection (d)(2)(B) as follows:

(1) In the case of a first lien purchase money mortgage transaction, the closing agent shall file the signed sales disclosure form with the appropriate county assessor and county auditor in accordance with IC 6-1.1-5.5-3.

(2) In the case of a refinancing transaction, the closing agent shall file the signed mortgage deduction form in accordance with section 2(a) of this chapter.

~~(e)~~ **(f)** A closing agent to which this section applies shall document ~~its~~ **the closing agent's** compliance with this section with respect to each transaction in the form of verification of compliance signed by the customer. **At the time of the closing, a customer may refuse to:**

(1) complete and sign the form provided to the customer under subsection (d)(2)(A); or

(2) return the form to the closing agent for filing under subsection (e).

If the customer refuses to complete, sign, or return the form, as described in subsection (d)(2), the customer shall sign a statement indicating the customer's refusal.

~~(f)~~ **(g)** A closing agent is subject to a civil penalty of twenty-five dollars ($25) for each instance in which the closing agent fails to comply with this section with respect to a customer. The penalty:

(1) may be enforced by the state agency that has administrative jurisdiction over the closing agent in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and

(2) shall be paid into the property tax replacement fund.

(h) A closing agent is not liable for any other damages claimed by a customer because of:

(1) the closing agent's mere failure to provide ~~the~~ **an** appropriate document to the customer **under this section; or**

(2) any determination made with respect to a customer's eligibility for a benefit.

~~(g)~~ **(i)** The state agency that has administrative jurisdiction over a

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closing agent shall:

(1) examine the closing agent to determine compliance with this section; and

(2) impose and collect penalties under subsection ~~(f).~~ **(g).**

SECTION 4. IC 6-1.1-20.9-3, AS AMENDED BY P.L.183-2007, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) **Subject to subsection (e),** an individual who desires to claim the credit provided by section 2 of this chapter must file a certified statement in duplicate, on forms prescribed by the department of local government finance, with the auditor of the county in which the homestead is located. The statement shall include the parcel number or key number of the real estate and the name of the city, town, or township in which the real estate is located. With respect to real property, the statement must be filed during the twelve (12) months before June 11 of the year prior to the first year for which the person wishes to obtain the credit for the homestead. With respect to a mobile home that is not assessed as real property or a manufactured home that is not assessed as real property, the statement must be filed during the twelve (12) months before March 31 of the first year for which the individual wishes to obtain the credit. The statement may be filed in person or by mail. If mailed, the mailing must be postmarked on or before the last day for filing. The statement applies for that first year and any succeeding year for which the credit is allowed.

(b) The certified statement referred to in subsection (a) shall contain the name of any other county and township in which the individual owns or is buying real property.

(c) If an individual who is receiving the credit provided by this chapter changes the use of the individual's real property, so that part or all of that real property no longer qualifies for the homestead credit provided by this chapter, the individual must file a certified statement with the auditor of the county, notifying the auditor of the change of use within sixty (60) days after the date of that change. An individual who changes the use of the individual's real property and fails to file the statement required by this subsection is liable for the amount of the credit the individual was allowed under this chapter for that real property.

(d) An individual who receives the credit provided by section 2 of this chapter for property that is jointly held with another owner in a particular year and remains eligible for the credit in the following year is not required to file a statement to reapply for the credit following the removal of the joint owner if:

(1) the individual is the sole owner of the property following the

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death of the individual's spouse;

(2) the individual is the sole owner of the property following the death of a joint owner who was not the individual's spouse; or

(3) the individual is awarded sole ownership of property in a divorce decree.

(e) For use in transactions involving a conveyance (as defined in IC 6-1.1-5.5-1), the department of local government finance shall combine the form prescribed under subsection (a) with the form prescribed by the department under IC 6-1.1-5.5-5. With respect to a transaction described in IC 6-1.1-12-43(a)(4), a closing agent may file the form prescribed by the department under this section with the appropriate county official on behalf of the person who desires to claim the credit provided by section 2 of this chapter, as provided in IC 6-1.1-12-43.

SECTION 5. IC 6-3.1-32 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]:

Chapter 32. Home Loan Cost Tax Credit

Sec. 1. This chapter applies only to taxable years beginning after December 31, 2008.

Sec. 2. As used in this chapter, "approved home ownership education efforts" refers to the following:

(1) Educational materials that are:

(A) prepared by or at the expense of a taxpayer;

(B) designed to inform borrowers or prospective borrowers about:

(i) the features of, and risks associated with, the home loan products offered by the taxpayer; or

(ii) the responsibilities and costs associated with home ownership in general; and

(C) approved by the authority for distribution to Indiana consumers.

(2) Home ownership counseling services that are:

(A) conducted by or at the expense of a taxpayer;

(B) designed to assist borrowers or prospective borrowers in meeting their obligations under a home loan; and

(C) approved by the authority to be offered to Indiana consumers.

Sec. 3. As used in this chapter, "authority" refers to the Indiana housing and community development authority established by IC 5-20-1-3.

Sec. 4. As used in this chapter, "borrower" has the meaning set

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forth in IC 24-9-2-4.

Sec. 5. As used in this chapter, "home loan" means a loan that is secured by a mortgage or deed of trust on real estate in Indiana on which there is located or will be located at least one (1) structure that:

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

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

Sec. 6. As used in this chapter, "pass through entity" means:

(1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) a partnership;

(3) a limited liability company; or

(4) a limited liability partnership.

Sec. 7. As used in this chapter, "qualified home loan cost" means any of the following incurred by a taxpayer:

(1) Costs incurred for approved home ownership education efforts.

(2) The cost of any contribution or grant made to the authority for the mortgage foreclosure counseling and education program under IC 5-20-6-3.

Sec. 8. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

(1) IC 6-5.5 (financial institutions tax), if the taxpayer is subject to the financial institutions tax; or

(2) IC 6-3-1 through IC 6-3-7 (adjusted gross income tax), if the taxpayer is not subject to the financial institutions tax under IC 6-5.5;

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 9. As used in this chapter, "taxpayer" means a creditor (as defined in IC 24-9-2-6) that:

(1) has any state tax liability; and

(2) issues or brokers at least twenty-five (25) home loans during the taxable year for which the taxpayer seeks the credit provided by section 10 of this chapter.

Sec. 10. A taxpayer that incurs qualified home loan costs during a taxable year is entitled to a credit against the taxpayer's state tax liability. The amount of the credit is equal to the lesser of:

(1) the amount of the taxpayer's qualified home loan costs

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during the taxable year; or

(2) the amount of the taxpayer's state tax liability for the taxable year.

Sec. 11. (a) To be entitled to a credit for a qualified home loan cost described in section 7(1) of this chapter, a taxpayer must request the authority to approve the home ownership education efforts for which the taxpayer seeks a credit under this chapter. The request must be made before costs for the home ownership education efforts are incurred by the taxpayer.

(b) If the authority determines that the home ownership education efforts for which the taxpayer seeks a credit under this chapter meet the rules adopted by the authority under section 15 of this chapter, the authority shall certify to the taxpayer that the taxpayer's home ownership education efforts are approved by the authority.

Sec. 12. (a) If the amount determined under section 10 of this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to the following taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year. A taxpayer is not entitled to a carryback.

(b) A taxpayer is not entitled to a refund of any unused credit.

Sec. 13. If a pass through entity does not have state income tax liability against which the tax credit allowed under this chapter may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

Sec. 14. To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's state tax return or returns in the manner prescribed by the department. The taxpayer must submit to the department all information that the department determines is necessary to calculate the credit provided by this chapter and to determine the taxpayer's eligibility for the credit, including any certification received by the taxpayer from the authority under section 11(b) of this chapter.

Sec. 15. The authority shall adopt rules under IC 4-22-2 to certify home ownership education efforts under this chapter.

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SECTION 6. IC 24-4.5-1-301, AS AMENDED BY P.L.57-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 301. General Definitions – In addition to definitions appearing in subsequent chapters in this article:

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

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

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

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

(a) fees or premiums for title examination, title insurance, or similar purposes, including surveys;

(b) fees for preparation of a deed, settlement statement, or other documents;

(c) escrows for future payments of taxes and insurance;

(d) fees for notarizing deeds and other documents;

(e) appraisal fees; and

(f) credit reports.

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

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

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

(8) "Creditor" means a person:

(a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable **by written agreement** in **more than four (4)** installments **(not including a down payment);** and

(b) to whom the obligation is initially payable, either on the face

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of the note or contract, or by agreement when there is not a note or contract.

The term does not include a person that is licensed or registered under IC 23-2-5.

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

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

(a) by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;

(b) by the lender's payment or agreement to pay the debtor's obligations; or

(c) by the lender's purchase from the obligee of the debtor's obligations.

(11) "Official fees" means:

(a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or

(b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

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

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

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

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

(a) the spouse of the individual;

(b) a brother, brother-in-law, sister, sister-in-law of the individual;

(c) an ancestor or lineal descendants of the individual or the

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individual's spouse; and

(d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

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

(a) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

(c) the spouse of a person related to the organization; and

(d) a relative by blood or marriage of a person related to the organization who shares the same home with the person.

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

(17) "Mortgage transaction" means a ~~transaction~~ **consumer credit sale or consumer loan** in which a ~~first~~ mortgage, **deed of trust,** or a land contract which constitutes a ~~first~~ lien is created or retained against land.

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

(a) twenty-five (25) times; or

(b) five (5) times for transactions secured by a dwelling;

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

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

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

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

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

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

(22) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

(a) controls;

(b) is controlled by; or

(c) is under common control with;

the person subject to this article.

SECTION 7. IC 24-4.5-2-104 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 104. (1) Except as provided in subsection (2), "consumer credit sale" is a sale of goods, services, or an interest in land in which:

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

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

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

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

(e) with respect to a sale of goods or services, either:

(i) the amount financed does not exceed fifty thousand dollars ($50,000); or

(ii) the debt is secured by **an interest in land or by** personal property used or expected to be used as the principal dwelling of the buyer.

(2) Unless the sale is made subject to this article by agreement (IC 24-4.5-2-601), "consumer credit sale" does not include ~~(a)~~ a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement. ~~or (b) except as provided with respect to disclosure (IC 24-4.5-2-301), debtors' remedies (IC 24-4.5-5-201), providing payoff amounts (IC 24-4.5-2-209), and powers and functions of the department (IC 24-4.5-6-101), a sale of an interest in land which is a mortgage transaction (as defined in IC 24-4.5-1-301(17)).~~

SECTION 8. IC 24-4.5-2-105 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 105. Definitions: "Goods"; "Merchandise Certificate"; "Services"; "Sale of Goods"; "Sale of Services"; "Sale of an Interest in Land"; "Precomputed".

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(1) "Goods" includes goods not in existence at the time the transaction is entered into and merchandise certificates, but excludes money, chattel paper, documents of title, and instruments.

(2) "Merchandise certificate" means a writing issued by a seller not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(3) "Services" includes (a) work, labor, and other personal services, (b) privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, and (c) insurance provided by a person other than the insurer.

(4) "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with ~~his~~ **the bailee's or lessee's** obligations under the agreement.

(5) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(6) "Sale of an interest in land" includes **a mortgage transaction or** a lease in which the **mortgagor or the** lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by ~~him~~ **the mortgagor or the lessee** are applied to the purchase price.

(7) A sale, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the amount financed and the amount of the credit service charge computed in advance.

SECTION 9. IC 24-4.5-2-107 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 107. Definition; "Seller" - Except as otherwise provided, "seller" **means a person regularly engaged as a creditor in making consumer credit sales. The term** includes an assignee of the seller's right to payment but use of the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment.

SECTION 10. IC 24-4.5-2-201, AS AMENDED BY P.L.57-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 201. Credit Service Charge for Consumer Credit Sales other than Revolving Charge Accounts — (1) With respect to a consumer credit sale, other than a sale pursuant to a revolving

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charge account, a seller may contract for and receive a credit service charge not exceeding that permitted by this section.

(2) The credit service charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

(a) the total of:

(i) thirty-six percent (36%) per year on that part of the unpaid balances of the amount financed which is three hundred dollars ($300) or less;

(ii) twenty-one percent (21%) per year on that part of the unpaid balances of the amount financed which is more than three hundred dollars ($300) but does not exceed one thousand dollars ($1,000); and

(iii) fifteen percent (15%) per year on that part of the unpaid balances of the amount financed which is more than one thousand dollars ($1,000); or

(b) twenty-one percent (21%) per year on the unpaid balances of the amount financed.

(3) **Except that not more than twenty-five percent (25%) of the credit service charge on a consumer credit sale that is a mortgage transaction may be precomputed,** this section does not limit or restrict the manner of contracting for the credit service charge, whether by way of add-on, discount, or otherwise, so long as the rate of the credit service charge does not exceed that permitted by this section. If the sale is precomputed:

(a) the credit service charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-2-210).

(4) For the purposes of this section, the term of a sale agreement commences with the date the credit is granted or, if goods are delivered or services performed more than thirty (30) days after that date, with the date of commencement of delivery or performance except as set forth below:

(a) Delays attributable to the customer. Where the customer requests delivery after the thirty (30) day period or where delivery occurs after the thirty (30) day period for a reason attributable to the customer (including but not limited to failure to close on a residence or failure to obtain lease approval), the term of the sale agreement shall commence with the date credit is granted.

(b) Partial Deliveries. Where any portion of the order has been delivered within the thirty (30) day period, the term of the sale

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agreement shall commence with the date credit is granted. Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the seller may reasonably establish, the seller may make the same credit service charge on all amounts financed within a specified range. A credit service charge so made does not violate subsection (2) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of credit service charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) Notwithstanding subsection (2), the seller may contract for and receive a minimum credit service charge of not more than thirty dollars ($30). The minimum credit service charge allowed under this subsection may be imposed only if:

(a) the ~~borrower~~ **debtor** prepays in full a consumer credit sale, refinancing, or consolidation, regardless of whether the sale, refinancing, or consolidation is precomputed;

(b) the sale, refinancing, or consolidation prepaid by the ~~borrower~~ **debtor** is subject to a credit service charge that:

(i) is contracted for by the parties; and

(ii) does not exceed the rate prescribed in subsection (2); and

(c) the credit service charge earned at the time of prepayment is less than the minimum credit service charge contracted for under this subsection.

(7) The amounts of three hundred dollars ($300) and one thousand dollars ($1,000) in subsection (2) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106).

(8) The amount of thirty dollars ($30) in subsection (6) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 1992.

SECTION 11. IC 24-4.5-2-203.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 203.5.

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Delinquency Charges – (1) With respect to a consumer credit sale, refinancing, or consolidation, **other than a purchase money mortgage transaction or the refinancing of a first lien mortgage transaction,** the parties may contract for a delinquency charge of not more than five dollars ($5) on any installment or minimum payment due not paid in full within ten (10) days after its scheduled due date. **For a purchase money mortgage transaction or the refinancing of a first lien mortgage transaction, the parties may contract for a delinquency charge of not more than five percent (5%) of the contracted payment amount.**

(2) A delinquency charge under this section may be collected only once on an installment however long it remains in default. A delinquency charge on consumer credit sales made under a revolving charge account may be applied each month that the payment is less than the minimum required payment. A delinquency charge may be collected any time after it accrues. No delinquency charge may be collected if the installment has been deferred and a deferral charge (IC 24-4.5-2-204) has been paid or incurred.

~~(3) A delinquency charge may not be collected on an installment or payment due that is paid in full within ten (10) days after its scheduled due date even though an earlier maturing installment, minimum payment, or a delinquency charge on:~~

~~(a) an earlier installment; or~~

~~(b) payment due;~~

~~may not have been paid in full. For purposes of this subsection, payments are applied first to current installments or payments due and then to delinquent installments or payments due.~~

~~(4)~~ **(3)** If two (2) installments or parts of two (2) installments of a precomputed consumer credit sale are in default for ten (10) days or more, the creditor may elect to convert the consumer credit sale from a precomputed consumer credit sale to a consumer credit sale in which the credit service charge is based on unpaid balances. A creditor that makes this election shall make a rebate under the provisions on rebates upon prepayment under IC 24-4.5-2-210 as of the maturity date of the first delinquent installment, and thereafter may make a credit service charge as authorized by the provisions on credit service charges for consumer credit sales under IC 24-4.5-2-201. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge under IC 24-4.5-2-210. Any deferral charges made on installments due at or after the maturity date of the first delinquent installment shall be rebated, and no further deferral charges shall be made.

~~(5)~~ **(4)** The amount of five dollars ($5) in subsection (1) is subject

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to change under the section on adjustment of dollar amounts (IC 24-4.5-1-106).

~~(6)~~ **(5)** If the parties provide by contract for a delinquency charge that is subject to change, the seller shall disclose in the contract that the amount of the delinquency charge is subject to change as allowed by IC 24-4.5-1-106.

SECTION 12. IC 24-4.5-3-103 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 103. Definitions in Chapter – The following definitions apply to this Article:

"Consumer loan" . . . . . Section 3-104
"Consumer related loan" . . . . . Section 3-602 (1)
"Lender" . . . . . Section 3-107 (1)
"Loan" . . . . . Section 3-106
"Loan finance charge" . . . . . Section 3-109
~~"Loan primarily secured by an interest in land"~~ . . . . . ~~Section 3-105~~
"Precomputed" . . . . . Section 3-107 (2)
"Principal" . . . . . Section 3-107 (3)
"Revolving loan account" . . . . . Section 3-108
"Supervised lender" . . . . . Section 3-501 (2)
"Supervised loan" 3-501 (1)

SECTION 13. IC 24-4.5-3-104 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 104. ~~Except with respect to a loan primarily secured by an interest in land (IC 24-4.5-3-105), "consumer~~ **"Consumer** loan" is a loan made by a person regularly engaged in the business of making loans in which:

(a) the debtor is a person other than an organization;

(b) the debt is primarily for a personal, family, or household purpose;

(c) either the debt is payable in installments or a loan finance charge is made; and

(d) either:

(i) the principal does not exceed fifty thousand dollars ($50,000); or

(ii) the debt is secured by an interest in land or by personal property used or expected to be used as the principal dwelling of the debtor.

SECTION 14. IC 24-4.5-3-107 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 107. Definitions: "Lender"; "Precomputed"; "Principal" – (1) Except as otherwise provided, "lender" **means a person regularly engaged in making consumer loans. The term** includes an assignee of the lender's right

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to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(2) A loan, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

(3) "Principal" of a loan means the total of:

(a) the net amount paid to, receivable by, or paid or payable for the account of the debtor;

(b) the amount of any discount excluded from the loan finance charge (subsection (2) of 24-4.5-3-109); and

(c) to the extent that payment is deferred:

(i) amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a); and

(ii) additional charges permitted by this Chapter (24-4.5-3-202).

SECTION 15. IC 24-4.5-3-201, AS AMENDED BY P.L.57-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 201. Loan Finance Charge for Consumer Loans other than Supervised Loans—(1) Except as provided in subsections (6) and (8), with respect to a consumer loan other than a supervised loan (IC 24-4.5-3-501), a lender may contract for a loan finance charge, calculated according to the actuarial method, not exceeding twenty-one percent (21%) per year on the unpaid balances of the principal.

(2) **Except that not more than twenty-five percent (25%) of the loan finance charge on a consumer credit loan that is a mortgage transaction may be precomputed,** this section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

(a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-3-210).

(3) For the purposes of this section, the term of a loan commences with the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days

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may be treated as a full month if periods of fifteen (15) days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. For purposes of computing average daily balances, the creditor may elect to treat all months as consisting of thirty (30) days.

(4) With respect to a consumer loan made pursuant to a revolving loan account:

(a) the loan finance charge shall be deemed not to exceed the maximum annual percentage rate if the loan finance charge contracted for and received does not exceed a charge in each monthly billing cycle which is one and three-fourths percent (1 3/4%) of an amount no greater than:

(i) the average daily balance of the debt;

(ii) the unpaid balance of the debt on the same day of the billing cycle; or

(iii) subject to subsection (5), the median amount within a specified range within which the average daily balance or the unpaid balance of the debt, on the same day of the billing cycle, is included; for the purposes of this subparagraph and subparagraph (ii), a variation of not more than four (4) days from month to month is "the same day of the billing cycle";

(b) if the billing cycle is not monthly, the loan finance charge shall be deemed not to exceed the maximum annual percentage rate if the loan finance charge contracted for and received does not exceed a percentage which bears the same relation to one-twelfth (1/12) the maximum annual percentage rate as the number of days in the billing cycle bears to thirty (30); and

(c) notwithstanding subsection (1), if there is an unpaid balance on the date as of which the loan finance charge is applied, the lender may contract for and receive a charge not exceeding fifty cents ($0.50) if the billing cycle is monthly or longer, or the pro rata part of fifty cents ($0.50) which bears the same relation to fifty cents ($0.50) as the number of days in the billing cycle bears to thirty (30) if the billing cycle is shorter than monthly, but no charge may be made pursuant to this paragraph if the lender has made an annual charge for the same period as permitted by the provisions on additional charges (paragraph (c) of subsection (1) of IC 24-4.5-3-202).

(5) Subject to classifications and differentiations, the lender may reasonably establish and make the same loan finance charge on all amounts financed within a specified range. A loan finance charge does not violate subsection (1) if:

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(a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (1); and

(b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) With respect to a consumer loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars ($30). The minimum loan finance charge allowed under this subsection may be imposed only if:

(a) the ~~borrower~~ **debtor** prepays in full a consumer loan, refinancing, or consolidation, regardless of whether the loan, refinancing, or consolidation is precomputed;

(b) the loan, refinancing, or consolidation prepaid by the ~~borrower~~ **debtor** is subject to a loan finance charge that:

(i) is contracted for by the parties; and

(ii) does not exceed the rate prescribed in subsection (1); and

(c) the loan finance charge earned at the time of prepayment is less than the minimum loan finance charge contracted for under this subsection.

(7) The amount of thirty dollars ($30) in subsection (6) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 1992.

(8) In addition to the loan finance charge provided for in this section, a lender may contract for the following:

(a) With respect to a consumer loan that is not made under a revolving loan account, a loan origination fee of not more than two percent (2%) of the loan amount.

(b) With respect to a consumer loan that is made under a revolving loan account, a loan origination fee of not more than two percent (2%) of the line of credit that was contracted for.

(9) The charges provided for in subsection (8):

(a) are not subject to refund or rebate;

(b) are not permitted if a lender makes a settlement charge under IC 24-4.5-3-202(d)(ii); and

(c) are limited to two percent (2%) of the part of the loan that does not exceed two thousand dollars ($2,000), if the loan is not primarily secured by an interest in land.

Notwithstanding subdivision (a), if a lender retains any part of a loan

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origination fee charged on a loan that is paid in full by a new loan from the same lender within three (3) months after the date of the prior loan, the lender may charge a loan origination fee only on that part of the new loan not used to pay the amount due on the prior loan, or in the case of a revolving loan, the lender may charge a loan origination fee only on the difference between the amount of the existing credit line and the increased credit line. This subsection does not prohibit a lender from contracting for and receiving a fee for preparing deeds, mortgages, reconveyance, and similar documents under IC 24-4.5-3-202(d)(ii), in addition to the charges provided for in subsection (8).

SECTION 16. IC 24-4.5-3-203.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 203.5. Delinquency Charges – (1) With respect to a consumer loan, refinancing, or consolidation, **other than a purchase money mortgage transaction or the refinancing of a first lien mortgage transaction,** the parties may contract for a delinquency charge of not more than five dollars ($5) on any installment or minimum payment due not paid in full within ten (10) days after its scheduled due date. **For a purchase money mortgage transaction or the refinancing of a first lien mortgage transaction, the parties may contract for a delinquency charge of not more than five percent (5%) of the contracted payment amount.**

(2) A delinquency charge under this section may be collected only once on an installment however long it remains in default. With regard to a delinquency charge on consumer loans made under a revolving loan account, the delinquency charge may be applied each month that the payment is less than the minimum required payment on the account. A delinquency charge may be collected any time after it accrues. A delinquency charge may not be collected if the installment has been deferred and a deferral charge (IC 24-4.5-3-204) has been paid or incurred.

~~(3) A delinquency charge may not be collected on an installment or payment due that is paid in full within ten (10) days after its scheduled due date even though an earlier maturing installment, minimum payment, or a delinquency charge on:~~

~~(a) an earlier installment; or~~

~~(b) payment due;~~

~~may not have been paid in full. For purposes of this subsection, payments are applied first to current installments or payments due and then to delinquent installments or payments due.~~

~~(4)~~ **(3)** If two (2) installments or parts of two (2) installments of a

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precomputed loan are in default for ten (10) days or more, the lender may elect to convert the loan from a precomputed loan to a loan in which the finance charge is based on unpaid balances. A lender that makes this election shall make a rebate under the provisions on rebates upon prepayment (IC 24-4.5-3-210) as of the maturity date of the first delinquent installment, and thereafter may make a loan finance charge as authorized by the provisions on loan finance charges for consumer loans (IC 24-4.5-3-201) or supervised loans (IC 24-4.5-3-508). The amount of the rebate shall not be reduced by the amount of any permitted minimum charge (IC 24-4.5-3-210). Any deferral charges made on installments due at or after the maturity date of the first delinquent installment shall be rebated, and no further deferral charges shall be made.

~~(5)~~ **(4)** The amount of five dollars ($5) in subsection (1) is subject to change pursuant to the section on adjustment of dollar amounts (IC 24-4.5-1-106).

~~(6)~~ **(5)** If the parties provide by contract for a delinquency charge that is subject to change, the lender shall disclose in the contract that the amount of the delinquency charge is subject to change as allowed by IC 24-4.5-1-106.

SECTION 17. IC 24-4.5-3-209 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 209. Right to Prepay - (1) Subject to the provisions on rebate upon prepayment (IC 24-4.5-3-210), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty. With respect to a consumer loan that is primarily secured by an interest in land, a lender may contract for a penalty for prepayment of the loan in full, not to exceed two percent (2%) of any amount prepaid within sixty (60) days of the date of the prepayment in full, after deducting all refunds and rebates as of the date of the prepayment. However, the penalty may not be imposed:

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

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

(c) after three (3) years from the contract date;

(d) if the loan is a subprime mortgage transaction (as defined in IC 24-4.5-8-107); or

(e) after the second year following the closing of the loan if the loan is a high cost home loan other than a subprime loan, as provided in IC 24-9-4-1(2).

(2) At the time of prepayment of a consumer loan not subject to the

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provisions of rebate upon prepayment (IC 24-4.5-3-210), the total finance charge, including the prepaid finance charge but excluding the loan origination fee allowed under IC 24-4.5-3-201, may not exceed the maximum charge allowed under this chapter for the period the loan was in effect. For the purposes of determining compliance with this subsection, the total finance charge does not include the following:

(a) The loan origination fee allowed under IC 24-4.5-3-201.

(b) The ~~borrower~~ **debtor** paid mortgage broker fee, if any, paid to a person who does not control, is not controlled by, or is not under common control with, the creditor holding the loan at the time a consumer loan is prepaid.

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

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

(b) the greater of:

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

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

if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with subdivision (a).

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

SECTION 18. IC 24-4.5-3-301 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 301. ~~(1) For the purposes of this section, "consumer loan" includes a loan secured primarily by an interest in land which is a mortgage transaction if the loan is otherwise a consumer loan (IC 24-4.5-3-104).~~

~~(2)~~ **(1)** The lender shall disclose to the debtor to whom credit is extended with respect to a consumer loan the information required by the Federal Consumer Credit Protection Act.

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~~(3)~~ **(2)** For purposes of subsection ~~(2),~~ **(1),** disclosures shall not be required on a consumer loan if the transaction is exempt from the Federal Consumer Credit Protection Act.

SECTION 19. IC 24-4.5-3-508, AS AMENDED BY P.L.57-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 508. Loan Finance Charge for Supervised Loans – (1) With respect to a supervised loan, including a loan pursuant to a revolving loan account, a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) The loan finance charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

(a) the total of:

(i) thirty-six percent (36%) per year on that part of the unpaid balances of the principal which is three hundred dollars ($300) or less;

(ii) twenty-one percent (21%) per year on that part of the unpaid balances of the principal which is more than three hundred dollars ($300) but does not exceed one thousand dollars ($1,000); and

(iii) fifteen percent (15%) per year on that part of the unpaid balances of the principal which is more than one thousand dollars ($1000); or

(b) twenty-one percent (21%) per year on the unpaid balances of the principal.

(3) **Except that not more than twenty-five percent (25%) of the loan finance charge on a consumer credit loan that is a mortgage transaction may be precomputed,** this section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

(a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-3-210).

(4) The term of a loan for the purposes of this section commences on the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days

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may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations, the lender may reasonably establish and make the same loan finance charge on all principal amounts within a specified range. A loan finance charge does not violate subsection (2) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted in subsection (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) The amounts of three hundred dollars ($300) and one thousand dollars ($1,000) in subsection (2) and thirty dollars ($30) in subsection (7) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). For the adjustment of the amount of thirty dollars ($30), the Reference Base Index to be used is the Index for October 1992.

(7) With respect to a supervised loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars ($30). The minimum loan finance charge allowed under this subsection may be imposed only if:

(a) the ~~borrower~~ **debtor** prepays in full a consumer loan, refinancing, or consolidation, regardless of whether the loan, refinancing, or consolidation is precomputed;

(b) the loan, refinancing, or consolidation prepaid by the ~~borrower~~ **debtor** is subject to a loan finance charge that:

(i) is contracted for by the parties; and

(ii) does not exceed the rate prescribed in subsection (2); and

(c) the loan finance charge earned at the time of prepayment is less than the minimum loan finance charge contracted for under this subsection.

SECTION 20. IC 24-4.5-8 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]:

Chapter 8. Mortgage Transactions

Sec. 101. This chapter shall be known and may be cited as Uniform Consumer Credit Code-Mortgage Transactions.

Sec. 102. (1) Except as otherwise provided, all provisions of this article that apply to consumer credit sales and consumer loans

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apply to mortgage transactions.

(2) This chapter applies to a creditor and to any person that facilitates, enables, or acts as a conduit for any person that is or may be exempt from:

(a) licensing under IC 24-4.5-3-502; or

(b) filing notification with the department under IC 24-4.5-6-202.

(3) Except for the prohibition against prepayment penalties for subprime mortgage transactions under section 109 of this chapter, this chapter does not apply to:

(a) a bank;

(b) a savings association;

(c) a credit union; or

(d) any other state or federally chartered financial institution.

(4) A creditor's employee who originates mortgage transactions shall comply with the registration requirements established by the rules, policies, and directives adopted or issued by the director or the department.

(5) The following do not apply to a person that is licensed or registered under IC 23-2-5:

(a) The licensing requirements set forth in IC 24-4.5-3-502.

(b) The notification requirements set forth in IC 24-4.5-6-202.

Sec. 103. The following definitions apply throughout this chapter:

"Mortgage transaction"	**Section 8-104**
"Nontraditional mortgage transaction	**Section 8-105**
"Subprime debtor"	**Section 8-106**
"Subprime mortgage transaction"	**Section 8-107**

Sec. 104. "Mortgage transaction" means a consumer credit sale or consumer loan in which a mortgage, deed of trust, or a land contract which constitutes a lien is created or retained against land.

Sec. 105. (1) "Nontraditional mortgage transaction" includes:

(a) interest-only;

(b) payment option; and

(c) negative amortization;

consumer credit sales and consumer loans.

(2) The term also includes an adjustable rate mortgage transaction that:

(a) provides for lower payments during an initial period, followed by higher payments later in the amortization period; and

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(b) contains other terms or conditions that distinguish the mortgage transaction from traditional mortgage transactions, as determined under rules, policies, and directives adopted or issued by the director or the department.

Sec. 106. "Subprime debtor" means a debtor who, at the time of the origination of a mortgage transaction, the creditor knew or should have known had a reduced or impaired repayment capacity based on the debtor's credit score, debt-to-income ratio, or reliability of income.

Sec. 107. "Subprime mortgage transaction" means a mortgage transaction in which the mortgagor is a subprime debtor.

Sec. 108. Subject to IC 24-4.5-2-203.5 and IC 24-4.5-3-203.5, the parties to:

(a) a purchase money mortgage transaction; or

(b) the refinancing of a first lien mortgage transaction;

may contract for a delinquency charge that is payable with respect to any installment or minimum payment due that is not paid in full within ten (10) days after its scheduled due date. A delinquency charge allowed under this section may not exceed five percent (5%) of the contracted payment amount.

Sec. 109. The documents for a subprime mortgage transaction may not provide for, and a creditor issuing a subprime mortgage may not charge the debtor, prepayment penalties or fees.

Sec. 110. (1) As used in this section, "fully indexed rate" means:

(a) for a fixed rate mortgage transaction in which the interest rate will not vary during the term of the mortgage, the rate as of the date of closing;

(b) for a mortgage transaction 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 mortgage agreement; or

(c) for all other mortgage transactions in which the rate may vary at any time during the term of the mortgage, the maximum rate that may be charged during the term of the mortgage.

(2) Regardless of whether a mortgage transaction is originated by an employee of the creditor or by a third party, a creditor retains the responsibility for ensuring that the mortgage transaction complies with this chapter and with any rules, policies, and directives adopted or issued by the director or the department under this chapter.

(3) A creditor that offers:

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(a) a nontraditional mortgage transaction; or

(b) a subprime mortgage transaction;

to a debtor must exercise prudent underwriting practices to determine and document the debtor's reasonable ability to repay the mortgage transaction at the mortgage transaction's fully indexed rate.

(4) If a creditor offers a subprime mortgage transaction to a debtor, the creditor shall establish an escrow account for the payment of real estate taxes and insurance owed in connection with the subprime mortgage transaction.

Sec. 111. (1) A person described in section 102(2) of this chapter that violates this chapter:

(a) is subject to a civil penalty imposed by the department in an amount not more than ten thousand dollars ($10,000) per occurrence;

(b) is subject to IC 24-4.5-5-202;

(c) commits a deceptive act under IC 24-5-0.5 and is subject to the penalties set forth in IC 24-5-0.5;

(d) except as provided in subsection (4), has no right to collect, receive, or retain any principal, interest, or other charges from a mortgage transaction; and

(e) except as provided in subsection (4), is liable to the debtor for actual damages, statutory damages of two thousand dollars ($2,000) per violation, costs, and attorney's fees.

(2) The department may sue:

(a) to enjoin any conduct that constitutes or will constitute a violation of this chapter; and

(b) for other equitable relief.

(3) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a debtor. A debtor is not required to exhaust any administrative remedies under this section or any other applicable law.

(4) Subsection (1)(d) and (1)(e) does not apply if the violation is the result of an accident or a bona fide error of computation.

Sec. 112. (1) A person regularly engaged as a creditor in mortgage transactions shall post a bond with the department in an amount acceptable to the department but not less than three hundred thousand dollars ($300,000).

(2) A bond posted under subsection (1) must continue in effect for two (2) years after the creditor ceases operation in Indiana. The bond must be available to:

(a) pay damages and penalties to a consumer harmed by a

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violation of this chapter; and

(b) fund regulatory costs incurred by the department in remedying violations of this chapter.

Sec. 113. A creditor engaged in mortgage transactions shall not commit nor cause to be committed any of the following acts:

(a) Threatening to use or using the criminal process in any state to collect on a mortgage transaction.

(b) Threatening to take action against a debtor that is prohibited by this chapter.

(c) Making a misleading or deceptive statement concerning:

(i) a mortgage transaction; or

(ii) a consequence of entering into a mortgage transaction.

(d) Engaging in unfair, deceptive, or fraudulent practices in the making of or collecting on a mortgage transaction.

Sec. 114. The department may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 21. IC 24-9-3-1.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 1.1. (a) As used in this section, "creditworthiness", with respect to a prospective borrower, means those factors likely to affect the prospective borrower's ability to repay a home loan at the home loan's trigger rate, including the following:**

(1) The prospective borrower's present and future:

(A) income, not including overtime payments, seasonal compensation, or other irregular income;

(B) expenses, including property taxes and insurance payments owed in connection with the home that is the subject of the home loan;

(C) assets; and

(D) liabilities.

(2) The prospective borrower's credit history.

(3) Any other factor likely to affect the prospective borrower's ability to repay the home loan at the home loan's trigger rate.

(b) For purposes of this section, a creditor conducts a "reasonable inquiry" into a prospective borrower's creditworthiness if the creditor:

(1) obtains a consumer report (as defined in IC 24-5-24-2) or other information maintained by a consumer reporting agency (as defined in IC 24-5-24-3) with respect to the prospective borrower; and

(2) obtains information about the prospective borrower through:

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(A) a current or past employer of the prospective borrower;

(B) public records; or

(C) any other legal or commercially reasonable means.

(c) A creditor may not recommend or issue a home loan to a prospective borrower without reasonable grounds for determining that the home loan is suitable for the prospective borrower based on a reasonable inquiry into the prospective borrower's creditworthiness. A creditor, or any officer, agent, or employee of a creditor, that conducts a reasonable inquiry under this section is not liable to:

(1) a borrower or prospective borrower;

(2) a subsequent purchaser of a home that was the subject of a home loan on which a borrower has defaulted; or

(3) any other person;

for a determination made under this section, if a borrower for whom the creditor determines a home loan is suitable under this section later defaults on the home loan issued by the creditor.

SECTION 22. IC 24-9-3-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 4.5. (a) This section applies to a home loan that first becomes sixty (60) days past due after June 30, 2008.**

(b) Subject to subsection (c), whenever a home loan becomes sixty (60) days past due, the creditor, or a loan servicer acting on the creditor's behalf, shall provide written notice of the delinquency to the borrower. The notice required under this section must offer the borrower:

(1) a temporary forbearance with respect to the home loan, subject to:

(A) terms agreed upon by the creditor and the borrower; and

(B) any applicable increase in the outstanding principal balance of the home loan, as allowed under IC 24-9-4-4(b);

(2) a payment plan; or

(3) any other option for the refinancing, restructuring, or workout of the existing indebtedness.

(c) Any option offered by the creditor under subsection (a) may not increase the interest rate on the home loan because of the delinquency. However, this subsection does not apply to interest rate changes in a variable rate home loan that are otherwise consistent with the provisions of the home loan documents, if the change in the interest rate is not triggered by the delinquency.

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SECTION 23. IC 24-9-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: 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) **For a high cost home loan other than a subprime mortgage transaction (as defined in IC 24-4.5-8-107):**

(A) prepayment fees or penalties may not be included in the loan documents for ~~a~~ **the** 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; **and**

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

(3) For a high cost home loan that is a subprime mortgage transaction (as defined in IC 24-4.5-8-107), the documents for the loan may not provide for, and a creditor issuing the loan may not charge the debtor, prepayment penalties or fees.

(4) A creditor may not include a prepayment penalty fee in a high cost home loan **described in subdivision (2)** 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

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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.

SECTION 24. IC 24-9-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) A creditor may not make a high cost home loan without regard to repayment ability, **as required under IC 24-9-3-1.1.**

(b) If a creditor presents evidence that the creditor:

(1) followed commercially reasonable practices in determining the borrower's debt to income ratio; **and**

(2) conducted a reasonable inquiry into a prospective borrower's creditworthiness under IC 24-9-3-1.1;

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) **For purposes of subsection (b)(1),** 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.

SECTION 25. IC 24-9-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 4.5. Residential Real Estate Closings

Sec. 1. This chapter applies to a home loan closing that takes place after June 30, 2008.

Sec. 2. As used in this chapter, "closing documents" refers to:

(1) the documents that a settlement service provider is required to provide to a borrower at or before the closing of a home loan, in accordance with the requirements of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) as amended;

(2) the form prescribed by the department of local government finance under IC 6-1.1-12-43(c);

(3) the form required to be provided by a closing agent under IC 6-1.1-12-43(d)(2); and

(4) any other documents required by law to be provided to a

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borrower at or before the closing of a home loan.

Sec. 3. (a) As used in this chapter, "settlement service provider" means a person that provides services in connection with the closing of a real estate transaction, including the provision of title examinations or title insurance.

(b) The term includes a closing agent (as defined in IC 6-1.1-12-43(a)(2)).

Sec. 4. A creditor shall provide a prospective borrower with a notice that states that the prospective borrower has a right to receive, at least forty-eight (48) hours before the closing of a home loan, the closing documents with respect to the home loan. The creditor shall provide the notice required by this section at the same time that the creditor provides the good faith estimates required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) as amended.

Sec. 5. Not later than forty-eight (48) hours before the closing of a home loan, a settlement service provider shall make available to the borrower the closing documents with respect to the home loan. The settlement service provider shall make the closing documents available to the borrower:

(1) at the office of the creditor or the settlement service provider;

(2) through the United States mail;

(3) by facsimile; or

(4) through any other commercially reasonable means.

SECTION 26. IC 34-30-2-16.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16.6. IC 6-1.1-12-43 (Concerning a closing ~~agent's~~ **agent for** failure to provide ~~a form~~ **a customer with certain forms** concerning property tax benefits, **or for any determination made with respect to a customer's eligibility for a benefit).**

SECTION 27. IC 34-30-2-96.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 96.7. IC 24-9-3-1.1 (Concerning a creditor's determination that a home loan is suitable for a borrower).**

SECTION 28. THE FOLLOWING ARE REPEALED [EFFECTIVE JANUARY 1, 2009]: IC 24-4.5-3-105; IC 24-4.5-5-201.

SECTION 29. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "task force" refers to the mortgage lending and fraud prevention task force created under subsection (b).**

(b) Not later than May 1, 2008, the following agencies shall

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create the mortgage lending and fraud prevention task force by each appointing an equal number of representatives to serve on the task force:

(1) The securities division of the office of the secretary of state established under IC 23-19-6-1(a).

(2) The homeowner protection unit established by the attorney general under IC 4-6-12-2.

(3) The department of financial institutions established by IC 28-11-1-1.

(4) The department of insurance created by IC 27-1-1-1.

(5) The Indiana real estate commission created by IC 25-34.1-2-1.

(6) The real estate appraiser licensure and certification board created by 25-34.1-8-1.

(c) The members of the task force shall annually appoint a chair from among the members of the task force. Each year, the chairmanship shall rotate among the agencies set forth in subsection (b).

(d) Subject to subsection (e), beginning not later than July 2008, the task force shall meet each month to:

(1) coordinate the state's efforts to:

(A) regulate the various participants involved in originating, issuing, and closing home loans;

(B) enforce state laws and rules concerning mortgage lending practices and mortgage fraud; and

(C) prevent fraudulent practices in the home loan industry and investigate and prosecute cases involving mortgage fraud; and

(2) share information and resources necessary for the efficient administration of the tasks set forth in subdivision (1).

(e) With respect to any meeting of the task force:

(1) one (1) or more members of the task force may participate in the meeting; or

(2) the meeting may be conducted in its entirety;

by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with each other. Participation by the means described in this subsection constitutes presence in person at the meeting.

(f) Beginning in 2008, not later than November 1 of each year, the task force shall report to the legislative council on the activities of the task force during the most recent state fiscal year. The

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report required under this subsection must include:

(1) information on the regulatory activities of each agency described in subsection (b), including a description of any:

(A) investigations conducted; or

(B) disciplinary actions taken or criminal prosecutions pursued;

with respect to the professions involved in originating, issuing, and closing home loans;

(2) a description of any challenges:

(A) encountered by the task force during the most recent state fiscal year; or

(B) anticipated by the task force in the current state fiscal year;

in carrying out the duties set forth in subsection (d);

(3) any additional information required by the legislative council; and

(4) any recommendations by the task force for legislation necessary to assist the task force in carrying out the duties set forth in subsection (d).

A report to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

SECTION 30. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "authority" refers to the Indiana housing and community development authority created by IC 5-20-1-3.**

(b) Notwithstanding IC 6-3.1-32-15, as added by this act, the authority shall adopt rules to certify home ownership education efforts under IC 6-3.1-32, as added by this act, in the same manner as emergency rules are adopted under IC 4-22-2-37.1. Any rules adopted under this SECTION must be adopted not later than September 1, 2008. A rule adopted under this SECTION expires on the earlier of:

(1) the date the rule is adopted by the authority under IC 4-22-2-24 through IC 4-22-2-36; or

(2) January 1, 2010.

(c) This SECTION expires January 1, 2010.

SECTION 31. [EFFECTIVE UPON PASSAGE] **(a) Notwithstanding IC 6-1.1-5.5-5, IC 6-1.1-12-2, and IC 6-1.1-20.9-3, all as amended by this act, the department of local government finance shall revise the sales disclosure form prescribed by the department under IC 6-1.1-5.5-5, as amended by this act, to include the forms prescribed by the department under IC 6-1.1-12-2 and IC 6-1.1-20.9-3, both as amended by this act, not later than June 1,**

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2008.

(b) This SECTION expires June 1, 2009.

SECTION 32. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "commissioner" refers to the securities commissioner appointed under IC 23-19-6-1.**

(b) As used in this SECTION, "director" refers to the director of the department of financial institutions appointed under IC 28-11-2-1.

(c) The commissioner and the director shall cooperate to determine the appropriate state agency or department to oversee the regulation of a person that is, has been, or may be subject to regulation, licensure, or registration under both:

(1) IC 23-2-5; and

(2) IC 24-4.5, as amended by this act.

(d) The commissioner and the director shall issue joint guidelines to address the appropriate regulation of a person described in subsection (c) not later than September 1, 2008. The joint guidelines issued under this subsection must include any recommendations for legislation needed to implement the appropriate regulation of a person described in subsection (c), as determined by the commissioner and the director.

(e) This SECTION expires January 1, 2010.

SECTION 33. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1211, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BARDON, Chair

Committee Vote: yeas 8, nays 1.

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