

# COMMITTEE REPORT

## MADAM PRESIDENT:

**The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 352, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:**

- 1           Page 6, between lines 4 and 5, begin a new line blocked left and
- 2           insert:
- 3           **"A determination by the director under this paragraph must be in**
- 4           **writing and shall be delivered to all parties to the transaction.**
- 5           **IC 4-21.5-3 applies to a determination made under this**
- 6           **paragraph."**
- 7           Page 6, line 27, delete "creditor's agent" and insert "**person acting**
- 8           **on behalf of the creditor"**.
- 9           Page 6, line 28, delete "creditor's agent" and insert "**person acting**
- 10          **on behalf of the creditor"**.
- 11          Page 7, line 24, delete "creditor's agent" and insert "**person acting**
- 12          **on behalf of the creditor"**.
- 13          Page 7, line 26, delete "creditor's" and insert "**person acting on**
- 14          **behalf of the creditor"**.
- 15          Page 7, line 27, delete "agent".
- 16          Page 7, line 29, delete "creditor's agent" and insert "**person acting**
- 17          **on behalf of the creditor"**.
- 18          Page 8, line 4, delete "creditor's agent" and insert "**person acting on**
- 19          **behalf of the creditor"**.

- 1 Page 8, line 28, delete "creditor's agent" and insert "**person acting**  
2 **on behalf of the creditor**".
- 3 Page 10, line 19, strike "or".
- 4 Page 10, line 20, delete "." and insert ", **a joint venture, an**  
5 **unincorporated organization, or any other entity, however**  
6 **organized.**".
- 7 Page 10, line 24, after "or" reset in roman "an".
- 8 Page 10, line 24, delete "any".
- 9 Page 10, line 24, after "and" insert "**or**".
- 10 Page 10, line 24, after "and" reset in roman "an".
- 11 Page 10, line 25, rest in roman "organization.".
- 12 Page 10, line 25, delete "sole proprietorship, partnership, trust, joint  
13 venture,".
- 14 Page 10, delete lines 26 through 27.
- 15 Page 12, line 6, delete "providing property tax forms (IC  
16 24-4.5-3-701),".
- 17 Page 12, between lines 10 and 11, begin a new paragraph and insert:  
18 "SECTION 6. IC 24-4.5-3-402, AS AMENDED BY P.L.217-2007,  
19 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
20 JULY 1, 2008]: Sec. 402. (1) **This section does not apply to a first**  
21 **lien mortgage transaction.**
- 22 (2) Except as provided in IC 24-9-4-3 with respect to a high cost  
23 home loan (as defined in IC 24-9-2-8), with respect to a consumer loan,  
24 other than one pursuant to a revolving loan account or one on which  
25 only loan finance charges are payable prior to the time that the final  
26 scheduled payment is due, if any scheduled payment is more than twice  
27 as large as the average of earlier scheduled payments, the debtor has  
28 the right to refinance the amount of that payment at the time it is due  
29 without penalty. The terms of the refinancing shall be no less favorable  
30 to the debtor than the terms of the original loan. This section does not  
31 apply to the extent that the payment schedule is adjusted to the seasonal  
32 or irregular income of the debtor.
- 33 ~~(2)~~ (3) For the purposes of this section, "terms of the refinancing"  
34 means:
- 35 (a) in the case of a fixed-rate consumer loan, the individual  
36 payment amounts, the charges as a result of default by the debtor,  
37 and the rate of the loan finance charge; and
- 38 (b) in the case of a variable rate consumer loan, the method used

1 to determine the individual payment amounts, the charges as a  
 2 result of default by the debtor, the method used to determine the  
 3 rate of the loan finance charge, the circumstances under which the  
 4 rate of the loan finance charge may increase, and any limitations  
 5 on the increase in the rate of the loan finance charge.

6 ~~(3)~~ **(4)** If a consumer loan is made under the authority of the  
 7 Alternative Mortgage Transaction Parity Act (12 U.S.C. 3802 et seq.),  
 8 the note evidencing the mortgage must contain a reference to the  
 9 applicable federal law."

10 Page 25, delete lines 22 through 31.

11 Page 26, line 4, delete "means:" and insert "**means an individual**  
 12 **consumer, or the individual's legal representative, who obtains or**  
 13 **has obtained from the person a financial:**

14 **(1) product; or**

15 **(2) service;**

16 **that is to be used primarily for personal, family, or household**  
 17 **purposes. The term does not include an affiliate of the person."**

18 Page 26, delete lines 5 through 12.

19 Page 32, line 33, after "not" insert "**create a substantial likelihood**  
 20 **of misleading the public by implying that the person, firm, limited**  
 21 **liability company, or corporation is a state or federally chartered**  
 22 **bank or savings bank."**

23 Page 32, delete lines 34 through 37.

24 Page 54, delete lines 30 through 42, begin a new paragraph and  
 25 insert:

26 "SECTION 41. IC 28-7-1-17.1, AS ADDED BY P.L.141-2005,  
 27 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 28 JULY 1, 2008]: Sec. 17.1. (a) ~~Subject to subsection (b);~~ A credit union  
 29 may make a loan to the credit union's individual ~~officers~~, directors and  
 30 committee members under the following terms and conditions:

31 (1) The loan must comply with all requirements under this chapter  
 32 that apply to loans made to other borrowers.

33 (2) The loan may not be on terms more favorable than those  
 34 extended to other borrowers.

35 (3) The borrower may not:

36 (A) take part in the consideration of; or

37 (B) vote on;

38 the borrower's loan application.

1 (4) Except as provided in subsection (b), a credit union may not  
 2 make a loan under this section to an individual, the individual's  
 3 immediate family, or the individual's related interests if the  
 4 amount of the loan, either by itself or when added to the amounts  
 5 of all other loans made under this section to the individual, the  
 6 individual's immediate family, or the individual's related interests,  
 7 exceeds the greater of:

8 (A) five percent (5%) of the credit union's ~~unimpaired~~ capital  
 9 and surplus; or

10 (B) twenty-five thousand dollars (\$25,000);

11 unless the loan is first approved by the credit union's board of  
 12 directors.

13 (5) A credit union may not make a loan under this section to an  
 14 individual, the individual's immediate family, or the individual's  
 15 related interests if the amount of the loan, either by itself or when  
 16 added to the amounts of all other loans made under this section to  
 17 the individual, the individual's immediate family, or the  
 18 individual's related interests, exceeds the lending limits set forth  
 19 in IC 28-7-1-39.

20 (6) ~~Subject to subsection (b)~~; The total amount of all loans made  
 21 under this section may not exceed the credit union's ~~unimpaired~~  
 22 capital and surplus. **However, the limit set forth in this**  
 23 **subdivision does not apply to either of the following:**

24 (A) **A loan, in any amount, secured by a perfected security**  
 25 **interest in bonds, notes, certificates of indebtedness, or**  
 26 **treasury bills of the United States or in other obligations**  
 27 **fully guaranteed as to principal and interest by the United**  
 28 **States.**

29 (B) **A loan, in any amount, secured by a perfected security**  
 30 **interest in a segregated deposit account in the lending**  
 31 **credit union.**

32 (b) ~~The limits set forth in subsections~~ **Approval by the board of**  
 33 **directors under subsection (a)(4) and (a)(6) do not apply to any of the**  
 34 **following: (1) is not required for** an extension of credit made under  
 35 a line of credit approved under subsection (a)(4) if the extension of  
 36 credit is made not later than fourteen (14) months after the line of  
 37 credit was approved.

38 (2) ~~A loan, in any amount, to finance the education of an~~

- 1 individual's child.
- 2 (3) A loan, in any amount, to finance or refinance the purchase;
- 3 construction, maintenance, or improvement of a residence of the
- 4 individual; if:
- 5 (A) the loan is secured by a first lien on the residence and the
- 6 residence is owned, or will be owned after the loan is made, by
- 7 the individual; and
- 8 (B) in the case of a refinancing, the loan includes only the
- 9 amount used to repay the original loan, plus any closing costs
- 10 and any additional amount used for any purpose described in
- 11 this subdivision.
- 12 (4) A loan, in any amount, secured by a perfected security interest
- 13 in bonds, notes, certificates of indebtedness, or treasury bills of
- 14 the United States or in other obligations fully guaranteed as to
- 15 principal and interest by the United States.
- 16 (5) A loan, in any amount, secured by a perfected security interest
- 17 in a segregated deposit account in the lending credit union.
- 18 (6) A loan made to an individual, the individual's immediate
- 19 family, or the individual's related interests, for any other purpose;
- 20 if the total amount of loans to the individual, the individual's
- 21 immediate family, or the individual's related interests under this
- 22 section does not exceed, at any given time, the greater of:
- 23 (A) two and one-half percent (2.5%) of the credit union's
- 24 unimpaired capital and unimpaired surplus; or
- 25 (B) twenty-five thousand dollars (\$25,000);
- 26 but in no event more than one hundred thousand dollars
- 27 (\$100,000).
- 28 (c) At least quarterly, the president or manager shall prepare and
- 29 deliver to the board of directors a report listing the outstanding
- 30 indebtedness of all officers, directors, and committee members. A
- 31 report prepared under this subsection must be retained at the credit
- 32 union for three (3) years and shall not be filed with the department
- 33 unless specifically requested. A report required by this subsection must
- 34 include:
- 35 (1) the amount of each indebtedness; and
- 36 (2) a description of the terms and conditions of each loan;
- 37 including:
- 38 (A) the interest rate;

- 1            ~~(B)~~ the original amount and date of the loan;  
 2            ~~(C)~~ the maturity date;  
 3            ~~(D)~~ payment terms;  
 4            ~~(E)~~ security, if any; and  
 5            ~~(F)~~ any unusual term or condition of a particular extension of  
 6            credit.

7            ~~(d)~~ (c) The department may apply the provisions of 12 CFR 215  
 8            (Regulation O) in applying and administering this section.

9            SECTION 42. IC 28-7-1-17.2 IS ADDED TO THE INDIANA  
 10           CODE AS A NEW SECTION TO READ AS FOLLOWS  
 11           [EFFECTIVE JULY 1, 2008]: **Sec. 17.2. (a) A credit union may make**  
 12           **a loan to the credit union's individual officers under the following**  
 13           **terms and conditions:**

14            (1) **The loan must comply with all requirements under this**  
 15            **chapter that apply to loans made to other borrowers.**

16            (2) **The loan may not be on terms more favorable than those**  
 17            **extended to other borrowers unless the loan is made in**  
 18            **connection with a benefit or compensation plan that:**

19                   (A) **is widely available to employees of the credit union;**  
 20                   **and**

21                   (B) **does not give preference to any officers of the credit**  
 22                   **union over other employees of the credit union.**

23            (3) **The loan must be promptly reported to the credit union's**  
 24            **board of directors.**

25            (4) **A loan to the officer, the officer's immediate family, or the**  
 26            **officer's related interests, either by itself or when added to the**  
 27            **amounts of all other loans made under this section to the**  
 28            **officer, the officer's immediate family, or the officer's related**  
 29            **interests, for any purpose, may not exceed, at any given time,**  
 30            **the greater of:**

31                   (A) **two and one-half percent (2.5%) of the credit union's**  
 32                   **capital and unimpaired surplus; or**

33                   (B) **twenty-five thousand dollars (\$25,000);**  
 34            **but in no event more than one hundred thousand dollars**  
 35            **(\$100,000).**

36            (b) **The limits set forth in subsection (a)(4) do not apply to any**  
 37            **of the following:**

38                   (1) **An extension of credit made under a line of credit**

1           **approved under this section if the extension of credit is made**  
 2           **not later than fourteen (14) months after the line of credit was**  
 3           **approved.**

4           **(2) A loan, in any amount, to finance the education of an**  
 5           **officer's child.**

6           **(3) A loan, in any amount, to finance or refinance the**  
 7           **purchase, construction, maintenance, or improvement of a**  
 8           **residence of an officer, if:**

9                   **(A) the loan is secured by a first lien on the residence and**  
 10                   **the residence is owned, or will be owned after the loan is**  
 11                   **made, by the officer; and**

12                   **(B) in the case of a refinancing, the loan includes only the**  
 13                   **amount used to repay the original loan, plus any closing**  
 14                   **costs and any additional amount used for any purpose**  
 15                   **described in this subdivision.**

16           **(4) A loan, in any amount, secured by a perfected security**  
 17           **interest in bonds, notes, certificates of indebtedness, or**  
 18           **treasury bills of the United States or in other obligations fully**  
 19           **guaranteed as to principal and interest by the United States.**

20           **(5) A loan, in any amount, secured by a perfected security**  
 21           **interest in a segregated deposit account in the lending credit**  
 22           **union.**

23           **(c) A credit union may not make a loan under this section to an**  
 24           **officer, the officer's immediate family, or the officer's related**  
 25           **interests if the amount of the loan, either by itself or when added**  
 26           **to the amounts of all other loans made under this section to the**  
 27           **officer, the officer's immediate family, or the officer's related**  
 28           **interests, exceeds the lending limits set forth in IC 28-7-1-39.**

29           **(d) The department may apply the provisions of 12 CFR 215**  
 30           **(Regulation O) in applying and administering this section."**

31           Delete pages 55 through 57.

32           Page 58, delete lines 1 through 3.

33           Page 77, line 34, delete "If the order is not".

34           Page 77, delete lines 35 through 38.

35           Page 80, between lines 19 and 20, begin a new paragraph and insert:

36           "SECTION 76. IC 28-11-5-10 IS ADDED TO THE INDIANA  
 37           CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 38           [EFFECTIVE JULY 1, 2008]: **Sec. 10. (a) Subject to subsection (g),**

- 1       **a financial institution subject to this chapter may:**  
2             **(1) be organized as a limited liability company;**  
3             **(2) convert to a limited liability company; or**  
4             **(3) merge with or into a limited liability company;**  
5       **under the laws of Indiana or the United States, including any rules**  
6       **or regulations adopted or promulgated under the laws of Indiana**  
7       **or the United States.**
- 8       **(b) A bank organized as a limited liability company is subject to:**  
9             **(1) IC 23-18; and**  
10            **(2) this title.**
- 11       **If a provision of IC 23-18 conflicts with a provision of this title or**  
12       **with any rule of the department, the provision of this title or the**  
13       **rule the department controls.**
- 14       **(c) Any filing required to be made under IC 23-18 shall be made**  
15       **in the same manner as for a bank that is organizing or is organized**  
16       **in stock form.**
- 17       **(d) The department may prescribe any requirements for:**  
18             **(1) the articles of organization; and**  
19             **(2) the operating agreement;**  
20       **of a financial institution that is organized and operates as a limited**  
21       **liability company.**
- 22       **(e) The department has the exclusive authority under this title**  
23       **to regulate a financial institution organized as a limited liability**  
24       **company. A financial institution that is a limited liability company**  
25       **is subject to the department's authority in the same manner as a**  
26       **bank that is organized in stock form.**
- 27       **(f) A financial institution that is a limited liability company is**  
28       **subject to the provisions of this title that apply to banks, except for**  
29       **the provisions concerning corporate governance (IC 28-13), in the**  
30       **same manner as a financial institution that is organized in stock**  
31       **form, subject to the following:**  
32             **(1) In the case of a manager managed limited liability**  
33             **company, "director" means a manager of the limited liability**  
34             **company.**  
35             **(2) In the case of a member managed limited liability**  
36             **company, "director" means a member of the limited liability**  
37             **company.**
- 38       **(g) A financial institution may not:**

- 1           **(1) organize as;**
- 2           **(2) convert to; or**
- 3           **(3) merge with or into;**
- 4           **a limited liability company without the prior approval of the**
- 5           **department under this title."**
- 6           Renumber all SECTIONS consecutively.  
            (Reference is to SB 352 as introduced.)

**and when so amended that said bill do pass.**

Committee Vote: Yeas 10, Nays 0.

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**Paul**

**Chairperson**