

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 328, 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 Replace the effective date in SECTIONS 111 through 112 with
- 2 "[EFFECTIVE UPON PASSAGE]".
- 3 Replace the effective date in SECTION 135 with "[EFFECTIVE
- 4 UPON PASSAGE]".
- 5 Replace the effective date in SECTION 174 with "[EFFECTIVE
- 6 UPON PASSAGE]".
- 7 Replace the effective date in SECTION 183 with "[EFFECTIVE
- 8 UPON PASSAGE]".
- 9 Replace the effective date in SECTION 189 with "[EFFECTIVE
- 10 UPON PASSAGE]".
- 11 Page 16, line 10, delete "using" and insert "**that exclusively uses**".
- 12 Page 16, line 12, delete "exclusively".
- 13 Page 18, line 30, delete "regularly".
- 14 Page 21, line 17, delete "offers to negotiate" and insert "**in offering**
- 15 **or negotiating**".
- 16 Page 21, line 18, delete "IC 24-5.5" and insert "**IC 24-4.5**".
- 17 Page 21, between lines 38 and 39, begin a new paragraph and insert:
- 18 "**(22) "Mortgage servicer" means the last person to whom a**
- 19 **mortgagor or the mortgagor's successor in interest has been**
- 20 **instructed by a mortgagee to send payments on a loan secured by**

- 1 **a mortgage."**
- 2 Page 21, line 39, delete "(22)" and insert "**(23)**".
- 3 Page 22, line 4, delete "(23)" and insert "**(24)**".
- 4 Page 22, line 10, delete "(24)" and insert "**(25)**".
- 5 Page 22, line 12, delete "(25)" and insert "**(26)**".
- 6 Page 22, line 17, delete "(26)" and insert "**(27)**".
- 7 Page 22, line 21, delete "(27)" and insert "**(28)**".
- 8 Page 22, line 31, delete "(28)" and insert "**(29)**".
- 9 Page 22, line 38, delete "(29)" and insert "**(30)**".
- 10 Page 23, line 14, delete "(30)" and insert "**(31)**".
- 11 Page 23, line 26, delete "(31)" and insert "**(32)**".
- 12 Page 23, line 29, delete "(32)" and insert "**(33)**".
- 13 Page 24, line 5, delete "(33)" and insert "**(34)**".
- 14 Page 24, line 12, delete "(34)" and insert "**(35)**".
- 15 Page 26, line 27, after "director" insert "**or the department**".
- 16 Page 37, line 1, delete "director;" and insert "**director or the**
- 17 **department;**".
- 18 Page 38, line 2, delete "404.1(1)" and insert "**404.4(1)**".
- 19 Page 38, line 5, delete "and".
- 20 Page 38, line 7, delete "alleged." and insert "**alleged; and**
- 21 **(h) if the director suspends or prohibits an officer, a director,**
- 22 **or an employee of the creditor from participating in the**
- 23 **affairs of the creditor, as described in subsection (5), include**
- 24 **a statement of the suspension or prohibition."**
- 25 Page 38, line 9, delete "director or designee of the" and insert
- 26 "**department**".
- 27 Page 38, line 10, delete "director".
- 28 Page 38, line 12, delete "director or" and insert "**department,**".
- 29 Page 38, line 13, delete "designee of the director,".
- 30 Page 38, line 18, delete "described in subsection (2)" and insert
- 31 "**under section 404.4 of this chapter**".
- 32 Page 38, line 28, delete "subsection (1)." and insert "**section**
- 33 **404.1(1) of this chapter."**
- 34 Page 38, line 30, delete "notice." and insert "**notice under section**
- 35 **404.1(1) of this chapter."**
- 36 Page 38, line 31, delete "notice" and insert "**suspension or**
- 37 **prohibition**".
- 38 Page 38, line 32, delete "proceeding under the written notice served

1 under subsection" and insert "**proceedings related to the notice**
2 **served under section 404.1(1) of this chapter**".

3 Page 38, line 33, delete "(1)".

4 Page 38, line 33, delete "director" and insert "**department**".

5 Page 38, line 34, after "or" insert "**the director under subsection**".

6 Page 38, line 42, delete "under" and insert "**related to the written**
7 **notice served under section 404.1(1) of this chapter,**".

8 Page 39, line 1, delete "subsection (2),".

9 Page 39, line 17, delete "If the director" and insert "**If, after a**
10 **hearing described in section 404.2(2) of this chapter, the**
11 **department**".

12 Page 39, line 19, delete "director may issue a final order." and insert
13 "**department may issue a final order. If a hearing is not requested**
14 **within the time specified in section 404.2(2) of this chapter, the**
15 **director may issue a final order on the basis of the facts set forth**
16 **in the written notice served under section 404.1(1) of this chapter.**".

17 Page 39, line 20, delete "A" and insert "**Unless the director has**
18 **entered into a consent agreement described in section 404.3 of this**
19 **chapter, a**".

20 Page 39, delete lines 22 through 29, begin a new paragraph and
21 insert:

22 "**(3) In a final order under this section, the department or the**
23 **director, as appropriate, may order one (1) or more of the**
24 **following with respect to an officer, a director, or an employee of**
25 **a creditor:**

26 (a) **The removal of the officer, director, or employee from the**
27 **person's office, position, or employment.**

28 (b) **A prohibition against any participation by the officer,**
29 **director, or employee in the conduct of the affairs of any**
30 **creditor.**

31 (c) **If the subject of the order is an officer or a director of a**
32 **creditor, and subject to section 404.6 of this chapter, the**
33 **imposition of a civil penalty not to exceed fifteen thousand**
34 **dollars (\$15,000) for each practice, violation, or act that:**

35 (i) **is described in section 404.1 of this chapter; and**

36 (ii) **is found to exist by the department or the director.**".

37 Page 39, line 31, delete "the hearing," insert "**a hearing held under**
38 **section 404.2(2) of this chapter,**".

- 1 Page 39, line 35, delete "the hearing," insert "**a hearing held under**
2 **section 404.2(2) of this chapter,**".
- 3 Page 40, line 1, delete "at the expiration of ten (10) days" and insert
4 "**on the eleventh day**".
- 5 Page 40, line 11, delete "A civil penalty imposed" and insert "**The**
6 **director or the department, as appropriate, shall consider the**
7 **following factors in determining the amount of a civil penalty that**
8 **should be assessed against a director or an officer in a final order**
9 **issued under section 404.4(3)(c) of this chapter:**".
- 10 Page 40, delete lines 12 through 18.
- 11 Page 40, line 26, delete "(3)" and insert "(2)".
- 12 Page 40, line 27, delete "404.4" and insert "**404.4(3)(c)**".
- 13 Page 40, line 29, delete "(4)" and insert "(3)".
- 14 Page 40, line 33, delete "department" and insert "**director**".
- 15 Page 40, line 37, after "department" insert "**or the director**".
- 16 Page 40, line 39, after "department" insert "**or the director**".
- 17 Page 50, line 5, after "rule" insert "**or guidance**".
- 18 Page 52, line 25, delete "using" insert "**that exclusively uses**".
- 19 Page 52, line 27, delete "exclusively".
- 20 Page 52, line 32, delete "an examination of" and insert
21 "**examinations or other**".
- 22 Page 52, line 33, delete "by the department" and insert "**conducted**
23 **by the department and**".
- 24 Page 56, line 40, delete "offers to negotiate" and insert "**in offering**
25 **or negotiating**".
- 26 Page 56, line 41, delete "IC 24-5.5" and insert "**IC 24-4.5**".
- 27 Page 69, line 4, after "director" insert "**or the department**".
- 28 Page 77, line 15, delete "through the NMLSR".
- 29 Page 77, line 16, after "year." insert "**A license issued under**
30 **section 502.1 of this chapter must be renewed through the**
31 **NMLSR.**".
- 32 Page 81, line 38, after "consumer loan" insert ".".
- 33 Page 81, line 39, strike "(IC 24-4.5-3-105).".
- 34 Page 90, delete lines 21 through 27.
- 35 Page 90, line 37, delete "director;" and insert "**director or the**
36 **department;**".
- 37 Page 91, line 39, delete "119(a)" and insert "**122(a)**".
- 38 Page 92, line 9, delete "director or" and insert "**department**".

- 1 Page 92, line 10, delete "designee of the director".
- 2 Page 92, line 12, delete "director" and insert "**department**".
- 3 Page 92, line 13, delete "or designee of the director,".
- 4 Page 92, line 29, delete "subsection (a)." and insert "**section 119(a)**
- 5 **of this chapter**".
- 6 Page 92, line 31, delete "notice." and insert "**notice under section**
- 7 **119(a) of this chapter**".
- 8 Page 92, line 32, delete "notice" and insert "**suspension or**
- 9 **prohibition**".
- 10 Page 92, line 33, delete "a proceeding under subsection (b)" and
- 11 insert "**the proceedings related to the notice served under section**
- 12 **119(a) of this chapter**".
- 13 Page 92, line 34, delete "director" and insert "**department**".
- 14 Page 92, line 35, after "(b) or" insert "**the director under**
- 15 **subsection**".
- 16 Page 93, line 2, delete "under" and insert "**related to the notice**
- 17 **served under section 119(a) of this chapter**".
- 18 Page 93, line 3, delete "subsection (b).".
- 19 Page 93, line 20, delete "if the director" and insert "**if, after a**
- 20 **hearing described in section 120(b) of this chapter, the**
- 21 **department**".
- 22 Page 93, line 22, delete "director may issue a final order." and insert
- 23 "**department may issue a final order. If a hearing is not requested**
- 24 **within the time specified in section 120(b) of this chapter, the**
- 25 **director may issue a final order on the basis of the facts set forth**
- 26 **in the written notice served under section 119(a) of this chapter**".
- 27 Page 93, line 23, delete "A" and insert "**Unless the director has**
- 28 **entered into a consent agreement described in section 121 of this**
- 29 **chapter, a**".
- 30 Page 93, delete lines 25 through 34, begin a new paragraph and
- 31 insert:
- 32 "**(c) In a final order under this section, the department or the**
- 33 **director, as appropriate, may order one (1) or more of the**
- 34 **following with respect to an officer, a director, or an employee of**
- 35 **a creditor:**
- 36 (1) **The removal of the officer, director, or employee from the**
- 37 **person's office, position, or employment.**
- 38 (2) **A prohibition against any participation by the officer,**

- 1 **director, or employee in the conduct of the affairs of any**
 2 **creditor.**
- 3 **(3) If the subject of the order is an officer or a director of a**
 4 **creditor, and subject to section 124 of this chapter, the**
 5 **imposition of a civil penalty not to exceed fifteen thousand**
 6 **dollars (\$15,000) for each practice, violation, or act that:**
- 7 **(A) is described in section 119 of this chapter; and**
 8 **(B) found to exist by the department or the director."**
- 9 Page 93, line 36, delete "hearing," and insert "**hearing held under**
 10 **section 120(b) of this chapter,"**.
- 11 Page 93, line 40, delete "the hearing," and insert "**a hearing held**
 12 **under section 120(b) of this chapter,"**.
- 13 Page 94, line 12, delete "served on the creditor and the officer," and
 14 insert "**served."**
- 15 Page 94, line 13, delete "director, or employee."
- 16 Page 94, line 22, delete "The director may impose".
- 17 Page 94, delete lines 23 through 26.
- 18 Page 94, line 27, delete "(b) The director" and insert "**The director**
 19 **or the department, as appropriate,"**.
- 20 Page 94, run in lines 22 through 27.
- 21 Page 94, line 29, delete "director, an officer, or an employee:" and
 22 insert "**director or an officer under section 122(c)(3) of this**
 23 **chapter:"**.
- 24 Page 94, line 37, delete "(c)" and insert "**(b)"**.
- 25 Page 94, line 37, delete "director, an officer, or an" and insert
 26 "**director or an officer"**.
- 27 Page 94, line 38, delete "employee".
- 28 Page 94, line 40, delete "(d)" and insert "**(c)"**.
- 29 Page 95, line 2, delete "department" and insert "**director"**.
- 30 Page 95, line 6, after "by" insert "**the director or"**.
- 31 Page 95, line 7, delete "the" and insert "**a"**.
- 32 Page 95, line 8, after "by" insert "**the director or"**.
- 33 Page 95, line 9, delete "the" and insert "**a"**.
- 34 Page 99, line 41, delete "." and insert ", **subject to the**
 35 **identification verification requirements set forth in subsection**
 36 **(12)."**.
- 37 Page 101, line 4, after "number." insert "**Documentation under this**
 38 **subdivision may be in electronic form and the numbers may be**

1 **truncated."**

2 Page 101, between lines 28 and 29, begin a new paragraph and
3 insert:

4 "SECTION 88. IC 24-5-23.5-4, AS ADDED BY P.L.52-2009,
5 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2010]: Sec. 4. (a) As used in this chapter, "mortgage loan"
7 means a loan in which a mortgage, deed of trust, or land contract that
8 constitutes a lien is created or retained against an interest in real
9 property in Indiana.

10 (b) The term includes the following:

11 (1) A home loan subject to IC 24-9.

12 (2) A loan described in IC 24-9-1-1, to the extent allowed under
13 federal law.

14 (3) A first lien mortgage transaction (as defined in
15 ~~IC 24-4.4-1-301(6)~~ **IC 24-4.4-1-301**) subject to IC 24-4.4.

16 (4) A consumer credit sale subject to IC 24-4.5-2 in which a
17 mortgage, deed of trust, or land contract that constitutes a lien is
18 created or retained against an interest in real property in Indiana.

19 (5) A consumer credit loan subject to IC 24-4.5-3 in which a
20 mortgage, deed of trust, or land contract that constitutes a lien is
21 created or retained against an interest in real property in Indiana.

22 (6) A loan in which a mortgage, deed of trust, or land contract that
23 constitutes a lien is created or retained against land:

24 (A) that is located in Indiana;

25 (B) upon which there is a dwelling that is not or will not be
26 used by the borrower primarily for personal, family, or
27 household purposes; and

28 (C) that is classified as residential for property tax purposes.

29 The term includes a loan that is secured by land in Indiana upon
30 which there is a dwelling that is purchased by or through the
31 borrower for investment or other business purposes."

32 Page 107, line 33, after "department" insert ".".

33 Page 107, line 33, strike "under".

34 Page 107, strike line 34.

35 Page 107, line 35, after "under" insert "**IC 24-4.4 or**".

36 Page 120, line 3, delete "(6)".

37 Page 120, line 3, strike "Whether the public convenience and
38 advantage will be".

- 1 Page 120, strike line 4.
- 2 Page 120, line 5, reset in roman "(6)".
- 3 Page 120, line 5 delete "(7)".
- 4 Page 120, between lines 7 and 8, begin a new paragraph and insert:
- 5 "SECTION 114. IC 28-1-8-3 IS AMENDED TO READ AS
- 6 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Before a
- 7 proposed disposition described in section 1 of this chapter is submitted
- 8 to a vote of the shareholders, the resolution proposing the disposition
- 9 shall be submitted for the approval of the department.
- 10 (b) The department may approve a resolution if the corporation ~~(†)~~
- 11 has and will have assets in excess of the corporation's liabilities and
- 12 **either of the following applies:**
- 13 **(1) The corporation intends to merge out of existence under**
- 14 **IC 28-1-7-1.**
- 15 **(2) The corporation** intends to voluntarily dissolve under
- 16 IC 28-1-9.
- 17 (c) If the department approves a resolution submitted under this
- 18 section, the department shall:
- 19 (1) write or stamp on the resolution:
- 20 (A) the words "Approved by the Department of Financial
- 21 Institutions of the State of Indiana"; and
- 22 (B) the date of the approval; and
- 23 (2) place the impression of the seal of the department and the
- 24 signature of the director or the director's authorized designee
- 25 beneath the approval stamp."
- 26 Page 129, line 8, delete "any class of" and insert "**the**".
- 27 Page 150, delete lines 35 through 42.
- 28 Page 151, delete lines 1 through 22.
- 29 Page 153, line 1, delete "providers;" and insert "**debt management**
- 30 **companies;**".
- 31 Page 153, line 4, delete "licensee." and insert "**person**."
- 32 **(i) Any person that provides services to a person doing business**
- 33 **as a debt management company shall, at the request of the**
- 34 **director, submit to an examination by the department. If the**
- 35 **director determines that an examination under this subsection is**
- 36 **necessary or desirable, the examination may be made at the**
- 37 **expense of the person to be examined. If the person to be examined**
- 38 **under this subsection refuses to permit the examination to be**

1 **made, the director may order every person doing business as a**
 2 **debt management company that receives services from the person**
 3 **refusing the examination to:**

4 **(1) discontinue receiving one (1) or more services from the**
 5 **person refusing the examination; or**
 6 **(2) otherwise cease conducting business with the person**
 7 **refusing the examination."**

8 Page 174, line 2, delete "bylaws" and insert "**articles of**
 9 **incorporation"**.

10 Page 191, between lines 11 and 12, begin a new line block indented
 11 and insert:

12 **"(4) Whether the proposed transaction, in the department's**
 13 **judgment and considering the available information under the**
 14 **prevailing circumstances, will result in an institution that is**
 15 **more favorable to the stakeholders than if the entities were to**
 16 **remain separate."**

17 Page 191, line 12, delete "(4)" and insert "**(5)"**.

18 Page 191, line 17, delete "(5)" and insert "**(6)"**.

19 Page 196, line 6, delete "renewal".

20 Page 196, line 6, after "license" insert "**renewal"**.

21 Page 196, line 6, reset in roman "fee".

22 Page 209, line 23, delete ";" and insert "**or the department;"**."

23 Page 210, line 19, strike "department." and insert "**director."**."

24 Page 211, line 33, strike "subsection (a)." and insert "**section 3(a)**
 25 **of this chapter."**

26 Page 211, line 36, strike "notice" and insert "**suspension or**
 27 **prohibition"**.

28 Page 211, line 37, strike "proceeding under" and insert
 29 **"proceedings related to"**.

30 Page 211, line 38, strike "subsection (a)" and insert "**section 3(a) of**
 31 **this chapter"**.

32 Page 211, line 39, strike "director" and insert "**department"**.

33 Page 211, line 39, after "or" insert "**the director under subsection"**.

34 Page 212, line 5, strike "under subsection".

35 Page 212, line 6, strike "(b)," and insert "**related to the notice**
 36 **served under section 3(a) of this chapter,"**.

37 Page 212, line 18, strike "department" and insert "**director"**.

38 Page 212, line 39, after "If" insert "**, after a hearing held under**

- 1 **section 4(b) of this chapter,".**
- 2 Page 212, line 41, after "order." insert **"If a hearing is not**
- 3 **requested within the time specified in section 4(b) of this chapter,**
- 4 **the director may issue a final order on the basis of the facts set**
- 5 **forth in the written notice served under section 3(a) of this**
- 6 **chapter.".**
- 7 Page 213, line 15, strike "the" and insert "a".
- 8 Page 213, line 15, delete "," and insert **"held under section 4(b) of**
- 9 **this chapter,".**
- 10 Page 213, line 18, after "at" strike "the" and insert "a".
- 11 Page 213, line 18, delete "," and insert **"held under section 4(b) of**
- 12 **this chapter,".**
- 13 Renumber all SECTIONS consecutively.
(Reference is to SB 328 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 8, Nays 0.

Paul

Chairperson