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| PREVAILED | Roll Call No. _____ |
| FAILED | Ayes _____ |
| WITHDRAWN | Noes _____ |
| RULED OUT OF ORDER | |

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 59 be amended to read as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning trade
- 3 regulation and commercial law.
- 4 Page 1, between the enacting clause and line 1, begin an new
- 5 paragraph and insert:
- 6 "SECTION 1. IC 24-4.4-2-201, AS AMENDED BY HEA
- 7 1528-2011, SECTION 5, IS AMENDED TO READ AS FOLLOWS
- 8 [EFFECTIVE JULY 1, 2011]: Sec. 201. (1) A creditor or mortgage
- 9 servicer shall provide, in writing, an accurate payoff amount for a first
- 10 lien mortgage transaction to the debtor not later than seven (7) business
- 11 days (excluding legal public holidays, Saturdays, and Sundays) after
- 12 the creditor or mortgage servicer receives the debtor's written request
- 13 for the accurate payoff amount. A payoff statement provided by a
- 14 creditor or mortgage servicer under this subsection must include the
- 15 date the statement was prepared and the payoff amount as of that date,
- 16 including an itemization of **the payoff amount, including the unpaid**
- 17 **principal balance and** each **other** fee, charge, or other sum included
- 18 within the payoff amount. A creditor or mortgage servicer who fails to
- 19 provide an accurate payoff amount is liable for:
- 20 (a) one hundred dollars (\$100) if an accurate payoff amount is not
- 21 provided by the creditor or mortgage servicer not later than seven
- 22 (7) business days (excluding legal public holidays, Saturdays, and
- 23 Sundays) after the creditor or mortgage servicer receives the
- 24 debtor's first written request; and

- 1 (b) the greater of:
 2 (i) one hundred dollars (\$100); or
 3 (ii) the loan finance charge that accrues on the first lien
 4 mortgage transaction from the date the creditor or mortgage
 5 servicer receives the first written request until the date on
 6 which the accurate payoff amount is provided;
 7 if an accurate payoff amount is not provided by the creditor or
 8 mortgage servicer not later than seven (7) business days
 9 (excluding legal public holidays, Saturdays, and Sundays) after
 10 the creditor or mortgage servicer receives the debtor's second
 11 written request, and the creditor or mortgage servicer fails to
 12 comply with subdivision (a).
- 13 (2) This subsection applies to a first lien mortgage transaction, or
 14 the refinancing or consolidation of a first lien mortgage transaction,
 15 that:
 16 (a) is closed after June 30, 2009; and
 17 (b) has an interest rate that is subject to change at one (1) or more
 18 times during the term of the first lien mortgage transaction.
- 19 A creditor in a transaction to which this subsection applies may not
 20 contract for and may not charge the debtor a prepayment fee or penalty.
- 21 (3) This subsection applies to a first lien mortgage transaction with
 22 respect to which any installment or minimum payment due is
 23 delinquent for at least sixty (60) days. The creditor, servicer, or the
 24 creditor's agent shall acknowledge a written offer made in connection
 25 with a proposed short sale not later than five (5) business days
 26 (excluding legal public holidays, Saturdays, and Sundays) after the date
 27 of the offer if the offer complies with the requirements for a qualified
 28 written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor,
 29 servicer, or creditor's agent is required to acknowledge a written offer
 30 made in connection with a proposed short sale from a third party acting
 31 on behalf of the debtor only if the debtor has provided written
 32 authorization for the creditor, servicer, or creditor's agent to do so. Not
 33 later than thirty (30) business days (excluding legal public holidays,
 34 Saturdays, and Sundays) after receipt of an offer under this subsection,
 35 the creditor, servicer, or creditor's agent shall respond to the offer with
 36 an acceptance or a rejection of the offer. The thirty (30) day period
 37 described in this subsection may be extended for not more than fifteen
 38 (15) business days (excluding legal public holidays, Saturdays, and
 39 Sundays) if, before the end of the thirty (30) day period, the creditor,
 40 the servicer, or the creditor's agent notifies the debtor of the extension
 41 and the reason the extension is needed. Payment accepted by a creditor,
 42 servicer, or creditor's agent in connection with a short sale constitutes
 43 payment in full satisfaction of the first lien mortgage transaction unless
 44 the creditor, servicer, or creditor's agent obtains:
 45 (a) the following statement: "The debtor remains liable for any
 46 amount still owed under the first lien mortgage transaction."; or

1 (b) a statement substantially similar to the statement set forth in
 2 subdivision (a);
 3 acknowledged by the initials or signature of the debtor, on or before the
 4 date on which the short sale payment is accepted. As used in this
 5 subsection, "short sale" means a transaction in which the property that
 6 is the subject of a first lien mortgage transaction is sold for an amount
 7 that is less than the amount of the debtor's outstanding obligation under
 8 the first lien mortgage transaction. A creditor or mortgage servicer that
 9 fails to respond to an offer within the time prescribed by this subsection
 10 is liable in accordance with 12 U.S.C. 2605(f) in any action brought
 11 under that section.

12 SECTION 2. IC 24-4.5-2-209, AS AMENDED BY HEA
 13 1528-2011, SECTION 15, IS AMENDED TO READ AS FOLLOWS
 14 [EFFECTIVE JULY 1, 2011]: Sec. 209. (1) Subject to the provisions
 15 on rebate upon prepayment (section 210 of this chapter), the buyer may
 16 prepay in full the unpaid balance of a consumer credit sale, refinancing,
 17 or consolidation at any time without penalty.

18 (2) At the time of prepayment of a credit sale not subject to the
 19 provisions of rebate upon prepayment (section 210 of this chapter), the
 20 total credit service charge, including the prepaid credit service charge,
 21 may not exceed the maximum charge allowed under this chapter for the
 22 period the credit sale was in effect.

23 (3) The creditor or mortgage servicer shall provide, in writing, an
 24 accurate payoff amount for the consumer credit sale to the debtor
 25 within seven (7) business days (excluding legal public holidays,
 26 Saturdays, and Sundays) after the creditor or mortgage servicer
 27 receives the debtor's written request for the accurate consumer credit
 28 sale payoff amount. A payoff statement provided by a creditor or
 29 mortgage servicer under this subsection must include the date the
 30 statement was prepared and the payoff amount as of that date,
 31 including an itemization of **the payoff amount, including the unpaid**
 32 **principal balance and each other** fee, charge, or other sum included
 33 within the payoff amount. A creditor or mortgage servicer who fails to
 34 provide the accurate consumer credit sale payoff amount is liable for:

35 (A) one hundred dollars (\$100) if an accurate consumer credit
 36 sale payoff amount is not provided by the creditor or mortgage
 37 servicer within seven (7) business days (excluding legal public
 38 holidays, Saturdays, and Sundays) after the creditor or mortgage
 39 servicer receives the debtor's first written request; and

40 (B) the greater of:

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

42 (ii) the credit service charge that accrues on the sale from the
 43 date the creditor or mortgage servicer receives the first written
 44 request until the date on which the accurate consumer credit
 45 sale payoff amount is provided;

46 if an accurate consumer credit sale payoff amount is not

1 provided by the creditor or mortgage servicer within seven (7)
2 business days (excluding legal public holidays, Saturdays, and
3 Sundays) after the creditor or mortgage servicer receives the
4 debtor's second written request, and the creditor or mortgage
5 servicer failed to comply with clause (A).

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

8 (4) As used in this subsection, "mortgage transaction" does not
9 include a land contract and means a consumer credit sale in which a
10 mortgage (or another equivalent consensual security interest) that
11 constitutes a lien is created or retained against land upon which there
12 is constructed or intended to be constructed a dwelling that is or will be
13 used by the debtor primarily for personal, family, or household
14 purposes. This subsection applies to a mortgage transaction with
15 respect to which any installment or minimum payment due is
16 delinquent for at least sixty (60) days. The creditor, servicer, or the
17 creditor's agent shall acknowledge a written offer made in connection
18 with a proposed short sale not later than five (5) business days
19 (excluding legal public holidays, Saturdays, and Sundays) after the date
20 of the offer if the offer complies with the requirements for a qualified
21 written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor,
22 servicer, or creditor's agent is required to acknowledge a written offer
23 made in connection with a proposed short sale from a third party acting
24 on behalf of the debtor only if the debtor has provided written
25 authorization for the creditor, servicer, or creditor's agent to do so. Not
26 later than thirty (30) business days (excluding legal public holidays,
27 Saturdays, and Sundays) after receipt of an offer under this subsection,
28 the creditor, servicer, or creditor's agent shall respond to the offer with
29 an acceptance or a rejection of the offer. The thirty (30) day period
30 described in this subsection may be extended for not more than fifteen
31 (15) business days (excluding legal public holidays, Saturdays, and
32 Sundays) if, before the end of the thirty (30) day period, the creditor,
33 the servicer, or the creditor's agent notifies the debtor of the extension
34 and the reason the extension is needed. Payment accepted by a creditor,
35 servicer, or creditor's agent in connection with a short sale constitutes
36 payment in full satisfaction of the mortgage transaction unless the
37 creditor, servicer, or creditor's agent obtains:

38 (a) the following statement: "The debtor remains liable for any
39 amount still owed under the mortgage transaction."; or

40 (b) a statement substantially similar to the statement set forth in
41 subdivision (a);

42 acknowledged by the initials or signature of the debtor, on or before the
43 date on which the short sale payment is accepted. As used in this
44 subsection, "short sale" means a transaction in which the property that
45 is the subject of a mortgage transaction is sold for an amount that is
46 less than the amount of the debtor's outstanding obligation under the

1 mortgage transaction. A creditor or mortgage servicer that fails to
 2 respond to an offer within the time prescribed by this subsection is
 3 liable in accordance with 12 U.S.C. 2605(f) in any action brought
 4 under that section.

5 SECTION 3. IC 24-4.5-3-209, AS AMENDED BY HEA
 6 1528-2011, SECTION 16, IS AMENDED TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2011]: Sec. 209. Right to Prepay - (1) Subject
 8 to the provisions on rebate upon prepayment (section 210 of this
 9 chapter), the debtor may prepay in full the unpaid balance of a
 10 consumer loan, refinancing, or consolidation at any time without
 11 penalty. With respect to a consumer loan that is primarily secured by
 12 an interest in land, a lender may contract for a penalty for prepayment
 13 of the loan in full, not to exceed two percent (2%) of any amount
 14 prepaid within sixty (60) days of the date of the prepayment in full,
 15 after deducting all refunds and rebates as of the date of the prepayment.
 16 However, the penalty may not be imposed:

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

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

21 (c) after three (3) years from the contract date.

22 (2) At the time of prepayment of a consumer loan not subject to the
 23 provisions of rebate upon prepayment (section 210 of this chapter), the
 24 total finance charge, including the prepaid finance charge but
 25 excluding the loan origination fee allowed under section 201 of this
 26 chapter, may not exceed the maximum charge allowed under this
 27 chapter for the period the loan was in effect. For the purposes of
 28 determining compliance with this subsection, the total finance charge
 29 does not include the following:

30 (a) The loan origination fee allowed under section 201 of this
 31 chapter.

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

36 (3) The creditor or mortgage servicer shall provide, in writing, an
 37 accurate payoff amount for the consumer loan to the debtor within
 38 seven (7) business days (excluding legal public holidays, Saturdays,
 39 and Sundays) after the creditor or mortgage servicer receives the
 40 debtor's written request for the accurate consumer loan payoff amount.
 41 A payoff statement provided by a creditor or mortgage servicer under
 42 this subsection must include the date the statement was prepared and
 43 the payoff amount as of that date, including an itemization of **the**
 44 **payoff amount, including the unpaid principal balance and each**
 45 **other** fee, charge, or other sum included within the payoff amount. A
 46 creditor or mortgage servicer who fails to provide the accurate

- 1 consumer loan payoff amount is liable for:
- 2 (a) one hundred dollars (\$100) if an accurate consumer loan
- 3 payoff amount is not provided by the creditor or mortgage
- 4 servicer within seven (7) business days (excluding legal public
- 5 holidays, Saturdays, and Sundays) after the creditor or mortgage
- 6 servicer receives the debtor's first written request; and
- 7 (b) the greater of:
- 8 (i) one hundred dollars (\$100); or
- 9 (ii) the loan finance charge that accrues on the loan from the
- 10 date the creditor or mortgage servicer receives the first written
- 11 request until the date on which the accurate consumer loan
- 12 payoff amount is provided;
- 13 if an accurate consumer loan payoff amount is not provided by the
- 14 creditor or mortgage servicer within seven (7) business days
- 15 (excluding legal public holidays, Saturdays, and Sundays) after
- 16 the creditor or mortgage servicer receives the debtor's second
- 17 written request, and the creditor or mortgage servicer failed to
- 18 comply with subdivision (a).

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

21 (4) As used in this subsection, "mortgage transaction" means a
22 consumer credit loan in which a mortgage (or another equivalent
23 consensual security interest) that constitutes a lien is created or
24 retained against land upon which there is constructed or intended to be
25 constructed a dwelling that is or will be used by the debtor primarily
26 for personal, family, or household purposes. This subsection applies to
27 a mortgage transaction with respect to which any installment or
28 minimum payment due is delinquent for at least sixty (60) days. The
29 creditor, servicer, or the creditor's agent shall acknowledge a written
30 offer made in connection with a proposed short sale not later than five
31 (5) business days (excluding legal public holidays, Saturdays, and
32 Sundays) after the date of the offer if the offer complies with the
33 requirements for a qualified written request set forth in 12 U.S.C.
34 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to
35 acknowledge a written offer made in connection with a proposed short
36 sale from a third party acting on behalf of the debtor only if the debtor
37 has provided written authorization for the creditor, servicer, or
38 creditor's agent to do so. Not later than thirty (30) business days
39 (excluding legal public holidays, Saturdays, and Sundays) after receipt
40 of an offer under this subsection, the creditor, servicer, or creditor's
41 agent shall respond to the offer with an acceptance or a rejection of the
42 offer. The thirty (30) day period described in this subsection may be
43 extended for not more than fifteen (15) business days (excluding legal
44 public holidays, Saturdays, and Sundays) if, before the end of the thirty
45 (30) day period, the creditor, the servicer, or the creditor's agent
46 notifies the debtor of the extension and the reason the extension is

1 needed. Payment accepted by a creditor, servicer, or creditor's agent in
2 connection with a short sale constitutes payment in full satisfaction of
3 the mortgage transaction unless the creditor, servicer, or creditor's
4 agent obtains:
5 (a) the following statement: "The debtor remains liable for any
6 amount still owed under the mortgage transaction."; or
7 (b) a statement substantially similar to the statement set forth in
8 subdivision (a);
9 acknowledged by the initials or signature of the debtor, on or before the
10 date on which the short sale payment is accepted. As used in this
11 subsection, "short sale" means a transaction in which the property that
12 is the subject of a mortgage transaction is sold for an amount that is
13 less than the amount of the debtor's outstanding obligation under the
14 mortgage transaction. A creditor or mortgage servicer that fails to
15 respond to an offer within the time prescribed by this subsection is
16 liable in accordance with 12 U.S.C. 2605(f) in any action brought
17 under that section."
18 Renumber all SECTIONS consecutively.
(Reference is to ESB 59 as printed April 5, 2011.)

Representative Speedy