
HOUSE BILL No. 1180

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.4-1-202; IC 24-4.5-1-202.

Synopsis: Zero interest mortgages by nonprofit entities. Specifies that: (1) the statute concerning first lien mortgage lending; and (2) the uniform consumer credit code; do not apply to a bona fide nonprofit entity that does not operate in a commercial context and that meets other specified criteria. Amends the same laws to: (1) remove exemptions from the laws for subsidiaries of depository institutions and for credit union service organizations, to comply with federal financial reform legislation; and (2) amend the exemption for mortgage loan originators employed by institutions regulated by the federal banking agencies to recognize that a registration system for those employees is not yet operational. Makes technical amendments.

Effective: July 1, 2011.

Clere, VanNatter

January 10, 2011, read first time and referred to Committee on Financial Institutions.

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First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1180



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:

1 SECTION 1. IC 24-4.4-1-202, AS AMENDED BY P.L.35-2010,
 2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2011]: Sec. 202. (a) **As used in this section, "balloon
 4 payment", with respect to a mortgage transaction, means any
 5 payment that:**
 6 (1) **the creditor requires the debtor to make at any time
 7 during the term of the mortgage;**
 8 (2) **represents the entire amount of the outstanding balance
 9 with respect to the mortgage; and**
 10 (3) **the entire amount of which is due as of a specified date or
 11 at the end of a specified period;**
 12 **if the aggregate amount of the minimum periodic payments
 13 required under the mortgage would not fully amortize the
 14 outstanding balance by the specified date or at the end of the
 15 specified period. The term does not include a payment required by
 16 a creditor under a due-on-sale clause (as defined in 12 U.S.C.
 17 1701j-3(a)) or a payment required by a creditor under a provision**



1 **in the mortgage that permits the creditor to accelerate the debt**
 2 **upon the debtor's default or failure to abide by the material terms**
 3 **of the mortgage.**

4 **(b)** This article does not apply to the following:

5 (1) Extensions of credit to government or governmental agencies
 6 or instrumentalities.

7 (2) A first lien mortgage transaction in which the debt is incurred
 8 primarily for a purpose other than a personal, family, or
 9 household purpose.

10 (3) An extension of credit primarily for a business, a commercial,
 11 or an agricultural purpose.

12 (4) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3,
 13 IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a first lien mortgage
 14 transaction made:

15 ~~(a)~~ **(A)** in compliance with the requirements of; and

16 ~~(b)~~ **(B)** by a community development corporation (as defined
 17 in IC 4-4-28-2) acting as a subrecipient of funds from;

18 the Indiana housing and community development authority
 19 established by IC 5-20-1-3.

20 (5) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3,
 21 IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a first lien mortgage
 22 transaction made by an entity that exclusively uses funds provided
 23 by the United States Department of Housing and Urban
 24 Development under Title 1 of the federal Housing and
 25 Community Development Act of 1974, Public Law 93-383, as
 26 amended (42 U.S.C. 5301 et seq.).

27 (6) An extension of credit originated by:

28 ~~(a)~~ **(A)** a depository institution; or

29 ~~(b)~~ subsidiaries that are:

30 (i) owned and controlled by a depository institution; and

31 (ii) regulated by a federal banking agency; or

32 ~~(c)~~ **(B)** an institution regulated by the Farm Credit
 33 Administration.

34 (7) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3,
 35 IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a credit union service
 36 organization that is majority owned, directly or indirectly, by one
 37 ~~(1)~~ or more credit unions.

38 (8) ~~(7)~~ A first lien mortgage transaction originated by a registered
 39 mortgage loan originator; when **an individual** acting for an entity
 40 described in subsection (6) **if the individual:**

41 **(A) is a registered mortgage loan originator, in the case of**
 42 **a first lien mortgage transaction that is originated at least**

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1 **one hundred eighty (180) days after the date the NMLSR**
 2 **begins accepting registrations from mortgage loan**
 3 **originators employed by institutions regulated by the**
 4 **federal banking agencies or the Farm Credit**
 5 **Administration; or**
 6 **(B) will be eligible for registration with the NMLSR after**
 7 **the NMLSR begins accepting registrations from mortgage**
 8 **loan originators employed by institutions regulated by the**
 9 **federal banking agencies or the Farm Credit**
 10 **Administration, in the case of a first lien mortgage**
 11 **transaction that is originated not later than one hundred**
 12 **eighty (180) days after the date the NMLSR begins**
 13 **accepting registrations from mortgage loan originators**
 14 **described in clause (A).**

15 ~~However,~~ A privately insured state chartered credit union shall
 16 **also** comply with the system of mortgage loan originator
 17 registration developed by the Federal Financial Institutions
 18 Examinations Council under Section 1507 of the federal ~~Safe~~
 19 **Secure** and Fair Enforcement for Mortgage Licensing Act of 2008
 20 (SAFE).

21 ~~(9)~~ **(8)** An individual who offers or negotiates terms of a mortgage
 22 transaction with or on behalf of an immediate family member of
 23 the individual.

24 ~~(10)~~ **(9)** An individual who offers or negotiates terms of a
 25 mortgage transaction secured by a dwelling that served as the
 26 individual's residence.

27 ~~(11)~~ **(10)** Unless the attorney is compensated by:
 28 ~~(a)~~ **(A)** a lender;
 29 ~~(b)~~ **(B)** a mortgage broker;
 30 ~~(c)~~ **(C)** another mortgage loan originator; or
 31 ~~(d)~~ **(D)** any agent of the lender, mortgage broker, or other
 32 mortgage loan originator described in clauses ~~(a)~~ **(A)** through
 33 ~~(c)~~ **(C)**;

34 a licensed attorney who negotiates the terms of a mortgage
 35 transaction on behalf of a client as an ancillary matter to the
 36 attorney's representation of the client.

37 ~~(12) Agencies, instrumentalities, and government owned~~
 38 ~~corporations of~~ **(11)** The United States, **any state or local**
 39 **government, or any agency or instrumentality of any**
 40 **governmental entity**, including United States government
 41 sponsored enterprises.

42 **(12) A bona fide nonprofit entity not operating in a**

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commercial context, as determined by the director, if the following criteria are satisfied:

(A) Subject to clause (B), the entity originates only one (1) or both of the following types of mortgage transactions:

- (i) Zero (0) interest first lien mortgage transactions.
- (ii) Zero (0) interest subordinate lien mortgage transactions.

(B) The entity does not require, under the terms of the mortgage or otherwise, balloon payments with respect to the mortgage transactions described in clause (A).

(C) The entity is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(D) The entity's primary purpose is to serve the public by helping low income individuals and families build, repair, and purchase housing.

(E) The entity uses only:

- (i) unpaid volunteers; or
- (ii) employees whose compensation is not based on the number or size of any mortgage transactions that the employees originate;

to originate the mortgage transactions described in clause (A).

(F) The entity does not charge loan origination fees in connection with the mortgage transactions described in clause (A).

SECTION 2. IC 24-4.5-1-202, AS AMENDED BY P.L.35-2010, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 202. (a) As used in this section, "balloon payment", with respect to a mortgage transaction, means any payment that:

- (1) the creditor requires the debtor to make at any time during the term of the mortgage;
- (2) represents the entire amount of the outstanding balance with respect to the mortgage; and
- (3) the entire amount of which is due as of a specified date or at the end of a specified period;

if the aggregate amount of the minimum periodic payments required under the mortgage would not fully amortize the outstanding balance by the specified date or at the end of the specified period. The term does not include a payment required by a creditor under a due-on-sale clause (as defined in 12 U.S.C. 1701j-3(a)) or a payment required by a creditor under a provision

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1 **in the mortgage that permits the creditor to accelerate the debt**
2 **upon the debtor's default or failure to abide by the material terms**
3 **of the mortgage.**

4 (b) This article does not apply to the following:

5 (1) Extensions of credit to government or governmental agencies
6 or instrumentalities.

7 (2) The sale of insurance by an insurer, except as otherwise
8 provided in the chapter on insurance (IC 24-4.5-4).

9 (3) Transactions under public utility, municipal utility, or
10 common carrier tariffs if a subdivision or agency of this state or
11 of the United States regulates the charges for the services
12 involved, the charges for delayed payment, and any discount
13 allowed for early payment.

14 (4) The rates and charges and the disclosure of rates and charges
15 of a licensed pawnbroker established in accordance with a statute
16 or ordinance concerning these matters.

17 (5) A sale of goods, services, or an interest in land in which the
18 goods, services, or interest in land are purchased primarily for a
19 purpose other than a personal, family, or household purpose.

20 (6) A loan in which the debt is incurred primarily for a purpose
21 other than a personal, family, or household purpose.

22 (7) An extension of credit primarily for a business, a commercial,
23 or an agricultural purpose.

24 (8) An installment agreement for the purchase of home fuels in
25 which a finance charge is not imposed.

26 (9) Loans made, insured, or guaranteed under a program
27 authorized by Title IV of the Higher Education Act of 1965 (20
28 U.S.C. 1070 et seq.).

29 (10) Transactions in securities or commodities accounts in which
30 credit is extended by a broker-dealer registered with the Securities
31 and Exchange Commission or the Commodity Futures Trading
32 Commission.

33 (11) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3,
34 IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a loan made:

35 (A) in compliance with the requirements of; and

36 (B) by a community development corporation (as defined in
37 IC 4-4-28-2) acting as a subrecipient of funds from;
38 the Indiana housing and community development authority
39 established by IC 5-20-1-3.

40 (12) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3,
41 IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a subordinate lien
42 mortgage transaction made by an entity that exclusively uses

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funds provided by the United States Department of Housing and Urban Development under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383, as amended (42 U.S.C. 5301 et seq).

(13) The United States, any state or local government, or any agency or instrumentality of any governmental entity, including United States government sponsored enterprises.

(14) A bona fide nonprofit entity not operating in a commercial context, as determined by the director, if the following criteria are satisfied:

(A) Subject to clause (B), the entity originates only one (1) or both of the following types of mortgage transactions:

- (i) Zero (0) interest first lien mortgage transactions.**
- (ii) Zero (0) interest subordinate lien mortgage transactions.**

(B) The entity does not require, under the terms of the mortgage or otherwise, balloon payments with respect to the mortgage transactions described in clause (A).

(C) The entity is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(D) The entity's primary purpose is to serve the public by helping low income individuals and families build, repair, and purchase housing.

(E) The entity uses only:

- (i) unpaid volunteers; or**
- (ii) employees whose compensation is not based on the number or size of any mortgage transactions that the employees originate;**

to originate the mortgage transactions described in clause (A).

(F) The entity does not charge loan origination fees in connection with the mortgage transactions described in clause (A).

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