SENATE BILL No. 238

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.5.

Synopsis: Charges for consumer loans and credit sales. Makes the following changes for purposes of the statutes that prescribe the maximum credit service charge for a consumer credit sale (other than a sale involving a revolving charge account) and the maximum loan finance charge for a supervised loan: (1) Increases the applicable amounts financed that are subject to the graduated service charge or loan finance charge percentages. (2) Increases the service charge or loan finance charge percentage that applies if the graduated percentages do not apply from 21% to 28%. Increases from 21% to 28% the permitted loan finance charge for consumer loans other than supervised loans. Provides that the permitted loan origination fee for consumer loans other than supervised loans and for supervised loans is the greater of: (1) 2% of the loan amount (or 2% of the line of credit, in the case of a revolving loan); or (2) $60. (Current law provides that the permitted origination fee is 2% of the loan amount (or 2% of the line of credit for a revolving loan) for consumer loans other than supervised loans, and does not provide for any origination fee for supervised loans.) Removes the provision that the permitted loan origination fee for a consumer loan other than a supervised loan is limited to 2% of the part of the loan that does not exceed $2,000 if the loan is not primarily secured by land.

Effective: July 1, 2013.

Holdman

January 7, 2013, read first time and referred to Committee on Financial Institutions.

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Introduced

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

C o p y

SENATE BILL No. 238

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 24-4.5-2-201, AS AMENDED BY P.L.145-2008, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: 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 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~~ **five thousand** dollars ~~($300)~~ **($5,000)** 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~~ **five thousand** dollars ~~($300)~~ **($5,000)** but does

not exceed ~~one~~ **seven** thousand **five hundred** dollars ~~($1,000);~~ **($7,500);** and

(iii) fifteen percent (15%) per year on that part of the unpaid balances of the amount financed which is more than ~~one~~ **seven** thousand **five hundred** dollars ~~($1,000);~~ **($7,500);** or

(b) ~~twenty-one~~ **twenty-eight** percent ~~(21%)~~ **(28%)** per year on the unpaid balances of the amount financed.

(3) 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 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

C o p y

(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 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 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~~ **five thousand** dollars ~~($300)~~ **($5,000)** and ~~one~~ **seven** thousand **five hundred** dollars ~~($1,000)~~ **($7,500)** 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 2. IC 24-4.5-3-201, AS AMENDED BY P.L.145-2008, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: 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~~ **twenty-eight** percent ~~(21%)~~ **(28%)** per year on the unpaid balances of the principal.

(2) 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

C o p y

(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 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~~ **two** and ~~three-fourths~~ **one-third** percent ~~(1 3/4%)~~ **(2 1/3%)** 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

C o p y

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).~~ **(IC 24-4.5-3-202(1)(c)).**

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

(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 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 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 **the greater of:**

(i) two percent (2%) of the loan amount; **or**

(ii) sixty dollars ($60).

(b) With respect to a consumer loan that is made under a

C o p y

revolving loan account, a loan origination fee of not more than **the greater of:**

(i) two percent (2%) of the line of credit that was contracted for; **or**

(ii) sixty dollars ($60).

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

(a) are not subject to refund or rebate; **and**

(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 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 3. IC 24-4.5-3-508, AS AMENDED BY P.L.145-2008, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: 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~~ **five thousand** dollars ~~($300)~~ **($5,000)** 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~~ **five thousand** dollars ~~($300)~~ **($5,000)** but does not exceed ~~one~~ **seven** thousand **five hundred** dollars ~~($1,000);~~

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($7,500); and

(iii) fifteen percent (15%) per year on that part of the unpaid balances of the principal which is more than ~~one~~ **seven** thousand **five hundred** dollars ~~($1000);~~ **($7,500);** or

(b) ~~twenty-one~~ **twenty-eight** percent ~~(21%)~~ **(28%)** per year on the unpaid balances of the principal.

(3) 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 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~~ **the lender may** 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~~ **five thousand** dollars ~~($300)~~ **($5,000)** and ~~one~~ **seven** thousand **five hundred** dollars ~~($1,000)~~ **($7,500)** 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

C o p y

minimum loan finance charge allowed under this subsection may be imposed only if:

(a) the 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 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.

(8) In addition to any other charges and fees permitted by this chapter, the lender may contract for and receive the following:

(a) With respect to a supervised loan that is not made under a revolving loan account, a loan origination fee of not more than the greater of:

(i) two percent (2%) of the loan amount; or

(ii) sixty dollars ($60).

(b) With respect to a supervised loan that is made under a revolving loan account, a loan origination fee of not more than the greater of:

(i) two percent (2%) of the line of credit that was contracted for; or

(ii) sixty dollars ($60).

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