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# HOUSE BILL No. 1402

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-5-23.7.

**Synopsis:** Refinancing of underwater mortgages. Establishes the underwater mortgage refinancing program (program). Defines "underwater mortgage" as a mortgage in which the outstanding balance owed by the debtor exceeds the market value of the mortgaged property, as determined by an appraisal. Requires the department of financial institutions (department) to adopt guidelines to implement the program. Provides that the program must be available on a voluntary basis to approved creditors. Provides that to qualify as an approved creditor for the program, a creditor must: (1) offer in Indiana to refinance qualifying underwater mortgages made by another creditor; and (2) maintain on file with the department a certification attesting to the creditor's compliance with specified program requirements. Provides that for purposes of the program, a qualifying underwater mortgage must satisfy certain conditions. Provides that in determining whether an underwater mortgage satisfies the conditions, a creditor: (1) may rely on information provided, or representations made, by the debtor; and (2) is not liable for the negligence or malfeasance of the debtor or any other person in connection with the information provided or the representations made. Provides the department's guidelines must: (1) allow an approved creditor to hold itself out as such in marketing materials or solicitations directed at Indiana customers; and (2) require an approved creditor to provide to any debtor who: (A) applies for a refinancing of a qualifying underwater mortgage; and (B) does not qualify for the refinancing based on the creditor's underwriting standards; a written statement stating the reasons the debtor did not qualify. Provides that an approved creditor must submit periodic  
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**Effective:** Upon passage.

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## Bartlett

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January 22, 2013, read first time and referred to Committee on Financial Institutions.

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Digest Continued

reports to the department concerning the mortgage products: (1) offered to; (2) applied for by; and (3) closed for; Indiana customers by the approved creditor during the applicable reporting period. Provides that any personal information concerning a debtor that is reported to the department is confidential. Requires the department to publish on the department's Internet web site a list of approved creditors that have a current and accurate program certification on file with the department. Requires the department to remove a creditor's name from the list for certain violations.

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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.

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## HOUSE BILL No. 1402

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 24-5-23.7 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]:

4 **Chapter 23.7. Refinancing of Underwater Mortgages**

5 **Sec. 1. As used in this chapter, "appraisal" has the meaning set**  
6 **forth in IC 24-5-23.5-1.**

7 **Sec. 2. As used in this chapter, "approved creditor" means a**  
8 **creditor that:**

9 (1) offers in Indiana to refinance qualifying underwater  
10 mortgages made by another creditor, subject to the approved  
11 creditor's underwriting standards; and

12 (2) has a current and accurate certification on file with the  
13 department, as described in section 10(a)(3) of this chapter.

14 **Sec. 3. (a) As used in this chapter, "creditor" means a person:**  
15 (1) that regularly engages in Indiana in the extension of



1 mortgages that are subject to a credit service charge or loan  
 2 finance charge, as applicable, or are payable by written  
 3 agreement in more than four (4) installments (not including  
 4 a down payment); and

5 (2) to which the obligation is initially payable, either on the  
 6 face of the note or contract, or by agreement if there is not a  
 7 note or contract.

8 (b) The term does not include a person described in  
 9 IC 24-9-2-6(b).

10 Sec. 4. As used in this chapter, "department" refers to the  
 11 department of financial institutions established by IC 28-11-1-1.

12 Sec. 5. As used in this chapter, "debtor", with respect to a  
 13 mortgage, refers to the maker of the note secured by the mortgage.

14 Sec. 6. As used in this chapter, "dwelling" means a residential  
 15 structure that is located in Indiana and that contains one (1) to  
 16 four (4) units, regardless of whether the structure is permanently  
 17 attached to real property. The term includes an individual:

- 18 (1) condominium unit;
- 19 (2) cooperative unit;
- 20 (3) mobile home; or
- 21 (4) trailer;

22 that is used as a residence.

23 Sec. 7. (a) As used in this chapter, "mortgage" means:

- 24 (1) a consumer loan; or
- 25 (2) a consumer credit sale;

26 that is or will be used by the debtor primarily for personal, family,  
 27 or household purposes and that is secured by a mortgage (or  
 28 another equivalent consensual security interest) that constitutes a  
 29 first lien on a dwelling in Indiana or on residential real estate in  
 30 Indiana upon which a dwelling is constructed or intended to be  
 31 constructed.

32 (b) The term does not include a land contract (as defined in  
 33 IC 24-4.4-1-301(36)) or similar agreement in which the debtor does  
 34 not possess a deed.

35 Sec. 8. As used in this chapter, "program" refers to the  
 36 underwater mortgage refinancing program established by section  
 37 10 of this chapter.

38 Sec. 9. As used in this chapter, "underwater mortgage" means  
 39 a mortgage with respect to which the outstanding balance owed by  
 40 the debtor exceeds the market value of the mortgaged property, as  
 41 determined by an appraisal.

42 Sec. 10. (a) The underwater mortgage refinancing program is

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1 established. Not later than June 1, 2013, the department shall  
 2 adopt guidelines to implement the program. The program  
 3 established by this section, as implemented through the  
 4 department's guidelines, must meet the following criteria:

5 (1) The program must be available on a voluntary basis to  
 6 creditors that offer in Indiana after June 30, 2013, to  
 7 refinance qualifying underwater mortgages made by another  
 8 creditor, subject to the underwriting standards of the offering  
 9 creditor.

10 (2) To participate in the program, a creditor must submit a  
 11 certification, on a form prescribed by the department,  
 12 attesting that the creditor qualifies to be an approved creditor  
 13 under the program.

14 (3) To qualify as an approved creditor under the program, a  
 15 creditor must certify, on the form described in subdivision (2),  
 16 that the creditor meets the following conditions:

17 (A) The creditor offers or will offer in Indiana after June  
 18 30, 2013, to refinance qualifying underwater mortgages  
 19 made by another creditor, subject to the underwriting  
 20 standards of the offering creditor.

21 (B) The creditor does not have a record of any significant  
 22 or recurring violation of:

23 (i) IC 24-5-23.5-7; or

24 (ii) any other state or federal law, regulation, or rule  
 25 applicable to mortgage transactions;

26 as of the date of the creditor's certification. If the creditor  
 27 is not certain whether it meets the criterion set forth in this  
 28 clause, the creditor shall consult with the department  
 29 before filing a certification to participate in the program.

30 (C) The creditor does not have a director or an executive  
 31 officer who has been convicted of a felony involving fraud,  
 32 deceit, or misrepresentation under the laws of Indiana or  
 33 any other jurisdiction, as of the date of the creditor's  
 34 certification. If the creditor is not certain whether it meets  
 35 the criterion set forth in this clause, the creditor shall  
 36 consult with the department before filing a certification to  
 37 participate in the program.

38 (4) For purposes of the program, a qualifying underwater  
 39 mortgage must satisfy the conditions set forth in subsection  
 40 (b).

41 (5) A creditor that qualifies as an approved creditor under the  
 42 program and files a certification with the department under

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1 subdivision (3) must provide a written statement, on a form  
 2 and in the manner prescribed by the department, to any  
 3 debtor who:

- 4 (A) submits an application to the creditor for a refinancing  
 5 of a qualifying underwater mortgage; and  
 6 (B) does not qualify for the refinancing based on the  
 7 creditor's underwriting standards.

8 The statement must set forth the reasons why the debtor did  
 9 not qualify for the refinancing.

10 (6) The program must allow a creditor that:

- 11 (A) qualifies as an approved creditor under the program;  
 12 and

13 (B) files a certification with the department;  
 14 to hold itself out as an approved creditor in any marketing  
 15 material or solicitation directed at Indiana customers, subject  
 16 to any conditions or limitations imposed by the department in  
 17 the guidelines adopted under this section.

18 (7) The program must provide that if a creditor:

- 19 (A) holds itself out as an approved creditor under the  
 20 program and:

21 (i) the creditor has not filed an accurate certification or  
 22 renewal certification with the department under this  
 23 chapter; or

24 (ii) the creditor has filed a certification or a renewal  
 25 certification with the department under this chapter and  
 26 subsequently ceases to offer in Indiana to refinance  
 27 qualifying underwater mortgages made by another  
 28 creditor; or

29 (B) fails to comply with any program requirement;  
 30 the department, upon discovering the act described in clause  
 31 (A) or (B), shall immediately provide written notice to the  
 32 creditor that the creditor does not qualify for participation in  
 33 the program, or no longer qualifies for participation in the  
 34 program, as appropriate. The notice must inform the creditor  
 35 of the reason or reasons the creditor does not qualify for  
 36 participation in the program, or no longer qualifies for  
 37 participation in the program, as appropriate.

38 (8) The program must include a requirement that on an  
 39 annual basis, or any other basis determined appropriate by  
 40 the department, a creditor that qualifies as an approved  
 41 creditor under the program and files a certification with the  
 42 department must report to the department the following

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**information for the applicable reporting period:**

**(A) A description of each type of residential mortgage product offered by the creditor to Indiana customers, including products involving the refinancing of qualifying underwater mortgages.**

**(B) For each type of residential mortgage product described under clause (A), the total number of Indiana customers who applied for the product, including the total number of Indiana customers who applied for products involving the refinancing of qualifying underwater mortgages.**

**(C) For each type of residential mortgage product described under clause (A), the total number of mortgages that were closed for Indiana customers, including the total number of closings for products involving the refinancing of qualifying underwater mortgages for Indiana customers.**

**(D) For each closing of a product involving the refinancing of a qualifying underwater mortgage for an Indiana customer, the following information:**

**(i) The date on which an appraisal described in subsection (b)(1) was performed with respect to the mortgaged property.**

**(ii) The market value of the mortgaged property as determined by the appraisal described in subsection (b)(1).**

**(iii) The amount by which the outstanding balance owed by the debtor on the qualifying underwater mortgage exceeded the market value of the mortgaged property as of the date of the debtor's application for the refinancing of the qualifying underwater mortgage.**

**(iv) An identification of each criterion set forth in subsection (b)(2) that the creditor determined was a cause of the qualifying underwater mortgage's underwater status.**

**(v) Any other information that the department may require with respect to the refinancing of a qualifying underwater mortgage.**

**The department may require an approved creditor to submit documents or other evidence to verify any of the information contained in a report under this subdivision. Any information, evidence, or documents submitted to the department under**

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1 clause (D) with respect to a particular refinancing of a  
 2 qualifying underwater mortgage is subject to the  
 3 confidentiality requirements set forth in subsection (g).

4 (b) For purposes of the program, a qualifying underwater  
 5 mortgage must satisfy the following conditions:

6 (1) The mortgage's underwater status must be determined by  
 7 an appraisal performed:

8 (A) in connection with a refinancing sought by the debtor  
 9 under the program; or

10 (B) before a refinancing is sought by the debtor under the  
 11 program, subject to any time restrictions specified in the  
 12 department's guidelines to ensure that the market value  
 13 determined at the time of the appraisal reflects the market  
 14 value at the time a refinancing is sought by the debtor  
 15 under the program.

16 (2) The mortgage's underwater status is the result of one (1)  
 17 or more of the following, as determined by an approved  
 18 creditor in connection with a refinancing applied for by the  
 19 debtor under the program and, if the refinancing applied for  
 20 is closed by the approved creditor, as reported by the  
 21 approved creditor to the department under subsection  
 22 (a)(8)(D)(iv):

23 (A) The appraisal performed at the time the mortgage was  
 24 made was the subject of:

25 (i) a disciplinary action;

26 (ii) an enforcement action; or

27 (iii) a criminal prosecution;

28 under IC 24-5-23.5, subject to verification by the  
 29 department under subsection (a)(8). In making a  
 30 determination under this clause, an approved creditor  
 31 acting in good faith is entitled to rely on information or  
 32 evidence provided by the debtor or on representations  
 33 made by the debtor and, when acting in good faith, is not  
 34 liable for the negligence or malfeasance of the debtor or  
 35 any other person in connection with the information or  
 36 evidence provided or the representations made.

37 (B) Property values in the neighborhood or area where the  
 38 mortgaged property is located have declined since the time  
 39 the mortgage was made, as documented in the appraisal  
 40 described in subdivision (1).

41 (C) The mortgage was made in violation of:

42 (i) IC 24-9-3-7(c)(3), IC 24-9-3-7(c)(4), or

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- 1                    **IC 24-9-3-7(c)(5);**  
 2                    **(ii) IC 24-4.4; or**  
 3                    **(iii) any other applicable law or regulation;**  
 4                    **subject to verification by the department under subsection**  
 5                    **(a)(8). In making a determination under this clause, an**  
 6                    **approved creditor acting in good faith is entitled to rely on**  
 7                    **information or evidence provided by the debtor or on**  
 8                    **representations made by the debtor and, when acting in**  
 9                    **good faith, is not liable for the negligence or malfeasance**  
 10                    **of the debtor or any other person in connection with the**  
 11                    **information or evidence provided or the representations**  
 12                    **made.**
- 13                    **(3) The mortgage's underwater status is not the result of a:**  
 14                    **(A) subordinate lien mortgage; or**  
 15                    **(B) home equity line of credit;**  
 16                    **entered into by the debtor with respect to the mortgaged**  
 17                    **property.**
- 18                    **(4) The debtor:**  
 19                    **(A) has no past due payments with respect to the**  
 20                    **mortgage; and**  
 21                    **(B) has not otherwise defaulted on the mortgage;**  
 22                    **at the time the debtor seeks a refinancing under the program.**
- 23                    **(5) A foreclosure action has not been filed by the creditor that**  
 24                    **made the mortgage.**
- 25                    **(c) In addition to the program criteria required by subsection**  
 26                    **(a), the guidelines adopted by the department under this section**  
 27                    **may include the following:**
- 28                    **(1) Provisions allowing a creditor that qualifies as an**  
 29                    **approved creditor under the program and files a certification**  
 30                    **with the department to include in the paperwork associated**  
 31                    **with the refinancing of a qualifying underwater mortgage:**  
 32                    **(A) a statement;**  
 33                    **(B) a seal; or**  
 34                    **(C) any other designation considered appropriate by the**  
 35                    **department;**  
 36                    **indicating that the particular mortgage product is a**  
 37                    **refinancing of a qualifying underwater mortgage.**
- 38                    **(2) A requirement that a creditor that qualifies as an**  
 39                    **approved creditor under the program and files a certification**  
 40                    **with the department must periodically submit to the**  
 41                    **department a renewal certification, on a form prescribed by**  
 42                    **the department, in conjunction with a report filed under**

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1 subsection (a)(8), or at such other time as the department  
 2 determines appropriate. In any renewal certification required  
 3 under this subdivision, a creditor must attest that the  
 4 creditor:

5 (A) continued to meet the criteria necessary to qualify as  
 6 an approved creditor under the program; and

7 (B) complied with all program requirements;  
 8 during the applicable reporting period.

9 (3) A fee fixed by the department under IC 28-11-3-5 for each  
 10 certification and recertification submitted by a creditor under  
 11 this chapter. However, any fee fixed by the department under  
 12 this subdivision may not exceed the department's actual costs  
 13 to:

14 (A) process certifications and renewal certifications;

15 (B) publish the list described in subsection (d) on the  
 16 department's Internet web site; and

17 (C) otherwise administer the program.

18 (4) Any other program requirements, criteria, or incentives  
 19 that the department determines necessary to implement and  
 20 evaluate a program to encourage creditors to offer to  
 21 refinance qualifying underwater mortgages for Indiana  
 22 customers.

23 (d) The department shall publish on the department's Internet  
 24 web site a list of all creditors that have a current and accurate:

25 (1) certification under this chapter; or

26 (2) renewal certification under this chapter;

27 on file with the department. Not later than seven (7) days after the  
 28 date that any notice described in subsection (a)(7) is provided to a  
 29 creditor by the department, the department shall remove the  
 30 creditor from the list of creditors published on the department's  
 31 Internet web site under this subsection (except with respect to a  
 32 creditor described in subsection (a)(7)(A)(i) and shall post, on the  
 33 same Internet web page on which the list described in this  
 34 subsection is published, a link to the notice provided to the creditor  
 35 under subsection (a)(7).

36 (e) The Indiana housing and community development authority  
 37 shall provide a link to the list described in subsection (d) on its  
 38 Internet web site.

39 (f) The program guidelines established by the department under  
 40 subsections (a) and (c) must be made available:

41 (1) for public inspection and copying at the offices of the  
 42 department under IC 5-14-3; and

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- 1           (2) on the department's Internet web site.
- 2           (g) Any information, evidence, or document submitted to the  
3 department under subsection (a)(8)(D) with respect to a particular  
4 refinancing of a qualifying underwater mortgage is confidential  
5 and may not be disclosed or distributed outside the department by  
6 the director or any officer or employee of the department.  
7 However, the director may provide for the release of information  
8 to representatives of:
- 9           (1) financial institution supervisory agencies;  
10          (2) law enforcement agencies; or  
11          (3) prosecutorial agencies or offices;  
12 of a state, the United States, or a foreign country, as required by  
13 law. An agency or office that receives information from the  
14 director under this subsection shall maintain the confidentiality of  
15 the information. This subsection does not prohibit the director  
16 from releasing aggregated data that is obtained from all reports  
17 under subsection (a)(8) and that does not include personal  
18 information (as defined in IC 28-1-2-30.5(c)) concerning any  
19 debtor.
- 20          (h) The department shall investigate any credible complaint  
21 received by any means alleging that a creditor has committed a  
22 violation described in subsection (a)(7). If the creditor that is the  
23 subject of a complaint under this subsection is not subject to  
24 regulation by the department, the department shall forward the  
25 complaint to the appropriate state or federal regulatory agency.
- 26          (i) Notwithstanding subsection (a), the department may adopt  
27 a different name for the program, other than the underwater  
28 mortgage refinancing program, in adopting the guidelines to  
29 implement the program.
- 30          SECTION 2. An emergency is declared for this act.

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