

IC 24-4.5-5

Chapter 5. Remedies and Penalties

(Part 1. Limitations on Creditors' Remedies)

IC 24-4.5-5-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to section 203 of this chapter by P.L.181-1991 apply to causes of action accruing after June 30, 1991. *As added by P.L.220-2011, SEC.391.*

IC 24-4.5-5-101

Short title

Sec. 101. Short Title — This Chapter shall be known and may be cited as Uniform Consumer Credit Code — Remedies and Penalties. *(Formerly: Acts 1971, P.L.366, SEC.6.)*

IC 24-4.5-5-102

Scope

Sec. 102. Scope — This Part applies to actions or other proceedings to enforce rights arising from consumer credit sales, consumer leases, and consumer loans; to garnishments of the earnings of an individual; and, in addition, to extortionate extensions of credit (24-4.5-5-107). *(Formerly: Acts 1971, P.L.366, SEC.6.)*

IC 24-4.5-5-103

Restrictions on deficiency judgments in consumer credit sales

Sec. 103. Restrictions on Deficiency Judgments in Consumer Credit Sales — (1) This section applies to a consumer credit sale of goods or services.

(2) If the seller repossesses or voluntarily accepts surrender of goods which were the subject of the sale and in which he has a security interest and the cash price of the goods repossessed or surrendered was one thousand dollars (\$1000) or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale of the goods, and the seller is not obligated to resell the collateral.

(3) If the seller repossesses or voluntarily accepts surrender of goods which were not the subject of the sale but in which he has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was one thousand dollars (\$1000) or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale.

(4) For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to revolving charge accounts, the allocation of payments to a debt shall be determined in the same manner as provided for determining the amount of debt secured by various security interests (24-4.5-2-409).

(5) The buyer may be liable in damages to the seller if the buyer has wrongfully damaged the collateral or if, after default and demand, the buyer has wrongfully failed to make the collateral available to the seller.

(6) If the seller elects to bring an action against the buyer for a debt arising from a consumer credit sale of goods or services, when under this section he would not be entitled to a deficiency judgment if he repossessed the collateral, and obtains judgment

(a) he may not repossess the collateral, and

(b) the collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

(7) The amounts of one thousand dollars (\$1000) in subsection (2) and (3) are subject to change pursuant to the provisions on adjustment of dollar amounts (24-4.5-1-106).

(Formerly: Acts 1971, P.L.366, SEC.6.)

IC 24-4.5-5-104

No garnishment before judgment

Sec. 104. No Garnishment Before Judgment — Prior to entry of judgment in an action against the debtor, no creditor may attach unpaid earnings of the debtor by garnishment or like proceedings.

(Formerly: Acts 1971, P.L.366, SEC.6.)

IC 24-4.5-5-105

Limitation on garnishment and proceedings supplemental to execution; employer's fee

Sec. 105. (1) For the purposes of IC 24-4.5-5-101 through IC 24-4.5-5-108:

(a) "disposable earnings" means that part of the earnings of an individual, including wages, commissions, income, rents, or profits remaining after the deduction from those earnings of amounts required by law to be withheld;

(b) "garnishment" means any legal or equitable proceedings through which the earnings of an individual are required to be withheld by a garnishee, by the individual debtor, or by any other person for the payment of a judgment; and

(c) "support withholding" means that part of the earnings that are withheld from an individual for child support in accordance with the laws of this state.

(2) Except as provided in subsection (8), the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment to enforce the payment of one (1) or more judgments against him may not exceed:

(a) twenty-five percent (25%) of his disposable earnings for that week; or

(b) the amount by which his disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage prescribed by 29 U.S.C. 206(a)(1) in effect at the time the earnings are payable;

whichever is less. In the case of earnings for a pay period other than

a week, the earnings shall be computed upon a multiple of the federal minimum hourly wage equivalent to thirty (30) times the federal minimum hourly wage as prescribed in this section.

(3) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment or support withholding to enforce any order for the support of any person shall not exceed:

(a) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), fifty percent (50%) of such individual's disposable earnings for that week; and

(b) where such individual is not supporting such a spouse or dependent child described in subdivision (a), sixty percent (60%) of such individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the fifty percent (50%) specified in subdivision (a) shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in subdivision (b) shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment or support withholding to enforce a support order with respect to a period which is prior to the twelve (12) week period which ends with the beginning of such workweek.

(4) No court may make, execute, or enforce an order or process in violation of this section.

(5) An employer who is required to make deductions from an individual's disposable earnings pursuant to a garnishment order or series of orders arising out of the same judgment debt (excluding a judgment for payment of child support) may collect, as a fee to compensate the employer for making these deductions, an amount equal to the greater of twelve dollars (\$12) or three percent (3%) of the total amount required to be deducted by the garnishment order or series of orders arising out of the same judgment debt. If the employer chooses to impose a fee, the fee shall be allocated as follows:

(a) One-half (1/2) of the fee shall be borne by the debtor, and that amount may be deducted by the employer directly from the employee's disposable earnings.

(b) One-half (1/2) of the fee shall be borne by the creditor, and that amount may be retained by the employer from the amount otherwise due the creditor.

The deductions made under this subsection for a collection fee do not increase the amount of the judgment debt for which the fee is collected for the purpose of calculating or collecting judgment interest. This fee may be collected by an employer only once for each garnishment order or series of orders arising out of the same judgment debt. The employer may collect the entire fee from one (1) or more of the initial deductions from the employee's disposable earnings. Alternatively, the employer may collect the fee ratably over the number of pay periods during which deductions from the employee's disposable earnings are required.

(6) The deduction of the garnishment collection fee under subsection (5)(a) or subsection (7) is not an assignment of wages under IC 22-2-6.

(7) An employer who is required to make a deduction from an individual's disposable earnings in accordance with a judgment for payment of child support may collect a fee of two dollars (\$2) each time the employer is required to make the deduction. The fee may be deducted by the employer from the individual's disposable earnings each time the employer makes the deduction for support. If the employer elects to deduct such a fee, the amount to be deducted for the payment of support must be reduced accordingly if necessary to avoid exceeding the maximum amount permitted to be deducted under subsection (3).

(8) A support withholding order takes priority over a garnishment order irrespective of their dates of entry or activation. If a person is subject to a support withholding order and a garnishment order, the garnishment order shall be honored only to the extent that disposable earnings withheld under the support withholding order do not exceed the maximum amount subject to garnishment as computed under subsection (2).

(Formerly: Acts 1971, P.L.366, SEC.6.) As amended by Acts 1979, P.L.239, SEC.1; Acts 1982, P.L.151, SEC.1; P.L.248-1983, SEC.1; P.L.237-1985, SEC.1; P.L.102-1986, SEC.3; P.L.148-1988, SEC.1.

IC 24-4.5-5-106

No discharge from employment for garnishment

Sec. 106. No Discharge From Employment for Garnishment—No employer shall discharge an employee for the reason that a creditor or creditors of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment or judgments.

(Formerly: Acts 1971, P.L.366, SEC.6.)

IC 24-4.5-5-107

Extortionate extensions of credit

Sec. 107. Extortionate Extensions of Credit — (1) If it is the understanding of the creditor and the debtor at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person, the repayment of the extension of credit is unenforceable through civil judicial processes against the debtor.

(2) If it is shown that an extension of credit was made at an annual rate exceeding forty-five percent (45%) calculated according to the actuarial method and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect extensions of credit or to punish the nonrepayment thereof, there is prima facie evidence that the extension of credit was unenforceable

under subsection (1).
(Formerly: Acts 1971, P.L.366, SEC.6.)

IC 24-4.5-5-108

Unconscionability

Sec. 108. Unconscionability — (1) With respect to a consumer credit sale, consumer lease, or consumer loan, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) If it is claimed or appears to the court that the agreement or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.

(3) For the purpose of this section, a charge or practice expressly permitted by this Article is not in itself unconscionable.
(Formerly: Acts 1971, P.L.366, SEC.6.)

(Part 2. Debtors' Remedies)

IC 24-4.5-5-201

First lien mortgage transactions; civil liability for disclosure violations; debtor's right to rescind

Sec. 201. For purposes of the provisions on civil liability for violation of disclosure provisions (IC 24-4.5-5-203) and on debtor's right to rescind certain transactions (IC 24-4.5-5-204):

(1) consumer credit sale includes a sale that is a first lien mortgage transaction if the sale is otherwise a consumer credit sale; and

(2) consumer loan includes a loan that is a first lien mortgage transaction if the loan is otherwise a consumer loan.

(Formerly: Acts 1971, P.L.366, SEC.6.) As amended by Acts 1981, P.L.218, SEC.7; P.L.152-1986, SEC.69; P.L.35-2010, SEC.62.

IC 24-4.5-5-202

Effect of violations on rights of parties

Sec. 202. Effect of Violations on Rights of Parties — (1) If a creditor has violated the provision of this Article applying to limitations on the schedule of payments or loan term for supervised loans (IC 24-4.5-3-511), the debtor is not obligated to pay the loan finance charge, and has a right to recover from the person violating this Article or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt a penalty in an amount determined by the court not in excess of three times the amount of the loan finance charge. No action pursuant to this subsection may be brought more than one

(1) year after the due date of the last scheduled payment of the agreement with respect to which the violation occurred.

(2) If a creditor has violated the provisions of this Article applying to authority to make consumer loans (IC 24-4.5-3-502), the loan is void and the debtor is not obligated to pay either the principal or loan finance charge. If the debtor has paid any part of the principal or of the loan finance charge, the debtor has a right to recover the payment from the person violating this Article or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two (2) years after the violation occurred. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than one (1) year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

(3) A debtor is not obligated to pay a charge in excess of that allowed by this Article, and if the debtor has paid an excess charge the debtor has a right to a refund. A refund may be made by reducing the debtor's obligation by the amount of the excess charge. If the debtor has paid an amount in excess of the lawful obligation under the agreement, the debtor may recover the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against debtors arising from the debt.

(4) If a debtor is entitled to a refund and a person liable to the debtor refuses to make a refund within a reasonable time after demand, the debtor may recover from that person a penalty in an amount determined by a court not exceeding the greater of either the amount of the credit service or loan finance charge or ten (10) times the amount of the excess charge. If the creditor has made an excess charge in deliberate violation of or in reckless disregard for this Article, the penalty may be recovered even though the creditor has refunded the excess charge. No penalty pursuant to this subsection may be recovered if a court has ordered a similar penalty assessed against the same person in a civil action by the department (IC 24-4.5-6-113). With respect to excess charges arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two (2) years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one (1) year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made.

(5) Except as otherwise provided, no violation of this Article impairs rights on a debt.

(6) If an employer discharges an employee in violation of the provisions prohibiting discharge (IC 24-4.5-5-106), the employee

may within six (6) months bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six (6) weeks.

(7) If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability is imposed under subsections (1), (2), and (4) and the validity of the transaction is not affected.

(8) In any case in which it is found that a creditor has violated this Article, the court may award reasonable attorney's fees incurred by the debtor.

(9) The department may act on behalf of a debtor to enforce the debtor's rights under this section against a creditor who is licensed or registered with the department or is required to be licensed or registered with the department.

(Formerly: Acts 1971, P.L.366, SEC.6.) As amended by P.L.14-1992, SEC.43; P.L.122-1994, SEC.31; P.L.172-1997, SEC.8.

IC 24-4.5-5-203

Civil liability for violation of disclosure provisions

Sec. 203. Civil Liability for Violation of Disclosure Provisions —

(1) Except as otherwise provided in this section, a creditor who, in violation of the provisions on disclosure (Part 3), of the Chapter on Credit Sales (Chapter 2) and the Chapter on Loans (Chapter 3), fails to disclose information to a person entitled to the information under this Article is liable to that person in an amount equal to the sum of:

(a) the following:

(1) in the case of an individual action, twice the amount of the credit service or loan finance charge in connection with the transaction, but the liability pursuant to this subdivision shall be not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000); or

(2) in the case of a class action, an amount the court allows, except that as to each member of the class no minimum recovery is applicable, and the total recovery under this subdivision in any class action or series of class actions arising out of the same failure to comply by the same creditor may not be more than the lesser of:

(i) five hundred thousand dollars (\$500,000); or

(ii) one percent (1%) of the net worth of the creditor; and

(b) in the case of a successful action to enforce the liability under paragraph (a), the costs of the action together with reasonable attorney's fees as determined by the court. In determining the amount of the award in a class action, the court shall consider, among other relevant factors, the amount of any award granted under the federal Consumer Credit Protection Act (15 U.S.C. 1601 et seq.), the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(2) A creditor has no liability under this section if within sixty (60) days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay a credit service charge or loan finance charge in excess of the amount or percentage rate actually disclosed.

(3) A creditor may not be held liable in any action brought under this section for a violation of this Article if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

(4) If there are multiple obligors in a consumer credit transaction or consumer lease, there may not be more than one (1) recovery of damages under subdivision (a)(1) for one (1) violation of this article with respect to that consumer credit transaction or consumer lease.

(5) The multiple failure to disclose to any person any information required under this article to be disclosed in connection with a single account under an open end consumer credit plan, a single consumer credit sale, a consumer loan, a consumer lease, or another extension of consumer credit entitles that person to a single recovery under this section. However, continued failure to disclose after a recovery has been granted gives rise to rights to additional recoveries.

(6) Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in land may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment, unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this Article, and that it maintained procedures reasonably adapted to apprise it of the existence of the violations.

(7) No action pursuant to this section may be brought more than one (1) year after the date of the occurrence of the violations.

(8) In this section, creditor includes a person who in the ordinary course of business regularly extends or arranges for the extension of credit, or offers to arrange for the extension of credit.

(Formerly: Acts 1971, P.L.366, SEC.6.) As amended by P.L.181-1991, SEC.5.

IC 24-4.5-5-204

Debtor's right to rescind certain transactions

Sec. 204. Debtor's Right to Rescind Certain Transactions — (1) A violation by a creditor of Section 125 of the Federal Consumer Credit Protection Act (IC 24-4.5-1-302) concerning the debtor's right to rescind a transaction that is a consumer credit sale or a consumer loan constitutes a violation of IC 24-4.5. A creditor may not accrue

interest during the period when a consumer loan may be rescinded under Section 125 of the Federal Consumer Protection Act (15 U.S.C. 1635).

(2) A creditor must make available for disbursement the proceeds of a transaction subject to subsection (1) on the later of:

(A) the date the creditor is reasonably satisfied that the consumer has not rescinded the transaction; or

(B) the first business day after the expiration of the rescission period under subsection (1).

(Formerly: Acts 1971, P.L.366, SEC.6.) As amended by Acts 1982, P.L.149, SEC.7; P.L.122-1994, SEC.32; P.L.23-2000, SEC.9.

IC 24-4.5-5-205

Refunds and penalties as set-off to obligation

Sec. 205. Refunds and Penalties as Set-Off to Obligation — Refunds or penalties to which the debtor is entitled pursuant to this Part may be set off against the debtor's obligation, and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by this Part.

(Formerly: Acts 1971, P.L.366, SEC.6.)

(Part 3. Criminal Penalties)

IC 24-4.5-5-301

Knowing violations

Sec. 301. (1) A lender who knowingly makes charges in excess of those permitted by the provisions of this article commits a Class A misdemeanor.

(2) A person who knowingly engages in the business of making consumer loans without a license in violation of the provisions of this article applying to authority to make consumer loans (IC 24-4.5-3-502 and IC 24-4.5-3-502.1) commits a Class A misdemeanor.

(3) A person who knowingly:

(a) engages in the business of making consumer credit sales, consumer leases, or consumer loans, or of taking assignments of rights against debtors; and

(b) undertakes direct collection of payments or enforcement of these rights, without complying with the provisions of this article concerning notification (IC 24-4.5-6-202) or payment of fees (IC 24-4.5-6-203);

commits a Class A infraction.

(Formerly: Acts 1971, P.L.366, SEC.6.) As amended by Acts 1978, P.L.2, SEC.2414; P.L.152-1986, SEC.70; P.L.14-1992, SEC.44; P.L.122-1994, SEC.33; P.L.45-1995, SEC.14; P.L.35-2010, SEC.63.

IC 24-4.5-5-302

Disclosure violations

Sec. 302. A person commits a Class A misdemeanor if he knowingly gives false or inaccurate information or fails to provide

information which he is required to disclose under the provisions of IC 24-4.5-2-301 or IC 24-4.5-3-301.

(Formerly: Acts 1971, P.L.366, SEC.6.) As amended by Acts 1978, P.L.2, SEC.2415; P.L.247-1983, SEC.21.