

## **IC 24-4.5-6**

### Chapter 6. Administration

(Part 1. Powers and Functions of Administrator)

## **IC 24-4.5-6-101**

### **Short title**

Sec. 101. Short Title — This Chapter shall be known and may be cited as Uniform Consumer Credit Code — Administration.

*(Formerly: Acts 1971, P.L.366, SEC.7.)*

## **IC 24-4.5-6-102**

### **Applicability**

Sec. 102. (a) IC 24-4.5-6-101 through IC 24-4.5-6-117 apply to persons who in this state:

(1) make or solicit consumer credit sales, consumer leases, consumer loans, consumer related sales (IC 24-4.5-2-602) and consumer related loans (IC 24-4.5-3-602); or

(2) directly collect payments from or enforce rights against debtors arising from sales, leases, or loans specified in subsection (1), wherever they are made.

(b) For purposes of IC 24-4.5-6-101 through IC 24-4.5-6-117:

(1) "Consumer credit sale" includes a sale that is a first lien mortgage transaction if the sale is otherwise a consumer credit sale.

(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.7.) As amended by Acts 1981, P.L.218, SEC.8; P.L.152-1986, SEC.71; P.L.35-2010, SEC.64.*

## **IC 24-4.5-6-103**

### **Department**

Sec. 103. Department — "Department" means the members of the department of financial institutions. The division of consumer credit shall have charge of the administration of this article.

*(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.45.*

## **IC 24-4.5-6-103.5**

### **Repealed**

*(Repealed by P.L.35-2010, SEC.209.)*

## **IC 24-4.5-6-104**

### **Powers of department; reliance on rules**

Sec. 104. (1) In addition to other powers granted by this article, the department within the limitations provided by law may:

(a) receive and act on complaints, take action designed to obtain voluntary compliance with this article, or commence proceedings on the department's own initiative;

(b) counsel persons and groups on their rights and duties under

this article;

(c) establish programs for the education of consumers with respect to credit practices and problems;

(d) make studies appropriate to effectuate the purposes and policies of this article and make the results available to the public;

(e) adopt, amend, and repeal rules, orders, policies, and forms to carry out the provisions of this article;

(f) maintain more than one (1) office within Indiana; and

(g) appoint any necessary attorneys, hearing examiners, clerks, and other employees and agents and fix their compensation, and authorize attorneys appointed under this section to appear for and represent the department in court.

(2) No liability is imposed under this article for an act done or omitted in conformity with a rule, written notice, written opinion, written interpretation, or written directive of the department notwithstanding that after the act or omission the rule, written notice, written opinion, written interpretation, or written directive may be amended or repealed, or be determined by judicial or other authority to be invalid for any reason.

*(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.247-1983, SEC.22; P.L.14-1992, SEC.46; P.L.45-1995, SEC.15; P.L.172-1997, SEC.9; P.L.213-2007, SEC.14; P.L.217-2007, SEC.13.*

#### **IC 24-4.5-6-105**

##### **Administrative powers with respect to depository institutions**

Sec. 105. (1) With respect to depository institutions, the powers of examination and investigation (IC 24-4.5-6-106) and administrative enforcement (IC 24-4.5-6-108) shall be exercised by the department. The department may, at its discretion, accept any examination of any financial institution made by a federal authority in lieu of the examination made under the provisions of this article. All other powers of the department under this article may be exercised by the director with respect to a depository institution.

(2) If the department receives a complaint or other information concerning noncompliance with this article by a depository institution, the director shall inform the official or agency having supervisory authority over the organization concerned. The department may request information about depository institutions from the officials or agencies supervising them.

(3) The department and any official or agency of this state having supervisory authority over a depository institution are authorized and directed to consult and assist one another in maintaining compliance with this article. They may jointly pursue investigations, prosecute suits, and take other official action, as they deem appropriate, if either of them otherwise is empowered to take the action.

*(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.47; P.L.35-2010, SEC.65.*

#### **IC 24-4.5-6-106**

#### **Department's examination and investigatory authority; record retention; director's authority to control access to records; court order compelling compliance; confidentiality; examination of vendors**

Sec. 106. (1) In administering this article and in order to determine whether the provisions of this article are being complied with by persons engaging in acts subject to this article, the department may examine the records of persons and may make investigations of persons as may be necessary to determine compliance. Records subject to examination under this section include the following:

- (a) Training, operating, and policy manuals.
- (b) Minutes of:
  - (i) management meetings; and
  - (ii) other meetings.
- (c) Other records that the department determines are necessary to perform its investigation or examination.

The department may also administer oaths or affirmations, subpoena witnesses, and compel the attendance of witnesses, including directors, executive officers, managers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person subject to this article. The department may also adduce evidence, and require the production of any matter which is relevant to the investigation. The department shall determine the sufficiency of the records maintained and whether the person has made the required information reasonably available. The records pertaining to any transaction subject to this article shall be retained for two (2) years after making the final entry relating to the consumer credit transaction, but in the case of a revolving loan account or revolving charge account, the two (2) years is measured from the date of each entry.

(2) The department's examination and investigatory authority under this article includes the following:

- (a) The authority to require a creditor to refund overcharges resulting from the creditor's noncompliance with the terms of a subordinate lien mortgage transaction.
- (b) The authority to require a creditor to comply with the penalty provisions set forth in IC 24-4.5-3-209.
- (c) The authority to investigate complaints filed with the department by debtors.

(3) If the department:

- (a) investigates; or
- (b) examines the books and records of;

a person that is subject to IC 24-4.5-6-201, IC 24-4.5-6-202, and IC 24-4.5-6-203, the person shall pay all reasonably incurred costs of the investigation or examination in accordance with the fee schedule adopted by the department under IC 28-11-3-5. However, the person is liable for the costs of an investigation or examination under this subsection only to the extent that the costs exceed the amount of the

filing fees paid most recently under IC 24-4.5-6-203. Any costs required to be paid under this subsection shall be paid not later than sixty (60) days after the person receives a notice from the department of the costs being assessed. The department may impose a fee, in an amount fixed by the department under IC 28-11-3-5, for each day that the assessed costs are not paid, beginning on the first day after the sixty (60) day period described in this subsection.

(4) The department shall be given free access to the records wherever located. In making any examination or investigation authorized by this article, the director may control access to any documents and records of the licensee or person under examination or investigation. The director may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where the documents are usually kept. During the period of control, the licensee or person may not remove or attempt to remove any of the documents and records except under a court order or with the consent of the director. Unless the director has reasonable grounds to believe the documents or records of the licensee or person have been, or are, at risk of being altered or destroyed for purposes of concealing a violation of this article, the licensee or person being examined or investigated is entitled to access to the documents or records as necessary to conduct the licensee's or person's ordinary business affairs. If the person's records are located outside Indiana, the records shall be made available to the department at a convenient location within Indiana, or the person shall pay the reasonable and necessary expenses for the department or its representative to examine them where they are maintained. The department may designate comparable officials of the state in which the records are located to inspect them on behalf of the department.

(5) Upon a person's failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all affected persons, the department may apply to any civil court with jurisdiction for an order compelling compliance.

(6) The department shall not make public the name or identity of a person whose acts or conduct the department investigates pursuant to this section or the facts disclosed in the investigation, but this subsection does not apply to disclosures in actions or enforcement proceedings pursuant to this article.

(7) If a creditor contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the creditor and be subject to the department's routine examination procedures, the person that provides the service to the creditor shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any creditor that is licensed under this article and that receives services from the person refusing the examination to:

(a) discontinue receiving one (1) or more services from the person; or

(b) otherwise cease conducting business with the person.

*(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.48; P.L.122-1994, SEC.34; P.L.45-1995, SEC.16; P.L.10-2006, SEC.9 and P.L.57-2006, SEC.9; P.L.213-2007, SEC.15; P.L.217-2007, SEC.14; P.L.35-2010, SEC.66.*

#### **IC 24-4.5-6-106.5**

##### **Powers of director**

Sec. 106.5. To carry out the purposes of this section, the director may:

(a) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(b) enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce regulatory burden by sharing:

(i) resources;

(ii) standardized or uniform methods or procedures; and

(iii) documents, records, information, or evidence obtained under this section;

(c) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate a licensee, an individual, or a person subject to this article;

(d) accept and rely on examination or investigation reports made by other government officials, in or outside Indiana; or

(e) accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this article in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the director.

*As added by P.L.35-2010, SEC.67.*

#### **IC 24-4.5-6-107**

##### **Applicability of laws governing administrative orders and rules; venue; emergency rulemaking authority**

Sec. 107. Except as otherwise provided, IC 4-21.5-3 governs all agency action taken by the department under this chapter or IC 24-4.5-3-501 through IC 24-4.5-3-513. All proceedings for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 shall be held in Marion County. The provisions of IC 4-22-2 prescribing procedures for the adoption of rules by agencies shall apply to the adoption of rules by the department of financial institutions under this article. However, if the department declares an emergency in the document containing the rule, it may adopt rules permitted by this chapter under IC 4-22-2-37.1.

*(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.31-1985,*

*SEC.48; P.L.7-1987, SEC.108; P.L.1-1990, SEC.243; P.L.14-1992, SEC.49; P.L.35-2010, SEC.68.*

**IC 24-4.5-6-107.5**

**Prohibited acts**

Sec. 107.5. It is a violation of this article for a person or individual subject to this article to:

- (a) directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (b) engage in any unfair or deceptive practice toward any person;
- (c) obtain property by fraud or misrepresentation;
- (d) solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this article may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;
- (e) solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
- (f) conduct any business covered by this article without holding a valid license as required under this article, or assist or aid and abet any person in the conduct of business under this article without a valid license as required under this article;
- (g) fail to make disclosures as required by this article and any other applicable state or federal law, including regulations under that law;
- (h) fail to comply with this article or rules adopted under this article, or fail to comply with any other state or federal law, rule, or regulation, applicable to any business authorized or conducted under this article;
- (i) make, in any manner, any false or deceptive statement or representation, including, with regard to the rates, points, or other financing terms or conditions for a mortgage transaction, or engage in bait and switch advertising;
- (j) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the NMLSR or in connection with any investigation conducted by the director or another governmental agency;
- (k) make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a mortgage transaction, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;
- (l) collect, charge, attempt to collect or charge, or use or

propose any agreement purporting to collect or charge any fee prohibited by this article;

(m) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(n) fail to account truthfully for money belonging to a party to a mortgage transaction; or

(o) knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information subject to examination under this article.

*As added by P.L.35-2010, SEC.69.*

#### **IC 24-4.5-6-108**

##### **Cease and desist orders; judicial review or enforcement proceedings; record; appeal; unconscionable or fraudulent conduct subject to injunction**

Sec. 108. (1) After notice and an opportunity to be heard, the department may order a creditor, or a person acting on behalf of the creditor, to cease and desist from engaging in violations of this article. A respondent aggrieved by an order of the department may obtain judicial review of the order and the department may obtain an order of the court for enforcement of its order in any civil court. The proceeding for review or enforcement is initiated by filing a petition in the court. Copies of the petition shall be served upon all parties of record.

(2) Within thirty (30) days after service of the petition for review upon the department, or within any further time the court may allow, the department shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After hearing the court may (a) reverse or modify the order if the findings of fact of the department are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, (b) grant any temporary relief or restraining order it deems just, and (c) enter an order enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the order of the department, or remanding the case to the department for further proceedings.

(3) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the department in the interest of justice for the purpose of adducing additional specified and material evidence and seeking finding thereon upon good cause shown for the failure to adduce this evidence before the department.

(4) The jurisdiction of the court shall be exclusive and its final judgment or decree shall be subject to review by the court on appeal in the same manner and form and with the same effect as in appeals from a final judgment or decree. The department's copy of the testimony shall be available at reasonable times to all parties for

examination without cost.

(5) A proceeding for review under this section must be initiated within thirty (30) days after a copy of the order of the department is received. If no proceeding is so initiated, the department may obtain a decree of the civil court for enforcement of its order upon a showing that an order was issued in compliance with this section, that no proceeding for review was initiated within thirty (30) days after copy of the order was received, and that the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the department may not issue an order pursuant to this section but may bring a civil action for an injunction (IC 24-4.5-6-111).

*(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.50; P.L.35-2010, SEC.70.*

#### **IC 24-4.5-6-109**

##### **Assurance of discontinuance**

Sec. 109. Assurance of Discontinuance — If it is claimed that a person has engaged in conduct subject to an order by the department (IC 24-4.5-6-108) or by a court (IC 24-4.5-6-110 through IC 24-4.5-6-112), the department may accept an assurance in writing that the person will not engage in the conduct in the future. If a person giving an assurance of discontinuance fails to comply with its terms, the assurance is evidence that prior to the assurance he engaged in the conduct described in the assurance.

*(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.51.*

#### **IC 24-4.5-6-110**

##### **Injunctions against violations**

Sec. 110. The department may bring a civil action to restrain a person from violating this article or another state or federal law or regulation, and for other appropriate relief.

*(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.52; P.L.35-2010, SEC.71.*

#### **IC 24-4.5-6-111**

##### **Injunctions against unconscionable agreements and fraudulent or unconscionable conduct**

Sec. 111. Injunctions Against Unconscionable Agreements and Fraudulent or Unconscionable Conduct — (1) The department may bring a civil action to restrain a creditor or a person acting in behalf of a creditor from engaging in a course of:

- (a) making or enforcing unconscionable terms or provisions of consumer credit sales, consumer leases, or consumer loans;
- (b) fraudulent or unconscionable conduct in inducing debtors to enter into consumer credit sales, consumer leases, or consumer loans; or
- (c) fraudulent or unconscionable conduct in the collection of

debts arising from consumer credit sales, consumer leases, or consumer loans.

(2) In an action brought pursuant to this section the court may grant relief only if it finds:

(a) that the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;

(b) that the agreements or conduct of the respondent has caused or is likely to cause injury to consumers; and

(c) that the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.

(3) In applying this section, consideration shall be given to each of the following factors, among others:

(a) belief by the creditor at the time consumer credit sales, consumer leases, or consumer loans are made that there was no reasonable probability of payment in full of the obligation by the debtor;

(b) in the case of consumer credit sales or consumer leases, knowledge by the seller or lessor at the time of the sale or lease of the inability of the buyer or lessee to receive substantial benefits from the property or services sold or leased;

(c) in the case of consumer credit sales or consumer leases, gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like buyers or lessees;

(d) the fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit sales or consumer loans with the effect of making the sales or loans, considered as a whole, unconscionable; and

(e) the fact that the respondent has knowingly taken advantage of the inability of the debtor reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors.

(4) In an action brought pursuant to this section, a charge or practice expressly permitted by this Article is not in itself unconscionable.

*(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.53; P.L.122-1994, SEC.35.*

#### **IC 24-4.5-6-112**

##### **Temporary relief**

Sec. 112. Temporary Relief — With respect to an action brought to enjoin violations of the Article (IC 24-4.5-6-110) or unconscionable agreements or fraudulent or unconscionable conduct (IC 24-4.5-6-111), the department may apply to the court for appropriate temporary relief against a respondent, pending final

determination of proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any temporary relief or restraining order it deems appropriate.

*(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.54.*

### **IC 24-4.5-6-113**

#### **Civil actions by department; civil penalties for violations**

Sec. 113. (1) After demand, the department may bring a civil action against a creditor for making or collecting charges in excess of those permitted by this article. An action may relate to transactions with more than one debtor. If it is found that an excess charge has been made, the court shall order the respondent to refund to the debtor or debtors the amount of the excess charge. If a creditor has made an excess charge in deliberate violation of or in reckless disregard for this article, or if a creditor has refused to refund an excess charge within a reasonable time after demand by the debtor or the department, the court may also order the respondent to pay to the debtor or debtors a civil penalty in an amount determined by the court not in excess of the greater of either the amount of the credit service or loan finance charge or ten (10) times the amount of the charge. Refunds and penalties to which the debtor is entitled pursuant to this subsection may be set off against the debtor's obligation. If a debtor brings an action against a creditor to recover an excess charge or civil penalty, an action by the department to recover for the same excess charge or civil penalty shall be stayed while the debtor's action is pending and shall be dismissed if the debtor's action is dismissed with prejudice or results in a final judgment granting or denying the debtor's claim. 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. If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection.

(2) The department may bring a civil action against a creditor or a person acting in his behalf to recover a civil penalty for willfully violating this article, and if the court finds that the defendant has engaged in a course of repeated and willful violations of this article, it may assess a civil penalty of no more than five thousand dollars (\$5,000). No civil penalty pursuant to this subsection may be imposed for violations of this article occurring more than two (2) years before the action is brought or for making unconscionable

agreements or engaging in a course of fraudulent or unconscionable conduct.

(3) If the department determines, after notice and opportunity for the person to be heard, that a person has violated this article, the department may, in addition to or instead of all other remedies available under this section, impose upon the person a civil penalty not greater than ten thousand dollars (\$10,000) per violation.

*(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.55; P.L.213-2007, SEC.16; P.L.217-2007, SEC.15; P.L.35-2010, SEC.72.*

#### **IC 24-4.5-6-114**

##### **Repealed**

*(Repealed by P.L.35-2010, SEC.209.)*

#### **IC 24-4.5-6-115**

##### **Debtor's remedies not affected**

Sec. 115. Debtor's Remedies Not Affected — The grant of powers to the department in this Article does not affect remedies available to debtors under this Article or under other principles of law or equity.

*(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.57.*

#### **IC 24-4.5-6-116**

##### **Venue**

Sec. 116. Venue — The department may bring actions or proceedings in a court in a county in which an act on which the action or proceeding is based occurred or in a county in which respondent resides or transacts business or in a county otherwise authorized by rule or venue laws.

*(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.14-1992, SEC.58.*

#### **IC 24-4.5-6-117**

##### **"Civil court" defined**

Sec. 117. As used in this article, "civil court" means any court of Indiana having civil jurisdiction.

*(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.1-1990, SEC.244.*

#### **IC 24-4.5-6-119**

##### **Violations by certain individuals; notice of charges; felonies; civil penalties**

Sec. 119. (a) Subject to subsection (b), if the director determines that a director, an officer, or an employee of a creditor:

- (1) has committed a violation of a statute, a rule, a final cease and desist order, a condition imposed in writing by the director in connection with the grant of an application or other request by the creditor, or a written agreement between the creditor and

the director or the department;

(2) has committed fraudulent or unconscionable conduct; or

(3) has been convicted of or has pleaded guilty or nolo contendere to a felony under the laws of Indiana or any other jurisdiction;

the director may issue and serve upon the person a notice of charges and of the director's intent to issue an order removing the person from the person's office or employment, an order prohibiting participation by the person in the conduct of the affairs of any creditor, or an order both removing the person and prohibiting the person's participation.

(b) A violation, practice, or breach described in subsection (a) is subject to the authority of the director under subsection (a) if the director finds any of the following:

(1) The interests of the creditor's customers could be seriously prejudiced by reason of the violation, practice, or breach.

(2) The violation, practice, or breach involves personal dishonesty on the part of the officer, director, or employee involved.

(3) The violation, practice, or breach demonstrates a willful or continuing disregard by the officer, director, or employee for state or federal law and regulations, and for the consumer protections contained in this article.

(c) A person who:

(1) has been convicted of; or

(2) has pleaded guilty or nolo contendere to;

a felony under the laws of Indiana or any other jurisdiction may not serve as an officer, a director, or an employee of a creditor, or serve in any similar capacity, unless the person obtains the written consent of the director.

(d) A creditor that willfully permits a person to serve the creditor in violation of subsection (c) is subject to a civil penalty of five hundred dollars (\$500) for each day the violation occurs.

*As added by P.L.35-2010, SEC.73.*

#### **IC 24-4.5-6-120**

##### **Notice of charges; contents; hearing; final order; suspension or prohibition pending final order; official record**

Sec. 120. (a) A notice issued under section 119 of this chapter must:

(1) be in writing;

(2) contain a statement of:

(A) the facts constituting the alleged violation, practice, or breach;

(B) the facts alleged in support of the violation, practice, or breach; and

(C) the director's intention to issue an order under section 122(a) of this chapter;

(3) be delivered to the board of directors of the creditor;

(4) be delivered to the officer, director, or employee to which

the notice applies;

(5) specify the procedures that must be followed to initiate a hearing to contest the alleged violation, practice, or breach; and

(6) if the director suspends or prohibits the officer, director, or employee from participation in the affairs of the creditor as described under subsection (e), a statement of the suspension or prohibition.

(b) If a hearing is requested not later than ten (10) days after service of the notice described under subsection (a), the department shall hold a hearing concerning the alleged violation, practice, or breach. The hearing shall be held not later than forty-five (45) days after receipt of the request. The department, based on the evidence presented at the hearing, shall enter a final order in accordance with section 122 of this chapter.

(c) If no hearing is requested within the period of time specified in subsection (b), the director may proceed to issue a final order under section 122 of this chapter on the basis of the facts set forth in the notice described under subsection (a).

(d) An officer, director, or employee of a creditor who is removed from a position under a removal order under section 122 of this chapter that has become final may not, without the approval of the director, participate in the conduct of the affairs of a licensee described under IC 24-4.5-3.

(e) The director may, for the protection of the creditor or the interests of the creditor's customers, suspend from office or prohibit from participation in the affairs of the creditor an officer, a director, or an employee of a creditor who is the subject of a written notice served by the director under section 119(a) of this chapter. A suspension or prohibition under this subsection becomes effective upon service of the notice under section 119(a) of this chapter. Unless stayed by a court in a proceeding authorized by subsection (f), the suspension or prohibition remains in effect pending completion of the proceedings related to the notice served under section 119(a) of this chapter and until the effective date of an order entered by the department under subsection (b) or the director under subsection (c). If the director suspends or prohibits participation of an officer, a director, or an employee under this subsection, copies of the notice shall also be served upon the creditor or affiliate of which the person is an officer, a director, or an employee.

(f) Not more than fifteen (15) days after an officer, a director, or an employee has been suspended from office or prohibited from participation in the conduct of the affairs of the creditor or affiliate under subsection (e), the officer, director, or employee may apply to a court having jurisdiction for a stay of the suspension or prohibition pending completion of the proceedings related to the notice served under section 119(a) of this chapter. The court may stay a suspension or prohibition of the officer, director, or employee.

(g) The department shall maintain an official record of a proceeding under this chapter.

*As added by P.L.35-2010, SEC.74.*

#### **IC 24-4.5-6-121**

##### **Consent agreement; notice of charges not required**

Sec. 121. If the director enters into a consent to a final order with a director, an officer, or an employee, the director is not required to issue and serve a notice of charges upon the director, officer, or employee under section 119 of this chapter. A consent agreement may be negotiated and entered into before or after the issuance of a notice of charges. The director shall provide a copy of the consent order to the board of directors of the creditor.

*As added by P.L.35-2010, SEC.75.*

#### **IC 24-4.5-6-122**

##### **Final order; remedies; consent presumed; confidentiality**

Sec. 122. (a) Subject to section 120 of this chapter, if, after a hearing described in section 120(b) of this chapter, the department determines that a director, an officer, or an employee of a creditor has committed an act described in section 119 of this chapter, the department may issue a final order. If a hearing is not requested within the time specified in section 120(b) of this chapter, the director may issue a final order on the basis of the facts set forth in the written notice served under section 119(a) of this chapter.

(b) Unless the director has entered into a consent agreement described in section 121 of this chapter, a final order must include separately stated findings of fact and conclusions of law for all aspects of the order.

(c) In a final order under this section, the department or the director, as appropriate, may order one (1) or more of the following with respect to an officer, a director, or an employee of a creditor:

(1) The removal of the officer, director, or employee from the person's office, position, or employment.

(2) A prohibition against any participation by the officer, director, or employee in the conduct of the affairs of any creditor.

(3) If the subject of the order is an officer or a director of a creditor, and subject to section 124 of this chapter, the imposition of a civil penalty not to exceed fifteen thousand dollars (\$15,000) for each practice, violation, or act that:

(A) is described in section 119 of this chapter; and

(B) found to exist by the department or the director.

(d) A final order shall be issued in writing not later than ninety (90) days after conclusion of a hearing held under section 120(b) of this chapter, unless this period is waived or extended with the written consent of all parties or for good cause shown.

(e) If the officer, director, or employee does not appear individually or by an authorized representative at a hearing held under section 120(b) of this chapter, the officer, director, or employee is considered to have consented to the issuance of a final order.

(f) The director may keep a final order confidential if the director determines that the immediate release of the order would endanger

the stability of the creditor. However, after two (2) years following the date that an order is issued, a final order is no longer confidential.

(g) The remedies provided in this chapter are in addition to other remedies contained in this article.

*As added by P.L.35-2010, SEC.76.*

#### **IC 24-4.5-6-123**

##### **Final order; effective date; authority of department or court to stay, modify, or vacate**

Sec. 123. (a) A final order issued under section 122 of this chapter is effective the eleventh day after the date the order is served. However, a final order issued upon consent under section 121 of this chapter is effective at the time specified in the order.

(b) A final order remains effective and enforceable as provided in the order.

(c) The department or a reviewing court may stay, modify, or vacate a final order.

*As added by P.L.35-2010, SEC.77.*

#### **IC 24-4.5-6-124**

##### **Factors for determining amount of civil penalty; indemnification by creditor prohibited; deposit of civil penalties in financial institutions fund**

Sec. 124. (a) The director or the department, as appropriate, shall consider the following factors in determining the amount of a civil penalty that should be assessed against a director or an officer under section 122(c)(3) of this chapter:

- (1) The appropriateness of the civil penalty with respect to the financial resources and good faith of the individual charged.
- (2) The gravity of the practice, violation, or breach.
- (3) The history of previous practices, violations, or breaches.
- (4) The economic benefit derived by the individual from the practice, violation, or breach.
- (5) Other factors that justice requires.

(b) A creditor may not indemnify a director or an officer for a civil penalty imposed against the director or officer under this section.

(c) Civil penalties shall be deposited in the financial institutions fund established by IC 28-11-2-9.

*As added by P.L.35-2010, SEC.78.*

#### **IC 24-4.5-6-125**

##### **Authority of director to enforce orders, agreements, or conditions in court**

Sec. 125. The director may enforce any of the following by applying for appropriate relief to a court having jurisdiction:

- (1) An order issued under section 121 or 122 of this chapter.
- (2) A written agreement entered into by the director or the department and a director, an officer, or an employee of a creditor.

(3) Any condition imposed in writing by the director or the department on a director, an officer, or an employee of a creditor.

*As added by P.L.35-2010, SEC.79.*

(Part 2. Notification and Fees)

#### **IC 24-4.5-6-201**

##### **Applicability of notification requirements and fees**

Sec. 201. (1) This section and sections 202 and 203 of this chapter apply to a person, including a depository institution, but not including a collection agency licensed under IC 25-11-1, engaged in Indiana in any of the following:

- (a) Making consumer credit sales, consumer leases, or consumer loans.
- (b) Taking assignments of rights against debtors that arise from sales, leases, or loans by a person having an office or a place of business in Indiana.
- (c) Undertaking direct collection of payments from the debtors or enforcement of rights against the debtors.
- (d) Placing consumer credit insurance, receiving commissions for consumer credit insurance, or acting as a limited line credit insurance producer in the sale of consumer credit insurance.
- (e) Selling insurance or other benefits, the charges for which are approved by the department as additional charges under IC 24-4.5-2-202 or IC 24-4.5-3-202.

(2) This section and sections 202 and 203 of this chapter are not applicable to a seller whose credit sales consist entirely of sales made pursuant to a seller credit card issued by a person other than the seller if the issuer of the card has complied with the provisions of this section and sections 202 and 203 of this chapter.

(3) This section and sections 202 and 203 of this chapter apply to a seller whose credit sales are made using credit cards that:

- (a) are issued by a lender;
- (b) are in the name of the seller; and
- (c) can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

*(Formerly: Acts 1971, P.L.366, SEC.7; Acts 1972, P.L.182, SEC.3.)  
As amended by P.L.152-1986, SEC.72; P.L.14-1992, SEC.59;  
P.L.122-1994, SEC.36; P.L.176-1996, SEC.10; P.L.178-2003,  
SEC.11; P.L.10-2006, SEC.10 and P.L.57-2006, SEC.10;  
P.L.213-2007, SEC.17; P.L.217-2007, SEC.16; P.L.35-2010,  
SEC.80.*

#### **IC 24-4.5-6-202**

##### **Notification**

Sec. 202. (1) Persons that are subject to this section and sections 201 and 203 of this chapter shall file notification with the department within thirty (30) days after commencing business in Indiana and thereafter on an annual basis, on the date set forth in subsection (2).

The notification shall state the:

- (a) name of the person;
- (b) name in which business is transacted if different from subdivision (a);
- (c) address of principal office, which may be outside Indiana; and
- (d) address of all offices or retail stores, if any, in Indiana at which consumer credit sales, consumer leases, or consumer loans are made, or in the case of a person taking assignments of obligations, the offices or places of business within Indiana at which business is transacted.

(2) A person required to be licensed under this article shall file the notification required by subsection (1) not later than December 31 of each year. All other persons subject to this section shall file the notification required by subsection (1) not later than January 31 of each year.

(3) Persons subject to sections 201 and 203 of this chapter and this section shall notify the department not later than thirty (30) days after the person:

- (a) has a change in name, address, or principals;
- (b) opens a new branch, closes an existing branch, or relocates an existing branch;
- (c) files for bankruptcy or reorganization;
- (d) is notified that the person is subject to revocation or suspension proceedings by a state or governmental authority with regard to the person's activities; or
- (e) has been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction.

*(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by P.L.152-1986, SEC.73; P.L.14-1992, SEC.60; P.L.122-1994, SEC.37; P.L.63-2001, SEC.4 and P.L.134-2001, SEC.4; P.L.213-2007, SEC.18; P.L.217-2007, SEC.17; P.L.35-2010, SEC.81.*

### **IC 24-4.5-6-203**

#### **Fees**

Sec. 203. (1) Persons required to file notification who are sellers, lessors, or lenders shall pay a fee in an amount and at intervals to be prescribed by the director under IC 28-11-3-5. The fee shall be a uniform amount for each one hundred thousand dollars (\$100,000), or part thereof, in excess of one hundred thousand dollars (\$100,000), of the original unpaid balances arising from consumer credit sales, consumer leases, and consumer loans made in Indiana and held either by the seller, lessor, or lender for more than thirty (30) days after the inception of the sale, lease, or loan giving rise to the obligations, or by an assignee who has not filed notification. A refinancing of a sale, lease, or loan resulting in an increase in the amount of an obligation is a new sale, lease, or loan to the extent of the increase. In prescribing the fee, the department shall consider the

costs and expense incurred or estimated to be incurred by the department in the administration of this article, including, but not limited to, the supervision, regulation, and examination of persons subject to the provisions of the article.

(2) Persons required to file notification who are assignees shall pay a fee as prescribed and fixed by the department under subsection (1) on the unpaid balances at the time of the assignment of obligations arising from consumer credit sales, consumer leases, and consumer loans made in Indiana taken by assignment during the preceding calendar year, but an assignee need not pay a fee with respect to an obligation on which the assignor or other person has already paid a fee.

(3) Persons required to file notification who are assignors shall pay a fee as prescribed by the department under subsection (1) on the unpaid balances at the time of the assignment of obligations arising from consumer credit sales, consumer leases, and consumer loans made in Indiana during the preceding calendar year unless the assignee has already paid the fees.

(4) Persons required to renew a license under IC 24-4.5-3-503 may deduct the fees paid under IC 24-4.5-3-503(7)(a) through IC 24-4.5-3-503(7)(c) from fees paid under this section.

(5) A person that is required to file notification under IC 24-4.5-6-202 shall pay a fee at the same rate as prescribed and fixed by the department under subsection (1) on the original unpaid balances of all closed end credit obligations originating from the person's place of business during the time preceding the notification as specified under subsection (1), unless the fees for the obligations have been paid by another person.

*(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by Acts 1977, P.L.269, SEC.1; P.L.247-1983, SEC.23; P.L.14-1992, SEC.61; P.L.122-1994, SEC.38; P.L.213-2007, SEC.19; P.L.217-2007, SEC.18; P.L.90-2008, SEC.13.*

#### **IC 24-4.5-6-204**

##### **Nonapplicability of licensing and notification requirements to attorneys' services**

Sec. 204. IC 24-4.5-3-502, IC 24-4.5-6-201, IC 24-4.5-6-202, and IC 24-4.5-6-203 are not applicable to services performed by attorneys.

*As added by P.L.153-1986, SEC.3. Amended by P.L.213-2007, SEC.20; P.L.217-2007, SEC.19.*