

IC 24-4.5-7

Chapter 7. Small Loans

IC 24-4.5-7-101

Citation

Sec. 101. This chapter shall be known and may be cited as Uniform Consumer Credit Code — Small Loans.

As added by P.L.38-2002, SEC.1.

IC 24-4.5-7-102

Applicability; loans otherwise subject to Uniform Consumer Credit Code

Sec. 102. (1) Except as otherwise provided, all provisions of this article applying to consumer loans apply to small loans, as defined in this chapter.

(2) This chapter applies to:

(a) a lender or to any person who facilitates, enables, or acts as a conduit for any person who is or may be exempt from licensing under IC 24-4.5-3-502;

(b) a bank, savings association, credit union, or other state or federally regulated financial institution except those that are specifically exempt regarding limitations on interest rates and fees; or

(c) a person, if the department determines that a transaction is:

(i) in substance a disguised loan; or

(ii) the application of subterfuge for the purpose of avoiding this chapter.

(3) A loan that:

(a) does not qualify as a small loan under section 104 of this chapter;

(b) is for a term shorter than that specified in section 401(1) of this chapter; or

(c) is made in violation of section 201, 401, 402, 404, or 410 of this chapter;

is subject to this article. The department may conform the finance charge for a loan described in this subsection to the limitations set forth in IC 24-4.5-3-508.

As added by P.L.38-2002, SEC.1. Amended by P.L.10-2006, SEC.11 and P.L.57-2006, SEC.11; P.L.213-2007, SEC.21; P.L.217-2007, SEC.20; P.L.35-2010, SEC.82.

IC 24-4.5-7-103

Definitions

Sec. 103. The following definitions apply to this chapter:

"Small loan" Section 7-104

"Principal" Section 7-105

"Check" Section 7-106

"Renewal" Section 7-107

"Consecutive small loan" Section 7-108

"Paid in full" Section 7-109

"Monthly gross income" Section 7-110

"Lender" Section 7-111

As added by P.L.38-2002, SEC.1. Amended by P.L.2-2005, SEC.61; P.L.10-2006, SEC.12 and P.L.57-2006, SEC.12.

IC 24-4.5-7-104

Small loan

Sec. 104. (1) "Small loan" means a loan:

(a) with a principal loan amount that is at least fifty dollars (\$50) and not more than five hundred fifty dollars (\$550); and

(b) in which the lender holds the borrower's check or receives the borrower's written authorization to debit the borrower's account under an agreement, either express or implied, for a specific period before the lender:

(i) offers the check for deposit or presentment; or

(ii) exercises the authorization to debit the borrower's account.

(2) The amount of five hundred fifty dollars (\$550) in subsection (1)(a) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 2006.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.17; P.L.213-2007, SEC.22; P.L.217-2007, SEC.21.

IC 24-4.5-7-105

Principal

Sec. 105. "Principal" means the total of:

(a) the net amount paid to, receivable by, or paid or payable from the account of the borrower; and

(b) to the extent that the payment is deferred, the additional charges permitted by this chapter that are not included in subdivision (a).

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.18.

IC 24-4.5-7-106

Check

Sec. 106. For purposes of this chapter, "check" has the meaning set forth in IC 26-1-3.1-104.

As added by P.L.38-2002, SEC.1.

IC 24-4.5-7-107

Renewal

Sec. 107. "Renewal" refers to a small loan that takes the place of an existing small loan by:

(a) renewing;

(b) repaying;

(c) refinancing; or

(d) consolidating;

a small loan with the proceeds of another small loan made to the

same borrower by a lender.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.19.

IC 24-4.5-7-108

Consecutive small loan

Sec. 108. "Consecutive small loan" means a new small loan agreement that the lender enters with the same borrower not later than seven (7) calendar days after a previous small loan made to that borrower is paid in full.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.20.

IC 24-4.5-7-109

Paid in full

Sec. 109. "Paid in full" means the termination of a small loan through:

(1) the presentment of the borrower's check for payment by the drawee bank or the exercise by the lender of an authorization to debit an account of the borrower; or

(2) the return of a check to a borrower who redeems it for consideration.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.21; P.L.10-2006, SEC.13 and P.L.57-2006, SEC.13.

IC 24-4.5-7-110

Monthly gross income

Sec. 110. "Monthly gross income" means the income received by the borrower in the thirty (30) day period preceding the borrower's application for a small loan under this chapter and exclusive of any income other than regular gross pay received, or as otherwise determined by the department.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.22.

IC 24-4.5-7-111

Lender

Sec. 111. "Lender" means a person licensed by the department of financial institutions under this chapter to engage in small loans.

As added by P.L.10-2006, SEC.14 and P.L.57-2006, SEC.14.

IC 24-4.5-7-112

Lender not considered a financial institution

Sec. 112. A lender is not considered a financial institution, except for purposes of IC 28-1.

As added by P.L.10-2006, SEC.15 and P.L.57-2006, SEC.15.

IC 24-4.5-7-201

Finance charges

Sec. 201. (1) Finance charges on the first two hundred fifty dollars (\$250) of a small loan are limited to fifteen percent (15%) of the principal.

(2) Finance charges on the amount of a small loan greater than

two hundred fifty dollars (\$250) and less than or equal to four hundred dollars (\$400) are limited to thirteen percent (13%) of the amount over two hundred fifty dollars (\$250) and less than or equal to four hundred dollars (\$400).

(3) Finance charges on the amount of the small loan greater than four hundred dollars (\$400) and less than or equal to five hundred fifty dollars (\$550) are limited to ten percent (10%) of the amount over four hundred dollars (\$400) and less than or equal to five hundred fifty dollars (\$550).

(4) The amount of five hundred fifty dollars (\$550) in subsection (3) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 2006.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.23; P.L.141-2005, SEC.3; P.L.213-2007, SEC.23; P.L.217-2007, SEC.22.

IC 24-4.5-7-202

Fee for dishonored check or debit authorization

Sec. 202. (1) Notwithstanding any other law, the only fee that may be contracted for and received by the lender or an assignee on a small loan is a charge, not to exceed twenty-five dollars (\$25), for each:

(a) return by a bank or other depository institution of a:

(i) dishonored check;

(ii) negotiable order of withdrawal; or

(iii) share draft;

issued by the borrower; or

(b) time an authorization to debit the borrower's account is dishonored.

This additional charge may be assessed one (1) time regardless of how many times a check or an authorization to debit the borrower's account may be submitted by the lender and dishonored.

(2) A lender may:

(a) present a borrower's check for payment; or

(b) exercise a borrower's authorization to debit the borrower's account;

not more than three (3) times.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.24; P.L.213-2007, SEC.24; P.L.217-2007, SEC.23; P.L.90-2008, SEC.14.

IC 24-4.5-7-301

Disclosures; informational brochure

Sec. 301. (1) For purposes of this section, the lender shall disclose to the borrower to whom credit is extended with respect to a small loan the information required by the Federal Consumer Credit Protection Act.

(2) In addition to the requirements of subsection (1), the lender must conspicuously display in bold type a notice to the public both

in the lending area of each business location and in the loan documents the following statement:

"WARNING: A small loan is not intended to meet long term financial needs. A small loan should be used only to meet short term cash needs. The cost of your small loan may be higher than loans offered by other lending institutions. Small loans are regulated by the State of Indiana Department of Financial Institutions.

A borrower may rescind a small loan without cost by paying the cash amount of the principal of the small loan to the lender not later than the end of the business day immediately following the day on which the small loan was made."

- (3) The statement required in subsection (2) must be in:
- (a) 14 point bold face type in the loan documents; and
 - (b) not less than one (1) inch bold print in the lending area of the business location.

(4) When a borrower enters into a small loan, the lender shall provide the borrower with a pamphlet approved by the department that describes:

- (a) the availability of debt management and credit counseling services; and
- (b) the borrower's rights and responsibilities in the transaction.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.25; P.L.35-2010, SEC.83.

IC 24-4.5-7-401

Term of loan; consecutive small loans; extended payment plans

Sec. 401. (1) A small loan may not be made for a term of less than fourteen (14) days.

(2) If five (5) consecutive small loans have been made to a borrower after the borrower's initial small loan, another small loan may not be made to that borrower within seven (7) days after the fifth consecutive small loan is paid in full. After the borrower's fifth consecutive small loan, the balance must be paid in full.

(3) Subject to subsection (4), whenever a borrower has entered into an initial small loan followed by three (3) consecutive small loans, the lender shall offer the borrower the option to repay:

- (a) the third consecutive small loan; and
- (b) subject to subsection (2), any small loan entered into after the third consecutive small loan;

under an extended payment plan. At the time of execution of a small loan described in subdivision (a) or (b), the lender shall disclose to the borrower the extended payment plan option by providing the borrower a written description of the extended payment plan option in a separate disclosure document approved by the director.

(4) A lender shall offer an extended payment plan under subsection (3) under the following terms and conditions:

- (a) A borrower shall be permitted to request an extended payment plan at any time during the term of a third or subsequent consecutive small loan if the borrower has not

defaulted on the outstanding small loan.

(b) An extended payment plan must allow the outstanding small loan to be paid in at least four (4) equal installments over a period of not less than sixty (60) days.

(c) The lender may not assess any fee or charge on a borrower for entering into an extended payment plan.

(d) An agreement for an extended payment plan must be in writing and acknowledged by both the borrower and the lender.

(e) A borrower may not enter into another small loan transaction while engaged in an extended payment plan.

(5) An agreement for an extended payment plan under subsection (3):

(a) shall be considered an extension of the outstanding small loan; and

(b) may not be considered a new loan.

As added by P.L.38-2002, SEC.1. Amended by P.L.258-2003, SEC.2; P.L.73-2004, SEC.26; P.L.10-2006, SEC.16 and P.L.57-2006, SEC.16; P.L.213-2007, SEC.25; P.L.217-2007, SEC.24.

IC 24-4.5-7-402

Limits based on borrower's income; payments; loan documents; rescission; renewals prohibited

Sec. 402. (1) A lender is prohibited from making a small loan to a borrower if the total of:

(a) the principal amount and finance charges of the small loan to be issued; plus

(b) any other small loan balances that the borrower has outstanding with any lender;

exceeds twenty percent (20%) of the borrower's monthly gross income.

(2) A small loan may be secured by only one (1) check or authorization to debit the borrower's account per small loan. The check or electronic debit may not exceed the amount advanced to or on behalf of the borrower plus loan finance charges contracted for and permitted.

(3) A borrower may make partial payments in any amount on the small loan without charge at any time before the due date of the small loan. After each payment is made on a small loan, whether the payment is in part or in full, the lender shall give a signed and dated receipt to the borrower making a payment showing the amount paid and the balance due on the small loan.

(4) The lender shall provide to each borrower a copy of the required loan documents before the disbursement of the loan proceeds.

(5) A borrower may rescind a small loan without cost by paying the cash amount of the principal of the small loan to the lender not later than the end of the business day immediately following the day on which the small loan was made.

(6) A lender shall not enter into a renewal with a borrower. If a loan is paid in full, a subsequent loan is not a renewal.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.27; P.L.213-2007, SEC.26; P.L.217-2007, SEC.25; P.L.35-2010, SEC.84.

IC 24-4.5-7-403

Security for loan

Sec. 403. A small loan may not be secured by personal property other than a check or electronic debit.

As added by P.L.38-2002, SEC.1.

IC 24-4.5-7-404

Limits and number and amounts of outstanding loans; lender's verification; third party data base; civil penalties; excess finance charges; verification of Social Security number

Sec. 404. (1) As used in this section, "commercially reasonable method of verification" means a private consumer credit reporting service that the department determines to be capable of providing a lender with adequate verification information necessary to ensure compliance with subsection (4).

(2) With respect to a small loan, no lender may permit a person to become obligated under more than one (1) loan agreement with the lender at any time.

(3) A lender shall not make a small loan that, when combined with the outstanding balance on another outstanding small loan owed to another lender, exceeds a total of five hundred fifty dollars (\$550), excluding finance charges. A lender shall not make a small loan to a borrower who has two (2) or more small loans outstanding, regardless of the total value of the small loans. The amount of five hundred fifty dollars (\$550) in this subsection is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 2006.

(4) A lender complies with subsection (3) if the lender independently verifies the total number of outstanding small loans and the total outstanding balance of those small loans for a customer through a commercially reasonable method of verification. A lender's method of verifying whether a borrower has any outstanding small loans and the total outstanding balance of any loans will be considered commercially reasonable if the method includes a manual investigation or an electronic query of:

(a) the lender's own records, including both records maintained at the location where the borrower is applying for the transaction and records maintained at other locations within the state that are owned and operated by the lender; and

(b) an available third party data base provided by a private consumer reporting service, subject to the identification verification requirements set forth in subsection (12).

(5) The department shall monitor the effectiveness of private consumer credit reporting services in providing the verification

information required under subsection (4). If the department determines that a commercially reasonable method of verification is available, the department shall:

(a) provide reasonable notice to all lenders identifying the commercially reasonable method of verification that is available; and

(b) require each lender to use, consistent with the policies of the department, the identified commercially reasonable method of verification as a means of complying with subsection (4).

(6) If a borrower presents evidence to a lender that a loan has been discharged in bankruptcy, the lender shall cause the record of the borrower's loan to be updated in the data base described in subsection (4)(b) to reflect the bankruptcy discharge.

(7) A lender shall cause the record of a borrower's loan to be updated in the data base described in subsection (4)(b) to reflect:

(a) presentment of the borrower's check for payment; or

(b) exercise of the borrower's authorization to debit the borrower's account.

If a check is returned or an authorization is dishonored because of insufficient funds in the borrower's account, the lender shall reenter the record of the loan in the data base.

(8) A lender shall update information in a data base described in subsection (4)(b) to reflect partial payments made on an outstanding loan, the record of which is maintained in the data base.

(9) If a lender ceases doing business in Indiana, the director may require the operator of the data base described in subsection (4)(b) to remove records of the lender's loans from the operator's data base.

(10) The director may impose a civil penalty not to exceed one hundred dollars (\$100) for each violation of:

(a) this section; or

(b) any rule or policy adopted by the director to implement this section.

(11) The excess amount of loan finance charge provided for in agreements in violation of this section is an excess charge for purposes of the provisions concerning effect of violations on rights of parties (IC 24-4.5-5-202) and the provisions concerning civil actions by the department (IC 24-4.5-6-113).

(12) If a borrower provides the borrower's Social Security number to a lender in connection with any transaction or proposed transaction under this chapter, the lender shall:

(a) maintain procedures to verify that the Social Security number provided is legitimate and belongs to the borrower; and

(b) retain copies of any documents used to verify the borrower's Social Security number. Documentation under this subdivision may be in electronic form and the numbers may be truncated.

If a borrower does not have a Social Security number, the lender may require and accept another valid form of government issued identification, subject to the requirements of subdivisions (a) and (b) with respect to the government issued identification accepted.

As added by P.L. 38-2002, SEC.1. Amended by P.L. 73-2004, SEC.28;

P.L.10-2006, SEC.17 and P.L.57-2006, SEC.17; P.L.213-2007, SEC.27; P.L.217-2007, SEC.26; P.L.90-2008, SEC.15; P.L.35-2010, SEC.85.

IC 24-4.5-7-405

Conducting other business

Sec. 405. (1) This section does not apply to a business that is licensed by the department for a purpose other than consumer loans.

(2) A lender shall not conduct the business of making small loans under this chapter within an office, suite, room, or place of business where another business is solicited or engaged unless the lender obtains a written opinion from the director of the department that the other business would not be contrary to the best interests of consumers.

As added by P.L.38-2002, SEC.1.

IC 24-4.5-7-406

Borrower's default; permissible and prohibited remedies; notice to borrower

Sec. 406. (1) An agreement with respect to a small loan may not provide for charges as a result of default by the borrower other than those specifically authorized by this chapter. A provision in a small loan agreement in violation of this section is unenforceable.

(2) A lender or an assignee of a small loan may seek only the following remedies upon default by a borrower:

(a) Recovery of:

- (i) the contracted principal amount of the loan; and
- (ii) the loan finance charge.

(b) Collection of a fee for:

- (i) a returned check, negotiable order of withdrawal, or share draft; or
- (ii) a dishonored authorization to debit the borrower's account;

if contracted for under section 202 of this chapter.

(c) Collection of postjudgment interest, if awarded by a court.

(d) Collection of court costs, if awarded by a court.

(3) A lender or an assignee of a small loan may not seek any of the following damages or remedies upon default by a borrower:

(a) Payment of the lender's attorney's fees.

(b) Treble damages.

(c) Prejudgment interest.

(d) Damages allowed for dishonored checks under any statute other than this chapter.

(e) Any damages or remedies not set forth in subsection (2).

(4) A contractual agreement in a small loan transaction must include a notice of the following in 14 point bold type:

(a) The remedies available to a lender or an assignee under subsection (2).

(b) The remedies and damages that a lender or an assignee is prohibited from seeking in a small loan transaction under

subsection (3).

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.29; P.L.10-2006, SEC.18 and P.L.57-2006, SEC.18; P.L.90-2008, SEC.16.

IC 24-4.5-7-407

Repealed

(Repealed by P.L.73-2004, SEC.48.)

IC 24-4.5-7-408

Repealed

(Repealed by P.L.73-2004, SEC.48.)

IC 24-4.5-7-409

Violations; remedies and damages; equitable relief; exhaustion of administrative remedies not required

Sec. 409. (1) This section applies to licensees and unlicensed persons.

(2) A person who violates this chapter:

(a) is subject to the remedies provided in IC 24-4.5-5-202;

(b) commits a deceptive act under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5;

(c) has no right to collect, receive, or retain any principal, interest, or other charges from a small loan; however, this subdivision does not apply if the violation is the result of an accident or bona fide error of computation; and

(d) is liable to the borrower for actual damages, statutory damages of two thousand dollars (\$2,000) per violation, costs, and attorney's fees; however, this subdivision does not apply if the violation is the result of an accident or bona fide error of computation.

The remedies described in this subsection are in addition to all other remedies set forth in this article.

(3) The department may sue:

(a) to enjoin any conduct that constitutes or will constitute a violation of this chapter; and

(b) for other equitable relief.

(4) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a borrower. A borrower is not required to exhaust any administrative remedies under this section or any other applicable law.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.30; P.L.10-2006, SEC.19 and P.L.57-2006, SEC.19; P.L.90-2008, SEC.17.

IC 24-4.5-7-410

Prohibited acts by lender

Sec. 410. A lender making small loans, or an assignee of a small loan, shall not commit nor cause to be committed any of the following acts:

- (a) Threatening to use or using the criminal process in any state to collect on a small loan.
- (b) Threatening to take action against a borrower that is prohibited by this chapter.
- (c) Making a misleading or deceptive statement regarding a small loan or a consequence of taking a small loan.
- (d) Contracting for or collecting attorney's fees on small loans made under this chapter.
- (e) Altering the date or any other information on a check or an authorization to debit the borrower's account held as security.
- (f) Using a device or agreement that the department determines would have the effect of charging or collecting more fees, charges, or interest than allowed by this chapter, including, but not limited to:
 - (i) entering a different type of transaction with the borrower;
 - (ii) entering into a sales/leaseback arrangement;
 - (iii) catalog sales;
 - (iv) entering into transactions in which a customer receives a purported cash rebate that is advanced by someone offering Internet content services, or some other product or service, when the cash rebate does not represent a discount or an adjustment of the purchase price for the product or service; or
 - (v) entering any other transaction with the borrower that is designed to evade the applicability of this chapter.
- (g) Engaging in unfair, deceptive, or fraudulent practices in the making or collecting of a small loan.
- (h) Charging to cash a check representing the proceeds of a small loan.
- (i) Except as otherwise provided in this chapter:
 - (i) accepting the proceeds of a new small loan as payment of an existing small loan provided by the same lender; or
 - (ii) renewing, refinancing, or consolidating a small loan with the proceeds of another small loan made by the same lender.
- (j) Including any of the following provisions in a loan document:
 - (i) A hold harmless clause.
 - (ii) A confession of judgment clause.
 - (iii) A mandatory arbitration clause, unless the terms and conditions of the arbitration have been approved by the director of the department.
 - (iv) An assignment of or order for payment of wages or other compensation for services.
 - (v) A provision in which the borrower agrees not to assert a claim or defense arising out of contract.
 - (vi) A waiver of any provision of this chapter.
- (k) Selling insurance of any kind in connection with the making or collecting of a small loan.
- (l) Entering into a renewal with a borrower.

As added by P.L. 38-2002, SEC.1. Amended by P.L. 73-2004, SEC.31;

P.L.10-2006, SEC.20 and P.L.57-2006, SEC.20; P.L.90-2008, SEC.18.

IC 24-4.5-7-411

Exemption of finance charges

Sec. 411. Finance charges made in compliance with this chapter are exempt from IC 24-4.5-3-508 and IC 35-45-7.

As added by P.L.38-2002, SEC.1.

IC 24-4.5-7-412

Endorsement of check

Sec. 412. Upon the receipt of a check from a borrower for a small loan, unless the check is marked as void at the time of acceptance by the lender, the lender shall immediately stamp the back of the check with an endorsement that states:

"This check is being negotiated as part of a small loan under IC 24-4.5, and any holder of this check takes it subject to the claims and defenses of the maker."

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.32; P.L.35-2010, SEC.86.

IC 24-4.5-7-413

Bond requirement

Sec. 413. (1) A person engaged in making small loans under this chapter shall post a bond to the department in the amount of fifty thousand dollars (\$50,000) for each location where small loans will be made, up to a maximum bond in an amount determined by the department.

(2) A bond posted under subsection (1) must continue in effect for two (2) years after the lender ceases operation in Indiana. The bond must be available to pay damages and penalties to a consumer harmed by a violation of this chapter.

As added by P.L.38-2002, SEC.1. Amended by P.L.258-2003, SEC.3; P.L.35-2010, SEC.87.

IC 24-4.5-7-414

Rulemaking authority

Sec. 414. The department may adopt rules under IC 4-22-2 to implement this chapter.

As added by P.L.38-2002, SEC.1.