



STATE OF INDIANA

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## 2018 GENERAL ASSEMBLY - LEGISLATION OF INTEREST

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The following is a brief summary of legislation adopted by the 2018 Indiana General Assembly which may be of interest to the Department, its constituencies, staff, and members. For additional information regarding any bill of particular interest, the complete list of all legislation enacted or considered in the 2018 General Assembly, can be found [here](#).

**HB 1397 Financial institutions and consumer credit (commonly known as the "DFI Omnibus Bill").** The following is a brief summary of HB 1397, authored by Representative Woody Burton, which was signed by the Governor in Public Law 69 on March 13, 2018. As in years' past, the vast majority of the bill changes included updated references to federal and state laws; streamlining and modernization efforts; and additional technical or housekeeping matters. *All provisions become effective July 1, 2018.*

**Dollar adjustments to 750 IAC 1.** In addition to the above, the Department is charged with calculating and adjusting as necessary certain dollar amounts based on changes in the Consumer Price Index every even numbered year. The dollar amounts change based on 10% incremental changes to the index values. Such changes are dictated primarily under Ind. Code § 24-4.5-1-106 of the Indiana Uniform Consumer Credit Code, and changes are adopted by the Department through the emergency rulemaking authority under IC § 4-22-2-37.1 and published under 750 IAC 1 on or before April 1. The Emergency Rule was posted in the Indiana Register as [LSA Document #18-155](#) on March 21, 2018. *The dollar adjustments become effective July 1, 2018.*

For Indiana Uniform Consumer Credit Code ("IUCCC") changes, three different base index values are used, depending on the timing of the statutory implementation. There are several IUCCC dollar value changes under the rule this year.

High Cost Home Loans, IC § 24-9-2-8, enacted in 2005, provides for an adjustment to a dollar amount at the time and according to the procedure set forth in the provisions of IC § 24-4.5-1-106 concerning the adjustment of dollar amounts in IC § 24-4.5. The dollar amount did change.

Under IC § 34-55-10-2.5, certain dollar amounts in the Indiana Bankruptcy Exemptions statute are subject to adjustment, and the Department is charged with the calculation of these changes. Values may change every six years, and adjustments are rounded to the nearest \$50 dollars. These values were not subject to change this year.

**The following are provisions of interest contained in HB 1397:**

**Consumer Credit:**

**Codification of historically-approved DFI charges as permissible additional charges.** The Uniform Consumer Credit Code outlines what additional charges (in addition to finance charges) a creditor may charge a consumer and finance in a credit sale or loan. In addition to the specific charges listed, a creditor may also ask the Department to review and approve a charge under certain conditions. The Department has historically approved only four charges – Guaranteed Asset Protection (“GAP”), debt cancellation for depository institutions, skip-a-pay fees, and expedited payment fees. The guidelines have been modernized from when the charges were first approved. See also the [GAP and Debt Cancellation Guidance](#) issued by the Department on April 2, 2018.

- Applies to: creditors of consumer credit transactions
- Statutory references: IC § 24-4.5-3-202 (consumer loans); IC § 24-4.5-2-202 (consumer credit sales)

❖ **Combining the first lien mortgage lending license and subordinate lien mortgage lending license into one general mortgage lending license.** DFI historically issued two separate mortgage lending licenses: one for first lien mortgages under IC § 24-4.4, and one for subordinate lien mortgages under IC § 24-4.5. DFI combined the mortgage licensing process in summer 2017 to create one general mortgage lending license covering all mortgage lending activity under both articles. This streamlined the licensing process for both the industry and the Department, and saved licensees the cost of maintaining two licenses. Minor language updates reflect the need for only one mortgage lending license.

- Applies to: mortgage lenders
- Statutory references: IC §§ 24-4.4-1-202.5, -301; IC §§ 24-4.4-2-401, -402.3, -402.4, -403, -404.2, -405, -406; IC §§ 24-4.5-3-301.5, -502.1, -503.3, -503.4

❖ **Update for internet payday loan rescission issues.** The original small loan law did not consider delays in funding that could occur with online transactions (internet payday loans); 2017 law provides a rescission period that could expires before a consumer actually receives the money loaned. This update will have the consumer’s rescission period start on the date the person receives the funds.

- Applies to: small loan lenders
- Statutory reference: IC § 24.4.5-7-402

- ❖ **Persistent violations of Extend Payment Plans on small loans.** Small loan lenders are required to offer a consumer an extended payment plan (EPP) under certain circumstances. Lenders are prohibited from influencing consumers against taking out an EPP in an effort to increase fees. The legislation includes: new language that prevents a small loan lender from influencing a consumer into paying off an EPP eligible loan; further clarifications regarding the time period in which a consumer may request an EPP.
  - Applies to: small loan lenders
  - Statutory references: IC §§ 24-4.5-7-301 and -401
  
- ❖ **Updating the UCCC to conform to federal Truth in Lending time frames for crediting consumer payments.**
  - Applies to: creditors in consumer credit transactions
  - Statutory references: IC § 24-4.5-2-417 (consumer credit sales); IC § 24-4.5-3-408 (consumer loans)
  
- ❖ **Explicitly excluding lead generators from small loan licensing.** The Department does not consider loan lead generators to be subject to the small loan statutes for licensing purposes. The 2017 statute could be mis-interpreted that small loan licensing statutes apply to lead generators. The legislation deletes the reference language that could be mis-interpreted to include lead generators.
  - Statutory references: IC § 24-4.5-7-102
  
- ❖ **U.S. GAAP requirement for submitting financial statements in support of licensing applications.**

The legislation requires that non-U.S. based companies applying for licenses with the Department provide financial statements reflecting U.S. GAAP accounting methods.

  - Applies to: consumer lenders; rental purchase entities; debt management companies; money transmitters
  - Statutory references: IC § 24-4.5-3-505 (consumer loans); IC § 24-7-7-2 (rental purchase); IC § 28-8-4-12, -24, -25, -33, -38, -44 (money transmission); IC § 28-1-29-5 (debt management companies)
  
- ❖ **Adding other legal business offerings as permissible for debt management companies.** In 2017, the Department clarified for many industries that it regulates that a licensed company, in addition to undertaking the licensed activity by the Department at its place of business, may carry on other legal business at the same location. Debt management company statutes were unintentionally excluded from the 2017 legislation; this industry is likewise updated with the 2018 legislation.
  - Applies to: debt management companies
  - Statutory references: IC § 28-1-29-8
  
- ❖ **Renewal dates for pawnbroker and check casher licenses.** This legislation consolidates the Department's renewal periods to decrease collective renewal dates from four down to two, by changing the renewal date for these two license types.
  - Applies to: pawnbrokers and check cashers
  - Statutory references: IC § 28-7-5-11 (pawnbroker license); IC § 28-8-5-14 (check cashing license)

❖ **Various clarifications and updates under the Rental Purchase Agreement Act (RPAA).**

Confusion appears to exist between the rent-to-own industry and the Department concerning what constitutes an initial payment and how it must be treated on a rental purchase agreement. There is also some indication that virtual leasing companies do not acquire 100% ownership of merchandise with the local retailer that is facilitating the transaction, prior to entering into a rental purchase agreement with the consumer. The legislation addresses these items and also includes some general updates, revisions, and clarifications of the Rental Purchase Agreement Act.

- Applies to: rental purchase entities
- Statutory references: IC §§ 24-7-2-8, -9; IC §§ 24-7-3-3, -6, -8; IC §§ 24-7-4-1, -1.5; IC §§ 24-7-4-11, -13; IC §§ 24-7-5-5, -5.5, -10; IC § 24-7-6-2; IC §§ 24-7-7-1, -2; IC § 24-7-8-2

❖ **Clarification of DFI authority over first lien mortgages at financial institutions.** This is a clarification item to make clear the longstanding position regarding the Department's examination and investigative authority, and administrative enforcement authority, for consumer credit matters that extend to first lien mortgage transactions at state chartered depository institutions.

- Applies to: financial institutions
- Statutory references: IC § 24-4.5-3-105

❖ **Modernize returned payment language.** The way in which payments can be made has expanded to include more than just traditional paper checks. The 2017 statute limits the fees that can be collected from a consumer for returned payments to mostly traditional payment methods. The legislation modernizes the language as well as adds electronic funds transfers to the list of payments where return fees are permitted to be charged.

- Applies to: creditors under the UCCC, small loan lenders, debt management companies
- Statutory references: IC §§ 24-4.5-2-202 (consumer credit sales), 3-202 (consumer loans); IC § 24-4.5-7-202 (small loans); IC § 28-1-29-8.3 (debt management companies).

## **Depositories:**

**Policies and Procedures for branch application approval on an expedited basis.** The 2017 statute requires that every time a bank or credit union wants to relocate or open a branch they have to apply and receive approval from the Department. Formalities have been reduced by creating an "expedited" branch application policy, whereby some minor statute changes were needed to reflect this new option.

- Applies to: banks, credit unions, trust companies, corporate fiduciaries, savings banks, savings associations, and industrial loan and investment companies chartered in the state of Indiana
- Statutory references: IC §§ 28-2-13-19, 18-19 (banks, trust companies, corporate fiduciaries, savings associations, industrial loan and investment companies); IC § 28-6.1-12-3 (savings banks); IC §§ 28-7-1-9, -28, -34 (credit unions)
- Note: Additional policies and procedures to be issued by the Department are forthcoming

- ❖ **Credit union loan statute – clarifying terminology replacing “notwithstanding.”** The statute lays out the guidelines for how a credit union can make a loan to its members. This is a clean-up to replace the term “notwithstanding.” Some credit unions have been unsure about offering different loan options because of the confusing language.
  - Applies to: credit unions
  - Statutory references: § 28-7-1-17
  
- ❖ **Modernization of credit union statutory requirements.** Loan officers are required to provide a list of both approved and denied loans to the credit union’s credit committee or board. This change deletes the required list of denied loans. A credit union statute requires the board to approve loan application forms; this change allows the credit union itself to approve the forms rather than the board. Clean-up to remove references to a regulatory policy that was previously rescinded/repealed.
  - Applies to: credit unions
  - Statutory references: IC §§ 28-7-1-16, -17, -24

#### **Other Bills of Interest:**

- ❖ **Uniform Business Organizations (SB 180; Public Law 52).** Secretary of State Omnibus Bill; includes additional limitation requiring all new corporate entities that utilize “bank” in their corporate name must first receive approval from the Department of Financial Institutions.
  
- ❖ **Secretary of State – Dealer Services Division (HB 1063; Public Law 137).** Requires an auto dealer to be in good standing with the Department in order to maintain in good standing a dealer’s license with the Secretary of State’s auto dealer services division.
  
- ❖ **Unclaimed Property (SB 376; Public Law 70).** Provides that an owner may consent at the time of the original account opening or account agreement for a certificate of deposit that upon maturity it may be renewed automatically, without triggering escheatment processes under the Unclaimed Property Act.
  
- ❖ **Small Loans (SB 377; Public Law 60).** Allows the director of the Department of Financial Institutions to take certain actions concerning the use of technology for oversight and enforcement of compliance with the law concerning small loans.