



2019 GENERAL ASSEMBLY – DFI LEGISLATION OF INTEREST

Prepared by Lyndsay H. Miller, General Counsel

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The following is a brief summary of legislation adopted by the 2019 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 2019 General Assembly can be found [here](#).

HEA 1447 Financial institutions and consumer credit (commonly known as the "DFI Omnibus Bill"). The following is a brief summary of [HEA 1447](#), authored by Representative Woody Burton, which was signed into law by the Governor into Public Law 176 on May 1, 2019. 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. The summary below is not all inclusive of the bill's accomplishments; interested parties are encouraged to review all provisions of the legislation. While this publication is intended to provide DFI regulated industries with an overview of recent legislation enacted, businesses are encouraged to seek counsel with questions regarding how the new laws may impact a particular business model or product. *All provisions become effective July 1, 2019.*

Consumer Credit:

❖ **Migration of all CPAP (Civil Proceeding Advance Payments) provisions from the Indiana Uniform Consumer Credit Code (IC 24-4.5) into the CPAP Act (IC § 24-12)**. In order to provide regulatory clarity and transparency to the CPAP industry, all provisions applicable to CPAP, including licensing, have been migrated out of the Indiana Consumer Credit Code and into the CPAP Act. A separate advisory publication providing a detailed overview of the legislative changes and updates has been published concurrently with this summary.

- Applies to: licensed CPAP providers
- Statutory references: IC § 24-4.5-1-201.1 (REPEALED); IC § 24-4.5-1-301.5 (46) – (51) (REPEALED IN PART); IC § 24-4.5-3-110 (REPEALED); IC § 24-4.5-3-110.5 (REPEALED); IC § 24-4.5-3-202 (AMENDED); IC 24-4.5-3-502(6) (AMENDED); IC 24-12-1-0.5 (NEW); IC 24-12-1-1 (AMENDED); IC 24-12-2-1 (AMENDED); IC 24-12-4-1 (AMENDED); IC 24-12-4.5 (NEW); IC 24-12-5-1 (AMENDED); IC 24-12-9-1 (AMENDED); IC 24-12-9-2 (REPEALED); IC 24-12-9-3 (AMENDED); IC 24-12-9-4 (NEW); IC 24-12-9-5 (NEW); IC 24-12-9-6 (NEW); IC 24-12-9-7 (NEW); IC 24-12-9-8 (NEW); IC 24-12-9-9 (NEW); IC 24-12-9-10 (NEW); IC 24-12-9-11 (NEW); IC 24-12-9-12 (NEW)

- ❖ **GAP update to additional changes regarding interest penalty.** Update applicable statutory references to include that GAP additional charges will accrue interest penalties on refunds not made within sixty (60) days of prepayment in full by a consumer. This was historically the case when GAP was previously an approved additional charge by Department policy (which is now codified into statute, effective July 2018).
 - Applies to: creditors in consumer credit transactions
 - Statutory references: IC § 24-4.5-4-108.

- ❖ **Clarify the UCCC exemption for state educational institutions.** The legislation clarifies that the current exemption provided to state educational institutions from application of the Indiana Uniform Consumer Credit Code extends to related foundations, affiliates and subsidiaries.
 - Applies to: state educational institutions as defined in IC 21-7-13-32; instrumentality of a governmental entity
 - Statutory references: IC § 24-4.5-1-202

- ❖ **Expands to all department licensing types a bar against an entity to renew a license when it has outstanding state tax liabilities.** The Indiana Uniform Consumer Credit Code and First Lien Mortgage Lending Act will be amended to add language similar to other current statutes under the Department’s authority pertaining to the state tax warrant list. Entities licensed under these areas will not be permitted to renew an applicable license if they have outstanding tax liabilities owed to the state, as determined by the Department of Revenue.
 - Applies to: licensed mortgage lenders; licensed lenders;
 - Statutory references: IC § 24-4.4-2-402 (first lien mortgage lending); IC § 24-4.5-3-503 (consumer loans);

- ❖ **Prohibition against leasing of live domestic animals (as defined by IC 34-30-30-1).** This change does not negatively impact the commercial market for leasing livestock, and also does not prevent the extension of credit or a loan to a consumer for the purpose of purchasing a pet. An amendment was also proposed and incorporated by the ASPCA which generally prohibits the leasing of live animals for consumer purposes under the UCCC, chapter 2.
 - Applies to: rental purchase registrants; consumer credit lessors
 - Statutory references: IC 24-7-1-5 (rental purchase); IC 24-4.5-2-407.5 (consumer leasing)

- ❖ **Various clarifications under the Rental Purchase Agreement Act (RPAA) regarding certain property prohibited to be the subject of a rent-to-own agreement, and use of rental purchase agreements to avoid application of the Uniform Consumer Credit Code.** Expands the existing provisions in the Rental Purchase Agreement Act (“RPAA”, IC 24-7) that certain items are prohibited from being the subject of a rental purchase agreement. The RPAA already prohibits rent-to-own of motor vehicles (as defined in state law). However, the referenced definition of a motor vehicle did not specifically define or include certain parts of a motor vehicle; the new legislation broadens and defines the exclusion to cover certain categories of parts (as statutorily defined) and component parts necessary to operate a motor vehicle.

In addition, in an effort to proactively address an emerging predatory market, the proposal also includes a new prohibition for rent-to-own of household pets (“live animals”).

These legislative changes also provide the Director of the department with the authority to treat the transaction as a disguised consumer credit sale if the rental purchase act and rental purchase agreements are being used for the purpose of circumventing the uniform consumer credit code (IC 24-4.5).

A new section has also been added providing additional clarity to legislation passed during the 2018 legislative session, reflecting new definitions of an “initial rental payment” (NEW section, IC 24-7-2-3.5), and “regular rental payment” (NEW section, IC 24-7-2-8.5). Additional statutory clarification also reflects that a copy of the rental purchase agreement is required to be provided to the lessee at the time the agreement is consummated.

- Applies to: rental purchase registrants; consumer credit lessors
- Statutory references: IC 24-7-4-1.5 (REPEALED), IC 24-7-1-5, IC 24-7-2-3.5 (NEW), IC 24-7-2-8.5 (NEW), IC 24-7-3-6 (AMENDED), IC 24-7-4-1 (AMENDED), IC 24-7-5-5 (AMENDED), IC 24-7-6-2 (AMENDED) (rental purchase); IC 24-4.5-2-407.5 (consumer leasing)

Depositories:

- ❖ **Capital requirements for de novo and chartered Industrial Loan Corporations (“ILCs”).** This legislation removes the \$50,000 minimum capital requirement currently referenced in statute and replaces it with similar statutory language found for other new and existing financial institution charters, providing for department discretion in determining minimum capital stock will be required for de novo ILCs, based on the risk profile and business activity of the company as proposed during any charter application or approval process. It also clarifies that the department may determine if the company’s capital is impaired in order to invoke the related statutory remedy.
 - Applies to: existing state-chartered Industrial Loan Corporations; de novo Industrial Loan Corporations
 - Statutory references: Indiana Code § IC 28-5-1-5

- ❖ **Application of state anti-money laundering requirements to privately insured credit unions and corporate fiduciaries to file SARs and CTRs as part of an anti-money laundering program.** Indiana statutes are currently silent regarding the state law requirements applicable to privately insured credit unions and corporate fiduciaries regarding their requirements to file Suspicious Activity Reports (SARS – reports into a federal law enforcement and regulatory database used to investigate financial crimes) and Currency Transaction Reports (CTRs – report filing required to track deposits/withdrawals of \$10,000 or more). While such entities are believed to be voluntarily complying as part of an overall sound anti-money laundering program, a regulatory gap currently exists at the state level that is silent regarding the responsibilities of state-chartered credit unions who are privately insured, as well as state-chartered corporate fiduciaries, to file SARs and CTRs as part of the entity’s anti-money laundering program.
 - Applies to: privately insured credit unions; corporate fiduciaries
 - Statutory references: Indiana Code § 28-1-2-6.5

Other Bills of Interest:

- ❖ **Loan Broker Act (HB 1440).** Indiana’s Loan Broker Act administered by the Indiana Secretary of State’s Office has undergone significant changes. The former Article (IC 23-2-5) will be repealed and replaced with a new Article (IC 23-2.5) effective July 1, 2019. The new Article reorganizes current provisions regulating loan brokers and adds or otherwise updates provisions to adapt to progress in technology and industry practices. Please see the [Indiana Secretary of State’s Compliance Alert published on June 3, 2019](#).
- ❖ **Uniform Consumer Credit Code (HB 1136).** Makes changes to the Uniform Consumer Credit Code, including authorization of specified additional charges for consumer credit sales (IC 24-4.5-2) and consumer loans (IC 24-4.5-3), effective July 1, 2019:
 - (1) in the case of a revolving loan account, permits a lender to contract for and receive a transaction fee that may not exceed the greater of (i) 2 % of the amount of the transaction; or \$10 (current language is “lesser of”);
 - (2) Replaces the authorized \$5 delinquency charge (subject to indexing by the department of financial institutions) for consumer credit sales and consumer loans with a non-indexed delinquency charge of:
 - (A) \$5, if installments are due every 14 days or less;
 - (B) \$25, if installments are due every 15 days or more; or
 - (C) \$25, in the case of a single installment due at least 30 days after the sale or loan is made.
 - (3) Specifies that a creditor may not charge or collect a delinquency charge on a payment that:
 - (A) is paid within 10 days after its scheduled due date; and
 - (B) is otherwise a full payment of the payment due for the applicable installment period; if the only delinquency with respect to a consumer credit sale or a consumer loan is attributable to a delinquency charge for an earlier installment. Repeals the current installment rule, and replaces it with the Federal Trade Commission’s anti-pyramiding regulation.
- ❖ **Use of Social Security Numbers in Credit Files (HEA 1668).** Requires a consumer reporting agency that uses a Social Security Number as a factor in determining whether a file matches the identity of the subject of a credit inquiry to ensure that the name and at least one additional identifier of the subject matches the name and the same identifier in the file (effective immediately).
- ❖ **Various Trust Matters (SEA 265).** Establishes the ability to create a legacy trust; provides for certain modifications of rights to beneficiaries; creates an expanded method by which a trustee may propose the termination of a trust; provides a trustee with a nonjudicial method for settlement of the trust accounting; clarifies interested persons, designated representatives of beneficiaries;
- ❖ **Regulation of Hemp (SEA 516).** Creates the Indiana Hemp Advisory Committee, consisting of various members including the director of the department of financial institutions or the director’s designee.

- ❖ **Dealer Services (HEA 1237)**. Creates a new definition of “document preparation fee” regarding any fee charged by a dealership concerning the sale of a motor vehicle, and provides it is an unfair practice for a dealer to charge a document preparation fee in excess of \$200. This legislative change became effective immediately and was retroactive to July 1, 2013.