IC 24

TITLE 24. TRADE REGULATION

IC 24-1

ARTICLE 1. COMBINATIONS IN RESTRAINT OF TRADE

IC 24-1-1

Chapter 1. Contracts to Prevent Competition

IC 24-1-1-1

Contracts against public policy; null and void contracts

Sec. 1. From and after April 14, 1897, all arrangements, contracts, agreements, trusts or combinations between persons or corporations who control the output of any article of merchandise, made with a view to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this state, and all arrangements, contracts, agreements, trusts, or combinations between persons or corporations who control the output of said article of merchandise, designed, or which tend to advance, reduce, or control the price or the cost to the producer or to the consumer of any such product or article, are hereby declared to be against public policy, unlawful, and void.

(Formerly: Acts 1897, c.104, s.1.) As amended by P.L.152-1986, SEC.1.

IC 24-1-1-2

Violation of chapter; domestic corporations; forfeiture of charter and franchise; foreign corporations; prohibition

Sec. 2. Any corporation, chartered under the laws of this state, which shall violate any of the provisions of this chapter shall thereby forfeit its charter and its franchise, and its corporate existence shall thereupon cease and determine. Every foreign corporation which shall violate any of the provisions of this chapter is hereby denied the right to do and is prohibited from doing business in this state. It is hereby made the duty of the attorney general of the state to enforce this section by due process of law.

(Formerly: Acts 1897, c.104, s.2.) As amended by P.L.152-1986, SEC.2.

IC 24-1-1-3 Version a

Offense

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

Sec. 3. A person who knowingly violates this chapter commits a Class C felony.

(Formerly: Acts 1897, c.104, s.3.) As amended by Acts 1978, P.L.2, SEC.2401.

IC 24-1-1-3 Version b
Offense

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

Sec. 3. A person who knowingly violates this chapter commits a Level 5 felony.

(Formerly: Acts 1897, c.104, s.3.) As amended by Acts 1978, P.L.2, SEC.2401; P.L.158-2013, SEC.269.

IC 24-1-1-4
Persons affected by chapter; exception

Sec. 4. The persons designed by this chapter to be affected by this chapter are those who own, control, or manufacture the output of any particular article of merchandise mentioned in this chapter; provided, however, that the provisions of this chapter shall not apply to agricultural products or livestock while in the possession of the producer or raiser.

(Formerly: Acts 1897, c.104, s.4.) As amended by P.L.152-1986, SEC.3.

IC 24-1-1-5
Civil suit for damages

Sec. 5. Any person or persons or corporations that may be injured or damaged by any such arrangement, contract, agreement, trust, or combination described in section 1 of this chapter may sue for and recover in any court of competent jurisdiction in this state, of any person, persons, or corporation operating such trust or combination, the full consideration or sum paid by him or them for any goods, wares, merchandise, or articles, the sale of which is controlled by such combination or trust.

(Formerly: Acts 1897, c.104, s.5.) As amended by P.L.152-1986, SEC.4.

IC 24-1-1-5.1
Attorney general may bring action on behalf of the state or a political subdivision

Sec. 5.1. The attorney general may bring an action on behalf of the state or a political subdivision (as defined in IC 34-6-2-110) for injuries or damages sustained directly or indirectly as a result of a violation of this chapter.

As added by P.L.135-2008, SEC.1.

IC 24-1-1-5.2
Attorney general may bring action on behalf of the state or a political subdivision

Sec. 5.2. (a) The attorney general may bring an action in a county on behalf of the state or a political subdivision (as defined in IC 34-6-2-110) for injuries or damages sustained directly or indirectly as a result of a violation of this chapter.

(b) An action brought under this section may be brought, without

respect to the amount in controversy, in a circuit or superior court in a county in which the defendant resides or is engaged in business, or in which service may be obtained.

(c) The plaintiff in an action brought under this section is entitled to recover a penalty of threefold the damages awarded in the action, plus reasonable costs and attorney's fees.

As added by P.L.135-2008, SEC.2.

IC 24-1-1-6

Special grand jury instructions

Sec. 6. It shall be the duty of the judges of the circuit courts of this state specially to instruct the grand juries as to the provisions of this chapter.

(Formerly: Acts 1897, c.104, s.6.) As amended by P.L.152-1986, SEC.5.

IC 24-1-2

Chapter 2. Combinations Restraining Trade

IC 24-1-2-1

Illegal combinations; exceptions; offense; defense

Sec. 1. Every scheme, contract, or combination in restraint of trade or commerce, or to create or carry out restrictions in trade or commerce, or to deny or refuse to any person participation, on equal terms with others, in any telegraphic service transmitting matter prepared or intended for public use, or to limit or reduce the production, or increase or reduce the price of merchandise or any commodity, or to prevent competition in manufacturing, within or without this state, is illegal, but this chapter may not be construed to apply to or repeal, modify or limit, or make unlawful any of the powers, rights or privileges now existing or conferred by law upon any person. A person who makes such a contract, engages in such a combination, or enters into such a scheme, or does within this state any act in furtherance of such a contract, combination, or scheme entered into without this state, commits a Class A misdemeanor. However, it is a defense to any action growing out of any violation of any law relating to the subject-matter of this chapter for the defendant to prove that the violation is not in restraint of trade or commerce, or does not restrict trade or commerce, limit or reduce the production, or increase or reduce the price of merchandise or any commodity, or prevent competition in manufacturing.

(Formerly: Acts 1907, c.243, s.1.) As amended by Acts 1978, P.L.2, SEC.2402.

IC 24-1-2-2

Monopoly; offense

Sec. 2. A person who monopolizes any part of the trade or commerce within this state commits a Class A misdemeanor.

(Formerly: Acts 1907, c.243, s.2.) As amended by Acts 1978, P.L.2, SEC.2403.

IC 24-1-2-3

Restraint of bidding for letting contracts; offense

Sec. 3. A person who engages in any scheme, contract, or combination to restrain or restrict bidding for the letting of any contract for private or public work, or restricts free competition for the letting of any contract for private or public work, commits a Class A misdemeanor.

(Formerly: Acts 1907, c.243, s.3.) As amended by Acts 1978, P.L.2, SEC.2404.

IC 24-1-2-4

Collusion among contract bidders; civil action by principal; action by attorney general

Sec. 4. If there shall be collusion or fraud of any kind or character among the bidders at the letting of any contract or work as provided

in section 3 of this chapter, then the principal who lets the contract or work, or for whom the contract was let, shall not be liable for such letting or on account of said contract or work, or any part thereof, to the successful bidder to whom the contract or work was let, his successors or assigns, if such successful bidder be a party, directly or indirectly, to such collusion or fraud on such contract or letting, or for any work, materials furnished, or thing done in discharge thereof or with reference thereto, and if before notice of such collusion or fraud payment or partial payment thereon or therefor shall have been made, such principal may at any time within five (5) years from the date of the last payment made thereon or therefor in an appropriate action in any court of competent jurisdiction in this state recover to the full amount of such payment or payments with interest to date of judgment thereon, and attorney's fees, against such successful bidder, and such recovery shall not be a bar to any action, either civil or criminal, brought against such bidder on account of any violation of this chapter on behalf of the state by the attorney general, a prosecuting attorney, or otherwise.
(Formerly: Acts 1907, c.243, s.4.) As amended by P.L.152-1986, SEC.6.

IC 24-1-2-5
Duty of attorney general and prosecuting attorney; civil and criminal proceedings

Sec. 5. It shall be the duty of the attorney general and of the prosecuting attorney of each judicial circuit to institute appropriate proceedings to prevent and restrain violations of the provisions of this chapter or any other statute or the common law relating to the subject matter of this chapter and to prosecute any person or persons guilty of having violated any of the penal provisions thereof. In all criminal proceedings the prosecution may be by way of affidavit or indictment the same as in other criminal matters, and the attorney general shall have concurrent jurisdiction with the prosecuting attorneys in instituting and prosecuting any such actions. All civil proceedings to prevent and restrain violations shall be in the name of the state of Indiana upon relation of the proper party. The attorney general may file such proceedings upon his own relation or that of any private person in any circuit or superior court of the state, without applying to such court for leave, when he shall deem it his duty so to do. Such proceedings shall be by information filed by any prosecuting attorney in a circuit or superior court of the proper county upon his own relation whenever he shall deem it his duty so to do, or shall be directed by the court or governor or attorney general, and an information may be filed by any taxpayer on his own relation. If judgment or decree be rendered against any domestic corporation or against any person claiming to be a corporation, the court may cause the costs to be collected by execution against the person claiming to be a corporation or by attachment against any or all of the directors or officers of the corporation, and may restrain the corporation or any director, agent, employee, or stockholder and

appoint a receiver for its property and effects, and take an accounting and make distribution of its assets among its creditors, and exercise any other power or authority necessary and proper for carrying out the provisions of this chapter. If judgment or decree be rendered against any corporation incorporated under the laws of the United States, or of any district or territory thereof, or of any state other than this state, or of any foreign country, the court may cause the costs to be collected as in this section provided and may render judgment and decree of ouster perpetually excluding such corporation from the privilege of transacting business in the state of Indiana and forfeiting to the school fund any or all property of such corporation within the state, and shall exercise such power and authority with regard to the property of such corporation as may be exercised with regard to that of domestic corporations.
(Formerly: Acts 1907, c.243, s.5; Acts 1923, c.82, s.1.) As amended by P.L.152-1986, SEC.7.

IC 24-1-2-5.1
Attorney general may bring action on behalf of the state or a political subdivision

Sec. 5.1. The attorney general may bring an action on behalf of the state or a political subdivision (as defined in IC 34-6-2-110) for injuries or damages sustained directly or indirectly as a result of a violation of this chapter.
As added by P.L.135-2008, SEC.3.

IC 24-1-2-6
Discovery proceedings; examination of defendant; sanctions for noncompliance

Sec. 6. In all proceedings instituted under and pursuant to section 5 of this chapter, the plaintiff may propound interrogatories to the defendant or defendants to be answered by such defendant or defendants under oath, as is provided by law in civil actions, and if any defendant to whom interrogatories be propounded as aforesaid be a corporation, then such interrogatories shall be answered by the highest officer of such corporation, or by any other officer, agent, or employee of such corporation designated by the plaintiff. The plaintiff in any such action shall be entitled upon motion to an order for an examination under oath before trial of any defendant or all the defendants in such action, and if any defendant in such action be a corporation, then of any officer, agent, or employee of any such defendant corporation, concerning any or all of the facts alleged in the information or other pleadings in such cause. The said defendant shall be given five (5) days' notice by the plaintiff of the time and place of the taking of said examination, but such officer, agent, or employee shall not be compelled to attend such examination except in the county where he resides or where the principal office or place of business of such corporation be situate in this state. If such defendant corporation be incorporated under the laws of the United States, or of any district or territory thereof, or of any state other than

the state of Indiana, or of any foreign country, and the officer, agent, or employee to be examined be without the jurisdiction of this state, then such defendant shall produce the officer, agent, or employee to be examined as aforesaid at some place in the city or town where the principal office or place of business of such defendant be situate, upon five (5) days' notice being served upon the attorneys of such defendant corporation of the time and place fixed for the examination of such officer, agent or employee. In any examination of any defendant or of any officer, agent, or employee of any defendant corporation, such defendant officer, agent or employee may be compelled upon notice to produce for inspection by the plaintiff and to testify concerning the same, or for use in evidence upon the trial, or both, all books, papers, documents, or writings pertaining or in any wise relating to the facts, or any of them, stated in the information or other pleadings filed in the cause. In such notice to produce for inspection and testimony or for trial, or both, it shall only be necessary to notify the defendant or the attorney or attorneys of the defendant to produce, at the time and place fixed in the notice, all books, papers, documents, or writings pertaining or in any wise relating to the facts stated in the information or other pleadings filed, and it shall not be necessary to state in such notice the particular books, papers, documents, or writings to be produced at such time and place. Such examinations shall be taken before an officer authorized to take depositions and may be continued from day to day. Upon the failure or refusal of any defendant to comply with any order made as aforesaid to answer interrogatories, or for the examination of the defendant or the officer, agent, or employee of any defendant corporation, or upon the failure or refusal of any defendant corporation to produce any officer, agent, or employee for examination when notified as aforesaid, or upon the failure or refusal of any defendant to produce books, papers, documents, and writings when notified as aforesaid, then all pleadings of such defendant so failing to comply with such order or notice shall be stricken from the files upon motion supported by affidavit, and the allegations of the information as to such defendant in default shall be taken as confessed and judgment and decree shall be entered accordingly.
(Formerly: Acts 1907, c.243, s.6.) As amended by P.L.152-1986, SEC.8.

IC 24-1-2-7
Treble damage action; attorney general's representation of state or political subdivision

Sec. 7. (a) Any person whose business or property is injured by a violation of this chapter may bring an action in the circuit or superior court of any county in which the defendant resides or is found without respect to the amount in controversy, and is entitled to recover a penalty of threefold the damages awarded in the action, together with the costs of suit, including reasonable attorney's fees.

(b) The attorney general may bring an action under this section on behalf of the state or a political subdivision if the state or political

subdivision has been directly or indirectly injured by a violation of this section.
(Formerly: Acts 1907, c.243, s.7.) As amended by P.L.152-1986, SEC.9; P.L.135-2008, SEC.4.

IC 24-1-2-8
General importance of case; certificate

Sec. 8. In any proceeding under this chapter the attorney general or prosecuting attorney may file with the clerk of the court a certificate that in his opinion the case is of general importance, a copy of which shall be immediately furnished by said clerk to the judge or each of the judges of the court wherein the proceedings may be pending, and the court shall thereupon make the proper orders in the premises.
(Formerly: Acts 1907, c.243, s.8.) As amended by P.L.152-1986, SEC.10.

IC 24-1-2-9
Costs of proceedings

Sec. 9. Whenever an information is filed by the attorney general or by any prosecuting attorney, such officer shall not be liable for costs; but when it is filed upon the relation of a private person, he shall be liable for costs unless the same are adjudged against the defendant. In all proceedings instituted under the provisions of this chapter by the attorney general or by the prosecuting attorney on the order and direction of the court, the attorney general, or the governor, all necessary costs and expenses of the prosecution shall be paid out of moneys in the state treasury not otherwise appropriated if such costs cannot be collected from the defendant or defendants, in case judgment be rendered against such defendant or defendants, and it shall be the duty of the auditor of state, upon receipt from the attorney general of a statement of the costs and expenses of any such prosecution, to draw his warrant upon the treasurer of state for the amount so certified; provided, however, that the attorney general shall not involve the state in any extraordinary expense for experts or other assistants without first obtaining the consent of the governor, and twenty thousand dollars ($20,000) is appropriated biennially from any funds of the state not otherwise appropriated to defray the expenses of such prosecutions by the attorney general. Such prosecuting attorney shall also be allowed by the court trying such cause reasonable compensation for his services, and such allowances shall be paid as part of the costs and expenses of such prosecution.
(Formerly: Acts 1907, c.243, s.9.) As amended by P.L.152-1986, SEC.11.

IC 24-1-2-10
Person; definition

Sec. 10. The words "person" or "persons" whenever used in this chapter shall be deemed to include corporations, associations, limited liability companies, joint stock companies, partnerships, limited or

otherwise, existing under or authorized by the laws of the state of Indiana, or of the United States, or of any state, territory, or district of the United States, or of any foreign country.
(Formerly: Acts 1907, c.243, s.10.) As amended by P.L.152-1986, SEC.12; P.L.8-1993, SEC.335.

IC 24-1-2-11
Examination of witness or party; immunity from criminal prosecution

Sec. 11. Any person or officer, agent, or employee of a corporation may be examined as a witness or a party as in other cases, in any civil action instituted under the provisions of this chapter and required to disclose all the facts relevant to the case in his knowledge as provided in this chapter, but the testimony of such witness or party or any answer to any question propounded to him in such examination shall not be used against such witness or party in any criminal prosecution except in case of perjury committed by him therein; and he shall not be liable to trial by indictment or affidavit or to punishment for any offense inquired about; provided, however, that such exemption shall be personal to such witness and shall not exempt or render immune the corporation of which such witness shall be an officer, agent, or employee, and such corporation shall be as liable for any violation of this chapter as if such officer, agent, or employee had not so testified.
(Formerly: Acts 1907, c.243, s.11; Acts 1923, c.82, s.2.) As amended by P.L.152-1986, SEC.13.

IC 24-1-2-12
Cumulative and supplemental effect of chapter

Sec. 12. The provisions of this chapter shall be held cumulative of or supplemental to each other and of all other laws in any way affecting them, or any matter which in any manner is the subject of this chapter in this state, and cumulative of and supplemental to the common law of this state relative thereto or to any thereof.
(Formerly: Acts 1907, c.243, s.12.) As amended by P.L.152-1986, SEC.14.

IC 24-1-3

Chapter 3. Combinations to Prevent Sale of Supplies

IC 24-1-3-1

Offenses; voiding contracts

Sec. 1. A person who enters into any contract or combination to induce, procure, or prevent any wholesale or retail dealer in or manufacturer of merchandise or of supplies or of material or articles intended for trade or used by any mechanic, artisan, or dealer in the prosecution of his business from selling such supplies to any dealer or to any mechanic or artisan commits a Class A misdemeanor. A dealer in or manufacturer of such supplies, material, or articles who is a party to any such contract or combination or who upon the request of any party to any such contract or combination refuses to sell such supplies, materials, or articles to any other person who may require them in the prosecution of his business, for the reason that the other person is not a member of a combination or association of persons, commits a Class A misdemeanor. All such contracts and combinations are void.

(Formerly: Acts 1899, c.148, s.1.) As amended by Acts 1978, P.L.2, SEC.2405.

IC 24-1-3-2

Repealed

(Repealed by Acts 1978, P.L.2, SEC.2426.)

IC 24-1-3-3

Continuing violations; penalties

Sec. 3. Each and every person, firm, limited liability company, or association of persons who shall in any manner violate the provisions of this chapter shall, for each and every day that such violation shall be committed and continued after due notice given by the party interested to the attorney general or prosecuting attorney, forfeit and pay the sum of fifty dollars ($50), which may be recovered in the name of the state on the relation of the party injured or on the relation of the prosecuting attorney in any county where the offense is committed or where the offender or offenders reside. And it shall be the duty of the prosecuting attorney of any county to prosecute any such action, and he shall be entitled to a fee of twenty-five dollars ($25) to be taxed against the defendant in the event of recovery as a part of the costs of said action. Any such action may be taken in any circuit or superior court of the county in which the defendant resides or in which he is engaged in business.

(Formerly: Acts 1899, c.148, s.3.) As amended by P.L.152-1986, SEC.15; P.L.8-1993, SEC.336.

IC 24-1-3-3.1

Attorney general may bring action on behalf of the state or a political subdivision

Sec. 3.1. The attorney general may bring an action on behalf of

the state or a political subdivision (as defined in IC 34-6-2-110) for injuries or damages sustained directly or indirectly as a result of a:

(1) contract or combination described in section 1 of this chapter; or

(2) violation of this chapter.

As added by P.L.135-2008, SEC.5.

IC 24-1-3-4

Civil action by injured party; attorney general's representation of the state or political subdivision

Sec. 4. (a) Any person who has suffered injuries or damages as a result of a contract or combination described in section 1 of this chapter, or by any other violation of this chapter, may bring an action in a circuit or superior court having jurisdiction in the county where the defendant resides or is engaged in business, or in any county where service may be obtained, without respect to the amount in controversy. The plaintiff in an action brought under this section is entitled to recover threefold damages awarded in the action, plus reasonable costs and attorney's fees.

(b) The attorney general may bring an action under this section on behalf of the state or a political subdivision.

(Formerly: Acts 1899, c.148, s.4.) As amended by P.L.152-1986, SEC.16; P.L.135-2008, SEC.6.

IC 24-1-3-5

Service of process; parties residing outside county in which action arises

Sec. 5. Whenever it shall appear to the court before which any proceedings under this chapter may be pending that the ends of justice require that other parties shall be brought before the court, said court may cause them to be made parties defendant and cause them to be served by the process of court as required by law in such cases provided, whether they reside in the county where said action is pending or not.

(Formerly: Acts 1899, c.148, s.5.) As amended by P.L.152-1986, SEC.17.

IC 24-1-4

Chapter 4. Combinations Compelling Manufacturers to Close Down

IC 24-1-4-1

Refusal to furnish product in ordinary commercial usage; violation of public policy; unlawful and void act

Sec. 1. From and after March 8, 1901, all arrangements, agreements, trusts, or combinations, or any agreement or arrangements that are made whereby a party or corporation refuses to furnish any article or articles required to be used in the manufacture of any article or merchandise when the party or corporation can furnish the same, or by charging more than the regular and ordinary price for the same or doing or refusing to do any act or acts that would cause such party to cease to manufacture such article or hinder such person or corporation from so doing, and all arrangements, contracts, or acts done or performed between any person or corporation made for the purpose of compelling any person or corporation engaged in the business of manufacturing any article of merchandise to cease manufacturing any such article, or compelling the same to close down or go out of business, are hereby declared to be against public policy, unlawful, and void.

(Formerly: Acts 1901, c.107, s.1.) As amended by P.L.152-1986, SEC.18.

IC 24-1-4-2

Violation of chapter; domestic corporations; forfeiture of charter and franchise; foreign corporations; prohibition; duty of attorney general

Sec. 2. (a) Any corporation chartered under the laws of this state which shall violate any of the provisions of this chapter shall thereby forfeit its charter and its franchise, and its corporate existence shall thereupon cease and terminate. Every foreign corporation which shall violate any of the provisions of this chapter is hereby denied the right to do and is prohibited from doing business in this state.

(b) It is hereby made the duty of the attorney general of the state to enforce the provisions of this chapter by due process of law.

(Formerly: Acts 1901, c.107, s.2.) As amended by P.L.152-1986, SEC.19.

IC 24-1-4-3 Version a

Offense

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

Sec. 3. A person who knowingly violates this chapter commits a Class C felony.

(Formerly: Acts 1901, c.107, s.3.) As amended by Acts 1978, P.L.2, SEC.2406.

IC 24-1-4-3 Version b

Offense

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

Sec. 3. A person who knowingly violates this chapter commits a Level 5 felony.

(Formerly: Acts 1901, c.107, s.3.) As amended by Acts 1978, P.L.2, SEC.2406; P.L.158-2013, SEC.270.

IC 24-1-4-4

Violation of chapter; civil action for damages; attorney general

Sec. 4. (a) Any person who has suffered injuries or damages as a result of an arrangement, contract, agreement, trust, or combination described in section 1 of this chapter may bring an action in any court of competent jurisdiction in this state to recover the full consideration or sum paid by the person for any goods, wares or merchandise, or article the sale of which is controlled by the combination or trust. In addition, the person is entitled to recover a penalty of threefold the damages awarded in the action, plus reasonable costs and attorney's fees.

(b) The attorney general may bring an action under this section on behalf of the state or a political subdivision.

(Formerly: Acts 1901, c.107, s.4.) As amended by P.L.152-1986, SEC.20; P.L.135-2008, SEC.7.

IC 24-1-4-5

Attorney general's representation of the state or a political subdivision

Sec. 5. The attorney general may bring an action on behalf of the state or any political subdivision (as defined in IC 34-6-2-110) that has been directly or indirectly injured or damaged by:

(1) an arrangement, agreement, trust, or combination described in section 1 of this chapter; or

(2) any other violation of this chapter.

As added by P.L.135-2008, SEC.8.

IC 24-1-5

Chapter 5. Motion Picture Fair Competition

IC 24-1-5-1

Definitions

Sec. 1. As used in this chapter:

"Person" includes one (1) or more individuals, partnerships, limited liability companies, associations, societies, trusts, organizations, or corporations.

"Theater" means an establishment in which motion pictures are exhibited to the public regularly for a charge.

"Distributor" means a person engaged in the business of distributing or supplying motion pictures to exhibitors by rental, sale or licensing.

"Exhibitor" means a person engaged in the business of operating one (1) or more theaters.

"Exhibit" or "exhibition" means showing a motion picture to the public for a charge.

"Invitation to bid" or "invite bids" means a written or oral solicitation by a distributor to one (1) or more exhibitors to bid for the right to exhibit a motion picture.

"Bid" means a written offer or proposal by an exhibitor to a distributor in response to an invitation to bid for the right to exhibit a motion picture.

"Trade screening" means the showing of a motion picture by a distributor at some location within the state which is open to any exhibitor from whom the distributor intends to invite bids or with whom the distributor intends to negotiate for the right to exhibit the motion picture.

"Blind selling" means the bidding or negotiating for, or the offering or agreeing to terms for, the licensing or exhibition of a motion picture before the motion picture has either been trade screened within the state or before such motion picture has been made available for viewing within the state by all exhibitors from whom the distributor is inviting bids or with whom the distributor is negotiating for the right to exhibit the motion picture.

"Run" means the continuous exhibition of a motion picture in a defined geographic area for a specified period of time. A "first run" is the first exhibition of a picture in the designated area; a "second run" is the second exhibition; and "subsequent runs" are subsequent exhibitions after a second run.

"Exclusive run" means a run limited to a single theater in a defined geographic area.

As added by Acts 1980, P.L.161, SEC.1. Amended by P.L.8-1993, SEC.337.

IC 24-1-5-2

Blind selling prohibited

Sec. 2. Blind selling is unlawful in this state and an agreement which attempts to waive this prohibition is void.

As added by Acts 1980, P.L.161, SEC.1.

IC 24-1-5-3
Notice of trade screening to exhibitors

Sec. 3. A distributor must provide reasonable and uniform notice of a trade screening of a motion picture to those exhibitors within the state from whom he intends to invite bids or with whom he intends to negotiate for the right to exhibit that motion picture.
As added by Acts 1980, P.L.161, SEC.1.

IC 24-1-5-4
Invitation to bids; requisites

Sec. 4. If bids are invited from exhibitors for the licensing of a motion picture, the invitation to bid shall specify:

(1) whether the run for which the bid is invited is a first, second, or subsequent run;
(2) whether the run is an exclusive or nonexclusive run;
(3) the geographic area for the run;
(4) the date and hour the invitation to bid expires; and
(5) the time and date when, and the location of the office serving the territory where, the bids will be opened.

As added by Acts 1980, P.L.161, SEC.1.

IC 24-1-5-5
Submitting and opening bids

Sec. 5. All bids must be submitted in writing and shall be opened at the designated time in the presence of those exhibitors, or their agents, who are present for the bid opening. The opened bids are subject to examination by the exhibitors or their agents.
As added by Acts 1980, P.L.161, SEC.1.

IC 24-1-5-6
Notice to bidders

Sec. 6. Within ten (10) business days of the bid opening, the distributor shall give notice of the name of the winning bidder or the fact that none of the bids were accepted to each exhibitor submitting a bid.
As added by Acts 1980, P.L.161, SEC.1.

IC 24-1-5-7
Violations; civil remedies; attorney's fees

Sec. 7. In a successful civil action against a person for violating this chapter, the court shall award the plaintiff damages and reasonable attorney fees. The provisions of this chapter may be enforced by injunction or other equitable remedy.
As added by Acts 1980, P.L.161, SEC.1.

IC 24-2

ARTICLE 2. TRADEMARKS, TRADE NAMES, AND TRADE SECRETS

IC 24-2-1

Chapter 1. Trademark Act

IC 24-2-1-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The addition of sections 0.5, 4.5, 8.5, 13.5, 14.5, and 15.3 of this chapter by P.L.135-2006 does not affect a legal proceeding or appeal initiated under this chapter before July 1, 2006.

(2) The amendments made to sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of this chapter by P.L.135-2006 do not affect a legal proceeding or appeal initiated under this chapter before July 1, 2006.

As added by P.L.220-2011, SEC.385.

IC 24-2-1-0.5

Intent; judicial or administrative interpretation

Sec. 0.5. This chapter is intended to provide a system of state trademark registration and protection that is consistent with the federal system of trademark registration and protection under the Trademark Act of 1946. A judicial or an administrative interpretation of a provision of the federal Trademark Act may be considered as persuasive authority in construing a provision of this chapter.

As added by P.L.135-2006, SEC.1.

IC 24-2-1-1

Repealed

(Repealed by P.L.135-2006, SEC.21.)

IC 24-2-1-2

Definitions

Sec. 2. The following definitions apply throughout this chapter:

(1) "Abandoned" means either of the following:

(A) The person who owns the mark has discontinued use of the mark and does not intend to resume use of the mark. A person's intent not to resume use of the mark may be inferred from the circumstances. Three (3) consecutive years without use of a mark constitutes prima facie evidence that the use of the mark has been abandoned.

(B) The conduct of the owner, including an act or omission, has caused the mark to lose its significance as a mark.

(2) "Applicant" means a person who files an application for registration of a mark under this chapter and the legal representatives, successors, or assigns of the person.

(3) "Dilution" means the lessening of the capacity of a famous

mark to identify and distinguish goods or services, regardless of the presence or absence of:

(A) competition between the owner of the famous mark and other parties; or

(B) the likelihood of confusion, mistake, or deception.

(4) "Mark" means a trademark or service mark that is entitled to registration under this chapter, whether the mark is registered or not.

(5) "Person" means:

(A) a human being;

(B) a corporation;

(C) a partnership;

(D) a limited liability company; or

(E) any other entity or organization:

(i) capable of suing and being sued in a court of law;

(ii) entitled to a benefit or privilege under this chapter; or

(iii) rendered liable under this chapter.

(6) "Registrant" means a person to whom the registration of a mark under this chapter is issued and the legal representatives, successors, or assigns of the person.

(7) "Secretary" means the secretary of state or the designee of the secretary charged with the administration of this chapter.

(8) "Service mark" means a word, name, symbol, device, or combination of a word, name, symbol, or device that is used by a person to:

(A) identify a service, including a unique service, of a person and distinguish the person's service from the service of another person; and

(B) indicate the source of a service, even if the source is unknown.

Titles and character names and other distinctive features of radio or television programs used by a person may be registered as a service mark even though the radio or television programs may advertise the goods of the sponsor.

(9) "Trademark" means any word, name, symbol, or device or any combination of a word, name, symbol, or device that is used by a person to:

(A) identify and distinguish goods, including a unique product, of a person and distinguish the person's goods from goods manufactured or sold by another person; and

(B) indicate the source of the goods, even if the source is unknown.

(10) "Trade name" means a name used by a person to identify a business or vocation of the person.

(11) "Use" means the bona fide use of a mark in the ordinary course of trade and not a use made merely to reserve a right in a mark. A mark is considered to be in use:

(A) on or in connection with a good if the:

(i) mark is placed in any manner on the good, a container for the good, a display associated with the good, or a tag

or label affixed to the good; or

(ii) nature of the good makes placement of the mark as described in item (i) impracticable and the mark is placed on a document associated with the good or with the sale of the good; and

(B) if the good described in clause (A) is sold or transported in Indiana.

A mark is considered to be in use on or in connection with a service if the mark is used or displayed in the sale or advertising of the service and the service is rendered in Indiana.

(Formerly: Acts 1955, c.174, s.2; Acts 1959, c.256, s.1.) As amended by P.L.152-1986, SEC.22; P.L.8-1993, SEC.338; P.L.135-2006, SEC.2.

IC 24-2-1-3
Registerability

Sec. 3. A mark by which the goods or services of an applicant may be distinguished from other goods or services may not be registered if the mark:

(1) consists of or comprises immoral, deceptive, or scandalous matter;

(2) consists of or comprises matter that may:

(A) disparage or falsely suggest a connection with:

(i) persons living or dead;

(ii) institutions;

(iii) beliefs; or

(iv) national symbols; or

(B) bring into contempt or disrepute:

(i) persons living or dead;

(ii) institutions;

(iii) beliefs; or

(iv) national symbols;

(3) consists of or comprises the flag, coat of arms, or other insignia of:

(A) the United States;

(B) a state or municipality;

(C) the United Nations; or

(D) a foreign nation;

(4) consists of or comprises the name, signature, or portrait identifying a particular living individual, unless the individual provides written consent; or

(5) is a mark that:

(A) if used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of the goods or services;

(B) if used on or in connection with the goods or services of the applicant, is primarily geographically descriptive or deceptively geographically misdescriptive of the goods or services; or

(C) is primarily merely a surname.

This subdivision does not prevent the registration of a mark that is used in Indiana by the applicant and has become distinctive of the applicant's goods or services. The secretary may accept proof of continuous use of a mark by the applicant in Indiana for the five (5) years immediately preceding the date on which the claim of distinctiveness is made as evidence that the mark has become distinctive, as used on or in connection with the applicant's goods or services; or

(6) is a mark that so resembles a mark registered in Indiana or a mark or trade name previously used by another person in Indiana and not abandoned, as to be likely, if used on or in connection with the goods or services of the applicant, to cause deception, confusion, or mistake.

(Formerly: Acts 1955, c.174, s.3; Acts 1959, c.256, s.2.) As amended by P.L.152-1986, SEC.23; P.L.135-2006, SEC.3.

IC 24-2-1-4

Application for registration

Sec. 4. (a) Subject to the limitations of this chapter, a person who uses a mark in Indiana may file in the office of the secretary, in a manner that complies with the requirements of the secretary, an application for registration of the mark. The application must include the following information:

(1) The name and business address of the person applying for registration of the mark, and:

(A) if the applicant is a corporation, the state of incorporation;

(B) if the applicant is a partnership, the:

(i) state in which the partnership is organized; and

(ii) names of the general partners, as specified by the secretary; or

(C) if the applicant is another form of legal entity, the jurisdiction in which the legal entity was organized.

(2) The:

(A) goods or services on or in connection with which the mark is used;

(B) mode or manner in which the mark is used on or in connection with the goods or services; and

(C) class in which the goods or services fall.

(3) The date on which the mark was first used anywhere and the date on which the mark was first used in Indiana by the applicant or the applicant's predecessor in business.

(4) A statement that:

(A) the applicant is the owner of the mark;

(B) the mark is in use; and

(C) to the knowledge of the person verifying the application, another person:

(i) has not registered the mark, either federally or in Indiana; or

(ii) does not have the right to use the mark either in the

identical form or in such near resemblance to the form as to be likely, if applied to the goods or services of the other person, to cause deception, confusion, or mistake.

(b) The secretary may also require on an application:

(1) a statement indicating whether an application to register a mark, parts of a mark, or a composite of a mark, has been filed by the applicant or a predecessor in the interest of the applicant in the United States Patent and Trademark Office. If an application has previously been filed in the United States Patent and Trademark Office, the applicant must provide full particulars with respect to the previous application, including the:

(A) filing date and serial number of each application;

(B) status of each application; and

(C) reason or reasons for the refusal of the application or the nonregistration of the mark if an application to register the mark was finally refused registration or if an application to register the mark has not resulted in a registration; and

(2) a drawing of the mark that complies with the requirements of the secretary.

(c) The application must be signed and verified under oath, affirmation, or declaration subject to perjury laws by:

(1) the applicant;

(2) a member of the applicant firm or applicant limited liability company; or

(3) an officer of the applicant corporation, association, or other form of legal entity.

The application must be accompanied by three (3) specimens showing actual use of the mark. The application must be accompanied by an application fee payable to the secretary.

(Formerly: Acts 1955, c.174, s.4; Acts 1959, c.256, s.3.) As amended by P.L.152-1986, SEC.24; P.L.8-1993, SEC.339; P.L.135-2006, SEC.4.

IC 24-2-1-4.5

Examination; additional information; new application; disclaiming component of mark; amending; civil action; priority

Sec. 4.5. (a) If a person files an application for registration of a mark and pays the application fee, the secretary may examine the application for conformity with this chapter.

(b) An applicant must provide additional information requested by the secretary, including a description of a design mark.

(c) An applicant may make or authorize the secretary to make reasonable amendments to an application that are requested by the secretary or are considered by the applicant to be advisable to respond to a rejection or an objection.

(d) The secretary may require an applicant to submit a new application if the secretary determines amendments to the application are necessary and the applicant does not make or authorize the secretary to make amendments under subsection (c).

(e) The secretary may require an applicant to disclaim a component of a mark that is not eligible for registration, and an applicant may voluntarily disclaim a component of a mark for which registration is sought. A disclaimer does not prejudice or affect the applicant's rights:

(1) existing at the time of application or arising after the application in the disclaimed matter; or

(2) on another application if the disclaimed matter is or becomes distinctive of the applicant's goods or services.

(f) If an applicant is not entitled to registration of a mark under this chapter, the secretary shall advise the applicant of the reason the applicant is not entitled to registration of the mark. The applicant has a reasonable time specified by the secretary:

(1) to reply to the reason the applicant is not entitled to registration; or

(2) to amend the application.

If the applicant replies to the secretary or amends the application within the reasonable time, the secretary shall reexamine the application.

(g) The procedure under subsection (f) may be repeated until:

(1) the secretary finally refuses registration of the mark; or

(2) the applicant fails to reply or amend the application within the time specified by the secretary, at which time the secretary shall consider the application to have been withdrawn.

(h) If the secretary issues a final order refusing the registration of a mark, an applicant may bring a civil action in a court with jurisdiction to compel the registration of the mark. A court may order the secretary to register a mark, without costs to the secretary, on proof that all statements in the application are true and the mark is entitled to registration.

(i) If two (2) or more applications are concurrently processed by the secretary for registration of the same or confusingly similar marks for the same or related goods or services, the secretary shall grant priority to the applications in order of filing. If a previously filed application is granted a registration, the other application or applications must be rejected. A rejected applicant may bring an action for cancellation of the previously registered mark based upon previous or superior rights to the mark under section 10 of this chapter.

As added by P.L.135-2006, SEC.5.

IC 24-2-1-5

Certificate of registration

Sec. 5. (a) If an applicant complies with the requirements of this chapter, the secretary shall issue and deliver a certificate of registration to the applicant. The certificate of registration must be issued under the signature of the secretary and the seal of the state of Indiana. The certificate of registration must include all of the following:

(1) The name and business address of the person claiming

ownership of the mark. If the person claiming ownership of the mark is:

(A) a corporation, the certificate of registration must show the state of incorporation;

(B) a partnership, the certificate of registration must show the state in which the partnership is organized and the names of the general partners, as specified by the secretary; or

(C) another form of legal entity, the certificate of registration must show the jurisdiction in which the legal entity is organized.

(2) The date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in Indiana.

(3) The class of goods or services and a description of the goods or services on or in connection with which the mark is used.

(4) A reproduction of the mark.

(5) The registration date.

(6) The term of the registration.

(b) A certificate of registration issued by the secretary under subsection (a) or a copy of a certificate of registration certified by the secretary is admissible in evidence as competent and sufficient proof of the registration of the mark in an action or judicial proceeding in a court of Indiana.

(Formerly: Acts 1955, c.174, s.5; Acts 1959, c.256, s.4.) As amended by P.L.152-1986, SEC.25; P.L.135-2006, SEC.6.

IC 24-2-1-6

Duration and renewal

Sec. 6. (a) Registration of a mark under this chapter is effective for a term of five (5) years from the date of registration.

(b) If a person who registers a mark under subsection (a) files an application not more than six (6) months before the expiration of the five (5) year term, in a manner complying with the requirements of the secretary, the registration may be renewed for an additional five (5) year term commencing at the end of the expiring five (5) year term.

(c) A renewal fee payable to the secretary must accompany the application for renewal of the registration.

(d) A registration may be renewed for successive periods of five (5) years in the manner described in subsection (b).

(e) The secretary shall notify the registrants of marks of the necessity of renewal within the year next preceding the expiration of the five (5) years from the date of the registration by writing to the last known address of the registrants.

(f) An application for renewal under this chapter for a mark registered under this chapter or a mark registered under a prior law, must include:

(1) a verified statement that the mark has been and remains in use; and

(2) a specimen showing actual use of the mark on or in connection with the good or service.

(Formerly: Acts 1955, c.174, s.6.) As amended by P.L.135-2006, SEC.7.

IC 24-2-1-7
Expiration of registration

Sec. 7. A registration in force on July 1, 2006, continues in full force and effect for the unexpired term of the registration and may be renewed by:

(1) filing an application for renewal with the secretary; and
(2) paying the renewal fee;

in the manner described in section 6 of this chapter not more than six (6) months before the expiration of the registration.
(Formerly: Acts 1955, c.174, s.7.) As amended by P.L.152-1986, SEC.26; P.L.135-2006, SEC.8.

IC 24-2-1-8
Assignment

Sec. 8. (a) A mark and the registration of a mark under this chapter are assignable with the:

(1) good will of the business in which the mark is used; or
(2) part of the good will of the business:
(A) connected with the use of the mark; and
(B) symbolized by the mark.

(b) An assignment:

(1) must be made by an instrument in writing duly executed; and
(2) may be recorded with the secretary upon the payment of a recording fee to the secretary.

(c) The secretary, after recording an assignment, shall issue in the name of the assignee a new certificate of registration for the remainder of the term of the:

(1) registration; or
(2) most recent renewal of the registration.

(d) An assignment of a registration under this chapter is void against a subsequent purchaser for valuable consideration without notice unless the assignment is recorded with the secretary not more than three (3) months:

(1) after the date of the assignment; or
(2) before the subsequent purchase.

(Formerly: Acts 1955, c.174, s.8.) As amended by P.L.152-1986, SEC.27; P.L.135-2006, SEC.9.

IC 24-2-1-8.5
Certificate of change of name; new certificate of registration

Sec. 8.5. (a) A registrant or an applicant who changes the name of the person to whom the mark is issued or for whom an application is filed may record a certificate of change of name of the registrant or applicant with the secretary upon the payment of a recording fee.

(b) The secretary may issue a new certificate of registration or an assigned application in the name of the assignee. The secretary may

issue a new certificate of registration in the name of the assignee for the remainder of the term of the:

(1) certificate of registration; or

(2) most recent renewal of the certificate of registration.

As added by P.L.135-2006, SEC.10.

IC 24-2-1-9

Records

Sec. 9. The secretary shall keep for public examination a record of all marks registered or renewed under this chapter as well as a record of all instruments recorded under sections 8 and 8.5 of this chapter.

(Formerly: Acts 1955, c.174, s.9.) As amended by P.L.152-1986, SEC.28; P.L.135-2006, SEC.11.

IC 24-2-1-10

Cancellation

Sec. 10. The secretary shall cancel from the register in whole or in part:

(1) a registration for which the secretary receives a voluntary request for cancellation from the registrant or the assignee of record;

(2) all registrations granted under this chapter and not renewed under section 6 of this chapter;

(3) a registration for which a court of competent jurisdiction finds that:

(A) the registered mark has been abandoned;

(B) the registrant is not the owner of the mark;

(C) the registration was granted improperly;

(D) the registration was obtained fraudulently;

(E) the registered mark is or has become the generic name for the good or the service, or a part of the good or the service, for which the mark was registered; or

(F) the registered mark is so similar to a mark registered by another person on the principal register in the United States Patent and Trademark Office as to be likely to cause deception, confusion, or mistake between the marks, and the mark registered in the United States Patent and Trademark Office was filed before the filing of the application for registration by the registrant under this chapter. However, a mark may not be canceled under this clause if the registrant proves that the registrant is the owner of a concurrent registration of a mark in the United States Patent and Trademark Office covering an area including Indiana; or

(4) a registration if a court of competent jurisdiction orders cancellation of the registration on any ground.

(Formerly: Acts 1955, c.174, s.10.) As amended by P.L.152-1986, SEC.29; P.L.135-2006, SEC.12.

IC 24-2-1-11

Classification; single application

Sec. 11. (a) The secretary shall adopt rules under IC 4-22-2 to establish:

(1) a classification of goods and services for convenience of administration of this chapter but not to limit or extend an applicant's or registrant's rights; and

(2) a single application for registration of a mark that:

(A) may include each good upon which a mark is used;

(B) may include each service with which a mark is used; and

(C) must indicate the appropriate class or classes of the goods or services.

To the extent practical, the classification of goods or services should conform to the classification of goods or services adopted by the United States Patent and Trademark Office.

(b) If a single application includes goods or services that fall within multiple classes, the secretary may require payment of a fee for each class.

(Formerly: Acts 1955, c.174, s.11; Acts 1959, c.256, s.5.) As amended by P.L.152-1986, SEC.30; P.L.135-2006, SEC.13.

IC 24-2-1-12

Damages for fraudulent registration

Sec. 12. (a) A person who shall for himself or herself, or on behalf of any other person, procure the filing or registration of any mark in the office of the secretary under this chapter by knowingly making a false or fraudulent representation or declaration orally, in writing, or by other fraudulent means, is liable for all damages sustained in consequence of the filing or registration.

(b) The damages may be recovered by or on behalf of the injured party in a court of competent jurisdiction.

(Formerly: Acts 1955, c.174, s.12.) As amended by P.L.135-2006, SEC.14.

IC 24-2-1-13

Infringement

Sec. 13. Subject to the provisions of section 15 of this chapter, a person who:

(1) uses, without the consent of the registrant, a reproduction, counterfeit, copy, or colorable imitation of a mark registered under this chapter:

(A) in connection with the sale, offering for sale, distribution, or advertising of goods or services; or

(B) on or in connection with which the use is likely to cause confusion or mistake, or result in deception regarding the source of origin of the goods or services; or

(2) reproduces, counterfeits, or copies a mark or colorably imitates a mark and applies the reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used:

(A) in connection with the sale or other distribution of the

goods or services in Indiana; or

(B) on the goods or services;

is liable in a civil action brought by the registrant for the remedies provided in this chapter, except that under subdivision (2) the registrant is not entitled to recover profits or damages unless the acts have been committed with the intent to cause deception, confusion, or mistake.

(Formerly: Acts 1955, c.174, s.13; Acts 1959, c.256, s.6.) As amended by P.L.152-1986, SEC.31; P.L.135-2006, SEC.15.

IC 24-2-1-13.5

Fanciful marks; famous marks; injunctive relief; remedies; attorney's fees

Sec. 13.5. (a) This section applies only to fanciful marks, except in cases where the other person's use tarnishes the reputation of the famous mark.

(b) An owner of a mark that is famous in Indiana is entitled, subject to the principles of equity and terms a court considers reasonable, to an injunction against another person's commercial use of the mark or trade name if the other person's use begins after the mark has become famous and the other person's use causes dilution of the distinctive quality of the mark, and to other relief provided in this section. In determining whether a mark is distinctive and famous, a court may consider factors such as:

(1) the degree of inherent or acquired distinctiveness of the mark in Indiana;

(2) the duration and extent of use of the mark in connection with the goods or services with which the mark is used;

(3) the duration and extent of advertising and publicity of the mark in Indiana;

(4) the geographical extent of the trading area in which the mark is used;

(5) the channels of trade for the goods or services with which the mark is used;

(6) the degree of recognition of the mark in the trading areas and channels of trade in Indiana as it relates to the use of the mark by the:

(A) mark's owner; and

(B) person against whom the injunction is sought;

(7) the nature and extent of use of the same or a similar mark by a third party; and

(8) whether the mark is the subject of a:

(A) registration in Indiana;

(B) federal registration under the Act of March 3, 1881;

(C) federal registration under the Act of February 20, 1905; or

(D) registration on the principal register.

(c) In an action brought under this section, the owner of a famous mark is entitled only to injunctive relief unless the person against whom the injunctive relief is sought willfully intended to trade on the

owner's reputation or to cause dilution of the famous mark. If willful intent is proven, the owner of the famous mark is entitled to the other remedies set forth in this section, subject to the discretion of the court and the principles of equity.

(d) A court may require a defendant to pay to the owner of a mark all profits derived from and damages suffered by reason of the use of the mark in violation of this section and, in exceptional cases, may award reasonable attorney's fees to the prevailing party.

(e) The following are not actionable under this section:

(1) Fair use of a famous mark by another person in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the famous mark.

(2) Noncommercial use of the mark.

(3) All forms of news reporting and news commentary.

As added by P.L.135-2006, SEC.16.

IC 24-2-1-14

Remedies

Sec. 14. (a) An owner of a mark registered under this chapter may bring an action to enjoin the use of any mark in violation of section 13 of this chapter and the manufacture, display, or sale of any goods or services identified by the mark and a court of competent jurisdiction may grant an injunction to restrain the use of the mark and the manufacture, display, or sale of the goods or services as the court considers just and reasonable.

(b) A court may:

(1) require a defendant to pay to the owner of a mark all:

(A) profits derived from; and

(B) damages suffered by reason of; the wrongful manufacture, display, or sale of the goods or services; and

(2) order that the goods or item bearing the mark in the possession or under the control of a defendant in the case be delivered to an officer of the court or to the complainant to be destroyed.

(c) In addition to amounts a court may award under subsection (b), a court may enter judgment for:

(1) an amount not to exceed the greater of:

(A) three (3) times the profits derived from; or

(B) three (3) times the damages suffered by reason of;

the intentional use of a counterfeit mark, knowing it to be a counterfeit in connection with the goods or services for which the mark is registered; and

(2) in exceptional cases, reasonable attorney's fees to the prevailing party.

(d) The invocation of a right or remedy in this chapter does not affect a registrant's right to prosecution under a penal law.

(Formerly: Acts 1955, c.174, s.14.) As amended by P.L.152-1986, SEC.32; P.L.135-2006, SEC.17.

IC 24-2-1-14.5

Cancellation; action to compel registration; jurisdiction

Sec. 14.5. (a) An action for cancellation of a mark registered under this chapter or an action to compel registration of a mark under this chapter must be brought in a court with jurisdiction in Indiana.

(b) In an action for cancellation of a mark, the secretary:

(1) may not be made a party to an action;

(2) must be notified of the filing of a complaint in an action by the clerk of the court in which the complaint is filed; and

(3) is entitled to intervene in an action for cancellation of a mark.

(c) In an action brought against a nonresident registrant, service may be effected upon the secretary as agent for service of the registrant in accordance with the procedures established for service upon nonresident corporations and business entities.

As added by P.L.135-2006, SEC.18.

IC 24-2-1-15

Common law rights

Sec. 15. This chapter does not adversely affect the rights or the enforcement of rights in a mark acquired in good faith at any time at common law.

(Formerly: Acts 1955, c.174, s.15.) As amended by P.L.135-2006, SEC.19.

IC 24-2-1-15.3

Fees

Sec. 15.3. (a) The secretary shall adopt rules under IC 4-22-2 to establish:

(1) an application fee;

(2) a renewal fee;

(3) a recording fee; and

(4) fees for related services.

(b) A fee is nonrefundable unless otherwise specified in the rules adopted by the secretary under subsection (a).

As added by P.L.135-2006, SEC.20.

IC 24-2-1-16

Repealed

(Repealed by P.L.135-2006, SEC.21.)

IC 24-2-2

Chapter 2. Misleading Trade Names

IC 24-2-2-1

Use of terms leading buyer to believe that seller is governmental agency

Sec. 1. It shall be unlawful for any person, firm, limited liability company, corporation or association, not an agency or instrumentality of the United States government, selling or offering for sale goods, wares or merchandise, to use or cause or permit to be used in the corporate or trade-name, or description of the seller or of the place where the goods, wares or merchandise are offered for sale, any of the following words or expressions, viz., "Army," "Navy," "Marine Corps," "Marines," "Coast Guard," "Government," "Post Exchange," "P-X," or "G.I."; or any word or expression which may lead the public to believe that the seller or the place is owned, operated or managed by the United States government or its military or naval forces or any agency of the United States government.

(Formerly: Acts 1947, c.143, s.1.) As amended by P.L.8-1993, SEC.340.

IC 24-2-2-2

Untruthful representation; United States government surplus

Sec. 2. No person, firm, limited liability company, corporation or association selling or offering for sale any article of merchandise, shall in any manner represent, contrary to fact, that the article was made for, or acquired directly or indirectly from, the United States government or its military or naval forces or any agency of the United States government, or that the article conforms to government specifications or requirements, or that it has been disposed of by the United States government.

(Formerly: Acts 1947, c.143, s.2.) As amended by P.L.8-1993, SEC.341.

IC 24-2-2-3

Violations

Sec. 3. A person who recklessly violates this chapter commits a Class C misdemeanor.

(Formerly: Acts 1947, c.143, s.3.) As amended by Acts 1978, P.L.2, SEC.2407.

IC 24-2-2-4

Action for continuing violations; injunction; criminal prosecution

Sec. 4. The attorney general, prosecuting attorney or any citizen of any county where any person, firm, limited liability company, corporation, or association shall be engaged in the violation of the provisions of this chapter may, in accordance with the laws of the state of Indiana governing injunctions, maintain an action in the name of the state of Indiana to enjoin such person, firm, limited liability company, corporation, or association from continuing

operations in violation of the provisions of this chapter. Any person having been so enjoined who shall violate such injunction shall be punished for contempt of court; however, such injunction shall not relieve any such person, firm, limited liability company, corporation, or association from criminal prosecution therefor as provided for in this chapter, but such remedy by injunction shall be in addition to any remedy provided for the criminal prosecution of such offense. The relator shall not be liable for any costs. In case judgment is rendered in favor of the plaintiff in any action brought for injunctive relief under the provisions of this chapter, the court rendering the same shall also render judgment for reasonable attorney's fees in such action in favor of the plaintiff and against the defendant therein, and when collected such fees shall be paid to the attorney or attorneys of the plaintiff, which if paid to the attorney general or to any prosecuting attorney shall be additional to any compensation allowed by law.

(Formerly: Acts 1947, c.143, s.4.) As amended by P.L.152-1986, SEC.34; P.L.8-1993, SEC.342.

IC 24-2-3

Chapter 3. Trade Secrets

IC 24-2-3-1

Short title; construction; purpose

Sec. 1. (a) This chapter may be cited as the Uniform Trade Secrets Act.

(b) This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject matter of this chapter among states enacting the provisions of this chapter.

(c) The chapter displaces all conflicting law of this state pertaining to the misappropriation of trade secrets, except contract law and criminal law.

As added by Acts 1982, P.L.148, SEC.1.

IC 24-2-3-2

Definitions

Sec. 2. As used in this chapter, unless the context requires otherwise:

"Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

"Misappropriation" means:

(1) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(2) disclosure or use of a trade secret of another without express or implied consent by a person who:

(A) used improper means to acquire knowledge of the trade secret;

(B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

(i) derived from or through a person who had utilized improper means to acquire it;

(ii) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(iii) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(C) before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

"Person" means a natural person, limited liability company, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(1) derives independent economic value, actual or potential,

from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

As added by Acts 1982, P.L.148, SEC.1. Amended by P.L.8-1993, SEC.343.

IC 24-2-3-3

Injunction against misappropriation; exceptional circumstances

Sec. 3. (a) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(b) If the court determines in exceptional circumstances that it would be unreasonable to prohibit future use, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited.

(c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

As added by Acts 1982, P.L.148, SEC.1. Amended by P.L.50-1984, SEC.3.

IC 24-2-3-4

Damages for misappropriation and unjust enrichment; royalty; exemplary damages

Sec. 4. (a) In addition to or in lieu of injunctive relief, a complainant may recover damages for the actual loss caused by misappropriation. A complainant also may recover for the unjust enrichment caused by misappropriation that is not taken into account in computing damages for actual loss.

(b) When neither damages nor unjust enrichment are provable, the court may order payment of a reasonable royalty for no longer than the period during which the use could have been prohibited.

(c) If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).

As added by Acts 1982, P.L.148, SEC.1. Amended by P.L.50-1984, SEC.4.

IC 24-2-3-5

Attorney's fees; conditions

Sec. 5. If:

(1) a claim of misappropriation is made in bad faith;

(2) a motion to terminate an injunction is made or resisted in bad faith; or

(3) willful and malicious misappropriation exists;

the court may award reasonable attorney's fees to the prevailing

party.
As added by Acts 1982, P.L.148, SEC.1.

IC 24-2-3-6
Preservation of secrecy of trade secret

Sec. 6. In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.
As added by Acts 1982, P.L.148, SEC.1.

IC 24-2-3-7
Limitation of action

Sec. 7. An action for misappropriation must be brought within three (3) years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.
As added by Acts 1982, P.L.148, SEC.1.

IC 24-2-3-8
Continuing misappropriation commenced before September 1, 1982

Sec. 8. If a continuing misappropriation otherwise covered by this chapter began before September 1, 1982, the chapter does not apply to the part of the misappropriation that occured before that date. It does apply to the part that occurs after August 31, 1982, unless the appropriation was not a misappropriation under the law displaced by this chapter.
As added by Acts 1982, P.L.148, SEC.1.

IC 24-3

ARTICLE 3. TOBACCO PRODUCTS

IC 24-3-1

Repealed

(Repealed by Acts 1978, P.L.2, SEC.2426.)

IC 24-3-2

Chapter 2. Cigarette Fair Trade Act

IC 24-3-2-1

Declaration of policy

Sec. 1. It is declared to be the public policy of this state to promote the public welfare by making unlawful unfair, dishonest, deceptive, destructive and fraudulent business practices now existing in transactions involving the sale of, offer to sell, or inducement to sell cigarettes in this state in wholesale and retail trades. The offering for sale or sale of cigarettes below cost in the retail or wholesale trade with the intent of injuring competitors or destroying or substantially lessening competition is an unfair and deceptive business practice and adversely affects the collection of revenue due this state from the sale of cigarettes.

(Formerly: Acts 1949, c.51, s.1.)

IC 24-3-2-2

Definitions

Sec. 2. Unless the context in this chapter requires otherwise, the term:

(a) "Cigarette" shall mean and include any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material; provided the definition in this paragraph shall not be construed to include cigars.

(b) "Person" or the term "company", used in this chapter interchangeably, means and includes any individual, assignee, receiver, commissioner, fiduciary, trustee, executor, administrator, institution, bank, consignee, firm, partnership, limited liability company, joint vendor, pool, syndicate, bureau, association, cooperative association, society, club, fraternity, sorority, lodge, corporation, municipal corporation, or other political subdivision of the state engaged in private or proprietary activities or business, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(c) "Distributor" shall mean and include every person who sells, barters, exchanges, or distributes cigarettes in the state of Indiana to retail dealers for the purpose of resale, or who purchases for resale cigarettes from a manufacturer of cigarettes or from a wholesaler, jobber, or distributor outside the state of Indiana who is not a distributor holding a registration certificate issued under the provisions of IC 6-7-1.

(d) "Retailer" shall mean every person, other than a distributor, who purchases, sells, offers for sale, or distributes cigarettes to consumers or to any person for any purpose other than resale, irrespective of quantity or amount or the number of sales.

(e) "Sell at retail", "sale at retail", and "retail sales" shall mean

and include any transfer of title to cigarettes for a valuable consideration made in the ordinary course of trade or usual conduct of the seller's business to the purchaser for consummation or use.

(f) "Sell at wholesale", "sale at wholesale", and "wholesale sales" shall mean and include any transfer of title to cigarettes for a valuable consideration made in the ordinary course of trade or usual conduct of a distributor's business.

(g) "Basic cost of cigarettes" shall mean the invoice cost of cigarettes to the retailer or distributor, as the case may be, or the replacement cost of cigarettes to the retailer or distributor, as the case may be, within thirty (30) days prior to the date of sale, in the quantity last purchased, whichever is the lower, less all trade discounts and customary discounts for cash, plus the cost at full face value of any stamps which may be required by IC 6-7-1, if not included by the manufacturer in his selling price to the distributor.

(h) "Department" shall mean the alcohol and tobacco commission or its duly authorized assistants and employees.

(i) "Cost to the retailer" shall mean the basic cost of cigarettes to the retailer, plus the cost of doing business by the retailer as evidenced by the standards and methods of accounting regularly employed by him in his allocation of overhead costs and expenses paid or incurred and must include without limitation labor (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising; however, any retailer who, in connection with the retailer's purchase, receives not only the discounts ordinarily allowed upon purchases by a retailer, but also, in whole or in part, discounts ordinarily allowed on purchases by a distributor shall, in determining costs to the retailer pursuant to this section, add the cost to the distributor, as defined in paragraph (j), to the basic cost of cigarettes to said retailer as well as the cost of doing business by the retailer. In the absence of proof of a lesser or higher cost of doing business by the retailer making the sale, the cost of doing business by the retailer shall be presumed to be ten percent (10%) of the basic cost of cigarettes to the retailer. In the absence of proof of a lesser or higher cost of doing business, the cost of doing business by the retailer, who in connection with the retailer's purchase receives not only the discounts ordinarily allowed upon purchases by a retailer, but also, in whole or in part, the discounts ordinarily allowed upon purchases by a distributor, shall be presumed to be ten percent (10%) of the sum of the basic cost of cigarettes plus the cost of doing business by the distributor.

(j) "Cost to the distributor" shall mean the basic cost of cigarettes to the distributor, plus the cost of doing business by the distributor as evidenced by the standards and methods of accounting regularly employed by him in his allocation of overhead costs and expenses, paid or incurred, and must include without limitation labor costs (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising. In the absence of proof of

a lesser or higher cost of doing business by the distributor making the sale, the cost of doing business by the wholesaler shall be presumed to be four percent (4%) of the basic cost of cigarettes to the distributor, plus cartage to the retail outlet, if performed or paid for by the distributor, which cartage cost, in the absence of proof of a lesser or higher cost, shall be deemed to be one-half of one percent (0.5%) of the basic cost of cigarettes to the distributor.

(k) "Registration certificate" refers to the registration certificate issued to cigarette distributors by the department of state revenue under IC 6-7-1-16.

(Formerly: Acts 1949, c.51, s.2.) As amended by P.L.152-1986, SEC.35; P.L.8-1993, SEC.344; P.L.204-2001, SEC.61; P.L.252-2003, SEC.12; P.L.172-2011, SEC.130.

IC 24-3-2-3

Sale at less than cost; penalty

Sec. 3. (a) It is a Class A infraction for a retailer or distributor, with intent to injure competitors or destroy or substantially lessen competition, to offer to sell or sell at retail or wholesale cigarettes at less than the cost to him. The registration certificate held by such a distributor under IC 6-7-1 may be revoked by the department for the balance of the term thereof.

(b) Evidence of offering to sell or sale of cigarettes by any retailer or distributor at less than the cost to him is prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

(c) Notwithstanding IC 34-28-5-5(c), a judgment for a violation of this section shall be deposited in the enforcement and administration fund established under IC 7.1-4-10-1.

(Formerly: Acts 1949, c.51, s.3.) As amended by Acts 1978, P.L.2, SEC.2408; P.L.252-2003, SEC.13.

IC 24-3-2-4

Sale of multiple items at combined price

Sec. 4. In all offers for sale or sales involving two (2) or more items, at least one (1) of which items is cigarettes, at a combined price, and in all offers for sale or sales, involving the giving of any gift or concession of any kind whatsoever (whether it be coupons or otherwise), the retailer's or distributor's combined selling price shall not be below the cost to the retailer or the cost to the distributor, irrespective of the total of all articles, products, commodities, gifts and concessions included in such transactions.

(Formerly: Acts 1949, c.51, s.4.)

IC 24-3-2-4.7

Failure to provide documentary evidence of distributor; penalty; seizure of cigarettes or other tobacco products

Sec. 4.7. (a) A retailer shall produce an invoice or other documentary evidence proving that the retailer obtained cigarettes or a tobacco product (as defined in IC 6-7-2-5) from a distributor that

holds a valid registration certificate.

(b) Each day a retailer fails to produce an invoice or other evidence under subsection (a) constitutes a separate violation of this section.

(c) This subsection applies in addition to or instead of any other civil or criminal penalty. The department or the department of state revenue may impose on a retailer that violates subsection (a) a civil penalty that does not exceed the greater of:

(1) five hundred percent (500%) of the retail value of the cigarettes described in subsection (a); or

(2) five thousand dollars ($5,000);

for each violation.

(d) In addition to any other penalty described in this section, the department or the department of state revenue may seize the cigarettes or other tobacco products for which the retailer is unable to produce the invoice or documentary evidence described in subsection (a). The seized cigarettes or other tobacco products shall be forfeited to the state and destroyed.

(e) Civil penalties collected under this chapter shall be deposited as follows:

(1) Seventy percent (70%) to the enforcement and administration fund established under IC 7.1-4-10.

(2) Thirty percent (30%) to the state general fund for the use of the department of state revenue.

As added by P.L.252-2003, SEC.14.

IC 24-3-2-5

Cost to the distributor; further definition

Sec. 5. When one distributor sells cigarettes to any other distributor, the former shall not be required to include in his selling price to the latter cost to the distributor as provided in section 2(j) of this chapter, but the latter distributor, upon resale to the retailer, shall be subject to the provisions of section 2(j) of this chapter.

(Formerly: Acts 1949, c.51, s.5.) As amended by P.L.152-1986, SEC.36.

IC 24-3-2-6

Exceptions

Sec. 6. The provisions of this chapter shall not apply to sales at retail or sales at wholesale made:

(a) in an isolated transaction and not in the usual course of business;

(b) where cigarettes are offered for sale or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and said advertising, offer to sell, or sale shall state the reason thereof and the quantity of such cigarettes offered for sale or to be sold;

(c) where cigarettes are offered for sale or sold as imperfect or damaged and said offering to sell or sale shall state the reason therefor and the quantity of such cigarettes offered for sale or

to be sold;

(d) where cigarettes are sold upon the final liquidation of a business; or

(e) where cigarettes are offered for sale or sold by any fiduciary or other officer acting under the order or direction of any court.

(Formerly: Acts 1949, c.51, s.6.) As amended by P.L.152-1986, SEC.37.

IC 24-3-2-7

Sale to meet price of competitor

Sec. 7. (a) Any retailer may offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to him as a retailer, as defined in section 2(i) of this chapter. Any distributor may offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to him as a distributor, as defined in section 2(j) of this chapter. The price of cigarettes offered for sale or sold under the exceptions specified in section 6 of this chapter shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of this section.

(b) In the absence of proof of the price of a competitor under this section, the lowest cost to the retailer or the lowest cost to the distributor, as the case may be, determined by any cost survey made pursuant to section 11 of this chapter, may be deemed the price of a competitor within the meaning of this section.

(Formerly: Acts 1949, c.51, s.7.) As amended by P.L.152-1986, SEC.38.

IC 24-3-2-8

Contract in violation of chapter; contract

Sec. 8. Any contract, expressed or implied, made by any person in violation of any of the provisions of this chapter is declared to be an illegal and void contract, and no recovery thereon shall be had.

(Formerly: Acts 1949, c.51, s.8.) As amended by P.L.152-1986, SEC.39.

IC 24-3-2-9

Evidence to establish cost

Sec. 9. (a) In determining cost to the retailer and cost to the distributor, the court or the department, as the case may be, shall receive and consider as bearing on the bona fides of such cost evidence tending to show that any person complained against under any of the provisions of this chapter purchased cigarettes with respect to the sale of which complaint is made at a fictitious price, or upon terms, or in such manner, or under such invoices, as to conceal the true cost, discounts, or terms of purchase, and shall also receive and consider as bearing on the bona fides of such cost evidence of

the normal, customary, and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

(b) Merchandise given gratis or payment made to a retailer or distributor for display, or advertising, or promotion purposes, or otherwise shall not be considered in determining the cost of cigarettes to the retailer or distributor.

(Formerly: Acts 1949, c.51, s.9.) As amended by P.L.152-1986, SEC.40.

IC 24-3-2-10

Evidence of price outside ordinary channels of trade

Sec. 10. (a) In establishing the cost of cigarettes to the retailer or distributor, the invoice cost of said cigarettes purchased at a forced, bankrupt, or close-out sale, or other sale outside of the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the retailer or distributor, within thirty (30) days prior to the date of sale, in the quantity last purchased, through the ordinary channels of trade.

(b) Any cigarettes that are imported or reimported into the United States for sale or distribution under a trade name, trade dress, or trademark that is the same as or confusingly similar to a trade name, trade dress, or trademark used for cigarettes manufactured in the United States for sale or distribution in the United States are presumed to be purchased outside the ordinary channels of trade.

(Formerly: Acts 1949, c.51, s.10.) As amended by P.L.21-2000, SEC.9.

IC 24-3-2-11

Cost survey as evidence

Sec. 11. Where a cost survey pursuant to recognized statistical and cost accounting practices has been made for the trading area in which the offense is committed to establish the lowest cost to the retailer and the lowest cost to the distributor, said cost survey shall be deemed competent evidence to be used in proving the cost to the person complained against within the provisions of this chapter.

(Formerly: Acts 1949, c.51, s.11.) As amended by P.L.152-1986, SEC.41.

IC 24-3-2-12

Injunction

Sec. 12. (a) The department, or any person injured by any violation or who shall suffer injury from any threatened violation of this chapter, may maintain an action in any court of equitable jurisdiction to prevent, restrain, or enjoin such violation or threatened violation. If in such action a violation or threatened violation of this chapter shall be established, the court shall enjoin and restrain or otherwise prohibit such violation or threatened violation, and in addition thereto, the court shall assess in favor of

the plaintiff and against the defendant the costs of suit including reasonable attorney's fees. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in said action, in addition to such injunctive relief and costs of suit, including reasonable attorney's fees, shall be entitled to recover from the defendant the actual damages sustained by him.

(b) In the event that no injunctive relief is sought or required, any person injured by a violation of this chapter may maintain an action for damages and costs of suit in any court of general jurisdiction.
(Formerly: Acts 1949, c.51, s.12.) As amended by P.L.152-1986, SEC.42.

IC 24-3-2-13
Rules; powers of department

Sec. 13. (a) The department may adopt rules for the enforcement of this chapter, and the department is empowered to and may undertake a cost survey, as provided for in section 11 of this chapter. The department may, in accordance with IC 4-21.5-3, suspend or revoke any registration certificate issued by it to a distributor under IC 6-7-1 for failure of any registrant to comply with this chapter or any rule adopted under this chapter.

(b) All the powers vested in the department by IC 6-7-1 shall be available to the department in the enforcement of this chapter.
(Formerly: Acts 1949, c.51, s.13.) As amended by P.L.152-1986, SEC.43; P.L.7-1987, SEC.105.

IC 24-3-3

Chapter 3. Qualified Escrow Fund for Tobacco Product Manufacturers

IC 24-3-3-1

Findings regarding cigarette smoking

Sec. 1. The General Assembly makes the following findings:

(1) Cigarette smoking presents serious public health concerns to the state and to the citizens of Indiana. The Surgeon General has determined that smoking causes lung cancer, heart disease, and other serious diseases, and that there are hundreds of thousands of tobacco related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(2) Cigarette smoking also presents serious financial concerns for the state. Under certain health care programs, the state may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(3) Under these programs, the state pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(4) It is the policy of the state that financial burdens imposed on the state by cigarette smoking be borne by tobacco product manufacturers rather than by the state to the extent that such manufacturers either determine to enter into a settlement with the state or are found culpable by the courts.

(5) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement", with the state. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present, and certain future claims against them as described in the Master Settlement Agreement, to:

(A) pay substantial sums to the state (tied in part to their volume of sales);

(B) fund a national foundation devoted to the interests of public health; and

(C) make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(6) It would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short term profits in the years before liability may arise without ensuring that the state will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the state to require that such manufacturers establish a reserve fund to guarantee a source of compensation

and to prevent such manufacturers from deriving large, short term profits and then becoming judgment proof before liability may arise.

As added by P.L.223-1999, SEC.1.

IC 24-3-3-2
"Adjusted for inflation" defined

Sec. 2. As used in this chapter, "adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

As added by P.L.223-1999, SEC.1.

IC 24-3-3-3
"Affiliate" defined

Sec. 3. As used in this chapter, "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns", "is owned", and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent (10%) or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

As added by P.L.223-1999, SEC.1.

IC 24-3-3-4
"Allocable share" defined

Sec. 4. As used in this chapter, "allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

As added by P.L.223-1999, SEC.1.

IC 24-3-3-5
"Cigarette" defined

Sec. 5. As used in this chapter, "cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(1) any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subdivision (1).

The term "cigarette" includes "roll-your-own" tobacco (i.e., any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this

definition of "cigarette", nine-hundredths (0.09) of an ounce of "roll-your-own" tobacco constitutes one (1) individual "cigarette".
As added by P.L.223-1999, SEC.1.

IC 24-3-3-6
"Master Settlement Agreement" defined

Sec. 6. As used in this chapter, "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.
As added by P.L.223-1999, SEC.1.

IC 24-3-3-7
"Qualified escrow fund" defined

Sec. 7. As used in this chapter, "qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars ($1,000,000,000) where the arrangement requires that the financial institution hold the escrowed fund's principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the fund's principal except as consistent with this chapter.
As added by P.L.223-1999, SEC.1.

IC 24-3-3-8
"Released claims" defined

Sec. 8. As used in this chapter, "released claims" means Released Claims as that term is defined in the Master Settlement Agreement.
As added by P.L.223-1999, SEC.1.

IC 24-3-3-9
"Releasing parties" defined

Sec. 9. As used in this chapter, "releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.
As added by P.L.223-1999, SEC.1.

IC 24-3-3-10
"Tobacco product manufacturer" defined

Sec. 10. As used in this chapter, "tobacco product manufacturer" means an entity that after June 30, 1999, directly (and not exclusively through any affiliate):

(1) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as

a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(2) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) becomes a successor of an entity described in subdivision (1) or (2).

The term "tobacco product manufacturer" does not include an affiliate of a tobacco product manufacturer unless the affiliate itself falls within subdivision (1), (2), or (3).

As added by P.L.223-1999, SEC.1.

IC 24-3-3-11

"Units sold" defined

Sec. 11. As used in this chapter, "units sold" means the number of individual cigarettes sold in Indiana by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the state. The department of state revenue shall, in the manner provided by IC 4-22-2, adopt rules that are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

As added by P.L.223-1999, SEC.1.

IC 24-3-3-12

Tobacco product manufacturers required to become participating manufacturer or place money in qualified escrow fund

Sec. 12. Any tobacco product manufacturer selling cigarettes to consumers within Indiana (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after June 30, 1999, shall do one (1) of the following:

(1) Become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(2) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

(A) 1999, $0.0094241 per unit sold after June 30, 1999.

(B) 2000, $0.0104712 per unit sold.

(C) For each of 2001 and 2002, $0.0136125 per unit sold.

(D) For each of 2003 through 2006, $0.0167539 per unit sold.

(E) For each of 2007 and each year thereafter, $0.0188482 per unit sold.

As added by P.L.223-1999, SEC.1.

IC 24-3-3-13
Interest paid and release of escrow funds; severability

Sec. 13. (a) Subsection (b) applies unless and until all or any part of subsection (b) is held to be unconstitutional or otherwise unenforceable. If all or any part of subsection (b) or the application of all or any part of subsection (b) to a person, an entity, or a circumstance is held to be unconstitutional or invalid by a court, the unconstitutionality or invalidity does not affect other provisions of this chapter, and subsection (c) controls. Subsection (c) applies unless and until all or any part of subsection (c) is held to be unconstitutional or otherwise unenforceable. If all or any part of subsection (c) or the application of all or any part of subsection (c) to a person, an entity, or a circumstance is held to be unconstitutional or invalid by a court, the unconstitutionality or invalidity does not affect other provisions of this chapter, and subsection (d) controls.

(b) A tobacco product manufacturer that places funds into escrow under section 12(2) of this chapter shall receive the interest or other appreciation on such funds as earned. The funds shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against the tobacco product manufacturer by the state or any releasing party located or residing in Indiana. Funds shall be released from escrow under this subdivision:

(A) in the order in which they were placed into escrow; and

(B) only to the extent and at the time necessary to make payments required under such a judgment or settlement.

(2) To the extent that a tobacco product manufacturer establishes that the amount the tobacco product manufacturer is required to place in escrow on account of units sold in Indiana in a particular year exceeds the master settlement agreement payments the tobacco product manufacturer would have been required to make on account of units sold in Indiana if the tobacco product manufacturer were a participating manufacturer, as determined under section IX(i) of the master settlement agreement and after final determination of all adjustments, the excess payments shall be released from escrow and shall revert to the tobacco product manufacturer.

(3) To the extent not released from escrow under subdivision (1) or (2), funds shall be released from escrow and revert back to the tobacco product manufacturer twenty-five (25) years after the date on which the funds were placed into escrow.

(c) This subsection applies only if subsection (b) is held to be unconstitutional or otherwise unenforceable. A tobacco product manufacturer that places funds into escrow under section 12(2) of this chapter shall receive the interest or other appreciation on the funds as earned. The funds shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim

brought against the tobacco product manufacturer by the state or any releasing party located or residing in Indiana. Funds shall be released from escrow under this subdivision:

(A) in the order in which they were placed into escrow; and

(B) only to the extent and at the time necessary to make payments required under such a judgment or settlement.

(2) To the extent not released from escrow under subdivision (1), funds shall be released from escrow and revert back to the tobacco product manufacturer twenty-five (25) years after the date on which the funds were placed into escrow.

(d) This subsection applies only if subsections (b) and (c) are held to be unconstitutional or otherwise unenforceable. A tobacco product manufacturer that places funds into escrow under section 12(2) of this chapter shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in Indiana. Funds shall be released from escrow under this subdivision:

(A) in the order in which they were placed into escrow; and

(B) only to the extent and at the time necessary to make payments required under such a judgment or settlement.

(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that the manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to the tobacco product manufacturer.

(3) To the extent not released from escrow under subdivision (1) or (2), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five (25) years after the date on which the funds were placed into escrow.

As added by P.L.223-1999, SEC.1. Amended by P.L.252-2003, SEC.15.

IC 24-3-3-14

Certification of compliance with chapter; failure to make annual deposit

Sec. 14. (a) Each tobacco product manufacturer that elects to place funds into escrow under section 12(2) of this chapter shall annually certify to the attorney general that it is in compliance with this chapter. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under section 12 and section 13

of this chapter. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under section 12(2) of this chapter shall:

(1) Be required within fifteen (15) days to place sufficient funds into escrow to bring it into compliance with this chapter. The court, upon a finding of a violation of section 12(2) of this chapter, may also impose a civil penalty to be paid to the state general fund in an amount not to exceed five percent (5%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from escrow.

(2) In the case of a knowing violation, be required within fifteen (15) days to place sufficient funds into escrow to bring it into compliance with section 12(2) of this chapter. The court, upon a finding of a knowing violation of section 12(2) of this chapter, may also impose a civil penalty to be paid to the state general fund in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent (300%) of the original amount improperly withheld from escrow.

(3) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within Indiana (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed two (2) years.

(b) Each failure to make an annual deposit required under section 12(2) of this chapter constitutes a separate violation.

As added by P.L.223-1999, SEC.1.

IC 24-3-3.5

Chapter 3.5. Tobacco Qualified Escrow Fund Proceedings

IC 24-3-3.5-1

Disclosure

Sec. 1. Notwithstanding any other provision of law, for any official purpose, including enforcing IC 24-3-3 or a judgment in a civil action based on IC 24-3-3, the attorney general may disclose information obtained under IC 24-3-3-11 or IC 24-3-3-14.

As added by P.L.33-2002, SEC.1.

IC 24-3-3.5-2

Attorney's fees

Sec. 2. The attorney general is entitled to reasonable attorney's fees from a tobacco manufacturer in settlement of matters related to IC 24-3-3, or as a remedy for an adjudicated violation of IC 24-3-3.

As added by P.L.33-2002, SEC.1.

IC 24-3-4

Chapter 4. Cigarettes Produced for Export; Imported Cigarettes

IC 24-3-4-1

Applicability of chapter

Sec. 1. This chapter does not apply to cigarettes sold or intended to be sold as duty free merchandise by a duty free sales enterprise that complies with federal requirements, including the requirements under 19 U.S.C. 1555(b). However, this chapter applies to cigarettes that are brought back into the United States that have not been assessed a federal tax or federal duty.

As added by P.L.21-2000, SEC.10.

IC 24-3-4-2

"Cigarette"

Sec. 2. As used in this chapter, "cigarette" has the meaning set forth in IC 24-3-2-2(a).

As added by P.L.21-2000, SEC.10.

IC 24-3-4-3

"Department"

Sec. 3. As used in this chapter, "department" refers to the department of state revenue.

As added by P.L.21-2000, SEC.10.

IC 24-3-4-4

"Importer"

Sec. 4. As used in this chapter, "importer" means any of the following:

(1) A person in the United States to whom nontaxpaid tobacco products, cigarette papers, or cigarette tubes manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned.

(2) A person who removes cigars or cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse.

(3) A person who smuggles or unlawfully brings tobacco products, cigarette papers, or cigarette tubes into the United States.

As added by P.L.21-2000, SEC.10.

IC 24-3-4-5

"Law enforcement officer"

Sec. 5. As used in this chapter, "law enforcement officer" has the meaning set forth in IC 35-31.5-2-185.

As added by P.L.21-2000, SEC.10. Amended by P.L.114-2012, SEC.47.

IC 24-3-4-6

"Manufacturer"

Sec. 6. As used in this chapter, "manufacturer" means a person who manufactures a product made from tobacco that is made for smoking or chewing, including snuff. However, the term does not include the following:

(1) A person who produces a product made from tobacco that is made for smoking or chewing, including snuff, solely for the person's own personal consumption or use.

(2) A proprietor of a customs bonded manufacturing warehouse with respect to the operation of the warehouse.

As added by P.L.21-2000, SEC.10.

IC 24-3-4-7

"Person"

Sec. 7. As used in this chapter, "person" has the meaning set forth in IC 24-3-2-2(b).

As added by P.L.21-2000, SEC.10.

IC 24-3-4-8

Sale, distribution, or transportation of prohibited cigarettes

Sec. 8. As of October 1, 2000, a person may not sell, distribute, or transport into Indiana any of the following cigarettes:

(1) Cigarettes that have been marked for sale, distribution, or use outside the United States, including labels stating "For Export Only", "U.S. Tax-Exempt", and "For Use Outside U.S.".

(2) Cigarettes that do not comply with the federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) or with other federal requirements regarding health warnings and other information on cigarette packages manufactured, packaged, or imported for sale, distribution, or use in the United States.

(3) Cigarettes that do not comply with federal trademark and copyright laws.

(4) Cigarettes that violate federal requirements on importation of previously exported tobacco products, including 26 U.S.C. 5754.

(5) Cigarettes that the person knows or has reason to know that the manufacturer did not intend to be sold, distributed, or used in the United States.

(6) Cigarettes that have not had the list of the cigarette's added ingredients submitted to the Secretary of the Department of Health and Human Services under 15 U.S.C. 1335a.

(7) Cigarettes that have had the package altered before the cigarettes are sold or distributed to the consumer that remove, conceal, or obscure any of the following:

(A) A marking that indicates the cigarettes are intended to be sold, distributed, or used outside the United States.

(B) A health warning or other information required under 15 U.S.C. 1333.

As added by P.L.21-2000, SEC.10.

IC 24-3-4-9
Affixing stamp on prohibited cigarettes

Sec. 9. A person may not affix a stamp (as defined by IC 6-7-1-9) on a package of cigarettes described in section 8 of this chapter.
As added by P.L.21-2000, SEC.10.

IC 24-3-4-10
Monthly reports of imported cigarettes

Sec. 10. (a) A person who, for the purpose of selling or distributing the cigarettes in Indiana, imports cigarettes into Indiana that were manufactured outside the United States, shall file a monthly report with the department and keep and maintain the records required under IC 6-7-1-19 and IC 6-7-1-19.5.

(b) The report required under subsection (a) must be signed by the person who imports the cigarettes, under penalties of perjury, and must contain the following information concerning cigarettes that the person imported during the preceding month:

(1) A copy of each of the following:

(A) The permit issued under 26 U.S.C. 5713 that allows the person to import the cigarettes into the United States.

(B) The United States Customs Service form concerning the cigarettes that contains the internal revenue tax information required by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives.

(2) A statement that includes the following information:

(A) The brand and brand styles of the cigarettes imported.

(B) The quantity of each brand style of the cigarettes imported.

(C) The name and address of each person to whom the cigarettes have been shipped.

(3) A statement signed by an officer of the manufacturer or importer, under the penalties for perjury, that states whether the manufacturer is a participant in the escrow fund under IC 24-3-3-12 and certifies that the manufacturer or importer has complied with the following:

(A) The federal cigarette package health warning requirements (15 U.S.C. 1333) and the federal ingredient reporting requirements (15 U.S.C. 1335a).

(B) The qualified escrow fund for tobacco product manufacturers requirements under IC 24-3-3.

As added by P.L.21-2000, SEC.10. Amended by P.L.1-2006, SEC.409.

IC 24-3-4-11
Powers of department

Sec. 11. The department may do the following:

(1) Adopt rules under IC 4-22-2 to implement this chapter.

(2) Assess tax due, penalties, and interest on cigarettes in violation of this chapter.

(3) Revoke or suspend the registration certificate issued under

IC 6-7-1-16 of a person who violates this chapter.
As added by P.L.21-2000, SEC.10.

IC 24-3-4-12
Seizure of cigarettes; search warrants

Sec. 12. (a) If the department or a law enforcement officer discovers cigarettes that are in violation of section 8 or 9 of this chapter, the department or a law enforcement officer may seize and take possession of the cigarettes together with any vending machine or receptacle in which the cigarettes are held for sale. The seized cigarettes, vending machine, or receptacle, not including money contained in the vending machine or receptacle, shall be forfeited to the state. The department or law enforcement agency shall, within a reasonable time after the seizure, destroy the confiscated cigarettes and vending machine or receptacle.

(b) The confiscation, destruction, sale, or redemption of cigarettes does not relieve a person of any penalties imposed for violation of this chapter.

(c) When the department has reason to believe that any cigarettes are being kept, sold, offered for sale, or given away in violation of this chapter, an officer of the department or a law enforcement officer may make an affidavit for a search warrant under IC 35-33-5. If the judge issues a search warrant under IC 35-33-1, a law enforcement officer or an authorized agent of the department may search any place or vehicle designated in the affidavit and search warrant and seize any cigarettes.
As added by P.L.21-2000, SEC.10.

IC 24-3-4-13
Enforcement powers; prosecution of violations

Sec. 13. (a) This chapter may be enforced by the department or a law enforcement officer.

(b) Upon referral of a violation of this chapter by the department or a law enforcement officer, the prosecuting attorney or the attorney general shall prosecute the person who violates this chapter.
As added by P.L.21-2000, SEC.10.

IC 24-3-4-14
Injunctive or equitable relief

Sec. 14. In addition to any other remedy, any person may bring an action for appropriate injunctive or equitable relief for a violation of this chapter that caused actual damages to the person. The person who brings the action may recover actual damages, interest on the damages from the date the complaint was filed, costs, and reasonable attorney's fees. If the court finds that the violation was flagrant, the court may increase the recovery to an amount not exceeding three (3) times the amount of actual damages.
As added by P.L.21-2000, SEC.10.

IC 24-3-4-15

Class A misdemeanor; sale, distribution, or transportation of prohibited cigarettes

Sec. 15. A person who knowingly or intentionally sells, distributes, or transports into Indiana cigarettes in violation of section 8 of this chapter commits a Class A misdemeanor.

As added by P.L.21-2000, SEC.10.

IC 24-3-4-16

Class A misdemeanor; affixing stamp on prohibited cigarettes

Sec. 16. A person who knowingly or intentionally sells, or distributes cigarettes that bear Indiana tax stamps affixed in violation of this chapter commits a Class A misdemeanor.

As added by P.L.21-2000, SEC.10.

IC 24-3-4-17 Version a

Class D felony; prior conviction of offense

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

Sec. 17. A person who:

(1) knowingly sells, distributes, or transports more than twelve thousand (12,000) cigarettes in violation of section 8 or 9 of this chapter; and

(2) has previously been convicted of an offense under section 15 or 16 of this chapter;

commits a Class D felony.

As added by P.L.21-2000, SEC.10. Amended by P.L.1-2001, SEC.29.

IC 24-3-4-17 Version b

Penalty

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

Sec. 17. A person who:

(1) knowingly sells, distributes, or transports more than twelve thousand (12,000) cigarettes in violation of section 8 or 9 of this chapter; and

(2) has previously been convicted of an offense under section 15 or 16 of this chapter;

commits a Level 6 felony.

As added by P.L.21-2000, SEC.10. Amended by P.L.1-2001, SEC.29; P.L.158-2013, SEC.271.

IC 24-3-5

Chapter 5. Delivery Sales of Tobacco Products

IC 24-3-5-0.1
"Cigarette"

Sec. 0.1. As used in this chapter, "cigarette" has the meaning set forth in IC 6-7-1-2.

As added by P.L.160-2005, SEC.1.

IC 24-3-5-0.2
"Cigarette manufacturer"

Sec. 0.2. As used in this chapter, "cigarette manufacturer" means a person or an entity that does the following:

(1) Manufactures cigarettes.

(2) Does one (1) of the following:

(A) Participates in the Master Settlement Agreement (as defined in IC 24-3-3-6) and performs the person's or entity's financial obligations under the Master Settlement Agreement.

(B) Places the applicable amount into a qualified escrow fund (as defined in IC 24-3-3-7).

(3) Pays all applicable taxes under IC 6-7-1.

As added by P.L.160-2005, SEC.2.

IC 24-3-5-0.3
"Commission"

Sec. 0.3. As used in this chapter, "commission" refers to the alcohol and tobacco commission created by IC 7.1-2-1-1.

As added by P.L.160-2005, SEC.3.

IC 24-3-5-1
"Delivery sale"

Sec. 1. As used in this chapter, "delivery sale" means a transaction for the purchase of tobacco products in which an offer to purchase tobacco products is made:

(1) electronically using a computer network (as defined in IC 35-43-2-3);

(2) by mail; or

(3) by telephone;

and acceptance of the offer results in delivery of the tobacco products to a named individual or entity at a designated address.

As added by P.L.253-2003, SEC.1. Amended by P.L.160-2005, SEC.4.

IC 24-3-5-1.5
"Distributor"

Sec. 1.5. As used in this chapter, "distributor" includes the following:

(1) A distributor as defined in IC 6-7-1-6.

(2) A distributor as defined in IC 6-7-2-2.

As added by P.L.160-2005, SEC.5.

IC 24-3-5-2
"Merchant"

Sec. 2. As used in this chapter, "merchant" means a person or an entity that engages in the selling of tobacco products by delivery sale.

As added by P.L.253-2003, SEC.1.

IC 24-3-5-3
"Tobacco product"

Sec. 3. As used in this chapter, "tobacco product" has the meaning set forth in IC 7.1-6-1-3. However, the term does not include a cigar or pipe tobacco.

As added by P.L.253-2003, SEC.1. Amended by P.L.160-2005, SEC.6.

IC 24-3-5-4
Requirements

Sec. 4. Subject to section 4.5 of this chapter, a merchant may not mail or ship cigarettes as part of a delivery sale unless, before mailing or shipping the cigarettes, the merchant:

(1) obtains from the prospective customer a written statement signed by the prospective customer under penalty of perjury:

(A) providing the prospective customer's address and date of birth;

(B) advising the prospective customer that:

(i) signing another person's name to the statement required under this subdivision may subject the person to a civil monetary penalty of not more than one thousand dollars ($1,000); and

(ii) purchasing cigarettes by a person less than eighteen (18) years of age is a Class C infraction under IC 35-46-1-10.5;

(C) confirming that the cigarette order was placed by the prospective customer;

(D) providing a warning under 15 U.S.C. 1333(a)(1); and

(E) stating the sale of cigarettes by delivery sale is a taxable event for purposes of IC 6-7-1;

(2) makes a good faith effort to verify the information in the written statement obtained under subdivision (1) by using a federal or commercially available data base; and

(3) receives payment for the delivery sale by a credit or debit card issued in the name of the prospective purchaser.

As added by P.L.253-2003, SEC.1. Amended by P.L.160-2005, SEC.7.

IC 24-3-5-4.5
Delivery sale by merchant; penalties

Sec. 4.5. (a) This section applies to a merchant that is not a

cigarette manufacturer.

(b) Except as provided in subsection (d), a merchant may not mail or ship cigarettes as part of a delivery sale to an Indiana resident or retailer (as defined in IC 24-3-2-2(d)) that is not a distributor.

(c) If the commission determines that a merchant has violated subsection (b):

(1) a distributor may not accept a shipment of cigarettes from the merchant for a period, not to exceed one (1) year, determined by the commission; and

(2) the commission may impose a civil penalty, not to exceed five thousand dollars ($5,000), on the merchant for each violation of subsection (b), as determined by the commission.

(d) A merchant may make a drop shipment of tobacco products to an Indiana resident or retailer that is billed through a distributor.

As added by P.L.160-2005, SEC.8.

IC 24-3-5-5

Mailing or shipping tobacco products; requirements; penalties

Sec. 5. (a) A merchant who mails or ships cigarettes as part of a delivery sale shall:

(1) use a mailing or shipping service that requires the customer or a person at least eighteen (18) years of age who is designated by the customer to:

(A) sign to accept delivery of the cigarettes; and

(B) present a valid operator's license issued under IC 9-24-3 or an identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the delivery agent or employee of the mailing or shipping service, appears to be less than twenty-seven (27) years of age;

(2) provide to the mailing or shipping service used under subdivision (1) proof of compliance with section 6(a) of this chapter; and

(3) include the following statement in bold type or capital letters on an invoice or shipping document:

INDIANA LAW PROHIBITS THE MAILING OR SHIPPING OF CIGARETTES TO A PERSON LESS THAN EIGHTEEN (18) YEARS OF AGE AND REQUIRES PAYMENT OF ALL APPLICABLE TAXES.

(b) The commission may impose a civil penalty of not more than one thousand dollars ($1,000) if a mailing or shipping service:

(1) delivers cigarettes as part of a delivery sale without first receiving proof from the merchant of compliance with section 6(a) of this chapter; or

(2) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (a)(1).

The commission shall deposit amounts collected under this subsection into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

(c) The following apply to a merchant that mails or ships

cigarettes as part of a delivery sale without using a third party service as required by subsection (a)(1):

(1) The merchant shall require the customer or a person at least eighteen (18) years of age who is designated by the customer to:

(A) sign to accept delivery of the cigarettes; and

(B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the merchant or the merchant's employee making the delivery, appears to be less than twenty-seven (27) years of age.

(2) The commission may impose a civil penalty of not more than one thousand dollars ($1,000) if the merchant:

(A) delivers the cigarettes without first complying with section 6(a) of this chapter; or

(B) fails to obtain a signature and proof of identification of the customer or the customer's designee under subdivision (1).

The commission shall deposit amounts collected under this subdivision into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

As added by P.L.253-2003, SEC.1. Amended by P.L.160-2005, SEC.9.

IC 24-3-5-6

Filing with department of state revenue; compliance

Sec. 6. (a) A merchant shall, before mailing or shipping cigarettes as part of a delivery sale, provide the department of state revenue with a written statement containing the merchant's name, address, principal place of business, and each place of business in Indiana.

(b) A merchant who mails or ships cigarettes as part of a delivery sale shall, not later than the tenth day of the calendar month immediately following the month in which the delivery sale occurred, file with the department of state revenue a copy of the invoice for each delivery sale to a customer in Indiana. The invoice must include the following information:

(1) The name and address of the customer to whom the cigarettes were delivered.

(2) The brand name of the cigarettes that were delivered to the customer.

(3) The quantity of cigarettes that were delivered to the customer.

(c) A merchant who complies with 15 U.S.C. 376 for the delivery sale of cigarettes is considered to satisfy the requirements of this section.

As added by P.L.253-2003, SEC.1. Amended by P.L.160-2005, SEC.10.

IC 24-3-5-7

Pay taxes or provide notice; penalties

Sec. 7. (a) A merchant who delivers cigarettes to a customer as

part of a delivery sale shall:

(1) collect and pay all applicable taxes under IC 6-7-1; or

(2) place a legible and conspicuous notice on the outside of the container in which the cigarettes are shipped. The notice shall be placed on the same side of the container as the address to which the container is shipped and must state the following:

"If these cigarettes have been shipped to you from a merchant located outside the state in which you reside, the merchant has under federal law reported information about the sale of these cigarettes, including your name and address, to your state tax collection agency. You are legally responsible for all applicable unpaid state taxes on these cigarettes.".

(b) For a violation of this section the commission may impose, in addition to any other remedies, civil penalties as follows:

(1) If the person has one (1) judgment for a violation of this section committed during a five (5) year period, a civil penalty of at least one thousand dollars ($1,000) but not more than two thousand dollars ($2,000).

(2) If the person has two (2) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least two thousand five hundred dollars ($2,500) but not more than three thousand five hundred dollars ($3,500).

(3) If the person has three (3) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least four thousand dollars ($4,000) but not more than five thousand dollars ($5,000).

(4) If the person has four (4) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least five thousand five hundred dollars ($5,500) but not more than six thousand five hundred dollars ($6,500).

(5) If the person has at least five (5) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of ten thousand dollars ($10,000).

As added by P.L.253-2003, SEC.1. Amended by P.L.97-2004, SEC.87; P.L.160-2005, SEC.11.

IC 24-3-5-8
Civil penalties

Sec. 8. The commission may impose a civil penalty of not more one thousand dollars ($1,000) on a:

(1) customer who signs another person's name to a statement required under section 4(1) of this chapter; or

(2) merchant who sells cigarettes by delivery sale to a person less than eighteen (18) years of age.

The commission shall deposit amounts collected under this section into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

As added by P.L.253-2003, SEC.1. Amended by P.L.160-2005, SEC.12.

IC 24-3-5.2
Repealed

(Repealed by P.L.160-2005, SEC.18.)

IC 24-3-5.4

Chapter 5.4. Master Settlement Agreement Protection Act

IC 24-3-5.4-1

"Brand family"

Sec. 1. As used in this chapter, "brand family" means cigarettes that are:

(1) sold under the same trademark; and

(2) differentiated from one another by means of modifiers such as menthol, lights, kings, or 100s.

The term includes the use of a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indicia of product identification that is identical or similar to or identifiable with a previously known brand of cigarettes.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-2

"Cigarette"

Sec. 2. As used in this chapter, "cigarette" has the meaning set forth in IC 24-3-3-5.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-3

"Commission"

Sec. 3. As used in this chapter, "commission" means the alcohol and tobacco commission created by IC 7.1-2-1-1.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-4

"Department"

Sec. 4. As used in this chapter, "department" means the department of state revenue.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-5

"Distributor"

Sec. 5. As used in this chapter, "distributor" means a person that:

(1) purchases cigarettes on which the tax under IC 6-7-1 is not paid; and

(2) stores, sells, or otherwise disposes of the cigarettes.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-5.5

"Importer"

Sec. 5.5. As used in this chapter, "importer" means a person that imports, other than for personal consumption, one (1) or more brand families of a nonparticipating manufacturer.

As added by P.L.24-2010, SEC.1.

IC 24-3-5.4-6

"Master settlement agreement"

Sec. 6. As used in this chapter, "master settlement agreement" has the meaning set forth in IC 24-3-3-6.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-6.5

"Newly qualified nonparticipating manufacturer"

Sec. 6.5. As used in this chapter, "newly qualified nonparticipating manufacturer" means a nonparticipating manufacturer:

(1) that has filed a certification under section 13 of this chapter; and

(2) whose brand families are not listed in a directory under section 14 of this chapter.

As added by P.L.24-2010, SEC.2.

IC 24-3-5.4-7

"Nonparticipating manufacturer"

Sec. 7. As used in this chapter, "nonparticipating manufacturer" means a tobacco product manufacturer that is not a participating manufacturer.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-8

"Participating manufacturer"

Sec. 8. As used in this chapter, "participating manufacturer" has the meaning set forth in IC 24-3-3-12(1).

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-9

"Qualified escrow fund"

Sec. 9. As used in this chapter, "qualified escrow fund" has the meaning set forth in IC 24-3-3-7.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-10

"Stamping agent"

Sec. 10. As used in this chapter, "stamping agent" means a person that may affix a stamp to a package of cigarettes under IC 6-7-1-15.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-11

"Tobacco product manufacturer"

Sec. 11. As used in this chapter, "tobacco product manufacturer" has the meaning set forth in IC 24-3-3-10.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-12

"Units sold"

Sec. 12. As used in this chapter, "units sold" has the meaning set

forth in IC 24-3-3-11.
As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-13
Tobacco product manufacturer certification; brand family list; maintenance of sales documentation by nonparticipating manufacturer

Sec. 13. (a) Not later than April 30 of each year, a tobacco product manufacturer whose cigarettes are sold in Indiana, whether directly or through a distributor, retailer, or similar intermediary, shall certify to the department and the attorney general that, as of the date of the certification, the tobacco product manufacturer is:

(1) a participating manufacturer; or

(2) in full compliance with IC 24-3-3.

The department shall prescribe the form of the certification.

(b) A participating manufacturer shall include in a certification under subsection (a) a list of the participating manufacturer's brand families. The participating manufacturer shall update the list by filing a supplemental certification with the department and the attorney general not less than thirty (30) days before the participating manufacturer adds a brand family or otherwise modifies the list of brand families.

(c) A nonparticipating manufacturer shall include in a certification under subsection (a) a list of the nonparticipating manufacturer's brand families, including the following:

(1) A separate listing of each brand family that was sold in Indiana during the calendar year before the year in which the certification is filed.

(2) A separate listing of the number of units sold for each brand family that was sold in Indiana during the calendar year before the year in which the certification is filed.

(3) An indication of any brand family that was sold in Indiana during the calendar year before the year in which the certification is filed and that is not sold in Indiana as of the date of the certification.

(4) The name and address of any other manufacturer of a brand family that was sold in Indiana during the calendar year before the year in which the certification is filed.

(d) A nonparticipating manufacturer shall file a supplemental certification with the attorney general not less than thirty (30) days before the nonparticipating manufacturer adds to or otherwise modifies its list of brand families.

(e) A nonparticipating manufacturer shall certify the following in a certification under subsection (a):

(1) The nonparticipating manufacturer:

(A) is registered to do business in Indiana; or

(B) has appointed an agent for service of process and provided notice under section 16 of this chapter.

(2) The nonparticipating manufacturer has:

(A) established and continues to maintain a qualified escrow

fund; and

(B) executed a qualified escrow agreement that:

(i) the attorney general has approved; and

(ii) governs the qualified escrow fund.

(3) The nonparticipating manufacturer is in full compliance with:

(A) this section;

(B) section 13.5 of this chapter, if applicable;

(C) section 13.6 of this chapter, if applicable; and

(D) IC 24-3-3.

(4) The name, address, and telephone number of the financial institution that holds the nonparticipating manufacturer's qualified escrow fund.

(5) The account number and any subaccount numbers of the nonparticipating manufacturer's qualified escrow fund.

(6) The amounts and dates of deposits that the nonparticipating manufacturer placed in the qualified escrow fund for cigarettes sold in Indiana during the calendar year before the year in which the certification is filed, including any verification required by the attorney general.

(7) The amounts and dates of withdrawals or transfers of funds that the nonparticipating manufacturer made from a qualified escrow fund into which the nonparticipating manufacturer made or makes escrow payments under IC 24-3-3.

(f) A tobacco product manufacturer shall not include a brand family in the tobacco product manufacturer's certification under subsection (a) unless:

(1) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is considered the participating manufacturer's cigarettes for purposes of calculating the participating manufacturer's payments under the master settlement agreement for the year in which the certification is filed in the volume and shares determined under the master settlement agreement; or

(2) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is considered to be the nonparticipating manufacturer's cigarettes for purposes of IC 24-3-3-12(2).

(g) This section does not limit or otherwise affect the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of IC 24-3-3.

(h) A nonparticipating manufacturer shall maintain all invoices and documentation of sales and any other relevant information for a period of five (5) years unless otherwise required by law to maintain the invoices, documentation of sales, or other relevant information for more than five (5) years.

As added by P.L.252-2003, SEC.16. Amended by P.L.24-2010, SEC.3.

IC 24-3-5.4-13.5

Importers required to provide information to the attorney general

Sec. 13.5. (a) This section applies to a nonparticipating manufacturer whose principal place of business is located outside the United States.

(b) Each year, a nonparticipating manufacturer shall provide to the attorney general a declaration from each of the nonparticipating manufacturer's importers that does the following:

(1) States that the importer assumes joint and several liability with the nonparticipating manufacturer for the following payments, penalties, costs, and fees with respect to the importer:

(A) Any escrow payments required under IC 24-3-3-12(2) for deposit in a qualified escrow fund.

(B) Any penalties assessed against the nonparticipating manufacturer under IC 24-3-3 or this chapter.

(C) Payment of all costs and fees recovered by the state against the nonparticipating manufacturer under section 28 of this chapter.

(2) Appoints a registered agent for service of process for the importer and provides notice in accordance with section 16 of this chapter.

The attorney general shall prescribe the form of a declaration under this subsection, including dates for filing the declaration.

As added by P.L.24-2010, SEC.4.

IC 24-3-5.4-13.6

Bonds required for certain newly qualified and certain nonparticipating manufacturers

Sec. 13.6. (a) The attorney general may determine that a nonparticipating manufacturer, including a newly qualified nonparticipating manufacturer, poses an elevated risk for noncompliance with this article if any of the following apply:

(1) The nonparticipating manufacturer or an affiliate of a nonparticipating manufacturer has failed to make required payments into a qualified escrow fund in any state during the three (3) calendar years immediately preceding the date of the determination unless:

(A) the nonparticipating manufacturer or affiliate:

(i) did not knowingly or recklessly fail to make the required payments; and

(ii) makes the required payment not more than one hundred eighty (180) days after receiving notice of the missed or insufficient payment; or

(B) the failure to make the required payment is:

(i) the subject of a good faith dispute that is documented to the satisfaction of the attorney general; and

(ii) cured not more than one hundred eighty (180) days after entry of a final order that resolves the good faith dispute and establishes the amount of the required escrow

payment.

(2) A state has removed the nonparticipating manufacturer, an affiliate of the nonparticipating manufacturer, or a brand family of the nonparticipating manufacturer or an affiliate of the nonparticipating manufacturer from the state's tobacco directory for noncompliance with state law during the three (3) calendar years immediately preceding the date of the determination.

(3) A state has:

(A) litigation pending; or

(B) an unsatisfied judgment;

against the nonparticipating manufacturer or an affiliate of the nonparticipating manufacturer for escrow payments or penalties, costs, or fees related to the nonparticipating manufacturer or affiliate's noncompliance with the state's escrow laws.

(b) The attorney general shall require:

(1) a newly qualified nonparticipating manufacturer; or

(2) a nonparticipating manufacturer that:

(A) has filed a certification under section 13 of this chapter; and

(B) poses an elevated risk for noncompliance, as determined by the attorney general under subsection (a);

to post a bond as described in subsection (c).

(c) A bond required under subsection (b) must be:

(1) posted by corporate surety located within the United States;

(2) in an amount equal to the greater of:

(A) fifty thousand dollars ($50,000); or

(B) the amount that the nonparticipating manufacturer is required to place into a qualified escrow fund under IC 24-3-3-12(2) for the calendar year in which the bond is posted;

(3) written in favor of the state of Indiana; and

(4) for a nonparticipating manufacturer, conditioned on the performance of the nonparticipating manufacturer, or an importer that assumes joint and several liability with the nonparticipating manufacturer under section 13.5 of this chapter, of all of obligations and duties of the nonparticipating manufacturer under this article during the calendar year in which the bond is posted and the immediately succeeding calendar year.

(d) If the attorney general determines under subsection (a) that a newly qualified nonparticipating manufacturer poses an elevated risk of noncompliance, the attorney general may require the newly qualified nonparticipating manufacturer to post a bond under subsection (c) for at least the first three (3) years during which the newly qualified nonparticipating manufacturers brand families are listed in a directory under section 14 of this chapter.

As added by P.L.24-2010, SEC.5.

IC 24-3-5.4-14

Brand family directory; refunds

Sec. 14. (a) Not later than July 1 of each year, the attorney general shall make available to the public by publishing on accessIndiana (as operated under IC 4-13.1-2) a directory listing all brand families listed in certifications filed under section 13 of this chapter.

(b) A directory described in subsection (a) shall not include the name or brand families of a nonparticipating manufacturer:

(1) that fails to comply with section 13 of this chapter;

(2) whose certification fails to comply with section 13(c) or 13(e) of this chapter, unless the attorney general determines that the failure has been remedied; or

(3) that:

(A) has filed a certification under section 13 of this chapter; and

(B) poses an elevated risk for noncompliance, as determined by the attorney general under section 13.6(a) of this chapter;

unless the nonparticipating manufacturer, or an importer that assumes joint and several liability with the nonparticipating manufacturer under section 13.5 of this chapter, posts a bond under section 13.6 of this chapter.

(c) The directory may not include a tobacco product manufacturer or a brand family if the attorney general concludes that:

(1) in the case of a nonparticipating manufacturer, all escrow payments required under IC 24-3-3-12 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, have not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or

(2) all outstanding final judgments, including interest on the judgments, for violations of IC 24-3-3 have not been fully satisfied for the tobacco product manufacturer or brand family.

(d) The directory may not include a newly qualified nonparticipating manufacturer unless the newly qualified nonparticipating manufacturer posts a bond under section 13.6 of this chapter.

(e) The attorney general shall update the directory as necessary to correct mistakes or to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this chapter.

(f) The attorney general shall post in the directory and transmit by electronic mail or other means to each distributor or stamping agent notice of any removal from the directory of a tobacco product manufacturer or brand family not later than thirty (30) days before the attorney general removes the tobacco product manufacturer or brand family from the directory.

(g) Unless otherwise provided in an agreement between a tobacco product manufacturer and a distributor or stamping agent, a distributor or stamping agent is entitled to a refund from a tobacco product manufacturer for any money paid by the distributor or stamping agent to the tobacco product manufacturer for any

cigarettes of the tobacco product manufacturer or brand family that:

(1) are in the possession of the distributor or stamping agent on; or

(2) the distributor or stamping agent receives from a retailer after;

the date on which the tobacco product manufacturer or brand family is removed from the directory.

(h) Unless otherwise provided in an agreement between a retailer and a distributor, stamping agent, or tobacco product manufacturer, a retailer is entitled to a refund from a distributor, stamping agent, or tobacco product manufacturer for any money paid by the retailer to the distributor, stamping agent, or tobacco product manufacturer for any cigarettes of the tobacco product manufacturer or brand family that are in the possession of the retailer on the date on which the tobacco product manufacturer or brand family is removed from the directory.

(i) The attorney general shall not restore a tobacco product manufacturer or brand family to the directory until the tobacco product manufacturer pays a distributor, stamping agent, or retailer any refund due under subsection (g) or (h).

(j) A distributor or stamping agent shall provide and update as necessary an electronic mail address to the attorney general for purposes of receiving a notification required by this chapter.

As added by P.L.252-2003, SEC.16. Amended by P.L.177-2005, SEC.44; P.L.24-2010, SEC.6.

IC 24-3-5.4-15

Stamping, sale, or importation of unlisted cigarettes prohibited

Sec. 15. A person may not:

(1) affix a stamp to a package or other container of cigarettes; or

(2) sell, offer or possess for sale, or import for personal consumption in Indiana cigarettes;

of a tobacco product manufacturer or brand family that is not listed in a directory under section 14 of this chapter.

As added by P.L.252-2003, SEC.16. Amended by P.L.160-2005, SEC.13.

IC 24-3-5.4-16

Appointment of agent by foreign nonparticipating manufacturer; termination of agency

Sec. 16. (a) A foreign nonparticipating manufacturer that has not registered to do business in Indiana shall, as a condition precedent to having the foreign nonparticipating manufacturer's brand families listed in a directory under section 14 of this chapter, appoint and engage without interruption the services of an agent in Indiana to act as the foreign nonparticipating manufacturer's agent for the service of process. Service on an agent under this section constitutes legal and valid service of process on the foreign nonparticipating manufacturer that appointed and engaged the services of the agent.

The foreign nonparticipating manufacturer shall provide the following information to the department and the attorney general:

(1) The name, address, and telephone number of the agent.

(2) Proof of the appointment of the agent.

(3) The availability of the agent.

(4) Any other information required by the department or the attorney general.

(b) A foreign nonparticipating manufacturer shall provide notice to the department and the attorney general not less than thirty (30) days before the foreign nonparticipating manufacturer terminates the authority of an agent appointed under this section. The foreign nonparticipating manufacturer shall provide proof to the satisfaction of the attorney general of the appointment of a new agent not less than five (5) days before the foreign nonparticipating manufacturer terminates an existing agency appointment.

(c) If an agent terminates an agency appointment, the foreign nonparticipating manufacturer shall:

(1) notify the department and the attorney general of the termination not more than five (5) days after the termination; and

(2) provide proof to the satisfaction of the attorney general of the appointment of a new agent.

(d) A foreign nonparticipating manufacturer that:

(1) sells products in Indiana; and

(2) has not appointed an agent under this section;

is considered to have appointed the secretary of state as the foreign nonparticipating manufacturer's agent. The appointment of the secretary of state under this subsection as the foreign nonparticipating manufacturer's agent does not satisfy the condition precedent to having the foreign nonparticipating manufacturer's brand families listed in a directory under section 14 of this chapter. *As added by P.L.252-2003, SEC.16.*

IC 24-3-5.4-17

Distributor or stamping agent required to send information to department, commission, and attorney general

Sec. 17. (a) This section applies after July 31, 2003.

(b) Not later than January 20, April 20, July 20, and October 20 of a calendar year, or more frequently if ordered by the department, the commission, or the attorney general, a distributor or stamping agent shall submit the following information to the department, the commission, and the attorney general:

(1) A list by brand family of the total number of cigarettes for which the distributor or stamping agent affixed stamps or otherwise paid taxes during the immediately preceding three (3) months.

(2) Any other information required by the department or the attorney general.

The distributor or stamping agent shall maintain and make available to the department, the commission, and the attorney general for a

period of five (5) years all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information that the distributor or stamping agent relied on in reporting to the department, the commission, and the attorney general.

(c) The attorney general may require a distributor or a tobacco product manufacturer to submit additional information to determine whether a tobacco product manufacturer is in compliance with this chapter. The additional information may include samples of the packaging or labeling of each of the tobacco product manufacturer's brand families.

As added by P.L.252-2003, SEC.16. Amended by P.L.160-2005, SEC.14.

IC 24-3-5.4-18

Disclosure and sharing of information among department, commission, and attorney general

Sec. 18. The department and the commission shall disclose to the attorney general any information received under this chapter and requested by the attorney general for purposes of determining compliance with and enforcing this chapter. The department, the commission, and the attorney general:

(1) shall share with each other the information received under this chapter; and

(2) may share the information received under this chapter with other federal, state, or local agencies only for purposes of enforcing this chapter or a corresponding law in another state.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-19

Proof of qualified escrow fund by nonparticipating manufacturer

Sec. 19. The attorney general may require a nonparticipating manufacturer to provide from the financial institution that holds the nonparticipating manufacturer's qualified escrow fund for purposes of complying with this chapter proof of:

(1) the amount of money in the qualified escrow fund being held on behalf of the state;

(2) the dates of any deposits into the qualified escrow fund; and

(3) the dates and amounts of any withdrawals from the qualified escrow fund.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-20

Rules

Sec. 20. The department or the attorney general may adopt rules under IC 4-22-2 to implement this chapter, including rules to:

(1) require a tobacco product manufacturer subject to section 13(c) of this chapter to make required escrow deposits in installments during the calendar year in which the sales covered by the deposits are made; or

(2) produce information sufficient to enable the attorney general

to determine the adequacy of the amount of an installment deposit described in subdivision (1).

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-21

Revocation of suspension of distributor's license; penalty

Sec. 21. (a) This section applies in addition to or instead of any other civil or criminal penalty.

(b) The department may revoke or suspend the license of a distributor, a stamping agent, or any other person that violates section 15 of this chapter.

(c) Each:

(1) stamp affixed;

(2) sale of cigarettes; or

(3) offer or possession of cigarettes for sale;

in violation of section 15 of this chapter constitutes a separate violation.

(d) The department or the commission may impose a civil penalty that does not exceed the greater of:

(1) five hundred percent (500%) of the retail value of the cigarettes sold; or

(2) five thousand dollars ($5,000);

for each violation of section 15 of this chapter.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-22

Seizure and forfeiture of unlisted cigarettes

Sec. 22. Whenever the department or the commission discovers any cigarettes that have been sold, offered for sale, or possessed for sale in Indiana in violation of section 15 of this chapter, the department or the commission may seize and take possession of the cigarettes. The seized cigarettes shall be forfeited to the state. The department or the commission shall destroy the seized cigarettes.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-23

Injunction

Sec. 23. The attorney general may seek an injunction to:

(1) restrain a threatened or an actual violation of section 15 of this chapter by a stamping agent; and

(2) compel the stamping agent to comply with sections 15, 17(b), and 17(c) of this chapter.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-24

Violation; Class C misdemeanor

Sec. 24. (a) A person shall not:

(1) sell or distribute; or

(2) acquire, hold, own, possess, transport, import, or cause to be imported;

cigarettes that the person knows or should know are intended for distribution or sale in Indiana in violation of section 15 of this chapter.

(b) A person who violates this section commits a Class C misdemeanor.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-25

Unfair and deceptive business practice

Sec. 25. A person who violates section 15 of this chapter engages in an unfair and deceptive business practice.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-26

Judicial review

Sec. 26. A determination by the attorney general to not list in or to remove from a directory under section 14 of this chapter a brand family or a tobacco product manufacturer is subject to review only by the Marion County circuit court.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-27

Issuance of registration certificate

Sec. 27. The department shall not issue a registration certificate under IC 6-7-1-16(a) to a distributor unless the distributor certifies in writing that the distributor will comply with this chapter.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-28

Recovery of costs

Sec. 28. In an action brought by the state to enforce this chapter, the state may recover:

(1) the costs of investigation;
(2) expert witness fees;
(3) the costs of the action; and
(4) attorney's fees.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-29

Disgorged profits

Sec. 29. If a court determines that a person has violated this chapter, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the treasurer of state for deposit in the Indiana tobacco master settlement agreement fund under IC 4-12-1-14.3.

As added by P.L.252-2003, SEC.16.

IC 24-3-5.4-30

Penalties deposited in enforcement and administration fund

Sec. 30. All:

(1) civil penalties imposed under; and

(2) judgments for violations of;

this chapter shall be deposited in the enforcement and administration fund established under IC 7.1-4-10-1.

As added by P.L.252-2003, SEC.16.

IC 24-3-6
Chapter 6. Contraband Cigarettes

IC 24-3-6-1
"Commission"
Sec. 1. As used in this chapter, "commission" refers to the alcohol and tobacco commission created by IC 7.1-2-1-1.
As added by P.L.160-2005, SEC.15.

IC 24-3-6-2
"Distributor"
Sec. 2. As used in this chapter, "distributor" means a distributor (as defined in IC 6-7-1-6) that holds a registration certificate issued under IC 6-7-1-16.
As added by P.L.160-2005, SEC.15.

IC 24-3-6-3
"Importer"
Sec. 3. As used in this chapter, "importer" means a person that brings cigarettes into the United States for sale or distribution.
As added by P.L.160-2005, SEC.15.

IC 24-3-6-4
"Licensed"
Sec. 4. As used in this chapter, "licensed" means holding a license issued under section 9 of this chapter.
As added by P.L.160-2005, SEC.15.

IC 24-3-6-5
"Manufacturer"
Sec. 5. As used in this chapter, "manufacturer" means a person that manufactures or otherwise produces cigarettes to be sold in the United States.
As added by P.L.160-2005, SEC.15.

IC 24-3-6-6
"Person"
Sec. 6. As used in this chapter, "person" has the meaning set forth in IC 6-7-1-4.
As added by P.L.160-2005, SEC.15.

IC 24-3-6-7
"Retailer"
Sec. 7. As used in this chapter, "retailer" means a person that sells cigarettes to a consumer. The term includes a distributor.
As added by P.L.160-2005, SEC.15.

IC 24-3-6-8
"Stamp"
Sec. 8. As used in this chapter, "stamp" has the meaning set forth

in IC 6-7-1-9.
As added by P.L.160-2005, SEC.15.

IC 24-3-6-9
Licenses; application, issuance, and renewal; revocation or suspension

Sec. 9. (a) The commission may issue or renew a license to the following applicants:

(1) An importer.
(2) A manufacturer.

The commission shall prescribe the form of an application.

(b) An importer or manufacturer that conducts business in Indiana must apply under this section for a license for the importer's or manufacturer's principal place of business. An importer or manufacturer that is issued a license shall display the license at the importer's or manufacturer's principal place of business.

(c) The commission shall prescribe the form and duration of a license issued under this section. However, a license may not be valid for more than three (3) years from the date of issuance.

(d) A license issued under this section is nontransferable.

(e) The commission shall not issue or renew a license under this section if:

(1) the applicant owes at least five hundred dollars ($500) in taxes imposed under IC 6-7-1-12;
(2) the commission revoked the applicant's license within two (2) years before the application;
(3) the applicant commits an offense under IC 6-7-1-21;
(4) the applicant does not comply with IC 24-3-3-12; or
(5) the applicant violates IC 24-3-4.

(f) The commission may revoke or suspend a license issued under this section if the applicant:

(1) is not eligible to receive or renew a license under subsection (e); or
(2) violates this chapter.

As added by P.L.160-2005, SEC.15.

IC 24-3-6-10
Stamped and unstamped cigarettes

Sec. 10. (a) A distributor may apply a stamp only to cigarettes that are received from a licensed importer or licensed manufacturer.

(b) A distributor shall store stamped and unstamped cigarettes separately.

(c) A distributor may transfer unstamped cigarettes only as provided in IC 6-7-1-18.
As added by P.L.160-2005, SEC.15.

IC 24-3-6-11
Selling or obtaining cigarettes

Sec. 11. (a) A manufacturer or an importer may sell cigarettes in Indiana only to a distributor or a licensed importer.

(b) A manufacturer that sells cigarettes to a licensed importer under subsection (a) must be a licensed manufacturer.

(c) A distributor may sell cigarettes only to a distributor or a retailer.

(d) A distributor may obtain cigarettes only from another distributor, a licensed importer, or a licensed manufacturer.

(e) Except as provided in subsection (f), a retailer may obtain cigarettes only from a distributor.

(f) A retailer that is a holder of a certificate issued under IC 7.1-3-18.5 may purchase up to one thousand dollars ($1,000) of cigarettes per week from another retailer that holds a certificate issued under IC 7.1-3-18.5.

As added by P.L.160-2005, SEC.15.

IC 24-3-6-12

Reporting information by distributor to attorney general

Sec. 12. (a) This section does not apply to a distributor who:

(1) is a licensed manufacturer; and

(2) complies with section 13 of this chapter.

(b) A distributor shall report the following information for each place of business belonging to the distributor to the office of the attorney general not later than the fifteenth day of each month:

(1) The number and brand of cigarettes:

(A) distributed;

(B) shipped into Indiana; or

(C) shipped within Indiana;

during the immediately preceding month.

(2) The name and address of each person to which cigarettes described in subdivision (1) were distributed or shipped.

As added by P.L.160-2005, SEC.15.

IC 24-3-6-12.3

Distributor reports under section 12 of chapter; when required

Sec. 12.3. Notwithstanding section 12(b)(2) of this chapter, as added by P.L.160-2005, a distributor is not required to report the information required in section 12(b)(2) of this chapter, as added by P.L.160-2005, until the later of the following:

(1) When the attorney general becomes capable of receiving the information reported in an electronic format.

(2) July 1, 2008.

As added by P.L.220-2011, SEC.386.

IC 24-3-6-13

Documentation of transactions; preservation; review

Sec. 13. (a) An importer or a manufacturer shall maintain documentation for each place of business belonging to the importer or manufacturer for each transaction other than a retail transaction with a consumer involving the sale, purchase, transfer, consignment, or receipt of cigarettes. The documentation must include:

(1) the name and address of the parties to the transaction; and

(2) the quantity by brand style of cigarettes involved in the transaction.

(b) Subject to subsection (c), an importer or a manufacturer shall preserve documentation described in subsection (a) at the place of business at which each transaction occurs.

(c) The commission may allow an importer or a manufacturer with multiple places of business to preserve documentation described in subsection (a) at a centralized location. However, the importer or manufacturer shall provide duplicate documentation at each place of business upon request by the commission.

(d) An importer or a manufacturer shall maintain documentation under this section for five (5) years from the date of the transaction.

(e) The commission may:

(1) obtain access to; and

(2) inspect at reasonable times;

the documentation maintained under this section. The commission may share the documentation with other law enforcement officials.

As added by P.L.160-2005, SEC.15.

IC 24-3-6-14

Inspection by commission or law enforcement officer

Sec. 14. (a) The commission may enter and inspect, without a warrant during normal business hours or with a warrant during nonbusiness hours, the facilities and records of an importer or a manufacturer.

(b) If the commission or a law enforcement officer has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes in violation of this chapter, the commission or the law enforcement officer may stop and inspect the vehicle for cigarettes being transported in violation of this chapter.

As added by P.L.160-2005, SEC.15.

IC 24-3-6-15

Civil penalty

Sec. 15. (a) A person who violates this chapter is liable for a civil penalty equal to the greater of:

(1) five (5) times the value of the cigarettes involved in the violation; or

(2) one thousand dollars ($1,000).

(b) A civil penalty under this section is in addition to any other penalty imposed.

As added by P.L.160-2005, SEC.15.

IC 24-3-6-16

Right of action; notice to attorney general

Sec. 16. (a) Either or both of the following may bring an action to prevent or restrain violations of this chapter:

(1) The attorney general or the attorney general's designee.

(2) A person that holds a valid permit under 26 U.S.C. 5712.

(b) A person that brings an action under subsection (a) shall

provide notice to the attorney general of the commencement of the action.

As added by P.L.160-2005, SEC.15.

IC 24-4

ARTICLE 4. REGULATED BUSINESSES

IC 24-4-1

Chapter 1. Dairy Products

IC 24-4-1-1

Discrimination; violation

Sec. 1. A person engaged in the purchasing, manufacture, or distribution of milk or milk products who, for the purpose of destroying the business of a competitor in any locality and creating or maintaining a monopoly, discriminates between different sections, communities, or cities of this state by buying or selling milk or milk products at a lower rate in one section, community, or city than is paid or charged in another section, community, or city after equalizing the distance from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, the actual cost of transportation, and making allowance for differences in quality, commits a Class B misdemeanor.

(Formerly: Acts 1913, c.117, s.1.) As amended by Acts 1978, P.L.2, SEC.2409.

IC 24-4-1-2

Repealed

(Repealed by Acts 1978, P.L.2, SEC.2426.)

IC 24-4-1-3

Void contracts and agreements

Sec. 3. All contracts and agreements made in violation of any provisions of section 1 of this chapter shall be void.

(Formerly: Acts 1913, c.117, s.3.) As amended by P.L.152-1986, SEC.44.

IC 24-4-1-4

Duty of prosecuting attorney and attorney general

Sec. 4. It shall be the duty of the prosecuting attorneys, in their counties, and the attorney general to enforce the provisions of sections 1 and 3 of this chapter by appropriate actions in courts of competent jurisdiction.

(Formerly: Acts 1913, c.117, s.4.) As amended by P.L.152-1986, SEC.45.

IC 24-4-1-5

Duty of secretary of state

Sec. 5. If complaint shall be made to the secretary of state that any corporation authorized to do business in this state is guilty of unfair discrimination within the terms of this chapter, it shall be the duty of the secretary of state to refer the matter to the attorney general, who may, if the facts justify it in his judgment, institute proceedings in the court against such corporations.

(Formerly: Acts 1913, c.117, s.5.) As amended by P.L.152-1986, SEC.46.

IC 24-4-1-6
Revocation of corporate permit

Sec. 6. If any corporation, foreign or domestic, authorized to do business in this state is found guilty of unfair discrimination within the terms of this chapter, it shall be the duty of the secretary of state to immediately revoke the permit of such corporation to do business in this state.

(Formerly: Acts 1913, c.117, s.6.) As amended by P.L.152-1986, SEC.47.

IC 24-4-2
Chapter 2. Trade Stamps

IC 24-4-2-1
Stamps; redeemable in lawful money

Sec. 1. No person shall sell or issue to any person in this state any stamps, trading stamps, cash discount stamps, checks, ticket, coupon, or other similar devise which will entitle the holder thereof, on presentation thereof, either singly or in definite number, or receive, either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, unless each of said stamps, trading stamps, cash discount stamps, checks, tickets, coupons, or other similar devices shall have legibly printed or written on the face thereof the redeemable value thereof in lawful money of the United States.
(Formerly: Acts 1913, c.299, s.1; Acts 1921, c.109, s.1.)

IC 24-4-2-2
Redemption in lawful money by seller or issuer; minimum redemption

Sec. 2. Any person who shall sell or issue to any person engaged in any trade, business, or profession, any stamp, trading stamp, cash discount stamp, check, ticket, coupon, or other similar device which will entitle the holder thereof, on presentation thereof, either singly or in definite number, to receive either directly from the vendor or indirectly through any other person, money, goods, wares or merchandise, shall upon presentation redeem the same either in goods, wares or merchandise, or in lawful money of the United States, at the option of the holder thereof, at the value in lawful money printed on the face thereof: Provided, That the same be presented for redemption in number or quantity aggregating in money value not less than five cents (5 cents) in each lot.
(Formerly: Acts 1913, c.299, s.2.)

IC 24-4-2-3
Refusal to redeem

Sec. 3. Any person engaged in any trade, business, or profession who shall distribute, deliver, or present to any person dealing with him, in consideration of any article or thing purchased, any stamp, trading stamp, cash discount stamp, check, ticket, coupon, or other similar device which will entitle the holder thereof, on presentation thereof, either singly or in definite number, to receive either directly from the person issuing or selling the same, as set forth in section 2 of this chapter, or indirectly from any other person, shall, upon the refusal or failure of the said person issuing or selling same to redeem the same as set forth in said section 2 of this chapter, be liable to the holder thereof for the face value thereof, and shall, upon presentation of the same in lots of number aggregating, in money value, not less than five cents ($0.05) in each lot, redeem the same either in ware or merchandise or in lawful money of the United States, at the option

of the holder thereof, at the value in lawful money printed on the face thereof.
(Formerly: Acts 1913, c.299, s.3.) As amended by P.L.152-1986, SEC.48.

IC 24-4-2-4
Redemption in money or merchandise; option of holder of stamps

Sec. 4. The redeemable value of such stamps, trading stamps, cash discount stamp, check, ticket, coupon or other similar device, printed or legibly written on the face of said stamp as herein provided shall be the same, whether redeemed in merchandise or in lawful money of the United States, and the redemption of such stamps as hereinabove mentioned shall be in lawful money of the United States or in merchandise of equal value thereto, at the option of the holder of said stamps.
(Formerly: Acts 1913, c.299, s.4.)

IC 24-4-2-5
Giving stamps; consent of person or firm issuing stamp

Sec. 5. No person, firm, limited liability company, or corporation shall give or deliver, as an inducement for or in connection with the sale of merchandise, any coupon, check, ticket, stamp, token, or similar device redeemable in money or in merchandise, as in this chapter provided, by any other person, firm, limited liability company, or corporation without the consent of the person, firm, or corporation originally issuing the same and responsible for the redemption thereof.
(Formerly: Acts 1913, c.299, s.5.) As amended by P.L.152-1986, SEC.49; P.L.8-1993, SEC.345.

IC 24-4-2-6
Violation

Sec. 6. A person who violates this chapter commits a Class C infraction.
(Formerly: Acts 1913, c.299, s.6.) As amended by Acts 1978, P.L.2, SEC.2410.

IC 24-4-3

Chapter 3. Secondhand Watches

IC 24-4-3-1

Definitions

Sec. 1. As used in this chapter:

(a) "Person" shall be deemed to mean a person, firm, partnership, association, limited liability company, or corporation.

(b) "Consumer" shall be deemed to mean an individual, firm, partnership, association, limited liability company, or corporation who buys for his or its own use, or for the use of another but not for resale.

(c) A "second-hand watch" shall be deemed to mean:

(1) a watch which, as a whole, the case thereof, or the movement thereof, has been sold to a consumer; or

(2) any watch whose case or movement, serial numbers, or other distinguishing numbers or identification marks have been erased, defaced, removed, altered, or covered.

(Formerly: Acts 1937, c.270, s.1.) As amended by P.L.152-1986, SEC.50; P.L.8-1993, SEC.346.

IC 24-4-3-2

Informing purchaser of secondhand nature of watch

Sec. 2. Any person, or agent or employee thereof, who sells a second-hand watch shall affix and keep affixed to the same a tag with the words "second-hand" legibly written or printed thereon in the English language. For the purposes of this chapter, "sell" shall be deemed to include offer to sell or exchange, expose for sale or exchange, possess with intent to sell or exchange, and sell or exchange.

(Formerly: Acts 1937, c.270, s.2.) As amended by P.L.152-1986, SEC.51.

IC 24-4-3-3

Invoice of sale

Sec. 3. Any person, or agent or employee thereof, who sells a second-hand watch shall deliver to the vendee a written invoice setting forth the name and address of the vendor, the name and address of the vendee, the date of the sale, the name of the watch or its maker, and the serial numbers (if any) or other distinguishing numbers or identification marks on its case and movement. In the event the serial numbers, or other distinguishing numbers or identification marks have been erased, defaced, removed, altered or covered, this shall be set forth in the invoice. A duplicate of the aforesaid invoice shall be kept on file by the vendor of such second-hand watch for at least one (1) year from the date of the sale thereof and shall be open to inspection during all business hours by the prosecuting attorney or his representative of the county in which the vendor is engaged in business.

(Formerly: Acts 1937, c.270, s.3.)

IC 24-4-3-4
Advertising secondhand watches

Sec. 4. Any person advertising in any manner second-hand watches for sale shall state clearly in such advertising that the watches so advertised are second-hand watches.
(Formerly: Acts 1937, c.270, s.4.)

IC 24-4-3-5
Violations

Sec. 5. A person who recklessly violates this chapter commits a Class B misdemeanor.
(Formerly: Acts 1937, c.270, s.5.) As amended by Acts 1978, P.L.2, SEC.2411.

IC 24-4-4

Chapter 4. Coal Delivery Tickets

IC 24-4-4-1

Sale of coal and coke; duplicate ticket; contents

Sec. 1. It shall be unlawful for any person, firm, limited liability company, or corporation, by himself or itself, or by his or its servants or as the servant or agent of another, to sell or offer for sale or delivery at retail any coal or coke which is sold by weight, unless each such delivery is accompanied by a delivery ticket and a duplicate thereof, upon each of which tickets and duplicates thereof shall be written or otherwise indicated:

(a) the name and address of the person, firm, limited liability company, corporation, or association selling and delivering or attempting to sell or deliver such commodity;

(b) the gross weight of the load, the tare weight of the delivering vehicle, and the net amount in weight of the commodity being delivered in such vehicle;

(c) the name or identifying initials of the party who weighed it;

(d) the state in which the coal was mined, the name of the coal, brand or trade name, if any;

(e) the number of the vein or seam from which the coal was taken; and

(f) the size and grade thereof, which size of all grades must be designated according to the openings in the screens over and through which each such size of coal is made at the place of production.

One (1) of such delivery tickets or the duplicate thereof shall be delivered and surrendered to the person or persons in charge of the delivery of such load of commodities to the purchaser thereof or to his agent or representative, and the other ticket or duplicate shall be retained by the person, firm, limited liability company, or corporation making such sale for a period of not less than twelve (12) months from date of sale. All coal or coke so sold or delivered shall consist of the kind, quality, and weight in all respects as described and indicated in such delivery ticket and duplicate thereof, and it shall constitute a violation of this chapter to sell or deliver or substitute any other kind and quality or weight of coal or coke than that so described and indicated, and proof of the sale, delivery, or substitution of any coal or coke which is not of the kind, quality, and weight so described and indicated shall constitute prima facie evidence and proof of intent to violate this section.

(Formerly: Acts 1931, c.177, s.1; Acts 1935, c.278, s.1.) As amended by P.L.152-1986, SEC.52; P.L.8-1993, SEC.347.

IC 24-4-4-2

Coal in carload lots; invoice; contents

Sec. 2. Every person, firm, limited liability company, or corporation who produces, ships or sells coal in car-load lots in this state shall transmit an invoice for each shipment of coal which shall

indicate plainly thereon the state in which the coal was mined, the name of the coal or the number of the vein or seam from which the coal was taken, and the size and grade thereof, which size of all grades must be designated according to the opening in the screens over and through which each such size of coal is made at the place of production.
(Formerly: Acts 1931, c.177, s.2; Acts 1935, c.278, s.2.) As amended by P.L.8-1993, SEC.348.

IC 24-4-4-3
Sign on delivery vehicle
Sec. 3. Upon both sides of delivery vehicles shall be displayed a sign with letters not less than three (3) inches in height showing name of person, firm, limited liability company, or corporation delivering or attempting to deliver commodities as prescribed in section 1 of this chapter.
(Formerly: Acts 1931, c.177, s.3.) As amended by P.L.152-1986, SEC.53; P.L.8-1993, SEC.349.

IC 24-4-4-4
Division of weights and measures; delivery tickets
Sec. 4. Upon the demand of the division of weights and measures, a deputy of the division inspector, or any peace officer, the person or persons in charge of any such load of commodities shall deliver to such officer all delivery tickets in the person's possession, and shall proceed, at the direction of the officer to a suitable tested scale for the purpose of reweighing such load of commodities to verify the correctness of the delivery ticket.
(Formerly: Acts 1931, c.177, s.4; Acts 1935, c.278, s.3.) As amended by P.L.2-1992, SEC.748.

IC 24-4-4-5
Violations
Sec. 5. A person who recklessly violates this chapter commits a Class B misdemeanor.
(Formerly: Acts 1931, c.177, s.5; Acts 1935, c.278, s.4.) As amended by Acts 1978, P.L.2, SEC.2412.

IC 24-4-4-6
Regulation by ordinance
Sec. 6. Nothing in this chapter shall prohibit any city from regulating by ordinance the retail or wholesale delivery of coal.
(Formerly: Acts 1931, c.177, s.6.) As amended by P.L.152-1986, SEC.54.

IC 24-4-4-7
Advertising coal and coke
Sec. 7. It shall be unlawful for any person, firm, limited liability company, or corporation, by himself or itself, or by his or its agent or servant, or as agent or servant of another, to advertise by any false

statement, either oral or written, or to publish or display any false sign, printing, or writing concerning the grade, size, quality, vein or seam, brand or trade name, name of mine in which produced, or origin of such coal or coke sold or delivered, or offered by him, it, or them for sale or delivery. For the purpose of this chapter, the term "size" where used in reference to coal shall be construed to mean the various grades into which coal is screened, namely, lump, block, egg, nut, and screenings, and the size of all such grades of coal must be designated according to the openings in the screens over and through which each such size of coal is made at the place of production. Abbreviations or words, terms, or phrases describing the size, preparation, or origin of coal or coke shall not be included in any advertisement as mentioned in this chapter. Any person, firm, limited liability company, or corporation violating any of the provisions of this section shall be subject to the provisions of section 5 of this chapter.

(Formerly: Acts 1931, c.177, s.7; Acts 1933, c.265, s.1; Acts 1935, c.278, s.5.) As amended by P.L.152-1986, SEC.55; P.L.8-1993, SEC.350.

IC 24-4-5

Chapter 5. Cloth Product Trademarks

IC 24-4-5-1

Trademarks; registration; fees

Sec. 1. (a) A person, a firm, a limited liability company, a corporation, or an association who supplies by rental or lease a circulating product that is the property of the supplier may adopt and use a name or other mark or device woven, impressed, or produced on the circulating product to indicate ownership and registration as described by this chapter.

(b) The owner of a delivery container may adopt and use an identifying mark or device for affixing or stamping on a delivery container to indicate ownership and registration as described in this chapter.

(c) A supplier of a circulating product and an owner of a delivery container may file in the office of the secretary of state and also in the office of the county recorder of the county in which the principal place of business of the supplier or owner is located or if the principal place of business is located outside Indiana then in the office of the county recorder of any county of the state in which it does business, a description of the names, marks, or devices used to indicate ownership, and cause such description to be printed once a week for three (3) successive weeks in a newspaper published in the county in which such description is filed. The registrant shall pay the secretary of state three dollars ($3) for each registration and the county recorder, the amount provided by law for recordation.

(Formerly: Acts 1971, P.L.365, SEC.1.) As amended by P.L.114-1992, SEC.1; P.L.8-1993, SEC.351.

IC 24-4-5-1.1

"Circulating product" defined

Sec. 1.1. As used in this chapter, "circulating product" includes:

(1) clean laundered towels;
(2) industrial wiping towels;
(3) sheets, pillowcases, napkins, tablecloths, and linen;
(4) coats, aprons, shirts, and diapers;
(5) garments serviced by linen and towel supply companies;
(6) garments serviced by industrial garment and towel supply companies;
(7) articles of dust control;
(8) toilet devices;
(9) towel dispensing cabinets; and
(10) bags, carts, baskets, or other receptacles used as packages or containers;

loaned or circulated as part of a regular service for the periodic exchange of clean articles for soiled articles.

As added by P.L.114-1992, SEC.2.

IC 24-4-5-1.2

"Delivery container" defined

Sec. 1.2. As used in this chapter, "delivery container" means a permanent container used by:

(1) a bakery, dairy, distributor, retailer, or food service establishment; or

(2) an agent of a bakery, dairy, distributor, retailer, or food service establishment;

to transport, store, or carry bakery or dairy products.

As added by P.L.114-1992, SEC.3.

IC 24-4-5-1.3

"Registrant" defined

Sec. 1.3. As used in this chapter, "registrant" means a supplier of a circulating product or the owner of a delivery container who has filed under section 1 of this chapter a description of a name, mark, or device used to indicate the ownership of the circulating product or delivery container.

As added by P.L.114-1992, SEC.4.

IC 24-4-5-2

Trademarks; unlawful sale or purchase; concealment or removal

Sec. 2. (a) This section does not apply to a registrant or person who has purchased from a registrant a circulating product or delivery container bearing a mark or device registered under this chapter.

(b) It is unlawful for any person, firm, limited liability company, corporation, or association, except the owner or registrant of a brand registered as provided in this chapter, to:

(1) sell, buy, rent, launder or clean, give, take, or otherwise traffic in;

(2) erase, obliterate or otherwise cover up, conceal, or remove a name, mark, or device registered under this chapter; or

(3) fill or refill;

without the written consent of the registrant, any circulating product or delivery container that is marked with or by any name, mark, or device, a description of which is filed and published as provided in section 1 of this chapter.

(Formerly: Acts 1971, P.L.365, SEC.1.) As amended by P.L.114-1992, SEC.5; P.L.8-1993, SEC.352.

IC 24-4-5-3

Trademarks; purchase; reregistration

Sec. 3. Any:

(1) person, firm, limited liability company, corporation, or association; or

(2) agent of a person, a firm, a limited liability company, a corporation, or an association;

who acquires by purchase or other lawful means a circulating product or delivery container marked under section 1 of this chapter and who has the written consent under section 2 of this chapter is not required to refile and republish the description, but, as to the supplies

described in the written consent, acquires as a part of the purchase all rights and benefits the vendor has under this chapter.
(Formerly: Acts 1971, P.L.365, SEC.1.) As amended by P.L.114-1992, SEC.6; P.L.8-1993, SEC.353.

IC 24-4-5-4
Trademarks; possession of goods; notice to owner

Sec. 4. (a) Any person, firm, limited liability company, corporation, or association who finds or receives in any manner a circulating product or delivery container marked with a brand registered under this chapter shall make a reasonable effort to find the owner of the circulating product or delivery container and restore the property to the owner.

(b) Any person, firm, limited liability company, corporation, or association who finds or receives a circulating product or delivery container may notify the owner by regular United States mail, which is sufficient to comply with the requirement to restore the property to the owner, and the owner has the burden of picking up the property at the location set forth in the letter.
(Formerly: Acts 1971, P.L.365, SEC.1.) As amended by P.L.152-1986, SEC.56; P.L.114-1992, SEC.7; P.L.8-1993, SEC.354.

IC 24-4-5-5
Trademarks; deposits for safekeeping not constituting sale

Sec. 5. Acceptance of money by a registrant as a deposit to secure safekeeping and return of a circulating product or delivery container does not constitute a sale of the property, either optional or otherwise, in any proceeding under this chapter.
(Formerly: Acts 1971, P.L.365, SEC.1.) As amended by P.L.114-1992, SEC.8.

IC 24-4-5-6
Trademarks; use of circulating product or delivery container without consent; prima facie evidence

Sec. 6. (a) This section does not apply to a person who possesses a circulating product or delivery container in good faith in the ordinary course of business.

(b) Evidence of possession of a circulating product or delivery container marked under section 1 of this chapter by a person other than the registrant whose name, mark, or device is on the circulating product or delivery container without the written consent of the registrant of the name, mark, or device constitutes prima facie evidence of unlawful use of or traffic in the circulating product or delivery container.
(Formerly: Acts 1971, P.L.365, SEC.1.) As amended by P.L.114-1992, SEC.9.

IC 24-4-5-7
Violations; infraction; civil actions

Sec. 7. A person who violates this chapter commits a Class B

infraction.

If a person suffers a pecuniary loss as a result of a violation of IC 24-4-5, the person may bring a civil action against the person who caused the loss for the following:

(1) Actual damages.

(2) The costs of the action.

(3) A reasonable attorney's fee.

(Formerly: Acts 1971, P.L.365, SEC.1.) As amended by Acts 1978, P.L.2, SEC.2413; P.L.114-1992, SEC.10.

IC 24-4-5-8

Common law rights protected

Sec. 8. Nothing in this chapter affects the rights or enforcement of rights acquired under IC 24-2-1 or the rights or the enforcement of rights in trademarks acquired in good faith at any time at common law.

(Formerly: Acts 1971, P.L.365, SEC.1.) As amended by P.L.114-1992, SEC.11.

IC 24-4-6

Chapter 6. Motor Vehicle Transactions

IC 24-4-6-1

Sunday transactions prohibited

Sec. 1. (a) This section does not apply to the following:

(1) A person that holds a special event permit issued under IC 9-32-11-18.

(2) The buying, selling, or trading of a motor vehicle that is a motorcycle (as defined in IC 9-13-2-108).

(b) A person who engages in the business of buying, selling, or trading motor vehicles on Sunday commits a Class B misdemeanor.

As added by Acts 1977, P.L.26, SEC.11. Amended by P.L.156-2006, SEC.24; P.L.89-2012, SEC.1; P.L.92-2013, SEC.81.

IC 24-4-6-2

Towing disabled motor vehicles; wrecker door identification

Sec. 2. (a) For the purpose of this section, "wrecker" means a motor vehicle with an apparatus capable of lifting one (1) or more axles of a towed vehicle off the ground for the purpose of transportation.

(b) A person who engages in the business of towing disabled motor vehicles with a wrecker shall identify each wrecker used in the business by painting or permanently affixing identification on both of the wrecker's doors:

(1) the name of the business; and

(2) the name of the city where the wrecker is domiciled;

in a form that may easily be read by a law enforcement officer.

(c) A person who engages in the business of towing disabled motor vehicles who fails to comply with this section commits a Class C infraction.

As added by P.L.133-1984, SEC.1.

IC 24-4-7

Chapter 7. Contracts With Wholesale Sales Representatives

IC 24-4-7-0.1

Application of certain amendments to chapter

Sec. 0.1. The addition of this chapter by P.L.238-1985 does not apply to contracts formed before September 1, 1985.

As added by P.L.220-2011, SEC.387.

IC 24-4-7-1

"Commission"

Sec. 1. As used in this chapter, "commission" means compensation that accrues to a sales representative, for payment by a principal, at a rate expressed as a percentage of the dollar amount of orders taken or sales made by the sales representative.

As added by P.L.238-1985, SEC.1.

IC 24-4-7-2

"Person"

Sec. 2. As used in this chapter, "person" means an individual, corporation, limited liability company, partnership, unincorporated association, estate, or trust.

As added by P.L.238-1985, SEC.1. Amended by P.L.8-1993, SEC.355.

IC 24-4-7-3

"Principal"

Sec. 3. As used in this chapter, "principal" means a person who:

(1) manufactures, produces, imports, sells, or distributes a product for wholesale;

(2) contracts with a sales representative to solicit wholesale orders for the product; and

(3) compensates the sales representative, in whole or in part, by commission.

As added by P.L.238-1985, SEC.1.

IC 24-4-7-4

"Sales representative"

Sec. 4. As used in this chapter, "sales representative" means a person who:

(1) contracts with a principal to solicit wholesale orders in Indiana; and

(2) is compensated, in whole or in part, by commission.

The term does not include a person who places orders or purchases on the person's own account for resale.

As added by P.L.238-1985, SEC.1.

IC 24-4-7-5

Termination of contract; payment of commissions accrued; failure to comply; attorney's fees and costs

Sec. 5. (a) If a contract between a sales representative and a principal is terminated, the principal shall, within fourteen (14) days after payment would have been due under the contract if the contract had not been terminated, pay to the sales representative all commissions accrued under the contract.

(b) A principal who in bad faith fails to comply with subsection (a) shall be liable, in a civil action brought by the sales representative, for exemplary damages in an amount no more than three (3) times the sum of the commissions owed to the sales representative.

(c) In a civil action under subsection (b), a principal against whom exemplary damages are awarded shall pay the sales representative's reasonable attorney's fees and court costs. However, if judgment is entered for the principal and the court determines that the action was brought on frivolous grounds, the court shall award reasonable attorney's fees and court costs to the principal.

As added by P.L.238-1985, SEC.1.

IC 24-4-7-6

Doing business in Indiana

Sec. 6. For purposes of Indiana trial rule 4.4, a principal who contracts with a sales representative to solicit wholesale orders for a product in Indiana is doing business in Indiana.

As added by P.L.238-1985, SEC.1.

IC 24-4-7-7

Commission; revocable offer; entitlement

Sec. 7. (a) If a principal makes a revocable offer of a commission to a sales representative who is not an employee of the principal, the sales representative is entitled to the commission agreed upon if:

(1) the principal revokes the offer of commission and the sales representative establishes that the revocation was for a purpose of avoiding payment of the commission;

(2) the revocation occurs after the sales representative has obtained a written order for the principal's product because of the efforts of the sales representative; and

(3) the principal's product that is the subject of the order is shipped to and paid for by a customer.

(b) This section may not be construed:

(1) to impair the application of IC 32-21-1 (statute of frauds);

(2) to abrogate any rule of agency law; or

(3) to unconstitutionally impair the obligations of contracts.

As added by P.L.138-1990, SEC.1. Amended by P.L.1-1993, SEC.193; P.L.2-2002, SEC.76.

IC 24-4-7-8

Waiver of provision in chapter

Sec. 8. A provision in a contract between a sales representative and a principal that waives a provision of this chapter by:

(1) an express waiver; or

(2) a contract subject to the laws of another state;

is void.

As added by P.L.138-1990, SEC.2.

IC 24-4-8

Chapter 8. Prohibition on Direct Molding Process

IC 24-4-8-1

"Direct molding process" defined

Sec. 1. As used in this chapter, "direct molding process" means any process by which a manufactured watercraft or its component part is used as a plug for the making of a mold from which a duplicate of the watercraft or component is made.

As added by P.L.250-1987, SEC.1.

IC 24-4-8-2

"Mold" defined

Sec. 2. As used in this chapter, "mold" means any pattern, hollow form, matrix, or other device for giving shape or form to material in a plastic or molten state.

As added by P.L.250-1987, SEC.1.

IC 24-4-8-3

"Plug" defined

Sec. 3. As used in this chapter, "plug" means a manufactured item used to make a mold.

As added by P.L.250-1987, SEC.1.

IC 24-4-8-4

"Watercraft" defined

Sec. 4. As used in this chapter, "watercraft" means any instrumentality or device in or by means of which a person may be transported upon waters and includes a motorboat, sailboat, rowboat, skiff, dinghy, or canoe of whatever length or size.

As added by P.L.250-1987, SEC.1.

IC 24-4-8-5

Acts prohibited

Sec. 5. (a) A person may not manufacture, by use of a direct molding process, a watercraft or its component part manufactured by another person without permission of that other person.

(b) A person may not sell a watercraft or its component part manufactured in violation of subsection (a).

As added by P.L.250-1987, SEC.1.

IC 24-4-8-6

Civil action for injunctive relief or damages

Sec. 6. (a) A person injured by a violation of section 5 of this chapter may bring a civil action for:

(1) injunctive relief;
(2) actual damages caused by the violation;
(3) treble damages; and
(4) costs and reasonable attorney's fees.

(b) Injunctive relief may be granted for a violation of section 5 of

this chapter regardless of the failure of the plaintiff to show irreparable injury.
As added by P.L.250-1987, SEC.1.

IC 24-4-8-7
Application of chapter

Sec. 7. This chapter applies to products duplicated using a mold made after August 31, 1987.
As added by P.L.250-1987, SEC.1.

IC 24-4-9

Chapter 9. Motor Vehicle Rental Companies

IC 24-4-9-0.1

Application of chapter to certain rental agreements

Sec. 0.1. The addition of this chapter by P.L.232-1989 does not apply to rental agreements entered into before July 1, 1989.

As added by P.L.220-2011, SEC.388.

IC 24-4-9-1

"Authorized driver"

Sec. 1. As used in this chapter, with respect to a vehicle that is the subject of a rental agreement, "authorized driver" means:

(1) the renter of the vehicle;

(2) the spouse of the renter, if the spouse:

(A) is a licensed driver; and

(B) satisfies the rental company's minimum age requirement for authorized drivers;

(3) an employer or coworker of the renter, if the employer or coworker:

(A) is engaged in a business activity with the renter;

(B) is a licensed driver; and

(C) satisfies the rental company's minimum age requirement for authorized drivers;

(4) a person who operates the vehicle:

(A) while parking the vehicle at a commercial establishment; or

(B) in an emergency; or

(5) a person expressly identified as an authorized driver in the rental agreement.

As added by P.L.232-1989, SEC.1.

IC 24-4-9-2

"Damage waiver"; "waiver"

Sec. 2. As used in this chapter, "damage waiver" or "waiver" means any contract or contract provision, whether separate from or a part of a rental agreement, under which a rental company agrees to waive any or all claims against the renter for any physical or mechanical damage, as defined in section 13 of this chapter, to the rented vehicle during the term of the rental agreement.

As added by P.L.232-1989, SEC.1. Amended by P.L.19-2005, SEC.1.

IC 24-4-9-3

"Damage"

Sec. 3. As used in this chapter, "damage" means physical damage or loss to a vehicle, including loss of use of the vehicle and the cost and expenses incident to any damage or loss.

As added by P.L.232-1989, SEC.1.

IC 24-4-9-4

"Person"

Sec. 4. As used in this chapter, "person" means an individual, a firm, a partnership, limited liability company, an association, a joint stock company, a corporation, a trust, an estate, or any combination of individuals.

As added by P.L.232-1989, SEC.1. Amended by P.L.8-1993, SEC.356.

IC 24-4-9-5

"Rental agreement"

Sec. 5. As used in this chapter, "rental agreement" means a written contract:

(1) that authorizes a renter to use a vehicle made available by a rental company for a period of thirty (30) days or less;

(2) under which a charge for use of the vehicle is made at a periodic rate; and

(3) under which title to the vehicle is not transferred to the renter.

As added by P.L.232-1989, SEC.1.

IC 24-4-9-6

"Renter"

Sec. 6. As used in this chapter, "renter" means a person who obtains the use of a vehicle from a rental company under a rental agreement.

As added by P.L.232-1989, SEC.1.

IC 24-4-9-7

"Rental company"

Sec. 7. As used in this chapter, "rental company" means any person engaged in the business of regularly making available, or arranging for another person to use, a vehicle under a rental agreement.

As added by P.L.232-1989, SEC.1.

IC 24-4-9-8

"Vehicle"

Sec. 8. As used in this chapter, "vehicle" means a private passenger motor vehicle primarily designed for transporting passengers. The term includes passenger vans and minivans that are primarily designed for transporting passengers.

As added by P.L.232-1989, SEC.1.

IC 24-4-9-9

Rental agreement application of damage waivers

Sec. 9. A rental company may provide in a rental agreement that a damage waiver does not apply under any of the following circumstances:

(1) The damage is caused by the authorized driver:

(A) intentionally; or

(B) through willful or wanton misconduct.

(2) The damage arises out of the authorized driver's operation of the vehicle while intoxicated or under the influence of an illegal drug.

(3) The damage is caused while the authorized driver is engaged in a speed contest, race, road rally, test, or driver training activity.

(4) The renter provided the rental company with fraudulent or false information and the rental company would not have rented the vehicle if the rental company had received true information.

(5) The damage arises out of vandalism or theft of the rented vehicle caused by the negligence of the authorized driver, except that the possession by the authorized driver, at the time of the vandalism or theft, of the ignition key furnished by the rental company shall be prima facie evidence that the authorized driver was not negligent.

(6) The damage arises out of the use of the vehicle in connection with conduct that could be properly charged as a felony.

(7) The damage arises out of the use of the vehicle to carry persons or property for hire or to tow or push anything.

(8) The damage arises out of the use of the vehicle outside the United States, unless the use is specifically authorized by the rental agreement.

(9) The damage arises out of the use of the vehicle by an unauthorized driver.

As added by P.L.232-1989, SEC.1. Amended by P.L.19-2005, SEC.2.

IC 24-4-9-10

Sale of damage waivers; disclosures; acknowledgment by renter

Sec. 10. (a) A rental company may offer and sell, for a separate charge, a damage waiver that is set forth in the rental agreement and that relieves an authorized driver of any liability for damage that the authorized driver might otherwise incur.

(b) Each rental agreement that contains a damage waiver must disclose the following information in plain language printed in type at least as large as 10 point type:

(1) That the waiver is optional.

(2) That the waiver entails an additional charge.

(3) The actual charge per day for the waiver.

(4) All restrictions, conditions, and provisions in or endorsed on the waiver.

(5) That the renter or other authorized driver may already be sufficiently covered for damage to the rental vehicle and should examine the renter's or authorized driver's automobile insurance policy to determine whether the policy provides coverage for damage, loss, or loss of use to a rented vehicle, and the amount of the deductible.

(6) That by entering into the rental agreement, the renter may be liable for damage, loss, or loss of use to the rental vehicle.

(c) A rental company may not rent a vehicle to a renter until the renter has acknowledged in writing that the renter understands the information set forth in subsection (b). The acknowledgment must be written in plain language on the rental agreement and must be initialed by the renter.
As added by P.L.232-1989, SEC.1. Amended by P.L.19-2005, SEC.3.

IC 24-4-9-11
Repealed
(Repealed by P.L.171-1997, SEC.2.)

IC 24-4-9-12
Rental company's action for damages
Sec. 12. A rental company may bring an action to recover for damage based on a rental agreement. If the action is against a renter who is a resident of Indiana, the action shall be filed in the county of the renter's primary residence.
As added by P.L.232-1989, SEC.1.

IC 24-4-9-13
Limitation of renter's liability generally
Sec. 13. A rental company and renter may agree that the renter will be responsible for no more than all of the following:
(1) Physical damage to the rented vehicle up to its fair market value regardless of the cause of damage.
(2) Mechanical damage to the rental vehicle, up to and including the rental vehicle's fair market value, resulting from:
(A) a collision;
(B) an impact; or
(C) another incident that is caused by the renter's or authorized driver's deliberate act.
(3) Loss due to theft of the rental vehicle up to its fair market value. However, the renter shall be presumed to have no liability for any loss due to theft if the renter or authorized driver:
(A) has possession of the ignition key furnished by the rental company or establishes that the ignition key furnished by the rental company was not in the vehicle at the time of the theft; and
(B) files an official report of the theft with the police or other law enforcement agency within twenty-four (24) hours of learning of the theft and reasonably cooperates with the rental company, police, and other law enforcement agency in providing information concerning the theft.
The presumption set forth in this subdivision is a presumption affecting the burden of proof, which the rental company may rebut by establishing that a renter or other authorized driver committed or aided and abetted in the commission of the theft.
(4) Physical damage to the rented vehicle up to its fair market value resulting from vandalism occurring after, or in connection

with, the theft of the rented vehicle. However, the renter is presumed to have no liability for any loss due to vandalism if the renter or authorized driver:

(A) has possession of the ignition key furnished by the rental company or establishes that the ignition key furnished by the rental company was not in the vehicle at the time of the vandalism; and

(B) files an official report of the vandalism with the police or other law enforcement agency within twenty-four (24) hours of learning of the vandalism and reasonably cooperates with the rental company, police, and other law enforcement agency in providing information concerning the vandalism.

The presumption set forth in this subdivision is a presumption affecting the burden of proof, which the rental company may rebut by establishing that a renter or other authorized driver committed or aided and abetted in the commission of the vandalism.

(5) Physical damage to the rented vehicle and loss of use of the rented vehicle up to its fair market value resulting from vandalism unrelated to the theft of the rented vehicle.

(6) Loss of use of the rented vehicle, if the renter is liable for damage.

(7) Actual charges for towing, storage, and impoundment fees paid by the rental company, if the renter is liable for damage.

(8) Reasonable attorney's fees related to the enforcement of the rental agreement.

(9) An administrative charge, including the cost of appraisal and all other costs and expenses incident to the damage, loss, loss of use, repair, or replacement of the rented vehicle.

As added by P.L.232-1989, SEC.1. Amended by P.L.70-2003, SEC.1; P.L.19-2005, SEC.4.

IC 24-4-9-14

Damage to rented vehicle; rental company's loss of use of damaged vehicle; administrative charges

Sec. 14. (a) The total amount of the renter's liability to the rental company resulting from damage to the rented vehicle may not exceed the sum of the following:

(1) The estimated cost of replacement parts that the rental company would have to pay to replace damaged vehicle parts, less all discounts and price reductions or adjustments that will be received by the rental company.

(2) The estimated cost of labor to replace damaged vehicle parts, which may not exceed the product of:

(A) the rate for labor usually paid by the rental company to replace vehicle parts of the type that were damaged; and

(B) the estimated time for replacement;

less all discounts and price reductions or adjustments that will be received by the rental company.

(3) The estimated cost of labor to repair damaged vehicle parts, which may not exceed the lesser of the following:

(A) The product of the rate for labor usually paid by the rental company to repair vehicle parts of the type that were damaged and the estimated time for repair.

(B) The sum of the estimated labor and parts costs determined under subdivisions (1) and (2) to replace the same vehicle parts.

All discounts and price reductions or adjustments that will be received by the rental company must be taken into account in determining the figure under this subdivision.

(4) Except as otherwise provided for, the loss of the use of the rented vehicle, which may not exceed the product of:

(A) the rental rate stated in the rental agreement for the particular vehicle rented, excluding optional charges; and

(B) the total of the estimated time for replacement and estimated time for repair.

(5) Actual charges for towing, storage, and impound fees paid by the rental company.

(b) Under any circumstances described in this chapter, liability for the rental company's loss of use of the rented vehicle may not exceed the product of:

(1) the rental rate stated in the rental agreement for the particular vehicle rented, excluding all optional charges; and

(2) eighty percent (80%) of the period from the date of the accident to the date the vehicle is ready to be returned to rental service.

However, a renter is not liable to a rental company for the loss of use of a damaged vehicle unless the renter uses its best efforts to effect repairs and return the vehicle to rental service.

(c) The administrative charge described in section 13(9) of this chapter may not exceed:

(1) ten percent (10%) of the total estimated cost for parts and labor, if the damage is one thousand five hundred dollars ($1,500) or less; or

(2) the amount specified in subdivision (1) plus seven and one-half percent (7 1/2%) of the amount in excess of one thousand five hundred dollars ($1,500), if the total estimated cost for parts and labor exceeds one thousand five hundred dollars ($1,500).

As added by P.L.232-1989, SEC.1. Amended by P.L.70-2003, SEC.2.

IC 24-4-9-15

Renter's maximum total liability; multiple recovery of single item of damages

Sec. 15. (a) The total amount of the liability of the renter or other authorized driver to the rental company for damage occurring during the rental period may not exceed the amount of the renter's liability under section 14 of this chapter.

(b) A rental company may not recover from the renter or other

authorized driver an amount exceeding the renter's liability under section 14 of this chapter.

(c) A rental company may not recover from the renter or other authorized driver for any item described in section 13 of this chapter to the extent that the rental company obtains recovery for that item from another person.

As added by P.L.232-1989, SEC.1.

IC 24-4-9-16

Damage deposits or advances; damages to vehicle not payable until liquidated

Sec. 16. (a) A rental company may not require a deposit or advance charge against the credit card of a renter, in any form, for damage to a rental vehicle that is in the care, custody, or control of the renter or other authorized driver.

(b) A rental company may not require any payment for damage to the rental vehicle until after the cost of the damage and liability for the damage is agreed to between the rental company and renter or is determined under law.

As added by P.L.232-1989, SEC.1.

IC 24-4-9-17

Rental rates, mileage charges, and fees; disclosures and prohibited practices

Sec. 17. A rental company of a vehicle:

(1) may not offer, display, quote, or advertise and charge in a rental agreement a periodic rate that does not include the entire amount to be charged, except for taxes, airport fees, and mileage, if any, that a renter must pay to rent the vehicle for the period of time to which the rate applies;

(2) shall clearly and conspicuously disclose in any visual or oral advertisement or quotation transmitting computer system in which the rental company presents its rate, the terms of any mileage conditions relating to the advertised or quoted rate, including but not limited to, to the extent applicable, the amount of mileage, the number of miles for which no charges will be imposed, and a description of geographic driving limitations within the United States;

(3) may not charge, in addition to the rental rate, taxes, airport fees, and mileage charge, if any, any fee that must be paid by the renter as a condition of renting the vehicle, such as, but not limited to, required fuel surcharges, or any fee for transporting the renter to the location where the rented vehicle will be delivered to the renter; and

(4) shall separately disclose, charge, and remit to an airport any fee that is charged to the customer and is required to be fully remitted to an airport's management entity, and such fee shall be considered part of and included in the definition of gross concession revenue reported to the airport’s management authority.

As added by P.L.232-1989, SEC.1. Amended by P.L.57-1999, SEC.1.

IC 24-4-9-18
Additional charges for optional items

Sec. 18. Notwithstanding section 17(3) of this chapter, a rental company may charge for the rental of a vehicle, in addition to the rental rate, taxes, airport fees, and any mileage charge, an additional charge for an item or service provided during the rental of the vehicle if the renter can avoid incurring that additional charge by choosing not to obtain the item or utilize the service. Items and services for which the rental company may impose an additional charge under this section include the following:

(1) Optional insurance or accessories requested by the renter.

(2) Service charges assessed when the insured returns the vehicle to a location other than the location where the vehicle was rented.

(3) A charge for refueling a vehicle that is returned with less fuel in its tank than when the rental period began.

(4) A damage waiver that conforms to the provisions of this chapter.

As added by P.L.232-1989, SEC.1. Amended by P.L.57-1999, SEC.2; P.L.19-2005, SEC.5.

IC 24-4-9-19
Nonconforming rental agreements unenforceable

Sec. 19. A rental agreement entered into in Indiana is unenforceable if the agreement does not conform to this chapter.

As added by P.L.232-1989, SEC.1.

IC 24-4-9-20
Renter's action for damages or equitable relief; attorney's fees

Sec. 20. A renter may bring an action against a rental company for recovery of damages and appropriate equitable relief for a violation of this chapter. The prevailing party may be awarded reasonable attorney's fees.

As added by P.L.232-1989, SEC.1.

IC 24-4-9-21
Waiver of chapter provisions void and unenforceable

Sec. 21. Any waiver of any provision of this chapter is void and unenforceable.

As added by P.L.232-1989, SEC.1.

IC 24-4-9-22
Unfair, deceptive, or coercive acts by rental company

Sec. 22. A rental company may not engage in any unfair, deceptive, or coercive act to induce a renter to purchase a damage waiver or any other optional good or service.

As added by P.L.232-1989, SEC.1. Amended by P.L.19-2005, SEC.6.

IC 24-4-9-23

Statistical reporting by rental companies; administration review of maximum charge for damage waiver

Sec. 23. (a) If a rental company enters into at least one (1) rental agreement containing a damage waiver in Indiana during a calendar year, the rental company shall compile and maintain the following statistics concerning all the rental agreements the rental company enters into in Indiana during that calendar year:

(1) The total expenses incurred by the rental company as a result of damage to vehicles that is caused while the vehicles are subject to the rental agreements.

(2) The total amount of the expenses referred to in subdivision (1) for which the rental company is indemnified.

(3) The total number of vehicles subject to the rental agreements, multiplied by the total number of days of the calendar year during which the vehicles are subject to the rental agreements.

(b) The expenses on which a rental company must compile statistics under subsection (a)(1) are the following:

(1) The cost that the rental company pays to replace damaged vehicle parts, less all discounts and price reductions or adjustments received by the rental company.

(2) The cost of labor paid by the rental company to replace damaged vehicle parts.

(3) The cost of labor paid by the rental company to repair damaged vehicle parts.

(4) The loss of use of the damaged vehicles, which must be determined according to the following formula:

STEP ONE: For each damaged vehicle, multiply the time necessary for the repair and replacement of damaged parts by eighty percent (80%).

STEP TWO: For each damaged vehicle, multiply the product of STEP ONE by the rental rate set forth in the rental agreement to which the vehicle was subject when damaged.

STEP THREE: Total the figures determined under STEP TWO for all of the damaged vehicles.

(5) Actual charges for towing, storage, and impound fees paid by the rental company.

(c) The director of the division of consumer protection appointed under IC 4-6-9-2 may request that rental companies provide the director with statistics compiled and maintained under subsection (a).

(d) Upon receiving a request under subsection (c), a rental company shall provide the director of the division of consumer protection with the statistics that are requested by the director.

As added by P.L.232-1989, SEC.1. Amended by P.L.171-1997, SEC.1; P.L.19-2005, SEC.7.

IC 24-4-9-24

Remedies for rental company violations of chapter provisions

Sec. 24. A rental company who violates any provision of this

chapter commits a deceptive act which is actionable under IC 24-5-0.5 and subject to the penalties of IC 24-5-0.5.
As added by P.L.232-1989, SEC.1.

IC 24-4-10

Chapter 10. Unlawful Use of Sound and Video Recordings

IC 24-4-10-1

"Manufacturer" defined

Sec. 1. As used in this chapter, "manufacturer" means a person who manufactures a recording. The term does not include a person who manufactures a medium upon which sounds or visual images can be recorded or stored.

As added by P.L.180-1991, SEC.1.

IC 24-4-10-2

"Person" defined

Sec. 2. As used in this chapter, "person" means an individual, partnership, limited liability company, corporation, association, or any other legal entity.

As added by P.L.180-1991, SEC.1. Amended by P.L.8-1993, SEC.357.

IC 24-4-10-3

"Recording" defined

Sec. 3. As used in this chapter, "recording" means a tangible medium upon which sounds or visual images are recorded or stored. The term includes the following:

(1) An original:

(A) phonograph record;

(B) compact disc;

(C) wire;

(D) tape;

(E) audio cassette;

(F) video cassette; or

(G) film.

(2) Any other medium on which sounds or visual images are or can be recorded or otherwise stored.

(3) A copy or reproduction of an item in subdivision (1) or (2) that duplicates an original recording in whole or in part.

As added by P.L.180-1991, SEC.1.

IC 24-4-10-4

Prohibited acts

Sec. 4. A person may not:

(1) sell;

(2) rent;

(3) transport; or

(4) possess;

a recording for commercial gain or personal financial gain if the

recording does not conspicuously display the true name and address of the manufacturer of the recording.
As added by P.L.180-1991, SEC.1.

IC 24-4-10-5
Offense

Sec. 5. A person who violates this chapter commits a Class A infraction.
As added by P.L.180-1991, SEC.1.

IC 24-4-11

Chapter 11. Regulation of Industrial Hygienists

IC 24-4-11-1

Application of chapter

Sec. 1. This chapter does not apply to the following:

(1) A person employed as an apprentice under the supervision of an industrial hygienist, an industrial hygienist in training, or a certified industrial hygienist.

(2) A student of industrial hygiene who is engaged in supervised activities related to industrial hygiene.

(3) A person licensed under IC 25 who is engaged in activities permitted under the person's license, if the person does not represent to the public that the person is an industrial hygienist, an industrial hygienist in training, or a certified industrial hygienist.

(4) A person who uses the title industrial hygienist within the scope of the person's employment if, when using the title industrial hygienist, the person:

(A) furnishes services as an industrial hygienist only on behalf of the employer for whom the person works; and

(B) does not furnish or offer to furnish services as an industrial hygienist to any person other than the employer for whom the person works.

(5) An individual practicing within the scope of meaning of industrial hygiene, if the person does not do the following:

(A) Use any of the following titles:

(i) Industrial hygienist.

(ii) Industrial hygienist in training.

(iii) Certified industrial hygienist.

(B) Use any of the following sets of initials:

(i) IH.

(ii) IHIT.

(iii) CIH.

(C) Represent to the public that the person is:

(i) An industrial hygienist.

(ii) An industrial hygienist in training.

(iii) A certified industrial hygienist.

As added by P.L.175-1996, SEC.1.

IC 24-4-11-2

"Accredited college or university" defined

Sec. 2. (a) As used in this chapter, "accredited college or university" refers to a college or university that is accredited by one (1) of the following regional accrediting agencies:

(1) Middle States Association of Colleges and Schools.

(2) New England Association of Colleges and Schools.

(3) North Central Association of Colleges and Schools.

(4) Northwest Association of Colleges and Schools.

(5) Southern Association of Colleges and Schools.

(6) Western Association of Colleges and Schools.

(b) A college or university located outside the United States is considered an accredited college or university if the college or university is accredited within the jurisdiction of the college or university by an accrediting agency having accreditation standards that are at least equal to the accreditation standards of the accrediting agencies listed in subsection (a).

As added by P.L.175-1996, SEC.1.

IC 24-4-11-3

"Board" defined

Sec. 3. As used in this chapter, "board" refers to the American Board of Industrial Hygiene, a nonprofit corporation established to improve the practice and educational standards of the profession of industrial hygiene by certifying individuals who meet its education, experience, and examination requirements.

As added by P.L.175-1996, SEC.1.

IC 24-4-11-4

"Certified industrial hygienist (CIH)" defined

Sec. 4. As used in this chapter, "certified industrial hygienist (CIH)" is a person who has received the designation certified industrial hygienist from the American Board of Industrial Hygiene and whose certification has not lapsed or been revoked.

As added by P.L.175-1996, SEC.1.

IC 24-4-11-5

"Education" defined

Sec. 5. As used in this chapter, "education" means:

(1) a baccalaureate or graduate degree from an accredited college or university in:

(A) industrial hygiene;

(B) biology;

(C) chemistry;

(D) engineering;

(E) physics; or

(F) a closely related physical or biological science; or

(2) a baccalaureate or graduate degree from an accredited college or university that has at least sixty (60) credit hours in undergraduate or graduate level courses (of which at least fifteen (15) credit hours must be in junior or higher level courses) in the following:

(A) Science.

(B) Mathematics.

(C) Engineering.

(D) Technology.

If the degree is heavily comprised of only one (1) of these subject matter areas, the board may accept the degree under this definition only if the applicant has taken additional science courses from an accredited college or university or has

completed a related graduate degree from an accredited college or university.

As added by P.L.175-1996, SEC.1.

IC 24-4-11-6
"Experience" defined

Sec. 6. As used in this chapter, "experience" means the completion of professional level work sufficient to provide competence in the following:

(1) The anticipation and recognition of workplace environmental factors and stresses, including chemical, physical, biological, and ergonomic stresses, and the understanding of their effect on people and their well-being.

(2) The evaluation, through observation, sampling, testing, and with the use of quantified measurement techniques, of the magnitude of workplace environmental factors and stresses.

(3) The prescription of methods for prevention, elimination, control, or reduction of environmental factors and stresses and their effects. Methods include the following:

(A) Engineering.

(B) Administrative control.

(C) Personnel protective equipment.

(D) Training.

As added by P.L.175-1996, SEC.1.

IC 24-4-11-7
"Industrial hygiene" defined

Sec. 7. As used in this chapter, "industrial hygiene" means the science and practice of anticipating, recognizing, evaluating, and controlling the environmental factors and stresses arising in or from the workplace that may cause sickness, impaired health and well-being, or significant discomfort among workers and the general community.

As added by P.L.175-1996, SEC.1.

IC 24-4-11-8
"Industrial hygienist (IH)" defined

Sec. 8. As used in this chapter, "industrial hygienist (IH)" means a person who has the education and experience to practice industrial hygiene.

As added by P.L.175-1996, SEC.1.

IC 24-4-11-9
"Industrial hygienist in training (IHIT)" defined

Sec. 9. As used in this chapter, "industrial hygienist in training (IHIT)" means a person who has received the designation industrial hygienist in training from the American Board of Industrial Hygiene and whose certification has not lapsed or been revoked.

As added by P.L.175-1996, SEC.1.

IC 24-4-11-10
Prohibitions against use of title

Sec. 10. (a) A person may not use the title industrial hygienist, use the initials IH, or represent to the public that the person is an industrial hygienist, unless the person is an industrial hygienist as defined in this chapter.

(b) A person may not use the title industrial hygienist in training, use the initials IHIT, or represent to the public that the person is an industrial hygienist in training, unless the person is an industrial hygienist in training as defined in this chapter.

(c) A person may not use the title certified industrial hygienist, use the initials CIH, or represent to the public that the person is a certified industrial hygienist, unless the person is a certified industrial hygienist as defined in this chapter.

(d) A person may not use a title that incorporates the words industrial hygiene or a variation of the words industrial hygiene unless the person meets the requirements of:

(1) an industrial hygienist;
(2) an industrial hygienist in training; or
(3) a certified industrial hygienist;

as defined in this chapter.

As added by P.L.175-1996, SEC.1.

IC 24-4-11-11
Violations

Sec. 11. A person who violates this chapter commits a Class A misdemeanor.

As added by P.L.175-1996, SEC.1.

IC 24-4-12

Chapter 12. Unused Property Market Regulation

IC 24-4-12-1

Chapter exemptions

Sec. 1. This chapter does not apply to the following:

(1) An event organized for the exclusive benefit of:

(A) a community chest;

(B) a fund;

(C) a foundation;

(D) an association; or

(E) a corporation;

organized and operated for religious, educational, or charitable purposes, unless part of an admission fee, a parking fee charged to vendors or prospective purchasers, or the gross receipts or net earnings from the sale or exchange of personal property is shared with a private shareholder or person organizing or conducting the event.

(2) An event where all personal property offered for sale or displayed is new, and all persons selling, exchanging, or offering or displaying personal property for sale or exchange are manufacturers or authorized representatives of manufacturers or distributors.

(3) The sale of a motor vehicle or trailer that is required to be registered or is subject to state motor vehicle registration law.

(4) The sale of wood for fuel, ice, or livestock.

(5) Business conducted in an industry or association trade show.

(6) Property, although never used, whose style, packaging, or material clearly indicates that the property was not produced or manufactured recently.

(7) A person who sells by sample, catalog, or brochure for future delivery.

(8) The sale of arts or crafts by a person who produces the arts or crafts.

(9) A person who makes sales presentations related to a prior, individualized invitation issued to the consumer by the owner or legal occupant of the premises.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-2

"Unused property market" defined

Sec. 2. As used in this chapter, "unused property market" means an event:

(1) where a fee is charged for the sale or the exchange of personal property or where a fee is charged to a prospective buyer for admission to an area where personal property is offered or displayed for sale or exchange by two (2) or more persons;

(2) held more than six (6) times in any twelve (12) month period where personal property is offered or displayed for sale

or exchange; or

(3) referred to as a "swap meet", "indoor swap meet", "flea market", or any other similar term, regardless of whether the event is held inside a building or in the open, if that event has as a primary characteristic activities that involve a series of sales sufficient in number, scope, and character to constitute a regular course of business.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-3
"Unused property merchant" defined

Sec. 3. As used in this chapter, "unused property merchant" means a person, other than a vendor or a merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot, or other unused property market location and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-4
"New and unused property" defined

Sec. 4. As used in this chapter, "new and unused property" means tangible personal property that:

(1) was acquired by an unused property merchant directly from the producer, manufacturer, wholesaler, or retailer in the ordinary course of business; and

(2) has not been used since its production or manufacture or that is in its original and unopened package or container, if the personal property was packaged when originally produced or manufactured.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-5
"Baby food" and "infant formula" defined

Sec. 5. As used in this chapter, "baby food" or "infant formula" means any food manufactured, packaged, and labeled specifically for sale for consumption by a child under two (2) years of age.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-6
"Nonprescription drug" and "over the counter drug" defined

Sec. 6. As used in this chapter, "nonprescription drug" or "over the counter drug" means nonnarcotic medicine or a drug that is sold without a prescription and is prepackaged for use by the consumer, prepared by the manufacturer or producer for use by the consumer, properly labeled, and unadulterated under requirements of the state and the federal governments. However, the terms do not include herbal products, dietary supplements, botanical extracts, or vitamins.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-7
"Medical device" defined

Sec. 7. As used in this chapter, "medical device" means an instrument, an apparatus, an implement, a machine, a contrivance, an implant, an in vitro reagent, a tool, or other similar or related article, including a component part or an accessory:

(1) required under federal law to bear the label "Caution: Federal law requires dispensing by or on the order of a physician"; or

(2) that is defined by federal law as a medical device and that is intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment, or prevention of disease in humans or animals or is intended to affect the structure or any function of the body of humans or animals, that does not achieve any of its principal intended purposes through chemical action within or on the body of humans or animals, and that is not dependent upon being metabolized for achievement of its principal intended purposes.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-8
Products prohibited from sale at unused property market

Sec. 8. (a) This section does not apply to a person who keeps available for public inspection a written authorization identifying that person as an authorized representative of the manufacturer or distributor of a product listed in subsection (b), if the authorization is not false, fraudulent, or fraudulently obtained.

(b) An unused property merchant may not offer at an unused property market for sale, or knowingly permit the sale of, baby food, infant formula, cosmetics, personal care products, nonprescription drugs, medical devices, or cigarettes or other tobacco products.

As added by P.L.99-1999, SEC.1. Amended by P.L.160-2005, SEC.16.

IC 24-4-12-9
Receipts required

Sec. 9. An unused property merchant shall maintain receipts for the purchase of new and unused property. A receipt must contain the following information:

(1) The date of the transaction.

(2) The name and address of the person, corporation, or entity from whom the new and unused property was acquired.

(3) An identification and description of the new and unused property acquired.

(4) The price paid for the new and unused property.

(5) The signature of the seller and buyer of the new and unused property.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-10

Improper maintenance of or failure to produce receipts

Sec. 10. It is a violation of this chapter for an unused property merchant required to maintain receipts under this chapter to knowingly do any of the following:

(1) Falsify, obliterate, or destroy the receipts.

(2) Refuse or fail upon request to make the receipts available for inspection within a period that is reasonable based on the individual circumstances surrounding the request. However, this chapter does not require the unused property merchant to possess the receipt on or about the merchant's person without reasonable notice.

(3) Fail to maintain the receipts required by this chapter for at least two (2) years after the date of the transaction.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-11 Version a
Chapter violations

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

Sec. 11. A person who violates this chapter commits:

(1) a Class B misdemeanor on the first violation;

(2) a Class A misdemeanor on the second violation; and

(3) a Class D felony on the third and any subsequent violation.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-11 Version b
Chapter violations

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

Sec. 11. A person who violates this chapter commits:

(1) a Class B misdemeanor on the first violation;

(2) a Class A misdemeanor on the second violation; and

(3) a Level 6 felony on the third and any subsequent violation.

As added by P.L.99-1999, SEC.1. Amended by P.L.158-2013, SEC.272.

IC 24-4-13
Chapter 13. Used Jewelry Sales

IC 24-4-13-0.5
Application

Effective 1-1-2014.

Sec. 0.5. (a) This chapter applies only to a jeweler that is a retail merchant that:

(1) is located in an area zoned for commercial land use;
(2) is open to the public;
(3) primarily sells jewelry; and
(4) remitted at least ten thousand dollars ($10,000) of Indiana gross retail and use tax during the immediately preceding calendar year as a result of retail sales of jewelry.

(b) This chapter does not apply to the following:

(1) A precious metal dealer regulated under IC 24-4-19.
(2) A valuable metal dealer (as defined in IC 25-37.5-1-1(b)).
(3) A pawnbroker licensed under IC 28-7-5.

As added by P.L.222-2013, SEC.2.

IC 24-4-13-1
Definitions

Sec. 1. For purposes of this chapter:

(1) "jewelry" means personal ornaments made of precious metals that may or may not contain precious, semiprecious, or imitation stones;
(2) "used jewelry" means jewelry previously purchased at retail, acquired by gift, or obtained in some other fashion by a consumer that is later sold to a jeweler by a consumer or a person who has acquired jewelry from a consumer;
(3) "jeweler" means a person engaged in the purchase and resale of jewelry;
(4) "person" means an individual, a firm, an association, a limited liability company, a partnership, a joint stock association, a trust, or a corporation; and
(5) "seller" means a consumer or other person who sells used jewelry to a jeweler.

As added by P.L.97-2003, SEC.1.

IC 24-4-13-2
Applicability

Sec. 2. A jeweler who purchases or resells used jewelry must comply with this chapter. However, this chapter does not apply to jewelry used by a customer as a trade-in toward the purchase of a new piece of jewelry.

As added by P.L.97-2003, SEC.1.

IC 24-4-13-3
Books, accounts, and records

Sec. 3. (a) A jeweler shall keep and use in the jeweler's business

the books, accounts, and records necessary to determine whether the jeweler is complying with this chapter.

(b) A jeweler shall preserve the books, accounts, and records, including cards used in the card system, for at least two (2) years after making the final entry on any purchase recorded.

(c) The jeweler shall keep the books and records so that the business of purchasing for resale of used jewelry may be readily separated and distinguished from any other business in which the jeweler is engaged.

(d) If a jeweler, in the conduct of the business, purchases an article of used jewelry from a seller, the purchase shall be evidenced by a bill of sale properly signed by the seller. All bills of sale must be in duplicate and must list the following separate items:

(1) Date of sale.

(2) Amount of consideration.

(3) Name of jeweler.

(4) Description of each article of used jewelry sold. However, if multiple articles of used jewelry of a similar nature are delivered together in one (1) transaction, the description of the articles is adequate if the description contains the quantity of the articles delivered and a physical description of the type of articles delivered, including any unique identifying marks, numbers, names, letters, or special features.

(5) Signature of seller.

(6) Address of seller.

(7) Date of birth of the seller.

(8) The type of government issued identification used to verify the identity of the seller, together with the name of the governmental agency that issued the identification and the identification number present on the government issued identification.

(e) The original copy of the bill of sale shall be retained by the jeweler. The second copy shall be delivered to the seller by the jeweler at the time of sale. The heading on all bill of sale forms must be in boldface type.

As added by P.L.97-2003, SEC.1.

IC 24-4-13-4

Examination of records by law enforcement agencies

Sec. 4. (a) The jeweler shall make the records and information under section 3 of this chapter available for examination upon the request of a law enforcement agency (as defined in IC 5-2-5-1).

(b) The law enforcement agency under subsection (a) shall determine if:

(1) the records are sufficient; and

(2) the jeweler has made the information reasonably available.

As added by P.L.97-2003, SEC.1.

IC 24-4-13-5

Unlawful transactions

Sec. 5. A jeweler may not purchase used jewelry:

(1) from an individual less than eighteen (18) years of age; or

(2) that the jeweler believes or should have reason to believe is stolen property acquired as a result of a crime.

As added by P.L.97-2003, SEC.1.

IC 24-4-13-6
Violations

Sec. 6. A person who violates this chapter commits a Class A misdemeanor.

As added by P.L.97-2003, SEC.1.

IC 24-4-13-7
Confidentiality

Sec. 7. (a) Records and information generated by a jeweler in the course of business are confidential under IC 5-14-3-4.

(b) A law enforcement officer (as defined in IC 3-6-6-36(a)) may obtain or receive records and information described in subsection (a) relating to the purchase of used jewelry for use in investigating crime.

(c) Law enforcement officials may disclose the name and address of the jeweler to an adverse claimant in the case of a dispute over ownership of property in possession of the jeweler.

As added by P.L.97-2003, SEC.1.

IC 24-4-14

Chapter 14. Persons Holding a Customer's Personal Information

IC 24-4-14-1

Applicability

Sec. 1. This chapter does not apply to the following:

(1) The executive, judicial, or legislative department of state government or any political subdivision.

(2) A unit (as defined in IC 36-1-2-23).

(3) The office of county auditor.

(4) The office of county treasurer.

(5) The office of county recorder.

(6) The office of county surveyor.

(7) A county sheriff's department.

(8) The office of county coroner.

(9) The office of county assessor.

(10) A person who engages in the business of waste collection, except to the extent the person holds a customer's personal information directly in connection with the business of waste collection.

(11) A person who maintains and complies with a disposal program under:

(A) the federal USA Patriot Act (P.L.107-56);

(B) Executive Order 13224;

(C) the federal Driver's Privacy Protection Act (18 U.S.C. 2721 et seq.);

(D) the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);

(E) the federal Financial Modernization Act of 1999 (15 U.S.C. 6801 et seq.); or

(F) the federal Health Insurance Portability and Accountability Act (HIPAA) (P.L.104-191);

if applicable.

As added by P.L.125-2006, SEC.5.

IC 24-4-14-2

"Customer"

Sec. 2. As used in this chapter, "customer" means a person who:

(1) has:

(A) received; or

(B) contracted for;

the direct or indirect provision of goods or services from another person holding the person's personal information; or

(2) provides the person's personal information to another person in connection with a transaction with a nonprofit corporation or charitable organization.

The term includes a person who pays a commission, a consignment fee, or another fee contingent on the completion of a transaction.

As added by P.L.125-2006, SEC.5.

IC 24-4-14-3
"Dispose of"

Sec. 3. As used in this chapter, "dispose of" means to discard or abandon the personal information of a customer in an area accessible to the public. The term includes placing the personal information in a container for trash collection.

As added by P.L.125-2006, SEC.5.

IC 24-4-14-4
"Encrypted"

Sec. 4. For purposes of this chapter, personal information is "encrypted" if the personal information:

(1) has been transformed through the use of an algorithmic process into a form in which there is a low probability of assigning meaning without use of a confidential process or key; or

(2) is secured by another method that renders the personal information unreadable or unusable.

As added by P.L.125-2006, SEC.5.

IC 24-4-14-5
"Person"

Sec. 5. As used in this chapter, "person" means an individual, a partnership, a corporation, a limited liability company, or another organization.

As added by P.L.125-2006, SEC.5.

IC 24-4-14-6
"Personal information"

Sec. 6. As used in this chapter, "personal information" has the meaning set forth in IC 24-4.9-2-10. The term includes information stored in a digital format.

As added by P.L.125-2006, SEC.5.

IC 24-4-14-7
"Redacted"

Sec. 7. (a) For purposes of this chapter, personal information is "redacted" if the personal information has been altered or truncated so that not more than the last four (4) digits of:

(1) a driver's license number;

(2) a state identification number; or

(3) an account number;

is accessible as part of personal information.

(b) For purposes of this chapter, personal information is "redacted" if the personal information has been altered or truncated so that not more than five (5) digits of a Social Security number are accessible as part of personal information.

As added by P.L.125-2006, SEC.5.

IC 24-4-14-8

Disposal of personal information; infraction

Sec. 8. A person who disposes of the unencrypted, unredacted personal information of a customer without shredding, incinerating, mutilating, erasing, or otherwise rendering the information illegible or unusable commits a Class C infraction. However, the offense is a Class A infraction if:

(1) the person violates this section by disposing of the unencrypted, unredacted personal information of more than one hundred (100) customers; or

(2) the person has a prior unrelated judgment for a violation of this section.

As added by P.L.125-2006, SEC.5.

IC 24-4-15

Chapter 15. Automated External Defibrillators in Health Clubs

IC 24-4-15-1

"Defibrillator"

Sec. 1. As used in this chapter, "defibrillator" means an automated external defibrillator.

As added by P.L.129-2007, SEC.2.

IC 24-4-15-2

"Health club"

Sec. 2. (a) As used in this chapter, "health club" means an establishment at which:

(1) an individual, a corporation, a limited liability company, a partnership, an association, a firm, an educational institution, or any other business enterprise offers:

(A) instruction, training, or assistance in physical fitness that is focused primarily on cardiovascular exertion; or

(B) facilities for the:

(i) preservation;

(ii) maintenance;

(iii) encouragement; or

(iv) development;

of physical fitness or well-being; and

(2) at least:

(A) fifty (50) persons have:

(i) purchased; or

(ii) paid a fee for;

the right to use the physical fitness facilities; or

(B) thirty (30) pieces of motorized physical fitness equipment are provided for use by individuals.

(b) The term includes the following:

(1) Health spas and studios.

(2) Sports centers.

(3) Weight control studios.

(4) Gymnasiums and workout centers in schools, colleges, and universities.

(c) The term does not include a workout center in:

(1) a hospital licensed under IC 16-21 or a health facility licensed under IC 16-28;

(2) a hotel or motel, unless the workout center allows membership by individuals who are not guests of the hotel or motel; or

(3) an apartment, a condominium, or a town home complex.

As added by P.L.129-2007, SEC.2.

IC 24-4-15-3

"Person"

Sec. 3. As used in this chapter, "person" means an individual, a

corporation, a limited liability company, a partnership, an association, a firm, or an educational institution.
As added by P.L.129-2007, SEC.2.

IC 24-4-15-4
"State department"

Sec. 4. As used in this chapter, "state department" refers to the state department of health.
As added by P.L.129-2007, SEC.2.

IC 24-4-15-5
Health club requirements

Sec. 5. An owner or operator of a health club shall do the following:

(1) Ensure that a defibrillator is:
(A) located on the health club premises and easily accessible to the health club staff, members, and guests; or
(B) if:
(i) the health club is located on the premises of a business of which the health club is a part; and
(ii) the business has an emergency response team;
located on the premises of the business and easily accessible to the emergency response team.

(2) Employ at least one (1) individual who:
(A) has satisfactorily completed a course consistent with the most current national guidelines for; and
(B) is currently certified in;
cardiopulmonary resuscitation and defibrillator use.

(3) Reasonably ensure that at least one (1) individual described in subdivision (2) is on the health club premises when staff is present at the health club during the health club's business hours.

(4) A health club that is not staffed must have the following on the premises:
(A) A telephone for 911 telephone call access.
(B) A sign in plain view containing an advisory warning that indicates that members of the unstaffed health club should be aware that working out alone may pose risks to a health club member's health and safety.
(C) A sign in plain view providing instruction in the use of the defibrillator and in cardiopulmonary resuscitation.

(5) Ensure compliance with the requirements set forth in IC 16-31-6.5.

(6) Post a sign at each entrance to the health club that indicates the location of each defibrillator.

As added by P.L.129-2007, SEC.2. Amended by P.L.3-2008, SEC.173; P.L.134-2008, SEC.14.

IC 24-4-15-6
Immunity

Sec. 6. A person is immune from civil liability for acts or omissions involving the use of or the failure to use a defibrillator located on the premises of a health club under this chapter as provided under IC 34-30-12-1.
As added by P.L.129-2007, SEC.2.

IC 24-4-15-7
Inspections

Sec. 7. The:

(1) state department and the division of fire and building safety may inspect a health club at any time:

(A) according to rules adopted by the state department; or

(B) in response to a filed complaint alleging noncompliance with this chapter; and

(2) fire department that serves the area in which a health club is located shall inspect the health club for compliance with this chapter if the health club is inspected as part of an inspection program under IC 36-8-17-8.

As added by P.L.129-2007, SEC.2. Amended by P.L.134-2008, SEC.15.

IC 24-4-15-8
Violations

Sec. 8. A person who violates this chapter commits a Class C infraction.
As added by P.L.129-2007, SEC.2.

IC 24-4-15-9
Rules

Sec. 9. The state department may adopt rules under IC 4-22-2 to implement this chapter.
As added by P.L.129-2007, SEC.2.

IC 24-4-16

Chapter 16. Architectural Salvage Material Dealers

IC 24-4-16-1

Applicability of chapter

Sec. 1. This chapter does not apply to the purchase of valuable metal (as defined in IC 25-37.5-1-1(a)) by a valuable metal dealer regulated under IC 25-37.5.

As added by P.L.63-2008, SEC.1.

IC 24-4-16-2

"Architectural salvage material"

Sec. 2. (a) As used in this chapter, "architectural salvage material" means an item originally installed on or in a dwelling, a business, or any other structure and subsequently removed from the dwelling, business, or other structure.

(b) The term includes the following:

(1) Aluminum, wood, or vinyl siding.
(2) Balustrades or other stair parts.
(3) Bathroom or kitchen cabinets or fixtures.
(4) Doors, door architraves, or doorknobs.
(5) Light fixtures.
(6) Mantelpieces.
(7) Plumbing.
(8) Shutters.
(9) Windows and window architraves, including stained glass or leaded glass window panes.
(10) Wood trim.

As added by P.L.63-2008, SEC.1.

IC 24-4-16-3

"Dealer"

Sec. 3. As used in this chapter, "dealer" means a person who purchases or otherwise acquires architectural salvage material for resale or reuse as part of the normal course of the person's business.

As added by P.L.63-2008, SEC.1.

IC 24-4-16-4

Transfer of ownership; identification

Sec. 4. Before a person may sell or otherwise transfer ownership of architectural salvage material to a dealer, the person must present government issued identification to the dealer to verify the identity of the person.

As added by P.L.63-2008, SEC.1.

IC 24-4-16-5

Dealer restrictions

Sec. 5. A dealer may not purchase or otherwise obtain architectural salvage material:

(1) from a person who is less than eighteen (18) years of age; or

(2) that the dealer believes or should have reason to believe is stolen property acquired as a result of a crime.

As added by P.L.63-2008, SEC.1.

IC 24-4-16-6

Dealer records; inspection

Sec. 6. (a) A dealer shall keep a record book that contains the following information concerning architectural salvage material received by the dealer:

(1) An accurate description of any architectural salvage material received by the dealer. If multiple articles of a similar nature that do not contain an identification or serial number are delivered together in one (1) transaction to the dealer, the description of the articles is adequate if the description contains:

(A) the quantity of the articles delivered; and

(B) a physical description of the type of articles delivered, including any unique identifying marks, numbers, names, letters, or special features.

(2) The date and time of the transaction.

(3) The:

(A) name, address, date of birth, and telephone number; and

(B) signature;

of the person who sold or otherwise transferred ownership of the architectural salvage material to the dealer.

(4) The:

(A) type of government issued identification used to verify the identity of the person who sold or otherwise transferred ownership of the architectural salvage material to the dealer as described in section 4 of this chapter;

(B) name of the governmental agency that issued the identification; and

(C) identification number printed on the government issued identification.

(b) The record book described in subsection (a) must be open to inspection by a law enforcement officer at all reasonable times.

(c) A dealer shall retain a record book described in subsection (a) for at least two (2) years after the date of the most recent transaction recorded in the book.

As added by P.L.63-2008, SEC.1.

IC 24-4-16-7

Dealer duty to hold architectural salvage material

Sec. 7. If a dealer receives a notice from a law enforcement agency to hold architectural salvage material possessed by the dealer, the dealer shall hold the architectural salvage material for at least five (5) business days after the date the dealer receives the notice.

As added by P.L.63-2008, SEC.1.

IC 24-4-16-8

Confidentiality of dealer records and other information

Sec. 8. (a) Records and information generated by a dealer concerning architectural salvage material are confidential under IC 5-14-3-4.

(b) A law enforcement officer may obtain or receive records and information described in subsection (a) for use in the official law enforcement purpose of investigating crime.

(c) A law enforcement officer may disclose the name and address of a dealer to an adverse claimant in the case of a dispute over ownership of architectural salvage material in possession of the dealer.

As added by P.L.63-2008, SEC.1.

IC 24-4-16-9

Violations; penalties

Sec. 9. A person who violates this chapter commits a Class A infraction.

As added by P.L.63-2008, SEC.1.

IC 24-4-16.4

Chapter 16.4. Sexually Explicit Materials

IC 24-4-16.4-0.1
Repealed

(Repealed by P.L.63-2012, SEC.28.)

IC 24-4-16.4-1
"Person"

Sec. 1. As used in this chapter, "person" has the meaning set forth in IC 35-31.5-2-234.

As added by P.L.92-2008, SEC.3. Amended by P.L.114-2012, SEC.48.

IC 24-4-16.4-2
"Sexually explicit materials"

Sec. 2. (a) As used in this chapter, "sexually explicit materials" means a product or service:

(1) that is harmful to minors (as described in IC 35-49-2-2), even if the product or service is not intended to be used by or offered to a minor; or

(2) that is designed for use in, marketed primarily for, or provides for:

(A) the stimulation of the human genital organs; or

(B) masochism or a masochistic experience, sadism or a sadistic experience, sexual bondage, or sexual domination.

(b) The term does not include:

(1) birth control or contraceptive devices; or

(2) services, programs, products, or materials provided by a:

(A) communications service provider (as defined in IC 8-1-32.6-3);

(B) physician; or

(C) public or nonpublic school.

As added by P.L.92-2008, SEC.3.

IC 24-4-16.4-3
Restrictions on offering for sale or selling sexually explicit materials

Sec. 3. A person or an employee or agent of a person may not offer for sale or sell sexually explicit materials unless a registration and statement are properly filed under IC 23-1-55.

As added by P.L.92-2008, SEC.3. Amended by P.L.1-2009, SEC.133.

IC 24-4-16.4-4
Violations

Sec. 4. A person or an employee or agent of a person who knowingly or intentionally offers for sale or sells sexually explicit materials in violation of this chapter commits unregistered sale of sexually explicit materials, a Class B misdemeanor.

As added by P.L.92-2008, SEC.3.

IC 24-4-17

Chapter 17. Retail Consignment Sales

IC 24-4-17-1

Application

Sec. 1. (a) Except as provided in subsections (b) through (d), this chapter applies to an item delivered to a retail merchant after June 30, 2009.

(b) This chapter does not apply to an item that has a value less than fifty dollars ($50).

(c) This chapter does not apply to an item offered at auction, or held by an auctioneer before or after being offered at auction.

(d) If a provision of this chapter conflicts with the Uniform Commercial Code (IC 26-1), the Uniform Commercial Code controls with respect to that provision.

As added by P.L.85-2009, SEC.2.

IC 24-4-17-2

"Bona fide purchaser"

Sec. 2. As used in this chapter, "bona fide purchaser" means a person who in good faith makes a purchase without notice of any outstanding rights of others.

As added by P.L.85-2009, SEC.2.

IC 24-4-17-3

"Claim"

Sec. 3. As used in this chapter, "claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, fixed, matured, disputed, secured, legal, or equitable. The term includes costs of collection and attorney's fees only to the extent that the laws of Indiana permit the holder of the claim to recover them in an action against the obligor.

As added by P.L.85-2009, SEC.2.

IC 24-4-17-4

"Commission"

Sec. 4. As used in this chapter, "commission" means the fee that a consignor and a retail merchant have agreed that the retail merchant may retain after the sale of the consignor's item to a third party. The term includes any form of compensation, including a percentage of the actual selling price of an item.

As added by P.L.85-2009, SEC.2.

IC 24-4-17-5

"Creditor"

Sec. 5. As used in this chapter, "creditor" means a person who has a claim.

As added by P.L.85-2009, SEC.2.

IC 24-4-17-6

"On consignment"

Sec. 6. As used in this chapter, "on consignment" means that no:

(1) title to;

(2) estate in; or

(3) right to possession of;

an item superior to that of the consignor vests in the consignee, even if the consignee has the authority to transfer the consignor's right, title, and interest in the work of art to a third party.

As added by P.L.85-2009, SEC.2.

IC 24-4-17-7

"Retail merchant"

Sec. 7. As used in this chapter, "retail merchant" means a retail merchant making a retail transaction as described in IC 6-2.5-4-1.

As added by P.L.85-2009, SEC.2.

IC 24-4-17-8

Trust property; retail merchant as trustee; exceptions; liability

Sec. 8. (a) When a person delivers an item to a retail merchant for the purpose of:

(1) sale;

(2) exhibition; or

(3) sale and exhibition;

for a commission, the delivery to and acceptance of the item by the retail merchant places the item on consignment, unless the delivery is under an outright sale for which the person receives full compensation for the item upon delivery.

(b) A retail merchant described in subsection (a) is the agent of the person with respect to an item described in subsection (a).

(c) An item described in subsection (a) is trust property and the retail merchant is trustee for the benefit of the person until the item is sold to a bona fide purchaser or returned to the person.

(d) Except as provided in subsection (e), this subsection does not apply to a deposit placed by a customer on an item. The proceeds of the sale of an item described in subsection (a) are trust property. The retail merchant is trustee for the benefit of the person until the amount due the person from the sale is paid in full. Unless the retail merchant and the person expressly agree otherwise in writing:

(1) a retail merchant shall pay the person the proceeds of the sale of an item not later than thirty (30) days after the retail merchant receives the payment; and

(2) if the sale of the item is on installment, the retail merchant shall first apply funds from an installment to pay any balance due to the person on the sale.

The terms of an express written agreement that alters a provision set forth in subdivision (1) or (2) must be clear and conspicuous.

(e) If:

(1) a customer who has placed a deposit on an item purchases the item; and

(2) the customer's deposit is used in whole or in part to pay for

the item;

the deposit shall be treated in accordance with subsection (d).

(f) Except as provided in subsection (g), if an item is lost or damaged while in the possession of a retail merchant, the retail merchant is strictly liable for the loss or damage in an amount equal to the value of the item as set forth in section 11(a)(1) of this chapter.

(g) A retail merchant is not liable for the loss of or damage to an item in the retail merchant's possession if:

(1) the loss or damage occurs more than thirty (30) days after:

(A) the date by which the person must remove the item, as specified in a written agreement between the retail merchant and the person; or

(B) the date on which the retail merchant sends written notice to the person by registered mail at the person's last known address that the person must remove the item, if a written agreement described in clause (A) does not exist; and

(2) the item was in the retail merchant's possession at the time of the loss or damage because the person failed to remove the item.

As added by P.L.85-2009, SEC.2.

IC 24-4-17-9

Funds from sale of item on consignment as trust funds

Sec. 9. (a) If an item is trust property under section 8 of this chapter when a retail merchant initially receives it, the item remains trust property until the balance due the consignor from the sale of the item is paid in full, even if the retail merchant directly or indirectly purchases the item for the retail merchant's own account.

(b) If a retail merchant resells an item described in subsection (a) to a bona fide purchaser before the consignor has been paid in full, the item ceases to be trust property and the proceeds of the resale are trust funds in the hands of the retail merchant for the benefit of the consignor to the extent necessary to pay any balance due the consignor. The trusteeship of the proceeds continues until the fiduciary obligation of the retail merchant with respect to the transaction is discharged in full.

As added by P.L.85-2009, SEC.2. Amended by P.L.1-2010, SEC.95.

IC 24-4-17-10

Trust property exempt from claims against the retail merchant

Sec. 10. Trust property under section 8 or 9 of this chapter is not subject to a claim, lien, or security interest of a creditor of the retail merchant.

As added by P.L.85-2009, SEC.2. Amended by P.L.1-2010, SEC.96.

IC 24-4-17-11

Conditions of accepting an item for commission on consignment; remedies

Sec. 11. (a) A retail merchant may accept an item for commission on consignment from a person only if, not later than seven (7) days

after accepting the item, the retail merchant enters into a written contract with the person that specifies the following:

(1) The value of the item.

(2) The time within which the proceeds from the sale must be paid to the consignor if the item is sold.

(3) The commission the retail merchant is to receive if the item is sold.

(4) The minimum price for the sale of the item.

(5) Any discounts ordinarily given by the retail merchant in the regular course of business.

(b) If a retail merchant violates this section, the consignor may bring an action in a court with jurisdiction to void the consignor's contractual obligations to the retail merchant. A retail merchant who violates this section is liable to the consignor in an amount equal to:

(1) fifty dollars ($50);

(2) any actual, consequential, or incidental damages sustained by the consignor because of the violation of this section; and

(3) reasonable attorney's fees.

As added by P.L.85-2009, SEC.2. Amended by P.L.1-2010, SEC.97.

IC 24-4-18

Chapter 18. Criminal History Providers

IC 24-4-18-1

"Criminal history information"

Sec. 1. (a) As used in this chapter, "criminal history information" means information:

(1) concerning a criminal conviction in Indiana; and

(2) available in records kept by a clerk of a circuit, superior, city, or town court with jurisdiction in Indiana.

(b) The term consists of the following:

(1) Identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges.

(2) Information, including a photograph, regarding a sex or violent offender (as defined in IC 11-8-8-5) obtained through sex or violent offender registration under IC 11-8-8.

(3) Any disposition, including sentencing, and correctional system intake, transfer, and release.

(4) A photograph of the person who is the subject of the information described in subdivisions (1) through (3).

(c) The term includes fingerprint information described in IC 10-13-3-24(f).

As added by P.L.69-2012, SEC.1. Amended by P.L.112-2013, SEC.1.

IC 24-4-18-2

"Criminal history provider"

Sec. 2. (a) As used in this section, "criminal history provider" means a person or an organization that compiles a criminal history report and either uses the report or provides the report to a person or an organization other than a criminal justice agency, a law enforcement agency, or another criminal history provider.

(b) The term does not include the following:

(1) A criminal justice agency.

(2) A law enforcement agency.

(3) Any:

(A) person connected with or employed by:

(i) a newspaper or other periodical issued at regular intervals and having a general circulation; or

(ii) a recognized press association or wire service;

as a bona fide owner, editorial or reportorial employee, who receives income from legitimate gathering, writing, editing, and interpretation of news;

(B) person connected with a licensed radio or television station as an owner or official, or as an editorial or reportorial employee who receives income from legitimate gathering, writing, editing, interpreting, announcing, or broadcasting of news; or

(C) other person who gathers, records, compiles, or disseminates:

(i) criminal history information; or

(ii) criminal history reports;

solely for journalistic, academic, governmental, or legal research purposes.

(4) The clerk of a circuit, superior, city, or town court.

As added by P.L.69-2012, SEC.1. Amended by P.L.112-2013, SEC.2.

IC 24-4-18-3
"Criminal history report"

Sec. 3. (a) As used in this section, "criminal history report" means criminal history information that has been compiled primarily for the purposes of evaluating a particular person's eligibility for:

(1) employment in Indiana;

(2) housing in Indiana;

(3) a license, permit, or occupational certification issued under state law; or

(4) insurance, credit, or another financial service, if the insurance, credit, or financial service is to be provided to a person residing in Indiana.

(b) The term does not include information compiled primarily for the purpose of journalistic, academic, governmental, or legal research.

(c) The term includes information described in subsection (a) and not excluded under subsection (b), regardless of the geographical location of the person who compiled the information.

As added by P.L.69-2012, SEC.1. Amended by P.L.112-2013, SEC.3.

IC 24-4-18-4
"Criminal justice agency"

Sec. 4. As used in this section, "criminal justice agency" has the meaning set forth in IC 10-13-3-6.

As added by P.L.69-2012, SEC.1.

IC 24-4-18-5
"Law enforcement agency"

Sec. 5. As used in this section, "law enforcement agency" has the meaning set forth in IC 10-13-3-10.

As added by P.L.69-2012, SEC.1.

IC 24-4-18-6 Version a
Providing criminal history information; prohibited information; exceptions

Note: This version of section amended by P.L.112-2013, SEC.4. See also following version of this section amended by P.L.158-2013, SEC.273, effective 7-1-2014.

Sec. 6. (a) Except as provided in subsection (b), a criminal history provider may not knowingly provide a criminal history report that provides criminal history information relating to the following:

(1) A record that has been expunged by:

(A) marking the record as expunged; or

(B) removing the record from public access.

(2) A record that is restricted by a court or the rules of a court and is marked as restricted from public disclosure or removed from public access.

(3) A record indicating a conviction of a Class D felony if the Class D felony conviction:

(A) has been entered as a Class A misdemeanor conviction; or

(B) has been converted to a Class A misdemeanor conviction.

(4) A record that the criminal history provider knows is inaccurate.

(b) A criminal history provider may provide information described in subsection (a)(1) through (a)(3) if the person requesting the criminal history report is:

(1) required by state or federal law to obtain the information; or

(2) the state or a political subdivision, and the information will be used solely in connection with the issuance of a public bond.

As added by P.L.69-2012, SEC.1. Amended by P.L.112-2013, SEC.4.

IC 24-4-18-6 Version b

Providing criminal history information; prohibited information

Note: This version of section amended by P.L.158-2013, SEC.273, effective 7-1-2014. See also preceding version of this section amended by P.L.112-2013, SEC.4.

Sec. 6. (a) A criminal history provider may provide only criminal history information that relates to a conviction.

(b) A criminal history provider may not provide information relating to the following:

(1) An infraction, an arrest, or a charge that did not result in a conviction.

(2) A record that has been expunged.

(3) A record that is restricted by a court or the rules of a court.

(4) A record indicating a conviction of a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014) if the Class D felony or Level 6 felony conviction:

(A) has been entered as a Class A misdemeanor conviction; or

(B) has been converted to a Class A misdemeanor conviction.

(5) A record that the criminal history provider knows is inaccurate.

As added by P.L.69-2012, SEC.1. Amended by P.L.158-2013, SEC.273.

IC 24-4-18-7

Criminal history data updates

Sec. 7. (a) A criminal history provider may not knowingly include criminal history information in a criminal history report if the criminal history information fails to reflect material changes to the

official record occurring sixty (60) days or more before the date the criminal history report is delivered.

(b) A criminal history provider that provides a criminal history report and fails to reflect material criminal history information does not violate this section if the material criminal history information was not contained in the official record at least sixty (60) days before the date the criminal history report is delivered.

As added by P.L.69-2012, SEC.1. Amended by P.L.112-2013, SEC.5.

IC 24-4-18-8

Violation is deceptive act; application of the federal Fair Credit Reporting Act

Sec. 8. (a) A violation of section 6 or 7 of this chapter is a deceptive act that is actionable under IC 24-5-0.5-4.

(b) This section does not prohibit an individual from bringing an action on the individual's own behalf under the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

As added by P.L.69-2012, SEC.1. Amended by P.L.13-2013, SEC.64; P.L.112-2013, SEC.6.

IC 24-4-19

Chapter 19. Precious Metal Dealers

Effective 1-1-2014.

IC 24-4-19-1

Application

Effective 1-1-2014.

Sec. 1. This chapter does not apply to the following:

(1) A jeweler regulated under IC 24-4-13 concerning used jewelry sales.

(2) A valuable metal dealer (as defined in IC 25-37.5-1-1(b)).

(3) A pawnbroker licensed under IC 28-7-5.

(4) The purchase or resale of a mint issued coin by a person whose primary business is buying, selling, and trading mint issued coins.

As added by P.L.222-2013, SEC.3.

IC 24-4-19-2

"Jewelry"

Effective 1-1-2014.

Sec. 2. As used in this chapter, "jewelry" means personal ornaments made of gold, silver, or platinum that may or may not contain precious, semiprecious, or imitation stones.

As added by P.L.222-2013, SEC.3.

IC 24-4-19-3

"Mint issued coin"

Effective 1-1-2014.

Sec. 3. As used in this chapter, "mint issued coin" means a coin that:

(1) is bought or sold as an investment in a rare or precious metal;

(2) has a collectable value greater than the face value of the coin; or

(3) is collectable or desirable due to the age, rarity, or condition of the coin.

As added by P.L.222-2013, SEC.3.

IC 24-4-19-4

"Permanent place of business"

Effective 1-1-2014.

Sec. 4. As used in this chapter, "permanent place of business" means a fixed premises:

(1) owned by a precious metal dealer; or

(2) leased by a precious metal dealer for a term of at least twelve (12) months;

at which the precious metal dealer purchases or resells precious metal.

As added by P.L.222-2013, SEC.3.

IC 24-4-19-5
"Person"

Effective 1-1-2014.

Sec. 5. As used in this chapter, "person" means an individual, a firm, an association, a limited liability company, a partnership, a joint stock association, a trust, or a corporation.
As added by P.L.222-2013, SEC.3.

IC 24-4-19-6
"Precious metal"

Effective 1-1-2014.

Sec. 6. (a) As used in this chapter, "precious metal" means:
(1) used jewelry; and
(2) other used articles of personal property that:
(A) are made of gold, silver, or platinum; and
(B) were previously purchased at retail, acquired by gift, or obtained in some other fashion by a consumer.
(b) The term does not include:
(1) mint issued coins;
(2) ingots; or
(3) industrial residue or byproducts that contain gold, silver, or platinum purchased from manufacturing firms.
As added by P.L.222-2013, SEC.3.

IC 24-4-19-7
"Precious metal dealer"

Effective 1-1-2014.

Sec. 7. As used in this chapter, "precious metal dealer" means a person who engages in the business of purchasing precious metal for the purpose of reselling the precious metal in any form.
As added by P.L.222-2013, SEC.3.

IC 24-4-19-8
"Purchase"

Effective 1-1-2014.

Sec. 8. As used in this chapter, "purchase" means to acquire property in exchange for cash, credit, or other valuable consideration.
As added by P.L.222-2013, SEC.3.

IC 24-4-19-9
"Seller"

Effective 1-1-2014.

Sec. 9. As used in this chapter, "seller" means a consumer or other person who sells precious metal to a precious metal dealer.
As added by P.L.222-2013, SEC.3.

IC 24-4-19-10
"Used jewelry"

Effective 1-1-2014.

Sec. 10. As used in this chapter, "used jewelry" means jewelry

previously purchased at retail, acquired by gift, or obtained in some other fashion by a consumer.
As added by P.L.222-2013, SEC.3.

IC 24-4-19-11
Purchase or resale of precious metal

Effective 1-1-2014.

Sec. 11. A precious metal dealer who purchases or resells precious metal must comply with this chapter. However, this chapter does not apply to jewelry used by a customer as a trade-in toward the purchase of a new piece of jewelry.
As added by P.L.222-2013, SEC.3.

IC 24-4-19-12
Permanent place of business requirement

Effective 1-1-2014.

Sec. 12. A precious metal dealer may engage in the business of purchasing or reselling precious metal in Indiana only at a permanent place of business owned or leased by the precious metal dealer.
As added by P.L.222-2013, SEC.3.

IC 24-4-19-13
Registration requirement; secretary of state; local law enforcement agencies

Effective 1-1-2014.

Sec. 13. (a) A precious metal dealer must satisfy the registration requirements described in subsections (b) and (c) before the precious metal dealer may engage in the business of purchasing or reselling precious metal at a permanent place of business in Indiana.

(b) A precious metal dealer must submit to the secretary of state one (1) time every twelve (12) months a registration that includes the following:

(1) The name of the precious metal dealer.

(2) The addresses of all permanent places of business owned or leased by the precious metal dealer in Indiana.

(3) Any other information required by the secretary of state.

(4) A registration fee of one hundred dollars ($100), to be deposited by the secretary of state into the electronic and enhanced access fund established by IC 4-5-10-5.

(c) A precious metal dealer must submit a registration to a law enforcement agency one (1) time every twelve (12) months for each permanent place of business owned or leased by the precious metal dealer in Indiana as follows:

(1) If the permanent place of business is located in a municipality that maintains a law enforcement agency, the registration shall be submitted to the law enforcement agency of the municipality.

(2) If the permanent place of business is not located in a municipality that maintains a law enforcement agency, the registration shall be submitted to the sheriff of the county in

which the permanent place of business is located.

A registration submitted to a law enforcement agency under this subsection must include the name of the precious metal dealer, the address of the permanent place of business, any other information required by the law enforcement agency, and a registration fee of fifty dollars ($50). However, if a precious metals dealer registers more than one (1) permanent place of business with the same law enforcement agency, the precious metal dealer must pay a registration fee of fifty dollars ($50) to register all the permanent places of business with the law enforcement agency.

As added by P.L.222-2013, SEC.3.

IC 24-4-19-14

Seller identification; photograph of precious metal

Effective 1-1-2014.

Sec. 14. (a) If a precious metal dealer purchases precious metal from a seller, the precious metal dealer shall:

(1) verify the identity of the seller by use of a government issued photographic identification;

(2) make a copy of the seller's government issued photographic identification; and

(3) take a photograph of the precious metal.

(b) A precious metal dealer shall retain a copy of the:

(1) government issued photographic identification; and

(2) photograph;

described in subsection (a) as required in section 15(e) of this chapter.

As added by P.L.222-2013, SEC.3.

IC 24-4-19-15

Books, accounts, and records

Effective 1-1-2014.

Sec. 15. (a) A precious metal dealer shall keep and use in the precious metal dealer's business the books, accounts, and records necessary to determine whether the precious metal dealer is complying with this chapter.

(b) A precious metal dealer shall preserve the books, accounts, and records, including cards used in the card system, for at least two (2) years after making the final entry on any purchase recorded.

(c) The precious metal dealer shall keep the books and records so that the business of purchasing precious metal for resale may be readily separated and distinguished from any other business in which the precious metal dealer is engaged.

(d) If a precious metal dealer, in the conduct of the business, purchases precious metal from a seller, the purchase shall be evidenced by a bill of sale properly signed by the seller verifying the accuracy of the information in the bill of sale. All bills of sale must be in duplicate and must list the following separate items:

(1) The date of sale.

(2) The:

(A) name;
(B) address;
(C) date of birth; and
(D) driver's license number or Social Security number;
of the seller from whom the precious metal was purchased.
(3) The amount of consideration paid for the precious metal.
(4) The:
(A) name of the precious metal dealer; and
(B) address of the permanent place of business where the purchase occurred.
(5) A description of each article of precious metal sold. However, if multiple articles of precious metal of a similar nature are delivered together in one (1) transaction, the description of the articles is adequate if the description contains the quantity of the articles delivered and a physical description of the type of articles delivered, including any unique identifying marks, numbers, names, letters, or special features.
(6) The type of government issued photographic identification used to verify the identity of the seller under section 14 of this chapter, together with the name of the governmental agency that issued the photographic identification and the identification number present on the government issued photographic identification.

(e) If a precious metal dealer purchases precious metal, the precious metal dealer shall retain as part of the books, accounts, and records kept by the precious metal dealer under this section:
(1) the original copy of the bill of sale described in subsection (d); and
(2) the:
(A) copy of the seller's government issued photographic identification; and
(B) photograph of the precious metal;
obtained by the precious metal dealer as required under section 14 of this chapter.

The second copy of the bill of sale shall be delivered to the seller by the precious metal dealer at the time of sale.

(f) The heading on all bill of sale forms must be in boldface type.
As added by P.L.222-2013, SEC.3.

IC 24-4-19-16
Precious metal purchases reported to law enforcement agencies
Effective 1-1-2014.

Sec. 16. (a) Each day a precious metal dealer purchases precious metal at a permanent place of business, the precious metal dealer shall report the information described in section 15(d) of this chapter concerning the precious metal to a law enforcement agency as follows:
(1) If the permanent place of business is located in a municipality that maintains a law enforcement agency, the report required under this section shall be made to the law

enforcement agency of the municipality.

(2) If the permanent place of business is not located in a municipality that maintains a law enforcement agency, the report required under this section shall be made to the sheriff of the county in which the permanent place of business is located.

(b) The information reported to a law enforcement agency under subsection (a) shall be submitted in an electronic format if requested by the law enforcement agency.

As added by P.L.222-2013, SEC.3.

IC 24-4-19-17

Examination of records and information by law enforcement agencies

Effective 1-1-2014.

Sec. 17. (a) A precious metal dealer shall make the records and information under section 15 of this chapter available for examination upon the request of a law enforcement agency (as defined in IC 10-13-3-10).

(b) The law enforcement agency under subsection (a) shall determine if:

(1) the records are sufficient; and

(2) the precious metal dealer has made the information reasonably available.

As added by P.L.222-2013, SEC.3.

IC 24-4-19-18

Prohibited precious metal purchases

Effective 1-1-2014.

Sec. 18. A precious metal dealer may not purchase precious metal:

(1) from an individual less than eighteen (18) years of age; or

(2) that the precious metal dealer believes or should have reason to believe is stolen property acquired as a result of a crime.

As added by P.L.222-2013, SEC.3.

IC 24-4-19-19

Retention of precious metal purchases

Effective 1-1-2014.

Sec. 19. (a) A precious metal dealer shall hold each article of precious metal purchased by the precious metal dealer for at least ten (10) calendar days after the date the precious metal dealer purchases the precious metal:

(1) at the precious metal dealer's permanent place of business where the purchase occurred; and

(2) separate from other precious metal.

(b) During the ten (10) calendar days that the precious metal dealer must hold precious metal under subsection (a), the precious metal dealer:

(1) may not change the form of the precious metal; and

(2) shall allow a law enforcement officer to inspect the precious metal.

As added by P.L.222-2013, SEC.3.

IC 24-4-19-20
Confidentiality of records and information

Effective 1-1-2014.

Sec. 20. (a) Records and information generated by a precious metal dealer in the course of business are confidential under IC 5-14-3-4.

(b) A law enforcement officer (as defined in IC 3-6-6-36(a)) may obtain or receive records and information described in subsection (a) relating to the purchase of precious metal for use in investigating crime.

(c) Law enforcement officials may disclose the name and address of the precious metal dealer to an adverse claimant in the case of a dispute over ownership of property in possession of the precious metal dealer.

As added by P.L.222-2013, SEC.3.

IC 24-4-19-21
Penalty

Effective 1-1-2014.

Sec. 21. A person who knowingly or intentionally violates this chapter commits a Class A misdemeanor.

As added by P.L.222-2013, SEC.3.

IC 24-4.4

ARTICLE 4.4. FIRST LIEN MORTGAGE LENDING

IC 24-4.4-1

Chapter 1. General Provisions and Definitions

IC 24-4.4-1-101

Short title; rules concerning licensing system for creditors and mortgage loan originators

Sec. 101. (a) This article shall be known and may be cited as the First Lien Mortgage Lending Act.

(b) Notwithstanding any other provision of this article or IC 24-4.5, the department may adopt emergency rules under IC 4-22-2-37.1, to remain effective until codified in the Indiana Code, in order to provide for a system of licensing creditors and mortgage loan originators that meets the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (H.R. 3221 Title V) and the interpretations of that Act issued by the Secretary of Housing and Urban Development and the Consumer Financial Protection Bureau.

As added by P.L.145-2008, SEC.20. Amended by P.L.182-2009(ss), SEC.369; P.L.27-2012, SEC.2.

IC 24-4.4-1-102

Purposes; rules of construction

Sec. 102. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

(a) to permit and encourage the development of fair and economically sound first lien mortgage lending practices; and

(b) to conform the regulation of first lien mortgage lending practices to applicable state and federal laws, rules, regulations, policies, and guidance.

(3) A reference to a requirement imposed by this article includes reference to a related rule of the department adopted under this article.

(4) A reference to a federal law in this article is a reference to the law as in effect December 31, 2012.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.5; P.L.89-2011, SEC.1; P.L.27-2012, SEC.3; P.L.216-2013, SEC.1.

IC 24-4.4-1-103

Unified coverage of subject matter; construction against implied repeal

Sec. 103. This article:

(1) is a general act intended as a unified coverage of its subject matter; and

(2) any part of this article may not be considered to be impliedly repealed by subsequent legislation if such construction can

reasonably be avoided.
As added by P.L.145-2008, SEC.20.

IC 24-4.4-1-104
Severability

Sec. 104. The provisions of this article are severable, so that if:

(1) any provisions of this article; or

(2) the application of this article to any person or circumstances;

is held invalid, the invalidity does not affect other provisions or applications of this article that can be given effect without the invalid provision or application.
As added by P.L.145-2008, SEC.20.

IC 24-4.4-1-201
Application; nonresident debtor

Sec. 201. (1) Except as provided in subsection (2), this article applies to a first lien mortgage transaction:

(a) that is secured by an interest in:

(i) a dwelling; or

(ii) residential real estate upon which a dwelling is constructed or intended to be constructed;

in Indiana; and

(b) the closing for which takes place after December 31, 2008.

(2) This article does not apply to a first lien mortgage transaction if:

(a) the debtor is not a resident of Indiana at the time the transaction is entered into; and

(b) the laws of the debtor's state of residence require that the transaction be made under the laws of the state of the debtor's residence.

As added by P.L.145-2008, SEC.20. Amended by P.L.1-2009, SEC.134; P.L.89-2011, SEC.2.

IC 24-4.4-1-202
Exempt transactions and persons

Sec. 202. (a) As used in this section, "balloon payment", with respect to a mortgage transaction, means any payment:

(1) that the creditor requires the debtor to make at any time during the term of the mortgage;

(2) that represents the entire amount of the outstanding balance with respect to the mortgage; and

(3) the entire amount of which is due as of a specified date or at the end of a specified period;

if the aggregate amount of the minimum periodic payments required under the mortgage would not fully amortize the outstanding balance by the specified date or at the end of the specified period. The term does not include a payment required by a creditor under a due-on-sale clause (as defined in 12 U.S.C. 1701j-3(a)) or a payment required by a creditor under a provision in the mortgage that permits

the creditor to accelerate the debt upon the debtor's default or failure to abide by the material terms of the mortgage.

(b) This article does not apply to the following:

(1) Extensions of credit to government or governmental agencies or instrumentalities.

(2) A first lien mortgage transaction in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.

(3) An extension of credit primarily for a business, a commercial, or an agricultural purpose.

(4) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a first lien mortgage transaction made:

(a) in compliance with the requirements of; and

(b) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from;

the Indiana housing and community development authority established by IC 5-20-1-3.

(5) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a first lien mortgage transaction made by an entity that exclusively uses funds provided by the United States Department of Housing and Urban Development under Title 1 of the federal Housing and Community Development Act of 1974, Public Law 93-383, as amended (42 U.S.C. 5301 et seq.).

(6) An extension of credit originated by:

(a) a depository institution;

(b) subsidiaries that are:

(i) owned and controlled by a depository institution; and

(ii) regulated by a federal banking agency; or

(c) an institution regulated by the Farm Credit Administration.

(7) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a credit union service organization that is majority owned, directly or indirectly, by one (1) or more credit unions.

(8) A first lien mortgage transaction originated by a registered mortgage loan originator, when acting for an entity described in subsection (6). However, a privately insured state chartered credit union shall comply with the system of mortgage loan originator registration developed by the Federal Financial Institutions Examinations Council under Section 1507 of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE).

(9) An individual who offers or negotiates terms of a mortgage transaction with or on behalf of an immediate family member of the individual.

(10) An individual who offers or negotiates terms of a mortgage transaction secured by a dwelling that served as the individual's residence.

(11) Unless the attorney is compensated by:

(a) a lender;

(b) a mortgage broker;

(c) another mortgage loan originator; or

(d) any agent of the lender, mortgage broker, or other mortgage loan originator described in clauses (a) through (c);

a licensed attorney who negotiates the terms of a mortgage transaction on behalf of a client as an ancillary matter to the attorney's representation of the client.

(12) The United States, any state or local government, or any agency or instrumentality of any governmental entity, including United States government sponsored enterprises.

(13) A person in whose name a tablefunded transaction is closed, as described in section 301(34)(a) of this chapter. However, the exemption provided by this subsection does not apply if:

(a) the transaction:

(i) is secured by a dwelling that is a mobile home, a manufactured home, or a trailer; and

(ii) is not also secured by an interest in land; and

(b) the person in whose name the transaction is closed, as described in section 301(34)(a) of this chapter, sells the dwelling to the debtor through a retail installment contract or other similar transaction.

(14) A bona fide nonprofit organization not operating in a commercial context, as determined by the director, if the following criteria are satisfied:

(a) Subject to clause (b), the organization originates only one (1) or both of the following types of mortgage transactions:

(i) Zero (0) interest first lien mortgage transactions.

(ii) Zero (0) interest subordinate lien mortgage transactions.

(b) The organization does not require, under the terms of the mortgage or otherwise, balloon payments with respect to the mortgage transactions described in clause (a).

(c) The organization is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(d) The organization's primary purpose is to serve the public by helping low income individuals and families build, repair, and purchase housing.

(e) The organization uses only:

(i) unpaid volunteers; or

(ii) employees whose compensation is not based on the number or size of any mortgage transactions that the employees originate;

to originate the mortgage transactions described in clause (a).

(f) The organization does not charge loan origination fees in connection with the mortgage transactions described in

clause (a).

(15) A bona fide nonprofit organization (as defined in section 301(37) of this chapter) if the following criteria are satisfied:

(a) For each calendar year that the organization seeks the exemption provided by this subdivision, the organization certifies, not later than December 31 of the preceding calendar year and on a form prescribed by the director and accompanied by such documentation as required by the director, that the organization is a bona fide nonprofit organization (as defined in section 301(37) of this chapter).

(b) The director determines that the organization originates only mortgage transactions that are favorable to the debtor. For purposes of this clause, a mortgage transaction is favorable to the debtor if the director determines that the terms of the mortgage transaction are consistent with terms of mortgage transactions made in a public or charitable context, rather than in a commercial context.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.6; P.L.89-2011, SEC.3; P.L.9-2011, SEC.1; P.L.6-2012, SEC.164; P.L.27-2012, SEC.4; P.L.13-2013, SEC.65.

IC 24-4.4-1-202.5

Persons also engaging in loan brokerage business; applicability of loan broker statutes; examination by department; cooperation with securities division

Sec. 202.5. (1) If a person licensed or required to be licensed under this article also engages in the loan brokerage business, the person's loan brokerage business is subject to the following sections of the Indiana Code and any rules adopted to implement these sections:

(a) IC 23-2-5-9.
(b) IC 23-2-5-9.1.
(c) IC 23-2-5-15.
(d) IC 23-2-5-16.
(e) IC 23-2-5-17.
(f) IC 23-2-5-18.
(g) IC 23-2-5-18.5.
(h) IC 23-2-5-20.
(i) IC 23-2-5-23, except for IC 23-2-5-23(2)(B).
(j) IC 23-2-5-24.

(2) Loan broker business transactions engaged in by persons licensed or required to be licensed under this article are subject to examination by the department and to the examination fees described in IC 24-4.4-2-402(7)(c). The department may cooperate with the securities division of the office of the secretary of state in the department's examination of loan broker business transactions and may use the securities division's examiners to conduct examinations.

As added by P.L.35-2010, SEC.7.

IC 24-4.4-1-203

Repealed

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

IC 24-4.4-1-204

Entities that also conduct loan broker business; regulatory cooperation with securities commissioner

Sec. 204. In the department's examination and regulatory activities related to licensees under this article, the department may cooperate with the Indiana securities commissioner in the regulation of entities that, in addition to conducting business regulated under this article, also conduct a loan brokerage business subject to IC 23-2-5.

As added by P.L.35-2010, SEC.8.

IC 24-4.4-1-301

Definitions

Sec. 301. In addition to definitions appearing in subsequent chapters of this article, the following definitions apply throughout this article:

(1) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

(a) controls;

(b) is controlled by; or

(c) is under common control with;

the person subject to this article.

(2) "Agreement" means the bargain of the parties in fact as found in the parties' language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(3) "Agricultural products" includes agricultural products, horticultural products, viticultural products, dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, any products raised or produced on farms, and any products processed or manufactured from products raised or produced on farms.

(4) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products.

(5) "Consumer credit sale" is a sale of goods, services, or an interest in land in which:

(a) credit is granted by a person who engages as a seller in credit transactions of the same kind;

(b) the buyer is a person other than an organization;

(c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;

(d) either the debt is payable in installments or a credit service charge is made; and

(e) with respect to a sale of goods or services, either:

(i) the sale amount does not exceed fifty-three thousand dollars ($53,000) or another amount as adjusted in accordance with the annual adjustment of the exempt threshold amount specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); or

(ii) the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

(6) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(7) "Creditor" means a person:

(a) that regularly engages in the extension of first lien mortgage transactions that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and

(b) to which the obligation is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.

The term does not include a person described in subsection (34)(a) in a tablefunded transaction. A creditor may be an individual, a limited liability company, a sole proprietorship, a partnership, a trust, a joint venture, a corporation, an unincorporated organization, or other form of entity, however organized.

(8) "Department" refers to the members of the department of financial institutions.

(9) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(10) "Director" refers to the director of the department of financial institutions or the director's designee.

(11) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

(a) condominium unit;

(b) cooperative unit;

(c) mobile home; or

(d) trailer;

that is used as a residence.

(12) "Employee" means an individual who is paid wages or other compensation by an employer required under federal income tax law to file Form W-2 on behalf of the individual.

(13) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(14) "First lien mortgage transaction" means:

(a) a consumer loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a first lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(15) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(16) "Individual" means a natural person.

(17) "Licensee" means a person licensed as a creditor under this article.

(18) "Loan" includes:

(a) the creation of debt by:

(i) the creditor's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor; or

(ii) the extension of credit by a person who engages as a seller in credit transactions primarily secured by an interest in land;

(b) the creation of debt by a credit to an account with the creditor upon which the debtor is entitled to draw immediately; and

(c) the forbearance of debt arising from a loan.

(19) "Loan brokerage business" means any activity in which a person, in return for any consideration from any source, procures, attempts to procure, or assists in procuring, a mortgage transaction from a third party or any other person, whether or not the person seeking the mortgage transaction actually obtains the mortgage transaction.

(20) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under this article. For purposes of this subsection, the term "clerical or support duties" may include, after the receipt of an application, the following:

(a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction.

(b) The communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:

(i) offering or negotiating loan rates or terms; or

(ii) counseling consumers about mortgage transaction rates or terms.

(21) "Mortgage loan originator" means an individual who, for compensation or gain, or in the expectation of compensation or

gain, regularly engages in taking a mortgage transaction application or in offering or negotiating the terms of a mortgage transaction that either is made under this article or under IC 24-4.5 or is made by an employee of a person licensed or exempt from licensing under this article or under IC 24-4.5, while the employee is engaging in the loan brokerage business. The term does not include the following:

(a) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed or exempt from licensing under this article.

(b) Unless the person or entity is compensated by:

(i) a creditor;

(ii) a loan broker;

(iii) another mortgage loan originator; or

(iv) any agent of a creditor, a loan broker, or another mortgage loan originator described in items (i) through (iii);

a person or entity that performs only real estate brokerage activities and is licensed or registered in accordance with applicable state law.

(c) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D)).

(22) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.

(23) "Mortgage transaction" means:

(a) a consumer loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(24) "Nationwide Mortgage Licensing System and Registry" or "NMLSR" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of creditors and mortgage loan originators.

(25) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

(26) "Organization" means a corporation, a government or government subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated organization, or any other entity, however organized.

(27) "Payable in installments", with respect to a debt or an

obligation, means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(28) "Person" includes an individual or an organization.

(29) "Principal" of a mortgage transaction means the total of:

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

(b) to the extent that payment is deferred, amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees if not included in clause (a).

(30) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.

(c) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).

(d) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.

(e) Offering to engage in any activity, or act in any capacity, described in this subsection.

(31) "Registered mortgage loan originator" means any individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(b) is registered with, and maintains a unique identifier through, the NMLSR.

(32) "Residential real estate" means any real property that is located in Indiana and on which there is located or intended to be constructed a dwelling.

(33) "Revolving first lien mortgage transaction" means a first lien mortgage transaction in which:

(a) the creditor permits the debtor to obtain advances from time to time;

(b) the unpaid balances of principal, finance charges, and other appropriate charges are debited to an account; and

(c) the debtor has the privilege of paying the balances in installments.

(34) "Tablefunded" means a transaction in which:

(a) a person closes a first lien mortgage transaction in the person's own name as a mortgagee with funds provided by one (1) or more other persons; and

(b) the transaction is assigned, not later than one (1) business day after the funding of the transaction, to the mortgage creditor providing the funding.

(35) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

(36) "Land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.

(37) "Bona fide nonprofit organization" means an organization that does the following, as determined by the director, under criteria established by the director:

(a) Maintains tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

(b) Promotes affordable housing or provides home ownership education or similar services.

(c) Conducts the organization's activities in a manner that serves public or charitable purposes.

(d) Receives funding and revenue and charges fees in a manner that does not encourage the organization or the organization's employees to act other than in the best interests of the organization's clients.

(e) Compensates the organization's employees in a manner that does not encourage employees to act other than in the best interests of the organization's clients.

(f) Provides to, or identifies for, debtors mortgage transactions with terms that are favorable to the debtor (as described in section 202(b)(15) of this chapter) and comparable to mortgage transactions and housing assistance provided under government housing assistance programs.

(g) Maintains certification by the United States Department of Housing and Urban Development or employs counselors who are certified by the Indiana housing and community development authority.

(38) "Regularly engaged", with respect to a person who extends or originates first lien mortgage transactions, refers to a person who:

(a) extended or originated more than five (5) first lien mortgage transactions in the preceding calendar year; or

(b) extends or originates, or will extend or originate, more than five (5) first lien mortgage transactions in the current calendar year if the person did not extend or originate more than five (5) first lien mortgage transactions in the preceding calendar year.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.9; P.L.42-2011, SEC.48; P.L.89-2011, SEC.4; P.L.27-2012, SEC.5; P.L.216-2013, SEC.2.

IC 24-4.4-2
Chapter 2. Miscellaneous

IC 24-4.4-2-101
Short title

Sec. 101. This chapter shall be known and may be cited as the First Lien Mortgage Lending Act - Miscellaneous.
As added by P.L.145-2008, SEC.20.

IC 24-4.4-2-201
Duty to provide payoff amount; liability for failure to provide; prepayment penalty prohibited for adjustable rate mortgages; short sales

Sec. 201. (1) A creditor or mortgage servicer shall provide, in writing, an accurate payoff amount for a first lien mortgage transaction to the debtor not later than seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's written request for the accurate payoff amount. A payoff statement provided by a creditor or mortgage servicer under this subsection must show the date the statement was prepared and itemize the unpaid principal balance and each fee, charge, or other sum included within the payoff amount. A creditor or mortgage servicer who fails to provide an accurate payoff amount is liable for:

(a) one hundred dollars ($100) if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's first written request; and

(b) the greater of:

(i) one hundred dollars ($100); or

(ii) the loan finance charge that accrues on the first lien mortgage transaction from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate payoff amount is provided;

if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer fails to comply with subdivision (a).

(2) This subsection applies to a first lien mortgage transaction, or the refinancing or consolidation of a first lien mortgage transaction, that:

(a) is closed after June 30, 2009; and

(b) has an interest rate that is subject to change at one (1) or more times during the term of the first lien mortgage transaction.

A creditor in a transaction to which this subsection applies may not contract for and may not charge the debtor a prepayment fee or

penalty.

(3) This subsection applies to a first lien mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than five (5) business days (excluding legal public holidays, Saturdays, and Sundays) after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days (excluding legal public holidays, Saturdays, and Sundays) after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. The thirty (30) day period described in this subsection may be extended for not more than fifteen (15) business days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the thirty (30) day period, the creditor, the servicer, or the creditor's agent notifies the debtor of the extension and the reason the extension is needed. Payment accepted by a creditor, servicer, or creditor's agent in connection with a short sale constitutes payment in full satisfaction of the first lien mortgage transaction unless the creditor, servicer, or creditor's agent obtains:

(a) the following statement: "The debtor remains liable for any amount still owed under the first lien mortgage transaction."; or

(b) a statement substantially similar to the statement set forth in subdivision (a);

acknowledged by the initials or signature of the debtor, on or before the date on which the short sale payment is accepted. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a first lien mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the first lien mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

As added by P.L.145-2008, SEC.20. Amended by P.L.52-2009, SEC.1; P.L.35-2010, SEC.10; P.L.89-2011, SEC.5; P.L.27-2012, SEC.6.

IC 24-4.4-2-202

Federal disclosure requirements; creditor's duty to comply; exempt transactions

Sec. 202. (1) The creditor shall comply with disclosure requirements applicable to first lien mortgage transactions in the federal Consumer Credit Protection Act (15 U.S.C. 1601 et seq.).

(2) For purposes of subsection (1), disclosures are not required if

the transaction is exempt from the federal Consumer Credit Protection Act (15 U.S.C. 1601 et seq.).
As added by P.L.89-2011, SEC.6.

IC 24-4.4-2-301
Violation of state or federal law, regulation, or rule; enforcement

Sec. 301. (1) A violation of a state or federal law, regulation, or rule applicable to first lien mortgage transactions is a violation of this article.

(2) The department may enforce penalty provisions set forth in 15 U.S.C. 1640 for violations of disclosure requirements applicable to first lien mortgage transactions.
As added by P.L.145-2008, SEC.20.

IC 24-4.4-2-401
License required; registration with NMLSR; licensed mortgage loan originators; loan processor or underwriting activities; applications for licensure; director's authority to contract with NMLSR

Sec. 401. (1) Unless a person subject to this article has first obtained a license under this article from the department and annually maintains the license, the person shall not engage in Indiana as a creditor in first lien mortgage transactions. A separate license under this article is required for each legal entity that engages in Indiana as a creditor in first lien mortgage transactions. However, a separate license under this article is not required for each branch of a legal entity licensed under this article.

(2) Each:

(a) creditor licensed under this article; and

(b) entity exempt from licensing under this article that employs a licensed mortgage loan originator;

shall register with and maintain a valid unique identifier issued by the NMLSR. Each licensed mortgage loan originator must be employed by, and associated with, a licensed creditor, or an entity exempt from licensing under this article, in the NMLSR in order to originate loans.

(3) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(4) Applicants for a license under this article must apply for the license in the form prescribed by the director. Each form:

(a) must contain content as set forth by rule, instruction, or procedure of the director; and

(b) may be changed or updated as necessary by the director to carry out the purposes of this article.

(5) To fulfill the purposes of this article, the director may establish relationships or contracts with the NMLSR or other entities

designated by the NMLSR to:

(a) collect and maintain records; and

(b) process transaction fees or other fees related to licensees or other persons subject to this article.

(6) For the purpose of participating in the NMLSR, the director or the department may:

(a) waive or modify, in whole or in part, by rule or order, any of the requirements of this article; and

(b) establish new requirements as reasonably necessary to participate in the NMLSR.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.11; P.L.89-2011, SEC.7.

IC 24-4.4-2-402

Applications for licenses; issuance; evidence of compliance; use of NMLSR; denial of application; right to hearing; fees; license not assignable or transferable

Sec. 402. (1) The department shall receive and act on all applications for licenses to engage in first lien mortgage transactions. Applications must be made as prescribed by the director. If, at any time, the information or record contained in:

(a) an application filed under this section; or

(b) a renewal application filed under section 403 of this chapter;

is or becomes inaccurate or incomplete in a material respect, the applicant shall promptly file a correcting amendment with the department.

(2) A license may not be issued unless the department finds that the professional training and experience, financial responsibility, character, and fitness of:

(a) the applicant and any significant affiliate of the applicant;

(b) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and

(c) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant;

are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

(3) The director is entitled to request evidence of compliance with this section at:

(a) the time of application;

(b) the time of renewal of a license; or

(c) any other time considered necessary by the director.

(4) Evidence of compliance with this section must include:

(a) criminal background checks, as described in section 402.1 of this chapter, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for any individual described in subsection (2);

(b) credit histories as described in section 402.2 of this chapter;

(c) surety bond requirements as described in section 402.3 of this chapter;

(d) a review of licensure actions in Indiana and in other states; and

(e) other background checks considered necessary by the director.

(5) For purposes of this section and in order to reduce the points of contact that the director has to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting and distributing information to and from any source as directed by the director.

(6) The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(7) Upon written request, the applicant is entitled to a hearing on the question of the qualifications of the applicant for a license in the manner provided in IC 4-21.5.

(8) The applicant shall pay the following fees at the time designated by the department:

(a) An initial license fee as established by the department under IC 28-11-3-5.

(b) An annual renewal fee as established by the department under IC 28-11-3-5.

(c) Examination fees as established by the department under IC 28-11-3-5.

(9) A fee as established by the department under IC 28-11-3-5 may be charged for each day a fee under subsection 8(b) or 8(c) is delinquent.

(10) Except in a transaction approved under section 406 of this chapter, a license issued under this section is not assignable or transferable.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.12; P.L.89-2011, SEC.8; P.L.27-2012, SEC.7.

IC 24-4.4-2-402.1

National criminal history background check; fingerprints; payment of fees or costs; use of NMLSR

Sec. 402.1. (1) When the director requests a national criminal history background check under section 402(4)(a) of this chapter for an individual described in section 402(2) of this chapter, the director shall require the individual to submit fingerprints to the department, state police department, or NMLSR, as directed, at the time evidence of compliance is requested under section 402(3) of this chapter. The individual to whom the request is made shall pay any fees or costs associated with processing and evaluating the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal

history background check to any private entity.

(2) For purposes of this section and in order to reduce the points of contact that the Federal Bureau of Investigation may have to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any governmental agency.

As added by P.L.35-2010, SEC.13.

IC 24-4.4-2-402.2

Credit reports; payment of fees or costs; demonstrated financial responsibility; considerations

Sec. 402.2. (1) If the director requests a credit report for an individual described in section 402(2) of this chapter, the individual to whom the request is made shall pay any fees or costs associated with procuring the report.

(2) The individual must submit personal history and experience information in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR or the director to obtain an independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)).

(3) The director may consider one (1) or more of the following when determining if an individual has demonstrated financial responsibility:

(a) Bankruptcies filed within the last ten (10) years.

(b) Current outstanding judgments, except judgments solely as a result of medical expenses.

(c) Current outstanding tax liens or other government liens or filings.

(d) Foreclosures within the past three (3) years.

(e) A pattern of serious delinquent accounts within the past three (3) years.

As added by P.L.35-2010, SEC.14.

IC 24-4.4-2-402.3 Version a

Surety bond; penal sum to reflect amount of mortgages originated

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

Sec. 402.3. (1) Each:

(a) creditor; and

(b) entity exempt from licensing under this article that employs a licensed mortgage loan originator;

must be covered by a surety bond in accordance with this section.

(2) A surety bond must:

(a) provide coverage for each creditor and each entity exempt from licensing under this article that employs a mortgage loan originator in an amount as prescribed in subsection (4); and

(b) be in a form prescribed by the director.

(3) The director may adopt rules or guidance documents with

respect to the requirements for a surety bond as necessary to accomplish the purposes of this article.

(4) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of mortgage transactions originated as determined by the director.

(5) If an action is commenced on the surety bond of a creditor or an entity exempt from licensing under this article as described in subsection (1), the director may require the filing of a new bond.

(6) A creditor or an entity exempt from licensing under this article as described in subsection (1) shall file a new surety bond immediately upon recovery of any action on the surety bond required under this section.

As added by P.L.35-2010, SEC.15.

IC 24-4.4-2-402.3 Version b

Surety bond; requirements; amount; termination; liability; notices

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

Sec. 402.3. (1) Each:

(a) creditor; and

(b) person exempt from licensing under this article that employs a licensed mortgage loan originator;

must be covered by a surety bond in accordance with this section.

(2) A surety bond must:

(a) provide coverage for:

(i) a creditor; or

(ii) a person exempt from licensing under this article that employs a mortgage loan originator;

in an amount as prescribed in subsection (4);

(b) be in a form prescribed by the director;

(c) be in effect:

(i) during the term of the creditor's license under this chapter; or

(ii) at any time during which the person exempt from licensing under this article employs a licensed mortgage loan originator;

as applicable;

(d) remain in effect during the two (2) years after:

(i) the creditor ceases offering financial services to individuals in Indiana; or

(ii) the person exempt from licensing under this article ceases to employ a licensed mortgage loan originator or to offer financial services to individuals in Indiana, whichever is later;

as applicable;

(e) be payable to the department for the benefit of:

(i) the state; and

(ii) individuals who reside in Indiana when they agree to receive financial services from the creditor or the person exempt from licensing under this article, as applicable;

(f) be issued by a bonding, surety, or insurance company authorized to do business in Indiana and rated at least "A-" by at least one (1) nationally recognized investment rating service; and

(g) have payment conditioned upon:

(i) the creditor's or any of the creditor's licensed mortgage loan originators'; or

(ii) the exempt person's or any of the exempt person's licensed mortgage loan originators';

noncompliance with or violation of this chapter, 750 IAC 9, or other federal or state laws or regulations applicable to mortgage lending.

(3) The director may adopt rules or guidance documents with respect to the requirements for a surety bond as necessary to accomplish the purposes of this article.

(4) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of mortgage transactions originated as determined by the director. If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the creditor or exempt person for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in an amount set by the director. The amount of the new or additional bond set by the director must be at least the amount of the bond before payment of the claim or judgment.

(5) If for any reason a surety terminates a bond issued under this section, the creditor or the exempt person shall immediately notify the department and file a new surety bond in an amount determined by the director.

(6) Cancellation of a surety bond issued under this section does not affect any liability incurred or accrued during the period when the surety bond was in effect.

(7) The director may obtain satisfaction from a surety bond issued under this section if the director incurs expenses, issues a final order, or recovers a final judgment under this chapter.

(8) Notices required under this section must be in writing and delivered by certified mail, return receipt requested and postage prepaid, or by overnight delivery using a nationally recognized carrier.

As added by P.L.35-2010, SEC.15. Amended by P.L.216-2013, SEC.3.

IC 24-4.4-2-402.4

Use of NMLSR in department's licensing system; reporting of information to NMLSR; confidentiality; director's authority to enter agreements; waiver of privilege; processing fee; electronic records

Sec. 402.4. (1) Subject to subsection (6), the director shall designate the NMLSR to serve as the sole entity responsible for:

(a) processing applications and renewals for licenses under this article;

(b) issuing unique identifiers for licensees and entities exempt from licensing under this article that employ a licensed mortgage loan originator under this article; and

(c) performing other services that the director determines are necessary for the orderly administration of the department's licensing system under this article.

(2) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director shall regularly report significant or recurring violations of this article to the NMLSR.

(3) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director may report complaints received regarding licensees under this article to the NMLSR.

(4) The director may report publicly adjudicated licensure actions against a licensee to the NMLSR.

(5) The director shall establish a process in which licensees may challenge information reported to the NMLSR by the department.

(6) The director's authority to designate the NMLSR under subsection (1) is subject to the following:

(a) Information stored in the NMLSR is subject to the confidentiality provisions of IC 5-14-3 and IC 28-1-2-30. A person may not:

(i) obtain information from the NMLSR, unless the person is authorized to do so by statute;

(ii) initiate any civil action based on information obtained from the NMLSR if the information is not otherwise available to the person under any other state law; or

(iii) initiate any civil action based on information obtained from the NMLSR if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(b) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential under IC 28-1-2-30 and that are:

(i) furnished by the director, the director's designee, or a licensee; or

(ii) otherwise obtained by the NMLSR;

are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director may use the documents, materials, or other information available to the director in furtherance of any action brought in connection with the director's duties under this article.

(c) Disclosure of documents, materials, and information:

(i) to the director; or

(ii) by the director;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(d) Information provided to the NMLSR is subject to IC 4-1-11.

(e) This subsection does not limit or impair a person's right to:

(i) obtain information;

(ii) use information as evidence in a civil action or proceeding; or

(iii) use information to initiate a civil action or proceeding;

if the information may be obtained from the director or the director's designee under any law.

(f) Except as otherwise provided in the federal Housing and Economic Recovery Act of 2008 (Public Law 110-289, Section 1512), the requirements under any federal law or IC 5-14-3 regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or IC 5-14-3.

(g) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies, as established by rule or order of the director.

(h) Information or material that is subject to a privilege or confidentiality under subdivision (f) is not subject to:

(i) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(ii) subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(i) Any provision of IC 5-14-3 that concerns the disclosure of:

(i) confidential supervisory information; or

(ii) any information or material described in subdivision (f);

and that is inconsistent with subdivision (f) is superseded by this section.

(j) This section does not apply with respect to information or material that concerns the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a

person described in section 402(2) of this chapter and that is included in the NMLSR for access by the public.

(k) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered reasonable by the director. In determining whether an NMLSR processing fee is reasonable, the director shall:

(i) require review of; and

(ii) make available;

the audited financial statements of the NMLSR.

(7) Notwithstanding any other provision of law, any:

(a) application, renewal, or other form or document that:

(i) relates to licenses issued under this article; and

(ii) is made or produced in an electronic format;

(b) document filed as an electronic record in a multistate automated repository established and operated for the licensing or registration of mortgage lenders, brokers, or loan originators; or

(c) electronic record filed through the NMLSR;

is considered a valid original document when reproduced in paper form by the department.

As added by P.L.35-2010, SEC.16. Amended by P.L.27-2012, SEC.8.

IC 24-4.4-2-403

License renewal; revocation or suspension of license not renewed; reinstatement or appeal; correcting amendments

Sec. 403. (1) A license issued under this article must be renewed through the NMLSR not later than December 31 of each calendar year. The minimum standards for license renewal for a creditor include the following:

(a) The creditor has continued to meet the surety bond requirement under section 402.3 of this chapter.

(b) The creditor has filed the creditor's call report in a manner that satisfies section 405(4) of this chapter.

(c) The creditor has paid all required fees for renewal of the license.

(d) The creditor and individuals described in section 402(2) of this chapter have certified to the department that they continue to meet all the standards for licensing contained in section 402 of this chapter.

(e) The creditor has provided in the creditor's renewal application:

(i) any information describing material changes in the information contained in the creditor's original application for licensure, or in any previous application, including any previous renewal application; and

(ii) any other information the director requires in order to evaluate the renewal of the license issued under this article.

(2) A license issued by the department authorizing a person to engage in first lien mortgage transactions as a creditor under this article may be revoked or suspended by the department if the person

fails to:

(a) file any renewal form required by the department; or

(b) pay any license renewal fee described under section 402 of this chapter;

not later than sixty (60) days after the due date.

(3) A person whose license is revoked or suspended under this section may do either of the following:

(a) Pay all delinquent fees and apply for reinstatement of the license.

(b) Appeal the revocation or suspension to the department for an administrative review under IC 4-21.5-3. Pending the decision resulting from the hearing under IC 4-21.5-3 concerning the license revocation or suspension, the license remains in force.

(4) If, at any time, the information or record contained in:

(a) an original application for licensure filed under section 402 of this chapter; or

(b) a renewal application filed under this section;

is or becomes inaccurate or incomplete in a material respect, the applicant shall promptly file a correcting amendment with the department.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.17; P.L.27-2012, SEC.9.

IC 24-4.4-2-404

Suspension or revocation of license as creditor; order to show cause; order of suspension or revocation; relinquishment of license; preexisting contracts; emergency order for revocation

Sec. 404. (1) The department may issue to a person licensed as a creditor to engage in first lien mortgage transactions an order to show cause why the person's license should not be revoked or suspended for a period determined by the department.

(2) An order issued under subsection (1) must:

(a) include:

(i) a statement of the place, date, and time for a meeting with the department, which date may not be less than ten (10) days from the date of the order;

(ii) a description of the action contemplated by the department; and

(iii) a statement of the facts or conduct supporting the issuance of the order; and

(b) be accompanied by a notice stating that the licensee is entitled to:

(i) a reasonable opportunity to be heard; and

(ii) show the licensee's compliance with all lawful requirements for retention of the license;

at the meeting described in subdivision (a)(i).

(3) After the meeting described in subsection (2)(a)(i), the department may revoke or suspend the license if the department finds that:

(a) the licensee has repeatedly and willfully violated:

(i) this article or any rule, order, or guidance document adopted or issued by the department; or

(ii) any other state or federal law, regulation, or rule applicable to first lien mortgage transactions;

(b) the licensee does not meet the licensing qualifications contained in section 402 of this chapter;

(c) the licensee obtained the license for the benefit of, or on behalf of, another person;

(d) the licensee knowingly or intentionally made material misrepresentations to, or concealed material information from, the department; or

(e) facts or conditions exist that, had they existed at the time the licensee applied for the license, would have been grounds for the department to deny the issuance of the license.

(4) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and notify the licensee of:

(a) the revocation or suspension;

(b) if a suspension has been ordered, the duration of the suspension;

(c) the procedure for appealing the revocation or suspension under IC 4-21.5-3-5; and

(d) any other terms and conditions that apply to the revocation or suspension.

Not later than five (5) days after the entry of the order, the department shall deliver to the licensee a copy of the order and the findings supporting the order.

(5) Any person holding a license as a creditor to engage in first lien mortgage transactions may relinquish the license by notifying the department in writing of the relinquishment. However, a relinquishment under this subsection does not affect the person's liability for acts previously committed and coming within the scope of this article.

(6) If the director determines it to be in the public interest, the director may pursue revocation of a license of a licensee that has relinquished the license under subsection (5).

(7) If a person's license is revoked, suspended, or relinquished, the revocation, suspension, or relinquishment does not impair or affect any obligation owed by any person under any preexisting lawful contract.

(8) If the director has just cause to believe an emergency exists from which it is necessary to protect the interests of the public, the director may proceed with the revocation of a license through an emergency or another temporary order under IC 4-21.5-4.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.18; P.L.27-2012, SEC.10.

IC 24-4.4-2-404.1

Violations by individuals; persons convicted of felonies; civil

penalties; creditor's duty to notify department of discharge or termination

Sec. 404.1. (1) If the director determines that a director, an officer, or an employee of a creditor:

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

(b) has committed fraudulent or unconscionable conduct; or

(c) has been convicted of a felony under the laws of Indiana or any other jurisdiction;

the director, subject to subsection (2), may issue and serve upon the officer, director, or employee a notice of the director's intent to issue an order removing the person from the person's office or employment, an order prohibiting any 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.

(2) A violation, practice, or breach specified in subsection (1) is subject to the authority of the director under subsection (1) if the director finds any of the following:

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

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

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

(3) A person who has been convicted of 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.

(4) A creditor that willfully permits a person to serve the creditor in violation of subsection (3) is subject to a civil penalty of five hundred dollars ($500) for each day the violation continues.

(5) A creditor shall give the department written notice of the resignation, discharge, or termination of an employee, independent contractor, or agent against whom allegations were made that accused the employee, independent contractor, or agent of:

(a) violating this article or other laws, regulations, rules, or industry standards of conduct applicable to first lien mortgage transactions; or

(b) fraud, dishonesty, theft, or the wrongful taking of property.

The creditor shall provide the department the notice required under this subsection not later than thirty (30) days after the effective date of the resignation, discharge, or termination.

As added by P.L.35-2010, SEC.19. Amended by P.L.27-2012,

SEC.11.

IC 24-4.4-2-404.2
Director's notice of intent to issue order; contents; hearing; final order; suspension or prohibition pending final order; official record

Sec. 404.2. (1) A notice issued under this chapter must:

(a) be in writing;

(b) contain a statement of the facts constituting the alleged practice, violation, or breach;

(c) state the facts alleged in support of the violation, practice, or breach;

(d) state the director's intention to enter an order under section 404.4(1) of this chapter;

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

(f) be delivered to the officer, director, or employee concerned;

(g) specify the procedures that must be followed to initiate a hearing to contest the facts alleged; and

(h) if the director suspends or prohibits an officer, a director, or an employee of the creditor from participating in the affairs of the creditor, as described in subsection (5), include a statement of the suspension or prohibition.

(2) If a hearing is requested not later than ten (10) days after service of the written notice, the department shall hold a hearing concerning the alleged practice, violation, 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 under section 404.4 of this chapter.

(3) If no hearing is requested within the time specified in subsection (2), the director may proceed to issue a final order under section 404.4 of this chapter on the basis of the facts set forth in the written notice.

(4) An officer, director, or employee who is removed from a position under a removal order that has become final may not participate in the conduct of the affairs of any licensee under this article without the approval of the director.

(5) The director may, for the protection of the creditor or the interests of its 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 404.1(1) of this chapter. A suspension or prohibition under this subsection becomes effective upon service of the notice under section 404.1(1) of this chapter. Unless stayed by a court in a proceeding authorized by subsection (6), the suspension or prohibition remains in effect pending completion of the proceedings related to the notice served under section 404.1(1) of this chapter and until the effective date of an order entered by the department under subsection (2) or the director under subsection (3). 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.

(6) 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 (5), 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 written notice served under section 404.1(1) of this chapter, and the court may stay the suspension or prohibition.

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

As added by P.L.35-2010, SEC.20.

IC 24-4.4-2-404.3

Consent agreement; notice of charges not required

Sec. 404.3. If the director enters into a consent to a final order under section 404.4 of this chapter with a creditor, a director, an officer, or an employee, the director is not required to issue and serve a notice of charges upon the creditor, director, or officer under section 404.1 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.21.

IC 24-4.4-2-404.4

Final order; remedies; consent presumed

Sec. 404.4. (1) If, after a hearing described in section 404.2(2) of this chapter, the department finds that the conditions specified in section 404.1 of this chapter have been established, the department may issue a final order. If a hearing is not requested within the time specified in section 404.2(2) 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 404.1(1) of this chapter.

(2) Unless the director has entered into a consent agreement described in section 404.3 of this chapter, a final order must include separately stated findings of fact and conclusions of law for all aspects of the order.

(3) 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:

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

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

(c) If the subject of the order is an officer or a director of a creditor, and subject to section 404.6 of this chapter, the imposition of a civil penalty not to exceed fifteen thousand dollars ($15,000) for each practice, violation, or act that:

(i) is described in section 404.1 of this chapter; and

(ii) is found to exist by the department or the director.

(4) A final order shall be issued in writing not later than ninety (90) days after conclusion of a hearing held under section 404.2(2) of this chapter, unless this period is waived or extended with the written consent of all parties or for good cause shown.

(5) If the officer, director, or employee does not appear individually or by an authorized representative at a hearing held under section 404.2(2) of this chapter, the officer, director, or employee is considered to have consented to the issuance of a final order.

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

As added by P.L.35-2010, SEC.22.

IC 24-4.4-2-404.5

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

Sec. 404.5. (1) A final order issued under this chapter is effective on the eleventh day after service of the order. However, a final order issued upon consent under section 404.3 of this chapter is effective at the time specified in the order.

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

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

As added by P.L.35-2010, SEC.23.

IC 24-4.4-2-404.6

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

Sec. 404.6. (1) 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 in a final order issued under section 404.4(3)(c) of this chapter:

(a) The appropriateness of the civil penalty with respect to the financial resources and good faith of the individual charged.

(b) The gravity of the practice, violation, or act.

(c) The history of previous practices, violations, or acts.

(d) The economic benefit derived by the individual from the practice, violation, or act.

(e) Other factors that justice requires.

(2) A creditor may not indemnify a director or an officer for a civil penalty imposed in a final order under section 404.4(3)(c) of this chapter.

(3) 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.24.

IC 24-4.4-2-404.7

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

Sec. 404.7. The director may enforce any of the following by applying for appropriate relief to a court having jurisdiction:

(a) An order issued under this chapter.

(b) A written agreement entered into by the department or the director and any director, officer, or employee of a creditor.

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

As added by P.L.35-2010, SEC.25.

IC 24-4.4-2-405

Record keeping; use of unique identifier on forms and documents; use of examination and regulatory software; reports of condition to NMLSR; financial statements; notice to department of certain events or changes

Sec. 405. (1) Every licensee shall maintain records in a manner that will enable the department to determine whether the licensee is complying with this article. The record keeping system of a licensee is sufficient if the licensee makes the required information reasonably available. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. The department shall be given free access to the records wherever the records are located. Records concerning any first lien mortgage transaction shall be retained for two (2) years after the making of the final entry relating to the transaction, but in the case of a revolving first lien mortgage transaction, the two (2) years required under this subsection is measured from the date of each entry relating to the transaction.

(2) The unique identifier of any person originating a mortgage transaction must be clearly shown on all mortgage transaction application forms and any other documents as required by the director.

(3) Every licensee shall use automated examination and regulatory software designated by the director, including third party software. Use of the software consistent with guidance and policies issued by the director is not a violation of IC 28-1-2-30.

(4) Each:

(a) creditor licensed by the department under this article; and

(b) entity that is exempt from licensing under this article and that employs one (1) or more licensed mortgage originators;

shall submit to the NMLSR reports of condition, which must be in a form and must contain information as required by the NMLSR.

(5) Each:

(a) creditor licensed by the department under this article; and

(b) entity exempt from licensing under this article that employs licensed mortgage loan originators;

shall file with the department additional financial statements relating to all first lien mortgage transactions originated by the licensed creditor or the exempt entity as required by the department, but not

more frequently than annually, in the form prescribed by the department.

(6) A licensed creditor shall file notification with the department if the licensee:

(a) has a change in name, address, or any of its principals;

(b) opens a new branch, closes an existing branch, or relocates an existing branch;

(c) files for bankruptcy or reorganization; or

(d) is subject to revocation or suspension proceedings by a state or governmental authority with regard to the licensed creditor's activities;

not later than thirty (30) days after the date of the event described in this subsection.

(7) A licensee shall file notification with the department if the licensee or any director, executive officer, or manager of the licensee has been convicted of a felony under the laws of Indiana or any other jurisdiction. The licensee shall file the notification required by this subsection not later than thirty (30) days after the date of the event described in this subsection.

(8) A licensee shall file notification with the department if the licensee or any director, executive officer, or manager of the licensee has had the person's authority to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry revoked or suspended by Indiana or by any other state, federal, or foreign governmental agency or self regulatory organization. The licensee shall file the notification required by this subsection not later than thirty (30) days after the date of the event described in this subsection.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.26; P.L.27-2012, SEC.12.

IC 24-4.4-2-406

Change in control of creditor; application to department; timeframe for department's decision; conditions for approval; creditor's duty to report transfer of securities; director's discretion to require new license

Sec. 406. (1) As used in this section, "control" means possession of the power directly or indirectly to:

(a) direct or cause the direction of the management or policies of a creditor, whether through the beneficial ownership of voting securities, by contract, or otherwise; or

(b) vote at least twenty-five percent (25%) of the voting securities of a creditor, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.

(2) An organization or an individual acting directly, indirectly, or through or in concert with one (1) or more other organizations or individuals may not acquire control of any creditor unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120)

days after receipt of an application to issue a notice approving the proposed change in control. The application must contain the name and address of the organization, individual, or individuals who propose to acquire control and any other information required by the director.

(3) The period for approval under subsection (2) may be extended:

(a) in the discretion of the director for an additional thirty (30) days; and

(b) not more than two (2) additional times for not more than forty-five (45) days each time if:

(i) the director determines that the organization, individual, or individuals who propose to acquire control have not submitted substantial evidence of the qualifications described in subsection (4);

(ii) the director determines that any material information submitted is substantially inaccurate; or

(iii) the director has been unable to complete the investigation of the organization, individual, or individuals who propose to acquire control because of any delay caused by or the inadequate cooperation of the organization, individual, or individuals.

(4) The department shall issue a notice approving the application only after it is satisfied that both of the following apply:

(a) The organization, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the creditor in a legal and proper manner.

(b) The interests of the owners and creditors of the creditor and the interests of the public generally will not be jeopardized by the proposed change in control.

(5) The director may determine, in the director's discretion, that subsection (2) does not apply to a transaction if the director determines that the direct or beneficial ownership of the creditor will not change as a result of the transaction.

(6) The president or other chief executive officer of a creditor shall report to the director any transfer or sale of securities of the creditor that results in direct or indirect ownership by a holder or an affiliated group of holders of at least ten percent (10%) of the outstanding securities of the creditor. The report required by this subsection must be made not later than ten (10) days after the transfer of the securities on the books of the creditor.

(7) Depending on the circumstances of the transaction, the director may reserve the right to require the organization, individual, or individuals who propose to acquire control of a creditor licensed under this article to apply for a new license under section 401 of this chapter, instead of acquiring control of the licensee under this section.

As added by P.L.89-2011, SEC.9. Amended by P.L.6-2012, SEC.165.

IC 24-4.4-2-501
Creditor's duty to comply with closing requirements

Sec. 501. A creditor in a first lien mortgage transaction shall comply with IC 6-1.1-12-43, to the extent applicable.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-2-502
Debtor's right to rescind; accruing interest prohibited during rescission period; disbursement of proceeds

Sec. 502. (1) A violation by a creditor in a first lien mortgage transaction of Section 125 of the Federal Consumer Credit Protection Act (15 U.S.C. 1635) (concerning a debtor's right to rescind a transaction) constitutes a violation of this article. A creditor may not accrue interest during the period when a first lien mortgage transaction may be rescinded under Section 125 of the Federal Consumer Credit Protection Act (15 U.S.C. 1635).

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

(a) the date the creditor is reasonably satisfied that the debtor has not rescinded the transaction; or

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

As added by P.L.145-2008, SEC.20. Amended by P.L.1-2009, SEC.135.

IC 24-4.4-2-503
Reverse mortgages; pamphlet; counseling required for debtor

Sec. 503. A creditor in a first lien mortgage transaction that:

(1) qualifies as a home equity conversion mortgage under the Federal Housing Administration's program; or

(2) otherwise constitutes a reverse mortgage;

shall provide the debtor with a pamphlet that is approved by the department and that describes the availability of reverse mortgage counseling services provided by housing counselors approved by the Secretary of the United States Department of Housing and Urban Development, as provided in 24 CFR 206.41(a). The debtor must receive the counseling described in this section and present the creditor with the certificate described in 24 CFR 206.41(c) before the creditor may make a first lien mortgage transaction described in this section to the debtor.

As added by P.L.35-2010, SEC.27.

IC 24-4.4-3
Chapter 3. Administration

IC 24-4.4-3-101
Short title
Sec. 101. This chapter shall be known and may be cited as the First Lien Mortgage Lending Act - Administration.
As added by P.L.145-2008, SEC.20.

IC 24-4.4-3-102
Application
Sec. 102. This chapter applies to a person that engages as a creditor in first lien mortgage transactions in Indiana. The authority of this chapter remains in effect, whether a licensee, individual, or person subject to this article acts or claims to act under any licensing or registration law of Indiana or claims to act without such authority.
As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.28.

IC 24-4.4-3-103
Powers of department; no liability for conforming act or omission
Sec. 103. (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) Liability may not be 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 the fact that after the act is done or omitted the rule, written notice, written opinion, written interpretation, or written directive may be:
(a) amended or repealed; or
(b) determined by judicial or other authority to be invalid;
for any reason.
As added by P.L.145-2008, SEC.20.

IC 24-4.4-3-104

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

Sec. 104. (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) Financial records, credit files, and data bases.

(d) 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 officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of licensees, and other individuals or persons subject to this article. The department may also adduce evidence and require the production of any matter that is relevant to an investigation. The department shall determine the sufficiency of the records maintained and whether the person has made the required information reasonably available. The records concerning any transaction subject to this article shall be retained for two (2) years after the making of the final entry relating to the first lien mortgage transaction, but in the case of a revolving first lien mortgage transaction the two (2) year period 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 first lien mortgage transaction.

(b) The authority to require a creditor to comply with the penalty provisions set forth in IC 24-4.4-2-201.

(c) The authority to investigate complaints filed with the department by debtors.

(3) The department shall be given free access to the records wherever the records are 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, a 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 shall have 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 the department's representative to examine the records where they are maintained. The department may designate comparable officials of the state in which the records are located to inspect the records on behalf of the department.

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

(5) The department shall not make public:

(a) the name or identity of a person whose acts or conduct the department investigates under this section; or

(b) the facts discovered in the investigation.

However, this subsection does not apply to civil actions or enforcement proceedings under this article.

(6) To discover violations of this article or to secure information necessary for the enforcement of this article, the department may investigate any:

(a) licensee; or

(b) person that the department suspects to be operating:

(i) without a license, when a license is required under this article; or

(ii) otherwise in violation of this article.

The department has all investigatory and enforcement authority under this article that the department has under IC 28-11 with respect to financial institutions. If the department conducts an investigation under this section, the licensee or other person investigated shall pay all reasonably incurred costs of the investigation in accordance with the fee schedule adopted under IC 28-11-3-5.

(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.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.29; P.L.216-2013, SEC.4.

IC 24-4.4-3-104.5
Powers of director

Sec. 104.5. 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 in order 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 within or outside Indiana; and

(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.30.

IC 24-4.4-3-104.6
Prohibited acts

Sec. 104.6. 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 or regulation adopted under this article and any other applicable state or federal law regulation;
(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, 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.31.

IC 24-4.4-3-105
Applicability of laws governing administrative orders and rules; venue; emergency rulemaking authority

Sec. 105. Except as otherwise provided, IC 4-21.5-3 governs any action taken by the department under this chapter or IC 24-4.4-2-401 through IC 24-4.4-2-405. IC 4-22-2 applies to the adoption of rules

by the department under this article. 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. However, if the department determines that an emergency exists, the department may adopt any rules authorized by this article under IC 4-22-2-37.1.
As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.32.

IC 24-4.4-3-106
Cease and desist orders; judicial review or enforcement proceedings; record; appeal; unconscionable or fraudulent conduct subject to injunction

Sec. 106. (1) After notice and hearing, 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. In any civil court with jurisdiction:

(a) a respondent aggrieved by an order of the department may obtain judicial review of the order; and

(b) the department may obtain an order of the court for the enforcement of the department's order.

A proceeding for review or enforcement under this subsection shall be initiated by the filing of a petition in the court. Copies of the petition shall be served upon all parties of record.

(2) Not later than thirty (30) days after service of a petition for review upon the department under subsection (1), or within such further time as 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 that is the subject of the review 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 conducting a hearing on the matter, 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 in the whole record;

(b) grant any temporary relief or restraining order the court considers just; and

(c) enter an order:

(i) enforcing;

(ii) modifying;

(iii) enforcing as modified; or

(iv) setting aside;

in whole or in part, the order of the department; or

(d) enter an order 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:

(a) adducing additional specified and material evidence; and

(b) seeking a finding upon such evidence;

upon good cause shown for the failure to previously adduce this evidence before the department.

(4) The jurisdiction of the court is exclusive and the court's final judgment or decree is subject to review 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 not later than thirty (30) days after a copy of the order of the department is received. If a proceeding is not initiated within the time set forth in this subsection, the department may obtain a decree of a civil court with jurisdiction for enforcement of the department's order upon a showing that:

(a) the order was issued in compliance with this section;

(b) a proceeding for review was not initiated within the thirty (30) day period prescribed by this subsection; and

(c) the respondent is subject to the jurisdiction of the court.

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

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.33.

IC 24-4.4-3-107

Assurance of discontinuance of conduct; failure to comply

Sec. 107. If it is claimed that a person has engaged in conduct subject to an order by:

(a) the department under section 106(1) of this chapter; or

(b) a court under sections 108 through 110 of this chapter;

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 the terms of the assurance, the assurance is evidence that before the assurance was issued the person engaged in the conduct described in the assurance.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-3-108

Civil action by department to restrain violation

Sec. 108. The department may bring a civil action to restrain a person from violating this article or other state or federal law, rule, or regulation and for other appropriate relief.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.34.

IC 24-4.4-3-109

Civil action by department to enjoin deceptive act

Sec. 109. (1) As used in this section, "deceptive act" means an act or a practice in which a person knowingly or intentionally:

(a) makes a material misrepresentation concerning; or

(b) conceals material information regarding the terms or conditions of;

a first lien mortgage transaction.

(2) For purposes of this section, "knowingly" means having actual knowledge at the time of the transaction.

(3) The department may bring a civil action to enjoin a deceptive act performed in connection with a first lien mortgage transaction.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-3-110

Department's application to court for temporary relief or restraining order

Sec. 110. With respect to an action brought under:

(a) section 108 of this chapter to enjoin violations of this article; or

(b) section 109 of this chapter to enjoin deceptive acts;

the department may apply to the court for appropriate temporary relief against a respondent, pending final determination of the 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 the conduct sought to be restrained, the court may grant any temporary relief or restraining order the court considers appropriate.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-3-111

Civil action by department for willful violation; imposition of civil penalty by department; restitution

Sec. 111. (1) The department may bring a civil action against a creditor or a person acting on behalf of the creditor to recover a civil penalty for willfully violating this article. If the court finds that the defendant has engaged in a course of repeated and willful violations of this article, the court may assess a civil penalty of not more than five thousand dollars ($5,000). A civil penalty may not be imposed under this subsection:

(a) for violations of this article occurring more than two (2) years before the action is brought; or

(b) for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

(2) If the department determines, after notice and an opportunity 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.

(3) If the department determines, after notice and opportunity to be heard, that a person has willfully violated this article, the department may, in addition to or instead of all other remedies available under this section, order restitution against the person subject to this article for a violation of this article.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.35.

IC 24-4.4-3-112
Repealed

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

IC 24-4.4-3-113
Rights of debtors not affected

Sec. 113. The grant of powers to the department under this article does not affect remedies available to debtors under this article or under other principles of law or equity.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-3-114
Actions brought by department; venue

Sec. 114. The department may bring an action or a proceeding in a court in a county:

(1) in which an act on which the action or proceeding is based occurred;
(2) in which the respondent resides or transacts business; or
(3) in which the action or proceeding is otherwise authorized by rule or venue laws.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-3-115
"Civil court"

Sec. 115. As used in this article, "civil court" means any court in Indiana having jurisdiction of civil cases.

As added by P.L.145-2008, SEC.20.

IC 24-4.5

ARTICLE 4.5. UNIFORM CONSUMER CREDIT CODE

IC 24-4.5-1

Chapter 1. General Provisions and Definitions

(Part 1. Short Title, Construction, General Provisions)

IC 24-4.5-1-101

Short title

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

(Formerly: Acts 1971, P.L.366, SEC.2.)

IC 24-4.5-1-102

Purposes; rules of construction; application to disguised consumer credit transactions; violations of other consumer credit laws, regulation, or rules; enforcing disclosure requirements for mortgage transactions

Sec. 102. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

(a) to simplify, clarify, and modernize the law governing retail installment sales, consumer credit, small loans, and usury;

(b) to provide rate ceilings to assure an adequate supply of credit to consumers;

(c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;

(d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;

(e) to permit and encourage the development of fair and economically sound consumer credit practices;

(f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act and to applicable state and federal laws, rules, regulations, policies, and guidance; and

(g) to make uniform the law, including administrative rules among the various jurisdictions.

(3) A reference to a requirement imposed by this article includes reference to a related rule or guidance of the department adopted pursuant to this article.

(4) A reference to a federal law in this article is a reference to the law as in effect December 31, 2012.

(5) This article applies to a transaction if the director determines that the transaction:

(a) is in substance a disguised consumer credit transaction; or
(b) involves the application of subterfuge for the purpose of avoiding this article.

A determination by the director under this paragraph must be in writing and shall be delivered to all parties to the transaction. IC 4-21.5-3 applies to a determination made under this paragraph.

(6) The authority of this article remains in effect, whether a licensee, an individual, or a person subject to this article acts or claims to act under any licensing or registration law of this state, or claims to act without such authority.

(7) A violation of a state or federal law, regulation, or rule applicable to consumer credit transactions is a violation of this article.

(8) The department may enforce penalty provisions set forth in 15 U.S.C. 1640 for violations of disclosure requirements applicable to mortgage transactions.

(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by P.L.14-1992, SEC.2; P.L.122-1994, SEC.1; P.L.45-1995, SEC.2; P.L.176-1996, SEC.1; P.L.172-1997, SEC.1; P.L.80-1998, SEC.2; P.L.23-2000, SEC.1; P.L.63-2001, SEC.1 and P.L.134-2001, SEC.1; P.L.82-2002, SEC.1; P.L.258-2003, SEC.1; P.L.73-2004, SEC.15; P.L.141-2005, SEC.1; P.L.10-2006, SEC.1 and P.L.57-2006, SEC.1; P.L.213-2007, SEC.5; P.L.217-2007, SEC.4; P.L.90-2008, SEC.4; P.L.182-2009(ss), SEC.370; P.L.35-2010, SEC.36; P.L.89-2011, SEC.10; P.L.27-2012, SEC.13; P.L.216-2013, SEC.5.

IC 24-4.5-1-103
Supplementary general principles of law applicable

Sec. 103. Unless displaced by the particular provisions of this article, the Uniform Commercial Code (IC 26-1) and the principles of law and equity (including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause) shall supplement its provisions.

(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by P.L.152-1986, SEC.57.

IC 24-4.5-1-104
Construction against implicit repeal

Sec. 104. Construction Against Implicit Repeal — This Article being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

(Formerly: Acts 1971, P.L.366, SEC.2.)

IC 24-4.5-1-105
Severability

Sec. 105. Severability — If any provisions of this Article or the application thereof to any person or circumstances is held invalid, the

invalidity does not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable.
(Formerly: Acts 1971, P.L.366, SEC.2.)

IC 24-4.5-1-106
Adjustment of dollar amounts

Sec. 106. (1) The dollar amounts in this article designated as subject to change shall change, as provided in this section, according to the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1957-59 equals 100, compiled by Bureau of Labor Statistics, United States Department of Labor, and referred to in this section as the Index. The Index for October, 1971, is the Reference Base Index.

(2) The dollar amounts shall change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index is ten percent (10%) or more, except that:

(a) the portion of the percentage change in the Index in excess of a multiple of ten percent (10%) shall be disregarded and the dollar amounts shall change only in multiples of ten percent (10%) of the amounts on March 5, 1971;

(b) the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to this article as a result of earlier application of the section; and

(c) in no event shall the dollar amounts be reduced below the amounts appearing in this article on March 5, 1971.

(3) If the Index is revised after December 1967, the percentage of change shall be calculated on the basis of the revised Index. If the revision of the Index changes the Reference Base Index, a revised Reference Base Index shall be determined by multiplying the Reference Base Index by the ratio of the revised Index to the current Index, as each was for the first month in which the revised Index is available. If the Index is superseded, the Index is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

(4) The department shall issue an emergency rule under IC 4-22-2-37.1 announcing:

(a) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by subsection (2); and

(b) promptly after the changes occur, changes in the Index required by subsection (3), including, when applicable, the numerical equivalent of the Reference Base Index under a revised Reference Base Index and the designation or title of any index superseding the Index.

An emergency rule adopted under this subsection expires on the date the department is next required to issue a rule under this subsection.

(5) A person does not violate this article through a transaction otherwise complying with this article if the person relies on dollar amounts either determined according to subsection (2) or appearing in the last rule of the department announcing the then current dollar amounts.

(Formerly: Acts 1971, P.L.366, SEC.2; Acts 1972, P.L.182, SEC.1; Acts 1972, P.L.182, SEC.2.) As amended by P.L.152-1986, SEC.58; P.L.3-1990, SEC.84; P.L.14-1992, SEC.3; P.L.1-1994, SEC.117; P.L.122-1994, SEC.2; P.L.140-2013, SEC.18.

IC 24-4.5-1-107

Waiver; agreement to forego rights; settlement of claims

Sec. 107. Waiver; Agreement to Forego Rights; Settlement of Claims - (1) Except as otherwise provided in this Article, a buyer, lessee, or debtor may not waive or agree to forego rights or benefits under this Article.

(2) A claim by a buyer, lessee, or debtor against a creditor for an excess charge, other violation of this Article, or civil penalty, or a claim against a buyer, lessee, or debtor for default or breach of a duty imposed by this Article, if disputed in good faith, may be settled by agreement.

(3) A claim, whether or not disputed against a buyer, lessee or debtor may be settled for less value than the amount claimed.

(4) A settlement in which the buyer, lessee, or debtor waives or agrees to forego rights or benefits under this Article is invalid if the court as a matter of law finds the settlement to have been unconscionable at the time it was made. The competence of the buyer, lessee, or debtor, any deception or coercion practiced upon him, the nature and extent of the legal advice received by him, and the value of the consideration are relevant to the issue of unconscionability.

(Formerly: Acts 1971, P.L.366, SEC.2.)

IC 24-4.5-1-108

Effect on powers of organizations

Sec. 108. (1) This article prescribes maximum charges for all creditors, except lessors and those excluded (IC 24-4.5-1-202), extending consumer credit, including consumer credit sales (IC 24-4.5-1-301.5(8)), consumer loans (IC 24-4.5-1-301.5(9)), and consumer related sales and loans (IC 24-4.5-2-602 and IC 24-4.5-3-602), and displaces existing limitations on the powers of those creditors based on maximum charges.

(2) With respect to sellers of goods or services, small loan companies, licensed lenders, consumer and sales finance companies, industrial loan and investment companies, and commercial banks and trust companies, this article displaces existing limitations on their powers based solely on amount or duration of credit.

(3) Except as provided in subsection (1) and IC 24-4.6-1, this article does not displace limitations on powers of credit unions, savings banks, savings or building and loan associations, or other

thrift institutions whether organized for the profit of shareholders or as mutual organizations.

(4) Except as provided in subsections (1) and (2), this article does not displace:

(a) limitations on powers of depository institutions (IC 24-4.5-1-301.5) with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan that is a mortgage transaction, or other similar restrictions designed to protect deposits; or

(b) limitations on powers an organization is authorized to exercise under the laws of this state or the United States.

(Formerly: Acts 1971, P.L.366, SEC.2; Acts 1974, P.L.115, SEC.3.) As amended by P.L.14-1992, SEC.4; P.L.122-1994, SEC.3; P.L.35-2010, SEC.37.

IC 24-4.5-1-109

Persons licensed or authorized on October 1, 1971

Sec. 109. All persons licensed on October 1, 1971, under:

(1) IC 24-5-4 (before its repeal on October 1, 1971);

(2) IC 28-7-4 (before its repeal on October 1, 1971);

(3) IC 28-7-2 (before its repeal on October 1, 1971); or

(4) IC 28-5-1-4;

are licensed to make supervised loans under this article, subject to the renewal provisions contained in this article. All provisions of this article apply to the persons previously licensed or authorized. The department may deliver evidence of licensing to the persons previously licensed or authorized.

As added by P.L.5-1988, SEC.128. Amended by P.L.3-1990, SEC.85; P.L.14-1992, SEC.5; P.L.35-2010, SEC.38.

IC 24-4.5-1-201

Territorial application; determination of residence; invalid agreements; violations; voiding of loan

Sec. 201. (1) Except as otherwise provided in this section, this article applies to sales, leases, and loans made in this state and to modifications, including refinancings, consolidations, and deferrals, made in this state, of sales, leases, and loans, wherever made. For purposes of this article, the following apply:

(a) A sale or modification of a sale agreement is made in this state if the buyer's agreement or offer to purchase or to modify is received by the seller or a person acting on behalf of the seller in this state.

(b) A lease or modification of a lease agreement is made in this state if the lessee's agreement or offer to lease or to modify is received by the lessor or a person acting on behalf of the lessor in this state.

(c) A loan or modification of a loan agreement is made in this state if a writing signed by the debtor and evidencing the debt is received by the lender or a person acting on behalf of the lender in this state.

(d) Except as provided in subdivisions (e) and (f), a sale, lease, or loan transaction occurs in Indiana if a consumer who is a resident of Indiana enters into a consumer sale, lease, or loan transaction with a creditor or a person acting on behalf of the creditor in another state and the creditor or the person acting on behalf of the creditor has advertised or solicited sales, leases, or loans in Indiana by any means, including by mail, brochure, telephone, print, radio, television, the Internet, or electronic means.

(e) A sale, lease, or loan transaction does not occur in Indiana if a consumer who is a resident of Indiana enters into a consumer sale, lease, or loan transaction secured by an interest in land located outside Indiana.

(f) A sale, lease, or loan transaction does not occur in Indiana if a consumer who is a resident of Indiana enters into a consumer sale, lease, or loan transaction at a creditor's place of business in another state.

For purposes of subdivisions (a) through (c), an offer is received by a creditor or a person acting on behalf of the creditor in Indiana if the offer is physically delivered, or otherwise transmitted or communicated, to a person who has actual or apparent authority to act for the creditor or the person acting on behalf of the creditor in Indiana, regardless of whether approval, acceptance, or ratification by any other agent or representative of the creditor or the person acting on behalf of the creditor in another state is necessary to give legal consequence to the consumer credit transaction.

(2) IC 24-4.5-5-101 through IC 24-4.5-5-108 apply to actions or other proceedings brought in this state to enforce rights arising from consumer credit sales, consumer leases, or consumer loans, or extortionate extensions of credit, wherever made.

(3) Except as provided in subsection (2), a sale, lease, loan, or modification thereof, made in another state to a person who was not a resident of this state when the sale, lease, loan, or modification was made is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

(4) For the purposes of this article, the residence of a buyer, lessee, or debtor is the address given by the buyer, lessee, or debtor as the buyer's, lessee's, or debtor's residence in any writing or electronic communication made by the buyer, lessee, or debtor in connection with a credit transaction. Until the buyer, lessee, or debtor notifies the creditor or the person acting on behalf of the creditor of a new or different address, the given address is presumed to be unchanged.

(5) Notwithstanding other provisions of this section:

(a) except as provided in subsection (2), this article does not apply if the buyer, lessee, or debtor is not a resident of this state at the time of a credit transaction and the parties then agree that the law of the buyer's, lessee's, or debtor's residence applies; and

(b) this article applies if the buyer, lessee, or debtor is a resident of this state at the time of a credit transaction and the parties then agree that the law of this state applies.

(6) Except as provided in subsection (5), the following agreements by a buyer, lessee, or debtor are invalid with respect to consumer credit sales, consumer leases, consumer loans, or modifications thereof, to which this article applies:

(a) An agreement that the law of another state shall apply.

(b) An agreement that the buyer, lessee, or debtor consents to the jurisdiction of another state.

(c) An agreement that fixes venue.

(7) The following provisions of this article specify the applicable law governing certain cases:

(a) IC 24-4.5-6-102 (applicability of the provisions on powers and functions of the department).

(b) IC 24-4.5-6-201 (applicability of the provisions on notification and fees).

(8) If a creditor or a person acting on behalf of the creditor has violated the provisions of this article that apply to the authority to make consumer loans (IC 24-4.5-3-502), the loan is void and the debtor is not obligated to pay either the principal or loan finance charge, as set forth in IC 24-4.5-5-202.

(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by Acts 1979, P.L.236, SEC.1; P.L.152-1986, SEC.59; P.L.252-1987, SEC.5; P.L.14-1992, SEC.6; P.L.122-1994, SEC.4; P.L.10-2006, SEC.2 and P.L.57-2006, SEC.2; P.L.213-2007, SEC.6; P.L.217-2007, SEC.5; P.L.90-2008, SEC.5; P.L.216-2013, SEC.6.

IC 24-4.5-1-202

Exempt transactions and persons

Sec. 202. (a) As used in this section, "balloon payment", with respect to a mortgage transaction, means any payment that:

(1) the creditor requires the debtor to make at any time during the term of the mortgage;

(2) represents the entire amount of the outstanding balance with respect to the mortgage; and

(3) the entire amount of which is due as of a specified date or at the end of a specified period;

if the aggregate amount of the minimum periodic payments required under the mortgage would not fully amortize the outstanding balance by the specified date or at the end of the specified period. The term does not include a payment required by a creditor under a due-on-sale clause (as defined in 12 U.S.C. 1701j-3(a)) or a payment required by a creditor under a provision in the mortgage that permits the creditor to accelerate the debt upon the debtor's default or failure to abide by the material terms of the mortgage.

(b) This article does not apply to the following:

(1) Extensions of credit to government or governmental agencies or instrumentalities.

(2) The sale of insurance by an insurer, except as otherwise

provided in the chapter on insurance (IC 24-4.5-4).
(3) Transactions under public utility, municipal utility, or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.
(4) The rates and charges and the disclosure of rates and charges of a licensed pawnbroker established in accordance with a statute or ordinance concerning these matters.
(5) A sale of goods, services, or an interest in land in which the goods, services, or interest in land are purchased primarily for a purpose other than a personal, family, or household purpose.
(6) A loan in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.
(7) An extension of credit primarily for a business, a commercial, or an agricultural purpose.
(8) An installment agreement for the purchase of home fuels in which a finance charge is not imposed.
(9) Loans made, insured, or guaranteed under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).
(10) Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.
(11) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3, IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a loan made:
(A) in compliance with the requirements of; and
(B) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from;
the Indiana housing and community development authority established by IC 5-20-1-3.
(12) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3, IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a subordinate lien mortgage transaction made by an entity that exclusively uses funds provided by the United States Department of Housing and Urban Development under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383, as amended (42 U.S.C. 5301 et seq.).
(13) The United States, any state or local government, or any agency or instrumentality of any governmental entity, including United States government sponsored enterprises.
(14) A bona fide nonprofit organization not operating in a commercial context, as determined by the director, if the following criteria are satisfied:
(A) Subject to clause (B), the organization originates only one (1) or both of the following types of mortgage transactions:
(i) Zero (0) interest first lien mortgage transactions.
(ii) Zero (0) interest subordinate lien mortgage

transactions.

(B) The organization does not require, under the terms of the mortgage or otherwise, balloon payments with respect to the mortgage transactions described in clause (A).

(C) The organization is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(D) The organization's primary purpose is to serve the public by helping low income individuals and families build, repair, and purchase housing.

(E) The organization uses only:

(i) unpaid volunteers; or

(ii) employees whose compensation is not based on the number or size of any mortgage transactions that the employees originate;

to originate the mortgage transactions described in clause (A).

(F) The organization does not charge loan origination fees in connection with the mortgage transactions described in clause (A).

(15) A bona fide nonprofit organization (as defined in section 301.5(45) of this chapter) if the following criteria are satisfied:

(a) For each calendar year that the organization seeks the exemption provided by this subdivision, the organization certifies, not later than December 31 of the preceding calendar year and on a form prescribed by the director and accompanied by such documentation as required by the director, that the organization is a bona fide nonprofit organization (as defined in section 301.5(45) of this chapter).

(b) The director determines that the organization originates only mortgage transactions that are favorable to the debtor. For purposes of this clause, a mortgage transaction is favorable to the debtor if the director determines that the terms of the mortgage transaction are consistent with terms of mortgage transactions made in a public or charitable context, rather than in a commercial context.

(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by Acts 1981, P.L.217, SEC.1; Acts 1982, P.L.149, SEC.1; P.L.247-1983, SEC.1; P.L.14-1992, SEC.7; P.L.176-1996, SEC.2; P.L.73-2004, SEC.16; P.L.1-2006, SEC.410 and P.L.181-2006, SEC.57; P.L.35-2010, SEC.39; P.L.89-2011, SEC.11; P.L.9-2011, SEC.2; P.L.6-2012, SEC.166; P.L.27-2012, SEC.14.

IC 24-4.5-1-203
Repealed

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

IC 24-4.5-1-204
Regulation of individuals also conducting loan brokerage business; department's cooperation with securities commissioner

Sec. 204. In examinations or other regulatory activities conducted by the department and related to licensees under this article, the department may cooperate with the Indiana securities commissioner in the regulation of individuals who, in addition to conducting business regulated under this article, also conduct a loan broker business subject to IC 23-2-5.
As added by P.L.35-2010, SEC.40.

(Part 3. Definitions)

IC 24-4.5-1-301
Repealed
(Repealed by P.L.35-2010, SEC.209.)

IC 24-4.5-1-301.5
Definitions
Sec. 301.5. In addition to definitions appearing in subsequent chapters in this article, the following definitions apply throughout this article:

(1) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

(a) controls;
(b) is controlled by; or
(c) is under common control with;

the person subject to this article.

(2) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(4) "Average daily balance" means the sum of each of the daily balances in a billing cycle divided by the number of days in the billing cycle, and if the billing cycle is a month, the creditor may elect to treat the number of days in each billing cycle as thirty (30).

(5) "Closing costs" with respect to a subordinate lien mortgage transaction includes:

(a) fees or premiums for title examination, title insurance, or similar purposes, including surveys;
(b) fees for preparation of a deed, settlement statement, or other documents;
(c) escrows for future payments of taxes and insurance;

(d) fees for notarizing deeds and other documents;

(e) appraisal fees; and

(f) fees for credit reports.

(6) "Conspicuous" refers to a term or clause when it is so written that a reasonable person against whom it is to operate ought to have noticed it.

(7) "Consumer credit" means credit offered or extended to a consumer primarily for a personal, family, or household purpose.

(8) "Consumer credit sale" is a sale of goods, services, or an interest in land in which:

(a) credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;

(b) the buyer is a person other than an organization;

(c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;

(d) either the debt is payable in installments or a credit service charge is made; and

(e) with respect to a sale of goods or services, either:

(i) the sale amount does not exceed fifty-three thousand dollars ($53,000) or another amount as adjusted in accordance with the annual adjustment of the exempt threshold amount specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); or

(ii) the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

Unless the sale is made subject to this article by agreement (IC 24-4.5-2-601), "consumer credit sale" does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement or except as provided with respect to disclosure (IC 24-4.5-2-301), debtors' remedies (IC 24-4.5-5-201), providing payoff amounts (IC 24-4.5-2-209), and powers and functions of the department (IC 24-4.5-6) a sale of an interest in land which is a first lien mortgage transaction.

(9) "Consumer loan" means a loan made by a person regularly engaged in the business of making loans in which:

(a) the debtor is a person other than an organization;

(b) the debt is primarily for a personal, family, or household purpose;

(c) either the debt is payable in installments or a loan finance charge is made; and

(d) either:

(i) the loan amount does not exceed fifty-three thousand dollars ($53,000) or another amount as adjusted in accordance with the annual adjustment of the exempt threshold amount specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); or

(ii) the debt is secured by an interest in land or by personal property used or expected to be used as the principal dwelling of the debtor.

Except as described in IC 24-4.5-3-105, the term does not include a first lien mortgage transaction.

(10) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(11) "Creditor" means a person:

(a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable by written agreement in more than four (4) installments (not including a down payment); and

(b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.

(12) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(13) "Director" means the director of the department of financial institutions or the director's designee.

(14) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

(a) condominium unit;

(b) cooperative unit;

(c) mobile home; or

(d) trailer;

that is used as a residence.

(15) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program.

(16) "Employee" means an individual who is paid wages or other compensation by an employer required under federal income tax law to file Form W-2 on behalf of the individual.

(17) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(18) "First lien mortgage transaction" means:

(a) a consumer loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a first lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(19) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(20) "Individual" means a natural person.

(21) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

(a) by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;

(b) by the lender's payment or agreement to pay the debtor's obligations; or

(c) by the lender's purchase from the obligee of the debtor's obligations.

(22) "Licensee" means a person licensed as a creditor under this article.

(23) "Loan brokerage business" means any activity in which a person, in return for any consideration from any source, procures, attempts to procure, or assists in procuring, a mortgage transaction from a third party or any other person, whether or not the person seeking the mortgage transaction actually obtains the mortgage transaction.

(24) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under this article. For purposes of this subsection, the term "clerical or support duties" may include, after the receipt of an application, the following:

(a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction.

(b) The communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:

(i) offering or negotiating loan rates or terms; or

(ii) counseling consumers about mortgage transaction rates or terms.

An individual engaging solely in loan processor or underwriter activities shall not represent to the public through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(25) "Mortgage loan originator" means an individual who, for compensation or gain, or in the expectation of compensation or gain, regularly engages in taking a mortgage transaction application or in offering or negotiating the terms of a mortgage transaction that either is made under this article or under IC 24-4.4 or is made by an employee of a person licensed or exempt from licensing under this article or under IC 24-4.4, while the employee is engaging in the loan brokerage business. The term does not include the following:

(a) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an

employee of a person licensed or exempt from licensing under this article.

(b) Unless the person or entity is compensated by:

(i) a creditor;

(ii) a loan broker;

(iii) another mortgage loan originator; or

(iv) any agent of the creditor, loan broker, or other mortgage loan originator described in items (i) through (iii);

a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law.

(c) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D)).

(26) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.

(27) "Mortgage transaction" means:

(a) a consumer loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(28) "Nationwide Mortgage Licensing System and Registry", or "NMLSR", means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of creditors and mortgage loan originators.

(29) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

(30) "Official fees" means:

(a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or

(b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) that would otherwise be payable.

(31) "Organization" means a corporation, a government or governmental subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated organization, or any other entity, however organized.

(32) "Payable in installments" means that payment is required or

permitted by written agreement to be made in more than four (4) installments not including a down payment.

(33) "Person" includes an individual or an organization.

(34) "Person related to" with respect to an individual means:

(a) the spouse of the individual;

(b) a brother, brother-in-law, sister, or sister-in-law of the individual;

(c) an ancestor or lineal descendants of the individual or the individual's spouse; and

(d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(35) "Person related to" with respect to an organization means:

(a) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(b) a director, an executive officer, or a manager of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

(c) the spouse of a person related to the organization; and

(d) a relative by blood or marriage of a person related to the organization who shares the same home with the person.

(36) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed, unless and until evidence is introduced that would support a finding of its nonexistence.

(37) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.

(c) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).

(d) Engaging in any activity for which a person is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.

(e) Offering to engage in any activity, or act in any capacity, described in this subsection.

(38) "Registered mortgage loan originator" means any individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(b) is registered with, and maintains a unique identifier through, the NMLSR.

(39) "Regularly engaged", with respect to a person who extends consumer credit, refers to a person who:

(a) extended consumer credit:

(i) more than twenty-five (25) times; or

(ii) more than five (5) times for a mortgage transaction secured by a dwelling;

in the preceding calendar year; or

(b) extends or will extend consumer credit:

(i) more than twenty-five (25) times; or

(ii) more than five (5) times for a mortgage transaction secured by a dwelling;

in the current calendar year, if the person did not meet the numerical standards described in subdivision (a) in the preceding calendar year.

(40) "Residential real estate" means any real property that is located in Indiana and on which there is located or intended to be constructed a dwelling.

(41) "Seller credit card" means an arrangement that gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or from that person and any other person. The term includes a card that is issued by a person, that is in the name of the seller, and that can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

(42) "Subordinate lien mortgage transaction" means:

(a) a consumer loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a subordinate lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(43) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

(44) "Land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.

(45) "Bona fide nonprofit organization" means an organization that does the following, as determined by the director under criteria established by the director:

(a) Maintains tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

(b) Promotes affordable housing or provides home ownership education or similar services.

(c) Conducts the organization's activities in a manner that serves public or charitable purposes.

(d) Receives funding and revenue and charges fees in a manner that does not encourage the organization or the organization's employees to act other than in the best interests of the organization's clients.

(e) Compensates the organization's employees in a manner that does not encourage employees to act other than in the best interests of the organization's clients.

(f) Provides to, or identifies for, debtors mortgage transactions with terms that are favorable to the debtor (as described in section 202(b)(15) of this chapter) and comparable to mortgage transactions and housing assistance provided under government housing assistance programs.

(g) Maintains certification by the United States Department of Housing and Urban Development or employs counselors who are certified by the Indiana housing and community development authority.

As added by P.L.35-2010, SEC.41. Amended by P.L.89-2011, SEC.12; P.L.27-2012, SEC.15; P.L.216-2013, SEC.7.

IC 24-4.5-1-302
Federal Consumer Credit Protection Act

Sec. 302. Federal Consumer Credit Protection Act — In this Article "Federal Consumer Credit Protection Act" means the Consumer Credit Protection Act (Public Law 90-321; 82 Stat. 146), as amended, and includes both the Truth in Lending Simplification and Reform Act amendments (Public Law 96-221, Title VI, 94 Stat. 168) and any regulations issued pursuant to those laws. However, the department may otherwise define this term by rule issued in accordance with IC 24-4.5-6-107.

(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by Acts 1982, P.L.149, SEC.2; P.L.14-1992, SEC.10.

IC 24-4.5-1-303
Repealed

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

IC 24-4.5-2
Chapter 2. Credit Sales

(Part 1. General Provisions)

IC 24-4.5-2-101
Short title
Sec. 101. Short Title — This Chapter shall be known and may be cited as Uniform Consumer Credit Code - Credit Sales.
(Formerly: Acts 1971, P.L.366, SEC.3.)

IC 24-4.5-2-102
Application
Sec. 102. This chapter applies to consumer credit sales, including home solicitation sales, and consumer leases. In addition, IC 24-4.5-2-601 through IC 24-4.5-2-605 apply to consumer related sales. Licensing under IC 24-4.5-3-502.1 applies to consumer credit sales that are subordinate lien mortgage transactions.
(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by P.L.152-1986, SEC.60; P.L.35-2010, SEC.42.

IC 24-4.5-2-103
Definitions
Sec. 103. Definitions — The following definitions apply to this article and appear in this article as follows:

"Amount financed"	Section 111 of this chapter
"Cash price"	Section 110 of this chapter
"Consumer credit sale"	
"Consumer lease"	Section 106 of this chapter
"Consumer related sale"	Section 602 of this chapter
"Credit service charge"	Section 109 of this chapter
"Goods"	Section 105(1) of this chapter
"Home solicitation sale"	Section 501 of this chapter
"Merchandise certificate"	Section 105(2) of this chapter
"Precomputed"	Section 105(7) of this chapter
"Revolving charge account"	Section 108 of this chapter
"Sale of goods"	Section 105(4) of this chapter
"Sale of an interest in land"	Section 105(6) of this chapter
"Sale of services"	Section 105(5) of this chapter
"Seller"	Section 107 of this chapter
"Services"	Section 105(3) of this chapter

(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by P.L.89-2011, SEC.13.

IC 24-4.5-2-104
Repealed
(Repealed by P.L.35-2010, SEC.209.)

IC 24-4.5-2-105
"Goods"; "merchandise certificate"; "services"; "sale of goods";

"sale of services"; "sale of an interest in land"; "precomputed"

Sec. 105. Definitions: "Goods"; "Merchandise Certificate"; "Services"; "Sale of Goods"; "Sale of Services"; "Sale of an Interest in Land"; "Precomputed".

(1) "Goods" includes goods not in existence at the time the transaction is entered into and merchandise certificates, but excludes money, chattel paper, documents of title, and instruments.

(2) "Merchandise certificate" means a writing issued by a seller not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(3) "Services" includes (a) work, labor, and other personal services, (b) privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, and (c) insurance provided by a person other than the insurer.

(4) "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his obligations under the agreement.

(5) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(6) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

(7) A sale, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the amount financed and the amount of the credit service charge computed in advance.

(Formerly: Acts 1971, P.L.366, SEC.3.)

IC 24-4.5-2-106

"Consumer lease"

Sec. 106. (1) "Consumer lease" means a lease of goods:

(a) which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, or household purpose;

(b) in which the amount payable under the lease does not exceed fifty-three thousand dollars ($53,000) or another amount as adjusted in accordance with the annual adjustment of the exempt threshold amount specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); and

(c) which is for a term exceeding four (4) months.

(2) "Consumer lease" does not include a lease made pursuant to a lender credit card or similar arrangement.

(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by

P.L.247-1983, SEC.3; P.L.122-1994, SEC.9; P.L.216-2013, SEC.8.

IC 24-4.5-2-107
"Seller"

Sec. 107. Definition; "Seller" - Except as otherwise provided, "seller" means a person regularly engaged as a creditor in making consumer credit sales. The term includes an assignee of the seller's right to payment but use of the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment.

(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by P.L.145-2008, SEC.22.

IC 24-4.5-2-108
"Revolving charge account"

Sec. 108. Definition: "Revolving Charge Account" — "Revolving charge account" means an arrangement between a seller and a buyer pursuant to which (1) the seller may permit the buyer to purchase goods or services on credit either from the seller or pursuant to a seller credit card, (2) the unpaid balances of amounts financed arising from purchases and the credit service and other appropriate charges are debited to an account, (3) a credit service charge if made is not precomputed but is computed on the outstanding unpaid balances of the buyer's account from time to time, and (4) the buyer has the privilege of paying the balances in instalments.

(Formerly: Acts 1971, P.L.366, SEC.3.)

IC 24-4.5-2-109
"Credit service charge"

Sec. 109. "Credit service charge" means the sum of:

(1) all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller as an incident to the extension of credit, including any of the following types of charges which are applicable: time price differential, service, carrying or other charge, however denominated, premium or other charge for any guarantee or insurance protecting the seller against the buyer's default or other credit loss; and

(2) charges incurred for investigating the collateral or credit-worthiness of the buyer.

The term does not include charges as a result of default, additional charges (IC 24-4.5-2-202), delinquency charges (IC 24-4.5-2-203.5), or deferral charges (IC 24-4.5-2-204). The term does not include charges paid or payable to a third party that are not required by the seller as a condition or incident to the extension of credit except for borrower paid mortgage broker fees, including fees paid directly to the broker or the seller (for delivery to the broker), whether the fees are paid in cash or financed. However, borrower paid mortgage broker fees do not include fees paid to a mortgage broker by a creditor, including yield spread premiums and service release fees.

(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by

P.L.247-1983, SEC.4; P.L.14-1992, SEC.13; P.L.2-1995, SEC.90; P.L.172-1997, SEC.3.

IC 24-4.5-2-110
"Cash price"

Sec. 110. Definition: "Cash Price" — Except as the department may prescribe by rule, the "cash price" of goods, services, or an interest in land means the price at which the goods, services, or interest in land are offered for sale by the seller to cash buyers in the ordinary course of business, and may include (1) applicable sales, use, and excise and documentary fees, (2) the cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations, service contracts, and improvements, and (3) amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees. The cash price stated by the seller to the buyer pursuant to the provisions on disclosure (Part 3) of this Chapter is presumed to be the cash price.

(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by P.L.14-1992, SEC.14; P.L.122-1994, SEC.10.

IC 24-4.5-2-111
"Amount financed"

Sec. 111. Definition: "Amount Financed" — "Amount financed" means the total of the following to the extent that payment is deferred:

(1) the cash price of the goods, services, or interest in land less the amount of down payment whether made in cash or property;

(2) the amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest or lien on property traded in; and

(3) if not included in the cash price:

(a) any applicable sales, use, excise or documentary fees;

(b) amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees; and

(c) additional charges permitted by this Chapter (IC 24-4.5-2-202).

(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by P.L.122-1994, SEC.11.

(Part 2. Maximum Charges)

IC 24-4.5-2-201
Credit service charge for consumer credit sales other than revolving charge accounts

Sec. 201. Credit Service Charge for Consumer Credit Sales other than Revolving Charge Accounts — (1) With respect to a consumer credit sale, other than a sale pursuant to a revolving charge account, a seller may contract for and receive a credit service charge not exceeding that permitted by this section.

(2) The credit service charge, calculated according to the actuarial

method, may not exceed the equivalent of the greater of:

(a) the total of:

(i) thirty-six percent (36%) per year on that part of the unpaid balances of the amount financed which is two thousand dollars ($2,000) or less;

(ii) twenty-one percent (21%) per year on that part of the unpaid balances of the amount financed which is more than two thousand dollars ($2,000) but does not exceed four thousand dollars ($4,000); and

(iii) fifteen percent (15%) per year on that part of the unpaid balances of the amount financed which is more than four thousand dollars ($4,000); or

(b) twenty-five percent (25%) per year on the unpaid balances of the amount financed.

(3) This section does not limit or restrict the manner of contracting for the credit service charge, whether by way of add-on, discount, or otherwise, so long as the rate of the credit service charge does not exceed that permitted by this section. If the sale is precomputed:

(a) the credit service charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment in section 210 of this chapter.

(4) For the purposes of this section, the term of a sale agreement commences with the date the credit is granted or, if goods are delivered or services performed more than thirty (30) days after that date, with the date of commencement of delivery or performance except as set forth below:

(a) Delays attributable to the customer. Where the customer requests delivery after the thirty (30) day period or where delivery occurs after the thirty (30) day period for a reason attributable to the customer (including but not limited to failure to close on a residence or failure to obtain lease approval), the term of the sale agreement shall commence with the date credit is granted.

(b) Partial Deliveries. Where any portion of the order has been delivered within the thirty (30) day period, the term of the sale agreement shall commence with the date credit is granted.

Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the seller may reasonably establish, the seller may make the same credit service charge on all amounts financed within a specified range. A credit service charge so made does not violate subsection (2) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of credit service charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) Notwithstanding subsection (2), the seller may contract for and receive a minimum credit service charge of not more than thirty dollars ($30). The minimum credit service charge allowed under this subsection may be imposed only if:

(a) the debtor prepays in full a consumer credit sale, refinancing, or consolidation, regardless of whether the sale, refinancing, or consolidation is precomputed;

(b) the sale, refinancing, or consolidation prepaid by the debtor is subject to a credit service charge that:

(i) is contracted for by the parties; and

(ii) does not exceed the rate prescribed in subsection (2); and

(c) the credit service charge earned at the time of prepayment is less than the minimum credit service charge contracted for under this subsection.

(7) The amounts of two thousand dollars ($2,000) and four thousand dollars ($4,000) in subsection (2) are subject to change pursuant to 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 2012.

(8) The amount of thirty dollars ($30) in subsection (6) 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 1992.

(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by Acts 1981, P.L.219, SEC.1; P.L.14-1992, SEC.15; P.L.79-1998, SEC.26; P.L.80-1998, SEC.4; P.L.10-2006, SEC.4 and P.L.57-2006, SEC.4; P.L.145-2008, SEC.23; P.L.91-2013, SEC.1.

IC 24-4.5-2-202

Permitted additional charges

Sec. 202. (1) In addition to the credit service charge permitted by IC 24-4.5-2-201 through IC 24-4.5-2-210, a seller may contract for and receive any of the following additional charges in connection with a consumer credit sale:

(a) Official fees and taxes.

(b) Charges for insurance as described in subsection (2).

(c) Notwithstanding provisions of the Federal Consumer Credit Protection Act concerning disclosure, charges for other benefits, including insurance, conferred on the buyer, if the benefits are of value to the buyer and if the charges are reasonable in relation to the benefits, and are excluded as permissible additional charges from the credit service charge.

With respect to any additional charge not specifically provided for in this section, to be a permitted charge under this subsection the seller must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit to the buyer. Supporting documents may be required by the department. The department shall determine whether the charge would be of benefit to the buyer and is reasonable in relation to the benefits.

(d) A charge not to exceed twenty-five dollars ($25) for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the debtor.

(e) Annual participation fees assessed in connection with a revolving charge account. Annual participation fees must:

(i) be reasonable in amount;

(ii) bear a reasonable relationship to the seller's costs to maintain and monitor the charge account; and

(iii) not be assessed for the purpose of circumvention or evasion of this article, as determined by the department.

(2) An additional charge may be made for insurance written in connection with the sale, other than insurance protecting the seller against the buyer's default or other credit loss:

(a) with respect to insurance against loss of or damage to property, or against liability, if the seller furnishes a clear and specific statement in writing to the buyer, setting forth the cost of the insurance if obtained from or through the seller and stating that the buyer may choose the person, subject to the seller's reasonable approval, through whom the insurance is to be obtained; and

(b) with respect to consumer credit insurance providing life, accident, unemployment or other loss of income, or health coverage, if the insurance coverage is not a factor in the approval by the seller of the extension of credit and is clearly disclosed in writing to the buyer, and if, in order to obtain the insurance in connection with the extension of credit, the buyer gives specific, affirmative, written indication of the desire to do so after written disclosure of the cost.

(3) With respect to a subordinate lien mortgage transaction, the following closing costs, if the costs are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this article:

(a) fees for title examination, abstract of title, title insurance, property surveys, or similar purposes;

(b) fees for preparing deeds, mortgages, and reconveyance, settlement, and similar documents;

(c) notary and credit report fees;

(d) amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the credit service charge; and

(e) appraisal fees.

(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by P.L.247-1983, SEC.5; P.L.181-1991, SEC.1; P.L.14-1992, SEC.16; P.L.122-1994, SEC.12; P.L.45-1995, SEC.4; P.L.80-1998, SEC.5; P.L.213-2007, SEC.7; P.L.217-2007, SEC.6; P.L.35-2010, SEC.43; P.L.89-2011, SEC.14.

IC 24-4.5-2-203
Repealed

(Repealed by P.L.122-1994, SEC.122.)

IC 24-4.5-2-203.5
Delinquency charges

Sec. 203.5. Delinquency Charges — (1) With respect to a consumer credit sale, refinancing, or consolidation, the parties may contract for a delinquency charge of not more than five dollars ($5) on any installment or minimum payment due not paid in full within ten (10) days after its scheduled due date.

(2) A delinquency charge under this section may be collected only once on an installment however long it remains in default. A delinquency charge on consumer credit sales made under a revolving charge account may be applied each month that the payment is less than the minimum required payment. A delinquency charge may be collected any time after it accrues. No delinquency charge may be collected if the installment has been deferred and a deferral charge (IC 24-4.5-2-204) has been paid or incurred.

(3) A delinquency charge may not be collected on an installment or payment due that is paid in full within ten (10) days after its scheduled due date even though an earlier maturing installment, minimum payment, or a delinquency charge on:

(a) an earlier installment; or

(b) payment due;

may not have been paid in full. For purposes of this subsection, payments are applied first to current installments or payments due and then to delinquent installments or payments due.

(4) If two (2) installments or parts of two (2) installments of a precomputed consumer credit sale are in default for ten (10) days or more, the creditor may elect to convert the consumer credit sale from a precomputed consumer credit sale to a consumer credit sale in which the credit service charge is based on unpaid balances. A creditor that makes this election shall make a rebate under the provisions on rebates upon prepayment under IC 24-4.5-2-210 as of the maturity date of the first delinquent installment, and thereafter may make a credit service charge as authorized by the provisions on credit service charges for consumer credit sales under IC 24-4.5-2-201. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge under IC 24-4.5-2-210. Any deferral charges made on installments due at or after the maturity date of the first delinquent installment shall be rebated, and no further deferral charges shall be made.

(5) The amount of five dollars ($5) in subsection (1) is subject to

change under the section on adjustment of dollar amounts (IC 24-4.5-1-106).

(6) If the parties provide by contract for a delinquency charge that is subject to change, the seller shall disclose in the contract that the amount of the delinquency charge is subject to change as allowed by IC 24-4.5-1-106.

As added by P.L.247-1983, SEC.6. Amended by P.L.181-1991, SEC.2; P.L.115-1992, SEC.1; P.L.122-1994, SEC.13; P.L.45-1995, SEC.5.

IC 24-4.5-2-204
Deferral charges

Sec. 204. Deferral Charges — (1) With respect to a precomputed consumer credit sale, refinancing, or consolidation, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid instalments, and the seller may make and collect a charge not exceeding the rate previously stated to the buyer pursuant to the provisions on disclosure (Part 3) applied to the amount or amounts deferred for the period of deferral calculated without regard to differences in lengths of months, but proportionately for a part of a month, counting each day as one-thirtieth (1/30) of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

(2) The seller, in addition to the deferral charge, may make appropriate additional charges (24-4.5-2-202), and the amount of these charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

(3) The parties may agree in writing at the time of a precomputed consumer credit sale, refinancing, or consolidation that if an instalment is not paid within ten (10) days after its due date, the seller may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date that the seller elects to accelerate the maturity of the agreement.

(4) A delinquency charge made by the seller on an instalment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency.

(Formerly: Acts 1971, P.L.366, SEC.3.)

IC 24-4.5-2-205
Credit service charge on refinancing

Sec. 205. Credit Service Charge on Refinancing — With respect to a consumer credit sale, refinancing, or consolidation, the seller may by agreement with the buyer refinance the unpaid balance and may contract for and receive a credit service charge based on the amount financed resulting from the refinancing at a rate not exceeding that permitted by the provisions on credit service charge for consumer credit sales (IC 24-4.5-2-201). For the purpose of determining the credit service charge permitted, the amount financed resulting from the refinancing comprises the following:

(1) If the transaction was not precomputed, the total of the unpaid

balance and accrued charges on the date of refinancing, or, if the transaction was precomputed, the amount which the buyer would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment (IC 24-4.5-2-210) on the date of refinancing.

(2) Appropriate additional charges (IC 24-4.5-2-202), payment of which is deferred.

(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by P.L.14-1992, SEC.17.

IC 24-4.5-2-206
Credit service charge on consolidation

Sec. 206. Credit Service Charge on Consolidation — If a buyer owes an unpaid balance to a seller with respect to a consumer credit sale, refinancing, or consolidation, and becomes obligated on another consumer credit sale, refinancing, or consolidation with the same seller, the parties may agree to a consolidation resulting in a single schedule of payments pursuant to either of the following subsections:

(1) The parties may agree to refinance the unpaid balance with respect to the previous sale pursuant to the provisions on refinancing (24-4.5-2-205) and to consolidate the amount financed resulting from the refinancing by adding it to the amount financed with respect to the subsequent sale. The seller may contract for and receive a credit service charge based on the aggregate amount financed resulting from the consolidation at a rate not exceeding that permitted by the provisions on credit service charge for consumer credit sales (24-4.5-2-201).

(2) The parties may agree to consolidate by adding together the unpaid balances with respect to the two sales.

(Formerly: Acts 1971, P.L.366, SEC.3.)

IC 24-4.5-2-207
Credit service charge for revolving charge accounts

Sec. 207. Credit Service Charge for Revolving Charge Accounts — (1) With respect to a consumer credit sale made pursuant to a revolving charge account, the parties to the sale may contract for the payment by the buyer of a credit service charge not exceeding that permitted in this section.

(2) A charge may be made in each billing cycle which is a percentage of an amount no greater than

(a) the average daily balance of the account,

(b) the unpaid balance of the account on the same day of the billing cycle, or

(c) the median amount within a specified range within which the average daily balance of the account or the unpaid balance of the account on the same day of the billing cycle is included. A charge may be made pursuant to this paragraph only if the seller, subject to classification and differentiations he may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied

to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than eight percent (8%) of the charge on the median amount.

(3) If the billing cycle is monthly, the charge may not exceed one and three-fourths percent (1 3/4%) of the amount pursuant to subsection (2). If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty (30). For the purposes of this section, a variation of not more than four (4) days from month to month is "the same day of the billing cycle."

(4) Notwithstanding subsection (3), if there is an unpaid balance on the date as of which the credit service charge is applied, the seller may contract for and receive a charge not exceeding fifty cents ($.50), if the billing cycle is monthly or longer, or the pro rata part of fifty cents ($.50) which bears the same relation to fifty cents ($.50) as the number of days in the billing cycle bears to thirty (30) if the billing cycle is shorter than monthly.

(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by Acts 1981, P.L.219, SEC.2; Acts 1982, P.L.150, SEC.1.

IC 24-4.5-2-208

Advances to perform covenants of buyer

Sec. 208. Advances to Perform Covenants of Buyer — (1) If the agreement with respect to a consumer credit sale, refinancing, or consolidation contains covenants by the buyer to perform certain duties pertaining to insuring or preserving collateral and the seller pursuant to the agreement pays for performance of the duties on behalf of the buyer, the seller may add the amounts paid to the debt. Within a reasonable time after advancing any sums, he shall state to the buyer in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the buyer performed by the seller pertain to insurance, a brief description of the insurance paid for by the seller including the type and amount of coverages. No further information need be given.

(2) A credit service charge may be made for sums advanced pursuant to subsection (1) at a rate not exceeding the rate stated to the buyer pursuant to the provisions on disclosure (Part 3) with respect to the sale, refinancing or consolidation, except that with respect to a revolving charge account the amount of the advance may be added to the unpaid balance of the account and the seller may make a credit service charge not exceeding that permitted by the provisions on credit service charge for revolving charge accounts (24-4.5-2-207).

(Formerly: Acts 1971, P.L.366, SEC.3.)

IC 24-4.5-2-209

Right to prepay without penalty; payoff statement; liability for

failure to provide; short sale; acknowledgment of offer; acceptance or rejection; acceptance of payment; liability for failure to respond

Sec. 209. (1) Subject to the provisions on rebate upon prepayment (section 210 of this chapter), the buyer may prepay in full the unpaid balance of a consumer credit sale, refinancing, or consolidation at any time without penalty.

(2) At the time of prepayment of a credit sale not subject to the provisions of rebate upon prepayment (section 210 of this chapter), the total credit service charge, including the prepaid credit service charge, may not exceed the maximum charge allowed under this chapter for the period the credit sale was in effect.

(3) The creditor or mortgage servicer shall provide, in writing, an accurate payoff amount for the consumer credit sale to the debtor within seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer credit sale payoff amount. A payoff statement provided by a creditor or mortgage servicer under this subsection must show the date the statement was prepared and itemize the unpaid principal balance and each fee, charge, or other sum included within the payoff amount. A creditor or mortgage servicer who fails to provide the accurate consumer credit sale payoff amount is liable for:

(A) one hundred dollars ($100) if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's first written request; and

(B) the greater of:

(i) one hundred dollars ($100); or

(ii) the credit service charge that accrues on the sale from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer credit sale payoff amount is provided;

if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with clause (A).

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

(4) As used in this subsection, "mortgage transaction" means a consumer credit sale in which a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a lien is created or retained against land upon which there is constructed or intended to be constructed a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. This subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor,

servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than five (5) business days (excluding legal public holidays, Saturdays, and Sundays) after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days (excluding legal public holidays, Saturdays, and Sundays) after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. The thirty (30) day period described in this subsection may be extended for not more than fifteen (15) business days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the thirty (30) day period, the creditor, the servicer, or the creditor's agent notifies the debtor of the extension and the reason the extension is needed. Payment accepted by a creditor, servicer, or creditor's agent in connection with a short sale constitutes payment in full satisfaction of the mortgage transaction unless the creditor, servicer, or creditor's agent obtains:

(a) the following statement: "The debtor remains liable for any amount still owed under the mortgage transaction."; or

(b) a statement substantially similar to the statement set forth in subdivision (a);

acknowledged by the initials or signature of the debtor, on or before the date on which the short sale payment is accepted. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by P.L.23-2000, SEC.5; P.L.63-2001, SEC.2 and P.L.134-2001, SEC.2; P.L.145-2008, SEC.24; P.L.35-2010, SEC.44; P.L.89-2011, SEC.15; P.L.27-2012, SEC.16.

IC 24-4.5-2-210
Rebate upon prepayment

Sec. 210. Rebate upon Prepayment — (1) Except as provided in subsection (2), upon prepayment in full of the unpaid balance of a precomputed consumer credit sale, refinancing, or consolidation, an amount not less than the unearned portion of the credit service charge calculated according to this section shall be rebated to the buyer. If the rebate required is less than one dollar ($1), no rebate need be made.

(2) Upon prepayment in full of a consumer credit sale,

refinancing, or consolidation, other than one pursuant to a revolving charge account, if the credit service charge then earned is less than any permitted minimum credit service charge (IC 24-4.5-2-201(6)) contracted for, whether or not the sale, refinancing, or consolidation is precomputed, the seller may collect or retain the minimum charge, as if earned, not exceeding the credit service charge contracted for.

(3) The unearned portion of the credit service charge is a fraction of the credit service charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which prepayment occurs, and the denominator is the sum of all periodic balances under either the sale agreement or, if the balance owing resulted from a refinancing (IC 24-4.5-2-205) or a consolidation (IC 24-4.5-2-206), under the refinancing agreement or consolidation agreement.

(4) In this section:

(a) "periodic balance" means the amount scheduled to be outstanding on the last day of a computational period before deducting the payment, if any, scheduled to be made on that day;

(b) "computational period" means one (1) month if one-half (1/2) or more of the intervals between scheduled payments under the agreement is one (1) month or more, and otherwise means one (1) week;

(c) the "interval" to the due date of the first scheduled installment or the final scheduled payment date is measured from the date of a sale, refinancing, or consolidation, or any later date prescribed for calculating maximum credit service charges (IC 24-4.5-2-201(4)) and includes either the first or last day of the interval; and

(d) if the interval to the due date of the first scheduled installment does not exceed one (1) month by more than fifteen (15) days when the computational period is one (1) month, or eleven (11) days when the computational period is one (1) week, the interval shall be considered as one (1) computational period.

(5) This subsection applies only if the schedule of payments is not regular.

(a) If the computational period is one (1) month and:

(i) if the number of days in the interval to the due date of the first scheduled installment is less than one (1) month by more than five (5) days, or more than one (1) month by more than five (5) but not more than fifteen (15) days, the unearned credit service charge shall be increased by an adjustment for each day by which the interval is less than one (1) month and, at the option of the seller, may be reduced by an adjustment for each day by which the interval is more than one (1) month; the adjustment for each day shall be one-thirtieth (1/30) of that part of the credit service charge earned in the computational period prior to the due date of the first scheduled installment assuming that period

to be one (1) month; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full month, the additional number of days shall be considered a computational period only if sixteen (16) days or more. This subparagraph applies whether or not clause (i) applies.

(b) Notwithstanding paragraph (a), if the computational period is one (1) month, the number of days in the interval to the due date of the first installment exceeds one (1) month by not more than fifteen (15) days, and the schedule of payments is otherwise regular, the seller, at the seller's option, may exclude the extra days and the charge for the extra days in computing the unearned credit service charge; but if the seller does so and a rebate is required before the due date of the first scheduled installment, the seller shall compute the earned charge for each elapsed day as one-thirtieth (1/30) of the amount the earned charge would have been if the first interval had been one (1) month.

(c) If the computational period is one (1) week and:

(i) if the number of days in the interval to the due date of this first scheduled installment is less than five (5) days or more than nine (9) days but not more than eleven (11) days, the unearned credit service charge shall be increased by an adjustment for each day by which the interval is less than seven (7) days and, at the option of the seller, may be reduced by an adjustment for each day by which the interval is more than seven (7) days; the adjustment for each day shall be one-seventh (1/7) of that part of the credit service charge earned in the computational period prior to the due date of the first scheduled installment assuming that period to be one (1) week; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full week, the additional number of days shall be considered a computational period only if five (5) days or more. This subparagraph applies whether or not subparagraph (i) applies.

(6) If a deferral (IC 24-4.5-2-204) has been agreed to, the unearned portion of the credit service charge shall be computed without regard to the deferral. The amount of deferral charge earned at the date of prepayment shall also be calculated. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the credit service charge. If any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the credit service charge or shall be added to the unpaid balance.

(7) This section does not preclude the collection or retention by the seller of delinquency charges (IC 24-4.5-2-203, repealed in 1994).

(8) If the maturity is accelerated for any reason and judgment is obtained, the buyer is entitled to the same rebate as if payment had been made on the date judgment is entered.

(9) Upon prepayment in full of a consumer credit sale by the proceeds of consumer credit insurance (IC 24-4.5-4-103), the buyer or the buyer's estate shall pay the same credit service charge or receive the same rebate as though the buyer had prepaid the agreement on the date the proceeds of the insurance are paid to the seller, but no later than ten (10) business days after satisfactory proof of loss is furnished to the seller. This subsection applies whether or not the credit sale is precomputed.

(10) Upon prepayment in full of a transaction with a term of more than sixty-one (61) months, the unearned part of the credit service charge shall be computed by applying the disclosed annual percentage rate that would yield the credit service charge originally contracted for to the unpaid balances of the amount financed for the full computational periods following the prepayment, as originally scheduled or as deferred.

(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by P.L.14-1992, SEC.18; P.L.122-1994, SEC.14; P.L.2-1995, SEC.91; P.L.176-1996, SEC.4.

(Part 3. Disclosure)

IC 24-4.5-2-301
Disclosures required by Federal Consumer Credit Protection Act

Sec. 301. (1) For purposes of this section, "consumer credit sale" includes the sale of an interest in land which is a first lien mortgage transaction if the sale is otherwise a consumer credit sale (IC 24-4.5-1-301.5(8)).

(2) The seller shall disclose to the buyer to whom credit is extended with respect to a consumer credit sale, and the lessor shall disclose to the lessee with respect to a consumer lease, the information required by the Federal Consumer Credit Protection Act.

(3) For purposes of subsection (2), disclosures shall not be required on a consumer credit sale if the transaction is exempt from the Federal Consumer Credit Protection Act.

(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by Acts 1981, P.L.218, SEC.4; P.L.247-1983, SEC.7; P.L.45-1995, SEC.6; P.L.35-2010, SEC.45.

IC 24-4.5-2-302
Repealed

(Repealed by P.L.247-1983, SEC.26.)

IC 24-4.5-2-303
Repealed

(Repealed by P.L.247-1983, SEC.26.)

IC 24-4.5-2-304

Repealed
(Repealed by P.L.247-1983, SEC.26.)

IC 24-4.5-2-305
Repealed
(Repealed by P.L.247-1983, SEC.26.)

IC 24-4.5-2-306
Repealed
(Repealed by P.L.247-1983, SEC.26.)

IC 24-4.5-2-307
Repealed
(Repealed by P.L.247-1983, SEC.26.)

IC 24-4.5-2-308
Repealed
(Repealed by P.L.247-1983, SEC.26.)

IC 24-4.5-2-309
Repealed
(Repealed by P.L.247-1983, SEC.26.)

IC 24-4.5-2-310
Repealed
(Repealed by P.L.247-1983, SEC.26.)

IC 24-4.5-2-311
Repealed
(Repealed by P.L.247-1983, SEC.26.)

IC 24-4.5-2-312
Repealed
(Repealed by P.L.247-1983, SEC.26.)

(Part 4. Limitations on Agreements and Practices)

IC 24-4.5-2-401
Scope
Sec. 401. Scope — This Part applies to consumer credit sales and consumer leases.
(Formerly: Acts 1971, P.L.366, SEC.3.)

IC 24-4.5-2-402
Use of multiple agreements
Sec. 402. Use of Multiple Agreements — A seller may not use multiple agreements with intent to obtain a higher credit service charge than would otherwise be permitted by this Article or to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure and advertising (Part 3). The excess amount of credit

service charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on the effect of violations on rights of parties (IC 24-4.5-5-202) and the provisions on civil actions by the department (IC 24-4.5-6-113).
(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by P.L.14-1992, SEC.19.

IC 24-4.5-2-403
Repealed
(Repealed by P.L.122-1994, SEC.122 and P.L.129-1994, SEC.3.)

IC 24-4.5-2-404
Repealed
(Repealed by P.L.45-1995, SEC.33.)

IC 24-4.5-2-405
Balloon payments
Sec. 405. (1) With respect to a consumer credit sale, other than one pursuant to a revolving charge account or one on which only credit service charges are payable before the time that the final scheduled payment is due, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the buyer has the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the buyer than the terms of the original sale. This section does not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the buyer.
(2) For the purposes of this section, "terms of the refinancing" means:
(a) in the case of a fixed-rate consumer credit sale, the individual payment amounts, the charges as a result of default by the buyer, and the rate of the credit service charge; and
(b) in the case of a variable rate consumer credit sale, the method used to determine the individual payment amounts, the charges as a result of default by the buyer, the method used to determine the rate of the credit service charge, the circumstances under which the rate of the credit service charge may increase, and any limitations on the increase in the rate of the credit service charge.
(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by P.L.247-1983, SEC.10.

IC 24-4.5-2-406
Restriction on liability in consumer lease
Sec. 406. The obligation of a lessee upon expiration of a consumer lease may not exceed three (3) times the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property or for other default.
(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by

P.L.247-1983, SEC.11; P.L.45-1995, SEC.7.

IC 24-4.5-2-407
Security interests

Sec. 407. (1) With respect to a consumer credit sale, a seller may take a security interest in the property sold. In addition, a seller may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if, in the case of a subordinate lien mortgage transaction, the debt secured is one thousand dollars ($1,000) or more, or, in the case of a security interest in goods the debt secured is three hundred dollars ($300) or more. Except as provided with respect to cross-collateral (IC 24-4.5-2-408), a seller may not otherwise take a security interest in property of the buyer to secure the debt arising from a consumer credit sale.

(2) With respect to a consumer lease, a lessor may not take a security interest in property of the lessee to secure the debt arising from the lease.

(3) A security interest taken in violation of this section is void.

(4) The amounts of one thousand dollars ($1,000) and three hundred dollars ($300) in subsection (1) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106).

(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by P.L.247-1983, SEC.12; P.L.35-2010, SEC.46.

IC 24-4.5-2-408
Cross-collateral

Sec. 408. Cross-Collateral — (1) In addition to contracting for a security interest pursuant to the provisions on security in sales or leases (24-4.5-2-407), a seller in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as security for the previous debt.

(2) If the seller contracts for a security interest in other property pursuant to this section, the rate of credit service charge thereafter on the aggregate unpaid balances so secured may not exceed that permitted if the balances so secured were consolidated pursuant to the provisions on consolidation involving a refinancing (subsection (1) of 24-4.5-2-206). The seller has a reasonable time after so contracting to make any adjustments required by this section. "Seller" in this section does not include an assignee not related to the original seller.

(Formerly: Acts 1971, P.L.366, SEC.3.)

IC 24-4.5-2-409

Debt secured by cross-collateral

Sec. 409. (1) If debts arising from two (2) or more consumer credit sales, other than sales pursuant to a revolving charge account, are secured by cross-collateral (IC 24-4.5-2-408) or consolidated into one (1) debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one (1) or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debt originally incurred with respect to each item is paid.

(2) Payments received by the seller upon a revolving charge account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of credit service charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

(3) If the debts consolidated arose from two (2) or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debts secured by the various security interests, to have been applied first to the payment of the smallest debt.

(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by P.L.247-1983, SEC.13.

IC 24-4.5-2-410

No assignment of earnings

Sec. 410. No Assignment of Earnings — A seller or lessor may not take an assignment of earnings of the buyer or lessee for payment or as security for payment of a claim, whether arising out of a consumer credit sale, consumer lease or otherwise. An assignment of earnings in violation of this section is unenforceable by the assignees of the earnings and revocable by the buyer or lessee. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable and is otherwise permitted by law.

(Formerly: Acts 1971, P.L.366, SEC.3.)

IC 24-4.5-2-411

Referral sales

Sec. 411. Referral Sales — With respect to a consumer credit sale or consumer lease the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or

lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease. If a buyer or lessee is induced by a violation of this section to enter into a consumer credit sale or consumer lease, the agreement is unenforceable by the seller or lessor and the buyer or lessee, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them.
(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by Acts 1978, P.L.127, SEC.1.

IC 24-4.5-2-412
Notice of assignment

Sec. 412. Notice of Assignment — The buyer or lessee is authorized to pay the original seller or lessor until the buyer or lessee receives notification of assignment of the rights to payment pursuant to a consumer credit sale or consumer lease and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the buyer or lessee, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the buyer or lessee may pay the seller or lessor.
(Formerly: Acts 1971, P.L.366, SEC.3.)

IC 24-4.5-2-413
Attorney's fees

Sec. 413. Attorney's Fees — With respect to a consumer credit sale or consumer lease the agreement may provide for the payment by the buyer or lessee of reasonable attorney's fees and after default and referral to an attorney not a salaried employee of the seller, or of the lessor or his assignee. A provision in violation of this section is unenforceable.
(Formerly: Acts 1971, P.L.366, SEC.3.)

IC 24-4.5-2-414
Limitation on default charges

Sec. 414. Limitation on Default Charges — Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer credit sale may not provide for any charges as a result of default by the buyer other than those authorized by this Article. A provision in violation of this section is unenforceable.
(Formerly: Acts 1971, P.L.366, SEC.3.)

IC 24-4.5-2-415
Authorization to confess judgment prohibited

Sec. 415. Authorization to Confess Judgment Prohibited - A buyer or lessee may not authorize any person to confess judgment on a claim arising out of a consumer credit sale or consumer lease. An authorization in violation of this section is void.

(Formerly: Acts 1971, P.L.366, SEC.3.)

IC 24-4.5-2-416
Repealed
(Repealed by P.L.122-1994, SEC.122.)

(Part 5. Home Solicitation Sales)

IC 24-4.5-2-501
"Home solicitation sale"
Sec. 501. Definition: "Home Solicitation Sale" — "Home solicitation sale" means a consumer credit sale of goods, other than farm equipment, or services in which:

(1) the seller or a person acting for him engages in a personal solicitation of the sale, including a solicitation over the telephone, at a residence of the buyer and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him; or

(2) the seller or his agent, solicits a sale in a city or town in which the seller does not have a permanent business establishment, through mailings, advertisements, or telephone calls, which require the buyer to meet the seller or his agent at a place other than the seller's permanent business establishment.

It does not include a sale made pursuant to a preexisting revolving charge account, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.
(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by Acts 1979, P.L.237, SEC.1.

IC 24-4.5-2-502
Buyer's right to cancel
Sec. 502. Buyer's Right to Cancel — The requirements of 16 CFR 429 must be met in regard to the following provisions concerning home solicitation sales:

(1) Period within which cancellation may be made by the buyer.
(2) Notice of cancellation.
(3) Form of cancellation.
(4) Form of agreement or offer to purchase.
(5) Statement of buyer's rights.
(6) Restoration of down payment.
(7) Retention of cancellation fee.
(8) Duty of buyer.
(9) Any other relevant requirements in 16 CFR 429.

(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by P.L.14-1992, SEC.22.

IC 24-4.5-2-503
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 24-4.5-2-504
Repealed
(Repealed by P.L.14-1992, SEC.165.)

IC 24-4.5-2-505
Repealed
(Repealed by P.L.14-1992, SEC.165.)

(Part 6. Sales Other Than Consumer Credit Sales)

IC 24-4.5-2-601
Sale subject to article by agreement of parties
Sec. 601. Sale Subject to Article by Agreement of Parties — The parties to a sale other than a consumer credit sale may agree in a writing signed by the parties that the sale is subject to the provisions of this Article applying to consumer credit sales. If the parties so agree, the sale is a consumer credit sale for the purposes of this Article.
(Formerly: Acts 1971, P.L.366, SEC.3.)

IC 24-4.5-2-602
"Consumer related sale"; credit service charge; annual notice to department not required
Sec. 602. (1) A "consumer related sale" is a sale of goods, services, or an interest in land in which:
(a) credit is granted by a person that is not regularly engaged as a seller in credit transactions of the same kind;
(b) the buyer is a person other than an organization;
(c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;
(d) either the debt is payable in installments or a credit service charge is made; and
(e) with respect to a sale of goods or services:
(i) either the sale amount does not exceed fifty-three thousand dollars ($53,000) or another amount as adjusted in accordance with the annual adjustment of the exempt threshold amount specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); or
(ii) the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.
(2) With respect to a consumer related sale not made pursuant to a revolving charge account, the parties may contract for an amount comprising the amount financed and a credit service charge not in excess of twenty-one percent (21%) per year calculated according to the actuarial method on the unpaid balances of the amount financed.
(3) With respect to a consumer related sale made pursuant to a revolving charge account, the parties may contract for a credit service charge not in excess of that permitted by the provisions on credit service charge for revolving charge accounts (IC

24-4.5-2-207).

(4) A person engaged in consumer related sales is not required to comply with IC 24-4.5-6-201 through IC 24-4.5-6-203.

(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by Acts 1981, P.L.219, SEC.3; Acts 1982, P.L.149, SEC.3; P.L.5-1988, SEC.130; P.L.122-1994, SEC.15; P.L.27-2012, SEC.17; P.L.216-2013, SEC.9.

IC 24-4.5-2-603

Applicability of other provisions to consumer related sales

Sec. 603. Applicability of other Provisions to Consumer Related Sales - Except for the rate of the credit service charge (24-4.5-2-201) and the rights to prepay and to rebate upon prepayment, the provisions of Part 2 of this Chapter apply to a consumer related sale.

(Formerly: Acts 1971, P.L.366, SEC.3.)

IC 24-4.5-2-604

Limitation on default charges in consumer related sales

Sec. 604. Limitation on Default Charges in Consumer Related Sales — (1) The agreement with respect to a consumer related sale may provide for only the following charges as a result of the buyer's default:

(a) reasonable attorney's fees and reasonable expenses incurred in realizing on a security interest;

(b) deferral charges not in excess of twenty-one percent (21%) per year of the amount deferred for the period of deferral; and

(c) other charges that could have been made had the sale been a consumer credit sale.

(2) A provision in violation of this section is unenforceable.

(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by Acts 1982, P.L.150, SEC.2.

IC 24-4.5-2-605

Credit service charge for other sales

Sec. 605. Credit Service Charge for Other Sales — With respect to a sale other than a consumer credit sale or a consumer related sale, the parties may contract for the payment by the buyer of any credit service charge.

(Formerly: Acts 1971, P.L.366, SEC.3.)

IC 24-4.5-3
Chapter 3. Loans

(Part 1. General Provisions)

IC 24-4.5-3-0.1
Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to section 201 of this chapter by P.L.163-1999 do not apply to consumer loans in existence before July 1, 1999.

(2) The amendments made to section 209(1) of this chapter by P.L.159-2001 apply to a contract between a lender and a debtor that is entered into or renewed after June 30, 2001.

As added by P.L.220-2011, SEC.390.

IC 24-4.5-3-101
Short title

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

(Formerly: Acts 1971, P.L.366, SEC.4.)

IC 24-4.5-3-102
Application

Sec. 102. This chapter applies to consumer loans, including supervised loans. In addition, IC 24-4.5-3-601 through IC 24-4.5-3-605 apply to consumer related loans. The licensing provisions of this chapter apply to consumer credit sales under IC 24-4.5-2 that are subordinate lien mortgage transactions.

(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by P.L.152-1986, SEC.62; P.L.35-2010, SEC.47.

IC 24-4.5-3-103
Repealed

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

IC 24-4.5-3-104
Repealed

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

IC 24-4.5-3-105
"Consumer loan"; first lien mortgage transaction not included

Sec. 105. Unless the loan is made subject to IC 24-4.5-3 by agreement (IC 24-4.5-3-601), and except with respect to disclosure (IC 24-4.5-3-301), debtors' remedies (IC 24-4.5-5-201), providing payoff amounts (IC 24-4.5-3-209), providing property tax information (IC 24-4.5-3-701), and powers and functions of the department (IC 24-4.5-6-104), "consumer loan" does not include a first lien mortgage transaction.

(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by Acts 1979, P.L.238, SEC.1; Acts 1981, P.L.218, SEC.5; P.L.152-1986, SEC.63; P.L.14-1992, SEC.23; P.L.176-1996, SEC.5; P.L.23-2000, SEC.4; P.L.90-2008, SEC.7; P.L.35-2010, SEC.48.

IC 24-4.5-3-106
"Loan"

Sec. 106. Definition: "Loan" — "Loan" includes

(1) the creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;

(2) the creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately;

(3) the creation of debt pursuant to a lender credit card or similar arrangement; and

(4) the forbearance of debt arising from a loan.

(Formerly: Acts 1971, P.L.366, SEC.4.)

IC 24-4.5-3-107
Definitions; "lender"; "precomputed"; "principal"

Sec. 107. Definitions: "Lender"; "Precomputed"; "Principal"−(1) Except as otherwise provided, "lender" means a person regularly engaged in making consumer loans. The term includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(2) A loan, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

(3) "Principal" of a loan means the total of:

(a) the net amount paid to, receivable by, or paid or payable for the account of the debtor;

(b) the amount of any discount excluded from the loan finance charge (subsection (2) of IC 24-4.5-3-109); and

(c) to the extent that payment is deferred:

(i) amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a); and

(ii) additional charges permitted by this chapter (IC 24-4.5-3-202).

(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by P.L.145-2008, SEC.25.

IC 24-4.5-3-108
"Revolving loan account"

Sec. 108. Definition: "Revolving Loan Account" — "Revolving loan account" means an arrangement between a lender and a debtor pursuant to which (1) the lender may permit the debtor to obtain loans from time to time, (2) the unpaid balances of principal and the loan finance and other appropriate charges are debited to an account,

(3) a loan finance charge if made is not precomputed but is computed on the outstanding unpaid balances of the debtor's account from time to time, and (4) the debtor has the privilege of paying the balances in instalments.
(Formerly: Acts 1971, P.L.366, SEC.4.)

IC 24-4.5-3-109
"Loan finance charge"

Sec. 109. (1) "Loan finance charge" means the sum of:

(a) all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable: interest or any amount payable under a point, discount, or other system of charges, however denominated, premium or other charge for any guarantee or insurance protecting the lender against the debtor's default or other credit loss; and

(b) charges incurred for investigating the collateral or credit-worthiness of the debtor.

The term does not include charges as a result of default, additional charges (IC 24-4.5-3-202), delinquency charges (IC 24-4.5-3-203.5), or deferral charges (IC 24-4.5-3-204). The term does not include charges paid or payable to a third party that are not required by the lender as a condition or incident to the extension of credit except for borrower paid mortgage broker fees, including fees paid directly to the broker or the lender (for delivery to the broker), whether the fees are paid in cash or financed. However, borrower paid mortgage broker fees do not include fees paid to a mortgage broker by a creditor, including yield spread premiums and service release fees.

(2) If a lender makes a loan to a debtor by purchasing or satisfying obligations of the debtor pursuant to a lender credit card or similar arrangement, and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the loan finance charge.
(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by P.L.247-1983, SEC.15; P.L.14-1992, SEC.24; P.L.172-1997, SEC.4.

(Part 2. Maximum Charges)

IC 24-4.5-3-201
Loan finance charge and origination fee for consumer loans other than supervised loans

Sec. 201. Loan Finance Charge for Consumer Loans other than Supervised Loans—(1) Except as provided in subsections (6) and (8), with respect to a consumer loan other than a supervised loan (as defined in section 501 of this chapter), a lender may contract for a loan finance charge, calculated according to the actuarial method, not exceeding twenty-five percent (25%) per year on the unpaid balances of the principal.

(2) This section does not limit or restrict the manner of

contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

(a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment in section 210 of this chapter.

(3) For the purposes of this section, the term of a loan commences with the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. For purposes of computing average daily balances, the creditor may elect to treat all months as consisting of thirty (30) days.

(4) With respect to a consumer loan made pursuant to a revolving loan account:

(a) the loan finance charge shall be deemed not to exceed the maximum annual percentage rate if the loan finance charge contracted for and received does not exceed a charge in each monthly billing cycle which is two and eighty-three thousandths percent (2.083%) of an amount not greater than:

(i) the average daily balance of the debt;

(ii) the unpaid balance of the debt on the same day of the billing cycle; or

(iii) subject to subsection (5), the median amount within a specified range within which the average daily balance or the unpaid balance of the debt, on the same day of the billing cycle, is included; for the purposes of this subparagraph and subparagraph (ii), a variation of not more than four (4) days from month to month is "the same day of the billing cycle";

(b) if the billing cycle is not monthly, the loan finance charge shall be deemed not to exceed the maximum annual percentage rate if the loan finance charge contracted for and received does not exceed a percentage which bears the same relation to one-twelfth (1/12) the maximum annual percentage rate as the number of days in the billing cycle bears to thirty (30); and

(c) notwithstanding subsection (1), if there is an unpaid balance on the date as of which the loan finance charge is applied, the lender may contract for and receive a charge not exceeding fifty cents ($0.50) if the billing cycle is monthly or longer, or the pro rata part of fifty cents ($0.50) which bears the same relation to fifty cents ($0.50) as the number of days in the billing cycle bears to thirty (30) if the billing cycle is shorter than monthly, but no charge may be made pursuant to this paragraph if the lender has made an annual charge for the same period as permitted by the provisions on additional charges in section

202(1)(c) of this chapter.

(5) Subject to classifications and differentiations the lender may reasonably establish, the lender may make the same loan finance charge on all amounts financed within a specified range. A loan finance charge does not violate subsection (1) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (1); and

(b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) With respect to a consumer loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars ($30). The minimum loan finance charge allowed under this subsection may be imposed only if the lender does not assess a loan origination fee under subsection (8) and:

(a) the debtor prepays in full a consumer loan, refinancing, or consolidation, regardless of whether the loan, refinancing, or consolidation is precomputed;

(b) the loan, refinancing, or consolidation prepaid by the debtor is subject to a loan finance charge that:

(i) is contracted for by the parties; and

(ii) does not exceed the rate prescribed in subsection (1); and

(c) the loan finance charge earned at the time of prepayment is less than the minimum loan finance charge contracted for under this subsection.

(7) The amount of thirty dollars ($30) in subsection (6) 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 1992.

(8) Except as provided in subsection (6), in addition to the loan finance charge provided for in this section and to any other charges and fees permitted by this chapter, a lender may contract for and receive a loan origination fee of not more than the following:

(a) In the case of a consumer loan that is secured by an interest in land and that:

(i) is not made under a revolving loan account, two percent (2%) of the loan amount; or

(ii) is made under a revolving loan account, two percent (2%) of the line of credit.

(b) In the case of consumer loan that is not secured by an interest in land, fifty dollars ($50).

(9) The loan origination fee provided for in subsection (8) is not subject to refund or rebate.

(10) Notwithstanding subsections (8) and (9), in the case of a consumer loan that is not secured by an interest in land, if a lender retains any part of a loan origination fee charged on a loan that is paid in full by a new loan from the same lender, the following apply:

(a) If the loan is paid in full by the new loan within three (3) months after the date of the prior loan, the lender may not charge a loan origination fee on the new loan, or, in the case of a revolving loan, on the increased credit line.

(b) The lender may not assess more than two (2) loan origination fees in any twelve (12) month period.

(11) In the case of a consumer loan that is secured by an interest in land, this section does not prohibit a lender from contracting for and receiving a fee for preparing deeds, mortgages, reconveyances, and similar documents under section 202(1)(d)(ii) of this chapter, in addition to the loan origination fee provided for in subsection (8).

(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by Acts 1982, P.L.150, SEC.3; P.L.14-1992, SEC.25; P.L.122-1994, SEC.18; P.L.45-1995, SEC.8; P.L.163-1999, SEC.1; P.L.10-2006, SEC.5 and P.L.57-2006, SEC.5; P.L.145-2008, SEC.26; P.L.91-2013, SEC.2.

IC 24-4.5-3-202

Additional charges

Sec. 202. (1) In addition to the loan finance charge permitted by IC 24-4.5-3-201 through IC 24-4.5-3-210, a lender may contract for and receive the following additional charges in connection with a consumer loan:

(a) Official fees and taxes.

(b) Charges for insurance as described in subsection (2).

(c) Annual participation fees assessed in connection with a revolving loan account. Annual participation fees must:

(i) be reasonable in amount;

(ii) bear a reasonable relationship to the lender's costs to maintain and monitor the loan account; and

(iii) not be assessed for the purpose of circumvention or evasion of this article, as determined by the department.

(d) With respect to a debt secured by an interest in land, the following closing costs, if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this article:

(i) Fees for title examination, abstract of title, title insurance, property surveys, or similar purposes.

(ii) Fees for preparing deeds, mortgages, and reconveyance, settlement, and similar documents.

(iii) Notary and credit report fees.

(iv) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the loan finance charge.

(v) Appraisal fees.

(e) Notwithstanding provisions of the Federal Consumer Credit Protection Act concerning disclosure, charges for other benefits, including insurance, conferred on the debtor, if the benefits are of value to the debtor and if the charges are reasonable in relation to the benefits, and are excluded as permissible additional charges from the loan finance charge.

With respect to any other additional charge not specifically provided for in this section to be a permitted charge under this subsection, the creditor must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit to the debtor. Supporting documents may be required by the department. The department shall determine whether the charge would be of benefit to the debtor and is reasonable in relation to the benefits.

(f) A charge not to exceed twenty-five dollars ($25) for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the debtor.

(g) With respect to a revolving loan account, a fee not to exceed twenty-five dollars ($25) in each billing cycle during which the balance due under the revolving loan account exceeds by more than one hundred dollars ($100) the maximum credit limit for the account established by the lender.

(h) With respect to a revolving loan account, a transaction fee that may not exceed the lesser of the following:

(i) Two percent (2%) of the amount of the transaction.

(ii) Ten dollars ($10).

The additional charges provided for in subdivisions (f), (g), and (h) are not subject to refund or rebate.

(2) An additional charge may be made for insurance in connection with the loan, other than insurance protecting the lender against the debtor's default or other credit loss:

(a) with respect to insurance against loss of or damage to property or against liability, if the lender furnishes a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained from or through the lender and stating that the debtor may choose the person, subject to the lender's reasonable approval, through whom the insurance is to be obtained; and

(b) with respect to consumer credit insurance providing life, accident, unemployment or other loss of income, or health coverage, if the insurance coverage is not a factor in the approval by the lender of the extension of credit and this fact is clearly disclosed in writing to the debtor, and if, in order to obtain the insurance in connection with the extension of credit, the debtor gives specific affirmative written indication of the desire to do so after written disclosure of the cost of the insurance.

(Formerly: Acts 1971, P.L.366, SEC.4; Acts 1975, P.L.266, SEC.1.) As amended by P.L.247-1983, SEC.16; P.L.139-1990, SEC.1; P.L.181-1991, SEC.3; P.L.14-1992, SEC.26; P.L.122-1994, SEC.19; P.L.45-1995, SEC.9; P.L.80-1998, SEC.6; P.L.213-2007, SEC.8; P.L.217-2007, SEC.7.

IC 24-4.5-3-203
Repealed

(Repealed by P.L.122-1994, SEC.122.)

IC 24-4.5-3-203.5
Delinquency charges; credit charges not precomputed

Sec. 203.5. Delinquency Charges — (1) With respect to a consumer loan, refinancing, or consolidation, the parties may contract for a delinquency charge of not more than five dollars ($5) on any installment or minimum payment due not paid in full within ten (10) days after its scheduled due date.

(2) A delinquency charge under this section may be collected only once on an installment however long it remains in default. With regard to a delinquency charge on consumer loans made under a revolving loan account, the delinquency charge may be applied each month that the payment is less than the minimum required payment on the account. A delinquency charge may be collected any time after it accrues. A delinquency charge may not be collected if the installment has been deferred and a deferral charge (IC 24-4.5-3-204) has been paid or incurred.

(3) A delinquency charge may not be collected on an installment or payment due that is paid in full within ten (10) days after its scheduled due date even though an earlier maturing installment, minimum payment, or a delinquency charge on:

(a) an earlier installment; or

(b) payment due;

may not have been paid in full. For purposes of this subsection, payments are applied first to current installments or payments due and then to delinquent installments or payments due.

(4) If two (2) installments or parts of two (2) installments of a precomputed loan are in default for ten (10) days or more, the lender may elect to convert the loan from a precomputed loan to a loan in which the finance charge is based on unpaid balances. A lender that makes this election shall make a rebate under the provisions on rebates upon prepayment (IC 24-4.5-3-210) as of the maturity date of the first delinquent installment, and thereafter may make a loan finance charge as authorized by the provisions on loan finance charges for consumer loans (IC 24-4.5-3-201) or supervised loans (IC 24-4.5-3-508). The amount of the rebate shall not be reduced by the amount of any permitted minimum charge (IC 24-4.5-3-210). Any deferral charges made on installments due at or after the maturity date of the first delinquent installment shall be rebated, and no further deferral charges shall be made.

(5) The amount of five dollars ($5) in subsection (1) is subject to change pursuant to the section on adjustment of dollar amounts (IC 24-4.5-1-106).

(6) If the parties provide by contract for a delinquency charge that is subject to change, the lender shall disclose in the contract that the amount of the delinquency charge is subject to change as allowed by IC 24-4.5-1-106.

As added by P.L.247-1983, SEC.17. Amended by P.L.181-1991, SEC.4; P.L.115-1992, SEC.2; P.L.14-1992, SEC.27; P.L.122-1994,

SEC.20; P.L.45-1995, SEC.10.

IC 24-4.5-3-204
Deferral charges

Sec. 204. Deferral Charges — (1) With respect to a precomputed consumer loan, refinancing, or consolidation, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid instalments, and the lender may make and collect a charge not exceeding the rate previously stated to the debtor pursuant to the provisions on disclosure (Part 3) applied to the amount or amounts deferred for the period of deferral calculated without regard to difference in the lengths of months, but proportionally for a part of a month, counting each day as one-thirtieth (1/30) of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

(2) The lender, in addition to the deferral charge, may make appropriate additional charges (24-4.5-3-202), and the amount of these charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

(3) The parties may agree in writing at the time of a precomputed consumer loan, refinancing, or consolidation that if an instalment is not paid within ten (10) days after its due date, the lender may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date that the lender elects to accelerate the maturity of the agreement.

(4) A delinquency charge made by the lender on an instalment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency.

(Formerly: Acts 1971, P.L.366, SEC.4.)

IC 24-4.5-3-205
Loan finance charge on refinancing

Sec. 205. Loan Finance Charge on Refinancing — With respect to a consumer loan, refinancing, or consolidation, the lender may by agreement with the debtor refinance the unpaid balance and may contract for and receive a loan finance charge based on the principal resulting from the refinancing at a rate not exceeding that permitted by the provisions on a loan finance charge for consumer loans (IC 24-4.5-3-201) or the provisions on a loan finance charge for supervised loans (IC 24-4.5-3-508), whichever is appropriate. For the purpose of determining the loan finance charge permitted, the principal resulting from the refinancing comprises the following:

(1) if the transaction was not precomputed, the total of the unpaid balance and the accrued charges on the date of the refinancing, or, if the transaction was precomputed, the amount which the debtor would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment (IC 24-4.5-3-210) on the date of refinancing; and

(2) appropriate additional charges (IC 24-4.5-3-202), payment of which is deferred.

(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by P.L.14-1992, SEC.28.

IC 24-4.5-3-206
Loan finance charge on consolidation

Sec. 206. Loan Finance Charge on Consolidation — (1) If a debtor owes an unpaid balance to a lender with respect to a consumer loan, refinancing, or consolidation, and becomes obligated on another consumer loan, refinancing, or consolidation with the same lender, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer loan, refinancing, or consolidation was not precomputed, the parties may agree to add the unpaid amount of principal and accrued charges on the date of consolidation to the principal with respect to the subsequent loan. If the previous consumer loan, refinancing, or consolidation was precomputed, the parties may agree to refinance the unpaid balance pursuant to the provisions on refinancing (24-4.5-3-205) and to consolidate the principal resulting from the refinancing by adding it to the principal with respect to the subsequent loan. In either case the lender may contract for and receive a loan finance charge based on the aggregate principal resulting from the consolidation at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (24-4.5-3-201) or the provisions on loan finance charge for supervised loans (24-4.5-3-508), whichever is appropriate.

(2) The parties may agree to consolidate the unpaid balance of a consumer loan with the unpaid balance of a consumer credit sale. The parties may agree to refinance the previous unpaid balance pursuant to the provisions on refinancing sales (24-4.5-2-205) or the provisions on refinancing loans (24-4.5-3-205), whichever is appropriate, and to consolidate the amount financed resulting from the refinancing or the principal resulting from the refinancing by adding it to the amount financed or principal with respect to the subsequent sale or loan. The aggregate amount resulting from the consolidation shall be deemed principal, and the creditor may contract for and receive a loan finance charge based on the principal at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (24-4.5-3-201) or the provisions on loan finance charge for supervised loans (24-4.5-3-508), whichever is appropriate.

(Formerly: Acts 1971, P.L.366, SEC.4.)

IC 24-4.5-3-207
Conversion to revolving loan account

Sec. 207. Conversion to Revolving Loan Account. — The parties may agree to add to a revolving loan account the unpaid balance of a consumer loan, not made pursuant to a revolving loan account, or a refinancing, or consolidation thereof, or the unpaid balance of a consumer credit sale, refinancing or consolidation, for the purpose of this section.

(1) the unpaid balance of a consumer loan, refinancing, or

consolidation is an amount equal to the principal determined according to the provisions on refinancing (24-4.5-3-205); and

(2) the unpaid balance of a consumer credit sale, refinancing, or consolidation is an amount equal to the amount financed determined according to the provisions on refinancing (24-4.5-2-205).
(Formerly: Acts 1971, P.L.366, SEC.4.)

IC 24-4.5-3-208
Advances to perform covenants of debtor

Sec. 208. Advances to Perform Covenants of Debtor. — (1) If the agreement with respect to a consumer loan, refinancing, or consolidation contains covenants by the debtor to perform certain duties pertaining to insuring or preserving collateral and if the lender pursuant to the agreement pays for performance of the duties on behalf of the debtor, the lender may add the amounts paid to the debt. Within a reasonable time after advancing any sums, he shall state to the debtor in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the debtor performed by the lender pertain to insurance, a brief description of the insurance paid for by the lender including the type and amount of coverages. No further information need be given.

(2) A loan finance charge may be made for sums advanced pursuant to subsection (1) at a rate not exceeding the rate stated to the debtor pursuant to the provisions on disclosure (Part 3) with respect to the loan, refinancing, or consolidation, except that with respect to a revolving loan account the amount of the advance may be added to the unpaid balance of the debt and the lender may make a loan finance charge not exceeding that permitted by the provisions on loan finance charge for consumer loans (24-4.5-3-201) or for supervised loans (24-4.5-3-508), whichever is appropriate.
(Formerly: Acts 1971, P.L.366, SEC.4.)

IC 24-4.5-3-209
Right to prepay; prepayment penalty; total finance charge; payoff statement; liability for failure to provide; short sale; acknowledgment of offer; acceptance or rejection; acceptance of payment; liability for failure to respond

Sec. 209. Right to Prepay - (1) Subject to the provisions on rebate upon prepayment (section 210 of this chapter), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty. With respect to a consumer loan that is primarily secured by an interest in land, a lender may contract for a penalty for prepayment of the loan in full, not to exceed two percent (2%) of any amount prepaid within sixty (60) days of the date of the prepayment in full, after deducting all refunds and rebates as of the date of the prepayment. However, the penalty may not be imposed:

(a) if the loan is refinanced or consolidated with the same creditor;

(b) for prepayment by proceeds of any insurance or acceleration after default; or

(c) after three (3) years from the contract date.

(2) At the time of prepayment of a consumer loan not subject to the provisions of rebate upon prepayment (section 210 of this chapter), the total finance charge, including the prepaid finance charge but excluding the loan origination fee allowed under section 201 of this chapter, may not exceed the maximum charge allowed under this chapter for the period the loan was in effect. For the purposes of determining compliance with this subsection, the total finance charge does not include the following:

(a) The loan origination fee allowed under section 201 of this chapter.

(b) The debtor paid mortgage broker fee, if any, paid to a person who does not control, is not controlled by, or is not under common control with, the creditor holding the loan at the time a consumer loan is prepaid.

(3) The creditor or mortgage servicer shall provide, in writing, an accurate payoff amount for the consumer loan to the debtor within seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer loan payoff amount. A payoff statement provided by a creditor or mortgage servicer under this subsection must show the date the statement was prepared and itemize the unpaid principal balance and each fee, charge, or other sum included within the payoff amount. A creditor or mortgage servicer who fails to provide the accurate consumer loan payoff amount is liable for:

(a) one hundred dollars ($100) if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's first written request; and

(b) the greater of:

(i) one hundred dollars ($100); or

(ii) the loan finance charge that accrues on the loan from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer loan payoff amount is provided;

if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with subdivision (a).

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

(4) As used in this subsection, "mortgage transaction" means a consumer loan in which a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land

contract) that constitutes a lien is created or retained against land upon which there is constructed or intended to be constructed a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. This subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than five (5) business days (excluding legal public holidays, Saturdays, and Sundays) after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days (excluding legal public holidays, Saturdays, and Sundays) after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. The thirty (30) day period described in this subsection may be extended for not more than fifteen (15) business days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the thirty (30) day period, the creditor, the servicer, or the creditor's agent notifies the debtor of the extension and the reason the extension is needed. Payment accepted by a creditor, servicer, or creditor's agent in connection with a short sale constitutes payment in full satisfaction of the mortgage transaction unless the creditor, servicer, or creditor's agent obtains:

(a) the following statement: "The debtor remains liable for any amount still owed under the mortgage transaction."; or

(b) a statement substantially similar to the statement set forth in subdivision (a);

acknowledged by the initials or signature of the debtor, on or before the date on which the short sale payment is accepted. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by P.L.14-1992, SEC.29; P.L.122-1994, SEC.21; P.L.23-2000, SEC.6; P.L.159-2001, SEC.1; P.L.145-2008, SEC.27; P.L.35-2010, SEC.49; P.L.89-2011, SEC.16; P.L.27-2012, SEC.18.

IC 24-4.5-3-210

Rebate upon prepayment

Sec. 210. Rebate upon Prepayment. — (1) Except as provided in subsection (2), upon prepayment in full of the unpaid balance of a

precomputed consumer loan, refinancing, or consolidation, an amount not less than the unearned portion of the loan finance charge calculated according to this section shall be rebated to the debtor. If the rebate otherwise required is less than one dollar ($1), no rebate need be made.

(2) Upon prepayment in full of a consumer loan, refinancing, or consolidation, other than one (1) under a revolving loan account, if the loan finance charge earned is less than any permitted minimum loan finance charge (IC 24-4.5-3-201(6) or IC 24-4.5-3-508(7)) contracted for, whether or not the consumer loan, refinancing, or consolidation is precomputed, the lender may collect or retain the minimum loan finance charge, as if earned, not exceeding the loan finance charge contracted for.

(3) The unearned portion of the loan finance charge is a fraction of the loan finance charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which prepayment occurs, and the denominator is the sum of all periodic balances under either the loan agreement or, if the balance owing resulted from a refinancing (IC 24-4.5-3-205) or a consolidation (IC 24-4.5-3-206), under the refinancing agreement or consolidation agreement.

(4) In this section:

(a) "periodic balance" means the amount scheduled to be outstanding on the last day of a computational period before deducting the payment, if any, scheduled to be made on that day;

(b) "computation period" means one (1) month if one-half (1/2) or more of the intervals between scheduled payments under the agreement is one (1) month or more, and otherwise means one (1) week;

(c) the "interval" to the due date of the first scheduled installment or the final scheduled payment date is measured from the date of a loan, refinancing, or consolidation, and includes either the first or last day of the interval; and

(d) if the interval to the due date of the first scheduled installment does not exceed one (1) month by more than fifteen (15) days when the computational period is one (1) month, or eleven (11) days when the computational period is one (1) week, the interval shall be considered as one (1) computational period.

(5) This subsection applies only if the schedule of payments is not regular.

(a) If the computational period is one (1) month and:

(i) if the number of days in the interval to the due date of the first scheduled installment is less than one (1) month by more than five (5) days, or more than one (1) month by more than five (5) but not more than fifteen (15) days, the unearned loan finance charge shall be increased by an adjustment for each day by which the interval is less than one (1) month and, at the option of the lender, may be

reduced by an adjustment for each day by which the interval is more than one (1) month; the adjustment for each day shall be one-thirtieth (1/30) of that part of the loan finance charge earned in the computational period prior to the due date of the first scheduled installment assuming that period to be one (1) month; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full month, the additional number of days shall be considered a computational period only if sixteen (16) days or more. This subparagraph applies whether or not subparagraph (i) applies.

(b) Notwithstanding paragraph (a), if the computational period is one (1) month, the number of days in the interval to the due date of the first installment exceeds one (1) month by not more than fifteen (15) days, and the schedule of payments is otherwise regular, the lender, at the lender's option, may exclude the extra days and the charge for the extra days in computing the unearned loan finance charge; but if the lender does so and a rebate is required before the due date of the first scheduled installment, the lender shall compute the earned charge for each elapsed day as one-thirtieth (1/30) of the amount the earned charge would have been if the first interval had been one (1) month.

(c) If the computational period is one (1) week and:

(i) if the number of days in the interval to the due date of the first scheduled installment is less than five (5) days, or more than nine (9) days, but not more than eleven (11) days, the unearned loan finance charge shall be increased by an adjustment for each day by which the interval is less than seven (7) days and, at the option of the lender, may be reduced by an adjustment for each day by which the interval is more than seven (7) days; the adjustment for each day shall be one-seventh (1/7) of that part of the loan finance charge earned in the computational period prior to the due date of the first scheduled installment, assuming that period to be one (1) week; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full week, the additional number of days shall be considered a computational period only if five (5) days or more. This subparagraph applies whether or not subparagraph (i) applies.

(6) If a deferral (IC 24-4.5-3-204) has been agreed to, the unearned portion of the loan finance charge shall be computed without regard to the deferral. The amount of deferral charge earned at the date of prepayment shall also be calculated. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the loan finance charge. If any part of a deferral charge has been earned but has not been paid,

that part shall be subtracted from the unearned portion of the loan finance charge or shall be added to the unpaid balance.

(7) This section does not preclude the collection or retention by the lender of delinquency charges (IC 24-4.5-3-203, repealed in 1994).

(8) If the maturity is accelerated for any reason and judgment is obtained, the debtor is entitled to the same rebate as if payment had been made on the date judgment is entered.

(9) Upon prepayment in full of a consumer loan by the proceeds of consumer credit insurance (IC 24-4.5-4-103), the debtor or the debtor's estate shall pay the same loan finance charge or receive the same rebate as though the debtor had prepaid the agreement on the date the proceeds of the insurance are paid to the lender, but no later than ten (10) business days after satisfactory proof of loss is furnished to the lender. This subsection applies whether or not the loan is precomputed.

(10) Upon prepayment in full of a transaction with a term of more than sixty-one (61) months, the unearned loan finance charge shall be computed by applying the disclosed annual percentage rate that would yield the loan finance charge originally contracted for to the unpaid balances of the amount financed for the full computational periods following the prepayment, as originally scheduled or as deferred.

(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by P.L.14-1992, SEC.30; P.L.122-1994, SEC.22; P.L.2-1995, SEC.92; P.L.176-1996, SEC.6.

(Part 3. Disclosure and Advertising)

IC 24-4.5-3-301
Disclosures required by Federal Consumer Credit Protection Act

Sec. 301. (1) For the purposes of this section, "consumer loan" includes a loan that is a first lien mortgage transaction if the loan is otherwise a consumer loan (IC 24-4.5-1-301.5(9)).

(2) The lender shall disclose to the debtor to whom credit is extended with respect to a consumer loan the information required by the Federal Consumer Credit Protection Act.

(3) For purposes of subsection (2), disclosures shall not be required on a consumer loan if the transaction is exempt from the Federal Consumer Credit Protection Act.

(Formerly: Acts 1971, P.L.366, SEC.4; Acts 1975, P.L.267, SEC.1.) As amended by Acts 1981, P.L.218, SEC.6; Acts 1981, P.L.217, SEC.2; P.L.247-1983, SEC.18; P.L.45-1995, SEC.11; P.L.35-2010, SEC.50.

IC 24-4.5-3-302
Repealed

(Repealed by P.L.247-1983, SEC.26.)

IC 24-4.5-3-303

Repealed
(Repealed by P.L.247-1983, SEC.26.)

IC 24-4.5-3-304
Repealed
(Repealed by P.L.247-1983, SEC.26.)

IC 24-4.5-3-305
Repealed
(Repealed by P.L.247-1983, SEC.26.)

IC 24-4.5-3-306
Repealed
(Repealed by P.L.247-1983, SEC.26.)

IC 24-4.5-3-307
Repealed
(Repealed by P.L.247-1983, SEC.26.)

IC 24-4.5-3-308
Repealed
(Repealed by P.L.247-1983, SEC.26.)

IC 24-4.5-3-309
Repealed
(Repealed by P.L.247-1983, SEC.26.)

IC 24-4.5-3-310
Repealed
(Repealed by P.L.247-1983, SEC.26.)

IC 24-4.5-3-311
Repealed
(Repealed by P.L.247-1983, SEC.26.)

(Part 4. Limitations on Agreements and Practices)

IC 24-4.5-3-401
Scope
Sec. 401. Scope — This Part applies to consumer loans.
(Formerly: Acts 1971, P.L.366, SEC.4.)

IC 24-4.5-3-402
Balloon payments; compliance with Alternative Mortgage Transaction Parity Act
Sec. 402. (1) This section does not apply to a first lien mortgage transaction.

(2) Except as provided in IC 24-9-4-3 with respect to a high cost home loan (as defined in IC 24-9-2-8), with respect to a consumer loan, other than one pursuant to a revolving loan account or one on

which only loan finance charges are payable prior to the time that the final scheduled payment is due, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the debtor has the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the debtor than the terms of the original loan. This section does not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the debtor.

(3) For the purposes of this section, "terms of the refinancing" means:

(a) in the case of a fixed-rate consumer loan, the individual payment amounts, the charges as a result of default by the debtor, and the rate of the loan finance charge; and

(b) in the case of a variable rate consumer loan, the method used to determine the individual payment amounts, the charges as a result of default by the debtor, the method used to determine the rate of the loan finance charge, the circumstances under which the rate of the loan finance charge may increase, and any limitations on the increase in the rate of the loan finance charge.

(4) If a consumer loan is made under the authority of the Alternative Mortgage Transaction Parity Act (12 U.S.C. 3802 et seq.), the note evidencing the mortgage must contain a reference to the applicable federal law.

(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by P.L.247-1983, SEC.19; P.L.213-2007, SEC.9; P.L.217-2007, SEC.8; P.L.90-2008, SEC.8.

IC 24-4.5-3-403
No assignment of earnings

Sec. 403. No Assignment of Earnings — (1) A lender may not take an assignment of earnings of the debtor for payment or as security for payment of a debt arising out of a consumer loan or otherwise. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the debtor. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable and is otherwise permitted by law.

(2) A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to him secured by an assignment of earnings.

(Formerly: Acts 1971, P.L.366, SEC.4.)

IC 24-4.5-3-404
Attorney's fees

Sec. 404. With respect to a consumer loan the agreement may provide for the payment by the debtor of reasonable attorney's fees after default and referral to an attorney not a salaried employee of the lender. A provision in violation of this section is unenforceable.

(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by

P.L.152-1986, SEC.64; P.L.14-1992, SEC.31.

IC 24-4.5-3-405
Limitation on default charges

Sec. 405. Limitation on Default Charges — Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer loan may not provide for charges as a result of default by the debtor other than those authorized by this Article. A provision in violation of this section is unenforceable.
(Formerly: Acts 1971, P.L.366, SEC.4.)

IC 24-4.5-3-406
Notice of assignment

Sec. 406. Notice of Assignment — The debtor is authorized to pay the original lender until he receives notification of assignment of rights to payment pursuant to a consumer loan and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the debtor may pay the original lender.
(Formerly: Acts 1971, P.L.366, SEC.4.)

IC 24-4.5-3-407
Authorization to confess judgment prohibited

Sec. 407. Authorization to Confess Judgment Prohibited — A debtor may not authorize any person to confess judgment on a claim arising out of a consumer loan. An authorization in violation of this section is void.
(Formerly: Acts 1971, P.L.366, SEC.4.)

IC 24-4.5-3-408
Time for crediting payments

Sec. 408. (1) This section also applies to revolving loan accounts.

(2) Except as provided in subsection (3) a creditor shall credit a payment to a consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance charge or other charge, including a late charge. A delay in posting does not violate this section so long as the payment is credited as of the date of receipt.

(3) If a creditor specifies requirements for the consumer to follow in making payments of the contract, payment coupon book, payment coupon or statement, or periodic statement, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within two (2) days of receipt of the payment.

(4) If a creditor fails to credit a payment as required by this section in time to avoid the imposition of a finance or other charge, including a delinquency charge, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next payment period.

As added by P.L.163-1999, SEC.2.

(Part 5. Regulated and Supervised Loans)

IC 24-4.5-3-501
Definitions; "supervised loan"; "supervised lender"

Sec. 501. Definitions:

(1) "Supervised loan" means a consumer loan in which the rate of the loan finance charge exceeds twenty-five percent (25%) per year as determined according to the provisions on loan finance charge for consumer loans in section 201 of this chapter.

(2) "Supervised lender" means a person authorized to make or take assignments of supervised loans.

(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by Acts 1982, P.L.150, SEC.4; P.L.122-1994, SEC.23; P.L.91-2013, SEC.3.

IC 24-4.5-3-502
Authority to make consumer loans, take assignment of loans, or undertake collection activities; license required for certain persons; separate licenses not required for branches

Sec. 502. (1) A person that is a:

(a) depository institution;

(b) subsidiary that is owned and controlled by a depository institution; or

(c) credit union service organization;

may engage in the making of consumer loans that are not mortgage transactions without obtaining a license under this article.

(2) A collection agency licensed under IC 25-11-1 may engage in:

(a) taking assignments of consumer loans in Indiana; and

(b) undertaking direct collection of payments from or enforcement of rights in Indiana against debtors arising from consumer loans;

without obtaining a license under this article.

(3) A person that does not qualify under subsection (1) or (2) shall acquire and retain a license under this article in order to regularly engage in Indiana in the following actions with respect to consumer loans that are not mortgage transactions:

(a) The making of consumer loans.

(b) Taking assignments of consumer loans.

(c) Undertaking direct collection of payments from or enforcement of rights against debtors arising from consumer loans.

(4) A separate license under this article is required for each legal entity that engages in Indiana in any activity described in subsection (3). However, a separate license under this article is not required for each branch of a legal entity licensed under this article to perform an activity described in subsection (3).

(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by P.L.14-1992, SEC.32; P.L.122-1994, SEC.24; P.L.176-1996, SEC.7; P.L.23-2000, SEC.7; P.L.10-2006, SEC.6 and P.L.57-2006, SEC.6; P.L.35-2010,

SEC.51.

IC 24-4.5-3-502.1
Engaging as a creditor in subordinate lien mortgage transactions; registration with NMLSR; licensed mortgage loan originators; applications for licensure; director's authority to contract with NMLSR

Sec. 502.1. (1) Unless a person:

(a) is a depository institution;

(b) is a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency;

(c) is an institution regulated by the Farm Credit Administration; or

(d) has first obtained, and subsequently retains, a license from the department under this article;

the person shall not regularly engage in Indiana as a creditor in subordinate lien mortgage transactions, take assignments in Indiana of subordinate lien mortgage transactions, or undertake in the direct collection of payments from or enforcement of rights against debtors in Indiana arising from subordinate lien mortgage transactions.

(2) Each:

(a) creditor licensed by the department under this article; and

(b) entity exempt from licensing under this article that employs a licensed mortgage loan originator;

shall register with and maintain a valid unique identifier issued by the NMLSR. Each licensed mortgage loan originator must be employed by, and associated with, a licensed creditor or an exempt entity described under subdivision (b) in the NMLSR in order to originate loans.

(3) Applicants for a license must apply for a license under this chapter in a form prescribed by the director. Each form:

(a) must contain content as set forth by rule, instruction, or procedure of the director; and

(b) may be changed or updated as necessary by the director to carry out the purposes of this article.

(4) To fulfill the purposes of this article, the director may establish relationships or contracts with the NMLSR or other entities designated by the NMLSR to:

(a) collect and maintain records; and

(b) process transaction fees or other fees;

related to licensees or other persons subject to this article.

(5) For the purpose of participating in the NMLSR, the director or the department may:

(a) waive or modify, in whole or in part, by rule, regulation, or order, any or all of the requirements of this article; and

(b) establish new requirements as reasonably necessary to participate in the NMLSR.

As added by P.L.35-2010, SEC.52.

IC 24-4.5-3-503

Applications for licenses; issuance; evidence of compliance; use of NMLSR; denial of application; right to hearing; fees; license not assignable or transferable

Sec. 503. (1) The department shall receive and act on all applications for licenses to make consumer loans. Applications must be as prescribed by the director of the department of financial institutions. If, at any time, the information or record contained in:

(a) an application filed under section 502 of this chapter or section 502.1 of this chapter; or

(b) a renewal application filed under section 503.6 of this chapter;

is or becomes inaccurate or incomplete in a material respect, the applicant shall promptly file a correcting amendment with the department.

(2) A license shall not be issued unless the department finds that the professional training and experience, financial responsibility, character, and fitness of:

(a) the applicant and any significant affiliate of the applicant;

(b) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and

(c) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant;

are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

(3) The director is entitled to request evidence of compliance with this section at:

(a) the time of application;

(b) the time of renewal of a license; or

(c) any other time considered necessary by the director.

(4) Evidence of compliance with this section concerning a person licensed under section 502 of this chapter may include and for a person licensed under section 502.1 of this chapter must include:

(a) criminal background checks as described in section 503.1 of this chapter, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for any individual described in subsection (2);

(b) credit histories as described in section 503.2 of this chapter;

(c) surety bond requirements as described in section 503.3 of this chapter;

(d) a review of licensure actions in Indiana and other states; and

(e) other background checks considered necessary by the director.

(5) For purposes of this section and in order to reduce the points of contact that the director may have to maintain under this section, the director may use the NMLSR as a channeling agent for requesting and distributing information to and from any source as directed by the director.

(6) The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(7) Upon written request, the applicant is entitled to a hearing on the question of the qualifications of the applicant for a license as provided in IC 4-21.5.

(8) The applicant shall pay the following fees at the time designated by the department:

(a) An initial license fee as established by the department under IC 28-11-3-5.

(b) Examination fees as established by the department under IC 28-11-3-5.

(c) An annual renewal fee as established by the department under IC 28-11-3-5.

(9) A fee as established by the department under IC 28-11-3-5 may be charged for each day a fee under subsection (8)(b) or (8)(c) is delinquent.

(10) The licensee may deduct the fees required under subsection (8)(a) and (8)(c) from the filing fees paid under IC 24-4.5-6-203.

(11) Except in a transaction approved under section 515 of this chapter, a license issued under this section is not assignable or transferable.

(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by P.L.14-1992, SEC.33; P.L.122-1994, SEC.25; P.L.80-1998, SEC.7; P.L.23-2000, SEC.8; P.L.10-2006, SEC.7 and P.L.57-2006, SEC.7; P.L.213-2007, SEC.10; P.L.217-2007, SEC.9; P.L.3-2008, SEC.174; P.L.90-2008, SEC.9; P.L.35-2010, SEC.53; P.L.89-2011, SEC.17; P.L.27-2012, SEC.19.

IC 24-4.5-3-503.1

National criminal history background check; fingerprints; payment of fees or costs; use of NMLSR

Sec. 503.1. (1) When the director requests a national criminal history background check under section 503(4)(a) of this chapter for an individual described in section 503(2) of this chapter, the director shall require the individual to submit fingerprints to the department, state police department, or NMLSR, as directed, at the time evidence of compliance is requested under section 503(3) of this chapter. The individual to whom the request is made shall pay any fees or costs associated with processing and evaluating the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

(2) For purposes of this section and in order to reduce the points of contact that the Federal Bureau of Investigation may have to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting information from and

distributing information to the United States Department of Justice or any governmental agency.
As added by P.L.35-2010, SEC.54.

IC 24-4.5-3-503.2
Credit reports; payment of fees or costs; demonstrated financial responsibility; considerations

Sec. 503.2. (1) If the director requests a credit report for an individual described in section 503(2) of this chapter, the individual to whom the request is made shall pay any fees or costs associated with procuring the report.

(2) The individual must submit personal history and experience information in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR or the director to obtain an independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)).

(3) The director may consider one (1) or more of the following when determining if an individual has demonstrated financial responsibility:

(a) Bankruptcies filed within the last ten (10) years.

(b) Current outstanding judgments, except judgments solely as a result of medical expenses.

(c) Current outstanding tax liens or other government liens or filings.

(d) Foreclosures within the past three (3) years.

(e) A pattern of serious delinquent accounts within the past three (3) years.

As added by P.L.35-2010, SEC.55.

IC 24-4.5-3-503.3 Version a
Surety bond; penal sum to reflect amount of mortgages originated

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

Sec. 503.3. (1) Each:

(a) creditor licensed by the department under this article; and

(b) entity exempt from licensing under this article that employs a licensed mortgage loan originator;

must be covered by a surety bond in accordance with this section.

(2) A surety bond:

(a) must provide coverage for:

(i) each creditor described in subsection (1)(a); and

(ii) each exempt entity described in subsection (1)(b);

in an amount as prescribed in subsection (4); and

(b) must be in a form as prescribed by the director.

(3) The director may adopt rules or guidance documents with respect to the requirements for surety bonds as necessary to accomplish the purposes of this article.

(4) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of mortgage transactions

originated as determined by the director.

(5) If an action is commenced on the surety bond of a creditor or an entity exempt from licensing under this article as described in subsection (1), the director may require the filing of a new bond.

(6) A creditor or an entity exempt from licensing under this article as described in subsection (1) shall file a new surety bond immediately upon recovery of any action on the surety bond required under this section.

As added by P.L.35-2010, SEC.56.

IC 24-4.5-3-503.3 Version b

Surety bond; requirements; amount; termination; liability; notices

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

Sec. 503.3. (1) Each:

(a) creditor licensed by the department under this article; and

(b) person exempt from licensing under this article that employs a licensed mortgage loan originator;

must be covered by a surety bond in accordance with this section.

(2) A surety bond must:

(a) provide coverage for:

(i) a creditor described in subsection (1)(a); and

(ii) an exempt person described in subsection (1)(b);

in an amount as prescribed in subsection (4);

(b) be in a form as prescribed by the director;

(c) be in effect:

(i) during the term of the creditor's license under this chapter; or

(ii) at any time during which the person exempt from licensing under this article employs a licensed mortgage loan originator;

as applicable;

(d) remain in effect during the two (2) years after:

(i) the creditor ceases offering financial services to individuals in Indiana; or

(ii) the person exempt from licensing under this article ceases to employ a licensed mortgage loan originator or to offer financial services to individuals in Indiana, whichever is later;

as applicable;

(e) be payable to the department for the benefit of:

(i) the state; and

(ii) individuals who reside in Indiana when they agree to receive financial services from the creditor or the person exempt from licensing under this article, as applicable;

(f) be issued by a bonding, surety, or insurance company authorized to do business in Indiana and rated at least "A-" by at least one (1) nationally recognized investment rating service; and

(g) have payment conditioned upon:

(i) the creditor's or any of the creditor's licensed mortgage loan originators'; or

(ii) the exempt person's or any of the exempt person's licensed mortgage loan originators';

noncompliance with or violation of this chapter, 750 IAC 9, or other federal or state laws or regulations applicable to mortgage lending.

(3) The director may adopt rules or guidance documents with respect to the requirements for surety bonds as necessary to accomplish the purposes of this article.

(4) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of mortgage transactions originated as determined by the director. If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the creditor or exempt person for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in an amount set by the director. The amount of the new or additional bond set by the director must be at least the amount of the bond before payment of the claim or judgment.

(5) If for any reason a surety terminates a bond issued under this section, the creditor or the exempt person shall immediately notify the department and file a new surety bond in an amount determined by the director.

(6) Cancellation of a surety bond issued under this section does not affect any liability incurred or accrued during the period when the surety bond was in effect.

(7) The director may obtain satisfaction from a surety bond issued under this section if the director incurs expenses, issues a final order, or recovers a final judgment under this chapter.

(8) Notices required under this section must be in writing and delivered by certified mail, return receipt requested and postage prepaid, or by overnight delivery using a nationally recognized carrier.

As added by P.L.35-2010, SEC.56. Amended by P.L.216-2013, SEC.10.

IC 24-4.5-3-503.4

Use of NMLSR in department's licensing system for subordinate lien mortgage transactions; reporting of information to NMLSR; confidentiality; director's authority to enter agreements; waiver of privilege; processing fee; electronic records

Sec. 503.4. (1) Subject to subsection (6), the director shall designate the NMLSR to serve as the sole entity responsible for:

(a) processing applications and renewals for licenses under section 502.1 of this chapter;

(b) issuing unique identifiers for licensees under section 502.1 of this chapter and for entities exempt from licensing under this article that employ licensed mortgage loan originators; and

(c) performing other services that the director determines necessary for the orderly administration of the department's licensing system under section 502.1 of this chapter.

(2) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director shall regularly report significant or recurring violations of this article related to subordinate lien mortgage transactions to the NMLSR.

(3) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director may report complaints received regarding licensees under this article related to subordinate lien mortgage transactions to the NMLSR.

(4) The director may report publicly adjudicated licensure actions against licensees under section 502.1 of this chapter to the NMLSR.

(5) The director shall establish a process in which persons licensed in accordance with section 502.1 of this chapter may challenge information reported to the NMLSR by the department.

(6) The director's authority to designate the NMLSR under subsection (1) is subject to the following:

(a) Information stored in the NMLSR is subject to the confidentiality provisions of IC 28-1-2-30 and IC 5-14-3. A person may not:

(i) obtain information from the NMLSR unless the person is authorized to do so by statute;

(ii) initiate any civil action based on information obtained from the NMLSR if the information is not otherwise available to the person under any other state law; or

(iii) initiate any civil action based on information obtained from the NMLSR if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(b) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential under IC 28-1-2-30 and that are:

(i) furnished by the director, the director's designee, or a licensee; or

(ii) otherwise obtained by the NMLSR;

are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director may use the documents, materials, or other information available to the director in furtherance of any action brought in connection with the director's duties under this article.

(c) Disclosure of documents, materials, and information:

(i) to the director; or

(ii) by the director;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(d) Information provided to the NMLSR is subject to IC 4-1-11.

(e) This subsection does not limit or impair a person's right to:

(i) obtain information;

(ii) use information as evidence in a civil action or proceeding; or

(iii) use information to initiate a civil action or proceeding;

if the information may be obtained from the director or the director's designee under any law.

(f) Except as otherwise provided in the federal Housing and Economic Recovery Act of 2008, Public Law 110-289, Section 1512, the requirements under any federal law or IC 5-14-3 regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or IC 5-14-3.

(g) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by rule or order of the director.

(h) Information or material that is subject to a privilege or confidentiality under subdivision (f) is not subject to:

(i) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(ii) subpoena, discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(i) Any provision of IC 5-14-3 that concerns the disclosure of:

(i) confidential supervisory information; or

(ii) any information or material described in subdivision (f);

and that is inconsistent with subdivision (f) is superseded by this section.

(j) This section does not apply with respect to information or material that concerns the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a person licensed in accordance with section 502.1 of this chapter and described in section 503(2) of this chapter and that is included in the NMLSR for access by the public.

(k) The director may require a licensee required to submit

information to the NMLSR to pay a processing fee considered reasonable by the director. In determining whether an NMLSR processing fee is reasonable, the director shall:

(i) require review of; and

(ii) make available;

the audited financial statements of the NMLSR.

(7) Notwithstanding any other provision of law, any:

(a) application, renewal, or other form or document that:

(i) relates to licenses issued under this article; and

(ii) is made or produced in an electronic format;

(b) document filed as an electronic record in a multistate automated repository established and operated for the licensing or registration of mortgage lenders, brokers, or loan originators; or

(c) electronic record filed through the NMLSR;

is considered a valid original document when reproduced in paper form by the department.

As added by P.L.35-2010, SEC.57. Amended by P.L.27-2012, SEC.20.

IC 24-4.5-3-503.5
Repealed

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

IC 24-4.5-3-503.6
License renewal; revocation or suspension of license not renewed; reinstatement or appeal; correcting amendments

Sec. 503.6. (1) A license issued under this article must be renewed not later than December 31 of each calendar year. A license issued under section 502.1 of this chapter must be renewed through the NMLSR. The minimum standards for license renewal for a creditor include the following:

(a) If the creditor is licensed in accordance with section 502 of this chapter, the creditor has:

(i) paid all required fees for renewal of the license; and

(ii) filed all reports and information required by the director.

(b) If the creditor is licensed under section 502.1 of this chapter, the following:

(i) The creditor has continued to meet the surety bond requirement under section 503.3 of this chapter.

(ii) The creditor has filed the creditor's call report in a manner that satisfies section 505(4) of this chapter.

(iii) The creditor has paid all required fees for renewal of the license.

(iv) The creditor and individuals described in section 503(2) of this chapter have certified to the department that they continue to meet all the standards for licensing established under section 503 of this chapter.

(v) The creditor has filed all reports and information required by the director.

(vi) The creditor has provided in the creditor's renewal application any information describing material changes in the information contained in the creditor's original application for licensure, or in any previous application, including any previous renewal application, along with any other information the director requires in order to evaluate the renewal of the license issued under this article.

(2) A license issued by the department authorizing a person to engage as a creditor in consumer loans or consumer credit sales under this article may be revoked or suspended by the department if the person fails to:

(a) file any renewal form required by the department; or

(b) pay any license renewal fee described under section 503(8)(c) of this chapter;

not later than sixty (60) days after the due date.

(3) A person whose license is revoked or suspended under this section may do either of the following:

(a) Pay all delinquent fees and apply for reinstatement of the license.

(b) Appeal the revocation or suspension to the department for an administrative review under IC 4-21.5-3.

Pending the decision from a hearing under IC 4-21.5-3 concerning license revocation or suspension, a license remains in force.

(4) If, at any time, the information or record contained in:

(a) an original application for licensure filed under section 502 or 502.1 of this chapter; or

(b) a renewal application filed under this section;

is or becomes inaccurate or incomplete in a material respect, the applicant shall promptly file a correcting amendment with the department.

As added by P.L.35-2010, SEC.58. Amended by P.L.89-2011, SEC.18; P.L.27-2012, SEC.21.

IC 24-4.5-3-504

Suspension or revocation of license; order to show cause; order of suspension or revocation; relinquishment of license; preexisting contracts; emergency order for revocation

Sec. 504. (1) The department may issue to a person licensed to:

(a) make consumer loans; or

(b) engage in consumer credit sales that are mortgage transactions;

an order to show cause why the license should not be revoked or suspended for a period determined by the department.

(2) An order issued under subsection (1) must:

(a) include:

(i) a statement of the place, date, and time for a meeting with the department, which date may not be less than ten (10) days from the date of the order;

(ii) a description of the action contemplated by the department; and

(iii) a statement of the facts or conduct supporting the issuance of the order; and

(b) be accompanied by a notice stating that the licensee is entitled to:

(i) a reasonable opportunity to be heard; and

(ii) show the licensee's compliance with all lawful requirements for retention of the license;

at the meeting described in subdivision (a)(i).

(3) After the meeting described in subsection (2)(a)(i), the department may revoke or suspend the license if the department finds that:

(a) the licensee has repeatedly and willfully violated:

(i) this article or any rule, order, or guidance document adopted or issued by the department; or

(ii) any other state or federal laws, rules, or regulations applicable to consumer credit transactions;

(b) the licensee does not meet the licensing qualifications under section 503 of this chapter;

(c) the licensee obtained the license for the benefit of, or on behalf of, a person who does not qualify for the license;

(d) the licensee knowingly or intentionally made material misrepresentations to, or concealed material information from, the department; or

(e) facts or conditions exist that, had they existed at the time the licensee applied for the license, would have been grounds for the department to deny the issuance of the license.

(4) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and forthwith notify the licensee of:

(a) the revocation or suspension;

(b) if a suspension has been ordered, the duration of the suspension;

(c) the procedure for appealing the revocation or suspension under IC 4-21.5-3-5; and

(d) any other terms and conditions that apply to the revocation or suspension.

Not later than five (5) days after the entry of the order the department shall deliver to the licensee a copy of the order and the findings supporting the order.

(5) Any person holding a license to make consumer loans may relinquish the license by notifying the department in writing of its relinquishment, but this relinquishment does not affect the person's liability for acts previously committed and coming within the scope of this article.

(6) If the director determines it is in the public interest, the director may pursue revocation of a license of a licensee that has relinquished the license under subsection (5).

(7) If a person's license is revoked, suspended, or relinquished, the revocation, suspension, or relinquishment does not impair or affect any obligation owed by any person under any preexisting lawful

contract.

(8) If the director has just cause to believe an emergency exists from which it is necessary to protect the interests of the public, the director may proceed with the revocation of a license through an emergency or another temporary order under IC 4-21.5-4.

(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by P.L.14-1992, SEC.34; P.L.176-1996, SEC.9; P.L.80-1998, SEC.8; P.L.213-2007, SEC.11; P.L.217-2007, SEC.10; P.L.90-2008, SEC.10; P.L.35-2010, SEC.59; P.L.27-2012, SEC.22.

IC 24-4.5-3-505

Record keeping; use of unique identifier on forms and documents; use of examination and regulatory software; submitting call reports to NMLSR; composite reports; notice to department of certain events or changes

Sec. 505. (1) Every creditor required to be licensed under this article shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the department to determine whether the licensee is complying with the provisions of this article. The record keeping system of a licensee shall be sufficient if the licensee makes the required information reasonably available. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. The department shall be given free access to the records wherever located. The records pertaining to any loan shall be retained for two (2) years after making the final entry relating to the loan, but in the case of a revolving loan account the two (2) years is measured from the date of each entry. A person licensed or required to be licensed under this chapter is subject to IC 28-1-2-30.5 with respect to any records maintained by the person.

(2) The unique identifier of any person originating a mortgage transaction must be clearly shown on all mortgage transaction application forms and any other documents as required by the director.

(3) Every licensee that engages in mortgage transactions shall use automated examination and regulatory software designated by the director, including third party software. Use of the software consistent with guidance documents and policies issued by the director is not a violation of IC 28-1-2-30.

(4) Each:

(a) creditor that is licensed by the department under this article and that engages in mortgage transactions; and

(b) entity that is exempt from licensing under this article and that employs one (1) or more licensed mortgage loan originators;

shall submit to the NMLSR a call report, which must be in the form and contain information the NMLSR requires.

(5) Every creditor required to be licensed under this article shall file with the department a composite report as required by the department, but not more frequently than annually, in the form

prescribed by the department relating to all consumer loans made by the licensee. The department shall consult with comparable officials in other states for the purpose of making the kinds of information required in the reports uniform among the states. Information contained in the reports shall be confidential and may be published only in composite form. The department may impose a fee in an amount fixed by the department under IC 28-11-3-5 for each day that a creditor fails to file the report required by this subsection.

(6) A creditor required to be licensed under this article shall file notification with the department if the licensee:

(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; or

(d) is subject to revocation or suspension proceedings by a state or governmental authority with regard to the licensee's activities;

not later than thirty (30) days after the date of the event described in this subsection.

(7) Every licensee shall file notification with the department if the licensee or any director, executive officer, or manager of the licensee has been convicted of a felony under the laws of Indiana or any other jurisdiction. The licensee shall file the notification required by this subsection not later than thirty (30) days after the date of the event described in this subsection.

(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by P.L.14-1992, SEC.35; P.L.122-1994, SEC.26; P.L.45-1995, SEC.12; P.L.172-1997, SEC.5; P.L.63-2001, SEC.3 and P.L.134-2001, SEC.3; P.L.213-2007, SEC.12; P.L.217-2007, SEC.11; P.L.90-2008, SEC.11; P.L.35-2010, SEC.60; P.L.27-2012, SEC.23.

IC 24-4.5-3-505.5

Automated loan machines

Sec. 505.5. (a) As used in this section, "automated loan machine" means an unmanned machine that performs routine lending functions.

(b) A licensee may make loans through an automated loan machine at an offsite location if the licensee:

(1) notifies the department in writing of the existence and location of the automated loan machine;

(2) maintains at a location licensed or approved by the department the books, accounts, records, and files concerning transactions performed through the automated loan machine; and

(3) posts at the offsite location where the automated loan machine is located the:

(A) address where the books, accounts, records and files are located; and

(B) telephone number at which the licensee may be contacted.

As added by P.L.172-1997, SEC.6.

IC 24-4.5-3-506
Repealed
(Repealed by P.L.35-2010, SEC.209.)

IC 24-4.5-3-507
Repealed
(Repealed by P.L.35-2010, SEC.209.)

IC 24-4.5-3-508
Loan finance charge and origination fee for supervised loans

Sec. 508. Loan Finance Charge for Supervised Loans – (1) With respect to a supervised loan, including a loan pursuant to a revolving loan account, a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) The loan finance charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of:

(a) the total of:

(i) thirty-six percent (36%) per year on that part of the unpaid balances of the principal which is two thousand dollars ($2,000) or less;

(ii) twenty-one percent (21%) per year on that part of the unpaid balances of the principal which is more than two thousand dollars ($2,000) but does not exceed four thousand dollars ($4,000); and

(iii) fifteen percent (15%) per year on that part of the unpaid balances of the principal which is more than four thousand dollars ($4,000); or

(b) twenty-five percent (25%) per year on the unpaid balances of the principal.

(3) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

(a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment in section 210 of this chapter.

(4) The term of a loan for the purposes of this section commences on the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the lender may reasonably establish, the lender may make the same loan finance

charge on all principal amounts within a specified range. A loan finance charge does not violate subsection (2) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted in subsection (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) The amounts of two thousand dollars ($2,000) and four thousand dollars ($4,000) in subsection (2) and thirty dollars ($30) in subsection (7) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), for the adjustment of the amount of thirty dollars ($30), the Reference Base Index to be used is the Index for October 1992. Notwithstanding IC 24-4.5-1-106(1), for the adjustment of the amounts of two thousand dollars ($2,000) and four thousand dollars ($4,000), the Reference Base Index to be used is the Index for October 2012.

(7) With respect to a supervised loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars ($30). The minimum loan finance charge allowed under this subsection may be imposed only if the lender does not assess a loan origination fee under subsection (8) and:

(a) the debtor prepays in full a consumer loan, refinancing, or consolidation, regardless of whether the loan, refinancing, or consolidation is precomputed;

(b) the loan, refinancing, or consolidation prepaid by the debtor is subject to a loan finance charge that:

(i) is contracted for by the parties; and

(ii) does not exceed the rate prescribed in subsection (2); and

(c) the loan finance charge earned at the time of prepayment is less than the minimum loan finance charge contracted for under this subsection.

(8) Except as provided in subsection (7), in addition to the loan finance charge provided for in this section and to any other charges and fees permitted by this chapter, the lender may contract for and receive a loan origination fee of not more than fifty dollars ($50).

(9) The loan origination fee provided for in subsection (8) is not subject to refund or rebate.

(10) Notwithstanding subsections (8) and (9), in the case of a supervised loan that is not secured by an interest in land, if a lender retains any part of a loan origination fee charged on a loan that is paid in full by a new loan from the same lender, the following apply:

(a) If the loan is paid in full by the new loan within three (3) months after the date of the prior loan, the lender may not charge a loan origination fee on the new loan, or, in the case of a revolving loan, on the increased credit line.

(b) The lender may not assess more than two (2) loan origination fees in any twelve (12) month period.

(11) In the case of a supervised loan that is secured by an interest in land, this section does not prohibit a lender from contracting for and receiving a fee for preparing deeds, mortgages, reconveyances, and similar documents under section 202(1)(d)(ii) of this chapter, in addition to the loan origination fee provided for in subsection (8).
(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by Acts 1981, P.L.219, SEC.4; Acts 1982, P.L.149, SEC.4; Acts 1982, P.L.150, SEC.5; P.L.14-1992, SEC.38; P.L.122-1994, SEC.27; P.L.10-2006, SEC.8 and P.L.57-2006, SEC.8; P.L.145-2008, SEC.28; P.L.91-2013, SEC.4.

IC 24-4.5-3-508.5
Repealed
(Repealed by Acts 1982, P.L.150, SEC.8.)

IC 24-4.5-3-509
Use of multiple agreements
Sec. 509. Use of Multiple Agreements. — With respect to a consumer loan, no lender may permit any person, or husband and wife, to become obligated in any way under more than one loan agreement with the lender or with a person related to the lender, with intent to obtain a higher rate of loan finance charge than would otherwise be permitted by the provisions on loan finance charge for supervised loans (IC 24-4.5-3-508) or to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure (Part 3). The excess amount of loan finance charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on effect of violations on rights of parties (IC 24-4.5-5-202) and the provisions on civil actions by the department (IC 24-4.5-6-113).
(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by P.L.14-1992, SEC.39.

IC 24-4.5-3-510
Restrictions on interest in land as security
Sec. 510. Restrictions on Interest in Land as Security — (1) With respect to a supervised loan in which the principal is one thousand dollars ($1000) or less, a lender may not contract for an interest in land as security. A security interest taken in violation of this section is void.
(2) The amount of one thousand dollars ($1000) in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (24-4.5-1-106).
(Formerly: Acts 1971, P.L.366, SEC.4.)

IC 24-4.5-3-511
Regular schedule of payments; maximum loan term
Sec. 511. Regular Schedule of Payments; Maximum Loan Term — (1) Supervised loans not made pursuant to a revolving loan account and in which the principal is one thousand dollars ($1,000)

or less shall be payable in a single instalment or shall be scheduled to be payable in substantially equal instalments which shall be payable at equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor and

(a) over a period of not more than thirty-seven (37) months if the principal is more than three hundred dollars ($300), or

(b) over a period of not more than twenty-five (25) months if the principal is three hundred dollars ($300) or less.

(2) The amounts of three hundred dollars ($300) and one thousand dollars ($1,000) in subsection (1) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106).
(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by Acts 1982, P.L.149, SEC.5.

IC 24-4.5-3-512
Conduct of business other than making loans

Sec. 512. Conduct of Business Other than Making Loans — A licensee may carry on other business at a location where he makes consumer loans unless he carries on other business for the purpose of evasion or violation of this Article.
(Formerly: Acts 1971, P.L.366, SEC.4.)

IC 24-4.5-3-513
Application of other provisions

Sec. 513. Application of Other Provisions — Except as otherwise provided, all provisions of this Article applying to consumer loans apply to supervised loans.
(Formerly: Acts 1971, P.L.366, SEC.4.)

IC 24-4.5-3-514
Repealed

(Repealed by P.L.14-1992, SEC.165.)

IC 24-4.5-3-515
Change in control of creditor; application to department; timeframe for department's decision; conditions for approval; creditor's duty to report transfer of securities; director's discretion to require new license

Sec. 515. (1) As used in this section, "control" means possession of the power directly or indirectly to:

(a) direct or cause the direction of the management or policies of a creditor, whether through the beneficial ownership of voting securities, by contract, or otherwise; or

(b) vote at least twenty-five percent (25%) of the voting securities of a creditor, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.

(2) An organization or an individual acting directly, indirectly, or through or in concert with one (1) or more other organizations or

individuals may not acquire control of any creditor unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days after receipt of an application to issue a notice approving the proposed change in control. The application must contain the name and address of the organization, individual, or individuals who propose to acquire control and any other information required by the director.

(3) The period for approval under subsection (2) may be extended:

(a) in the discretion of the director for an additional thirty (30) days; and

(b) not more than two (2) additional times for not more than forty-five (45) days each time if:

(i) the director determines that the organization, individual, or individuals who propose to acquire control have not submitted substantial evidence of the qualifications described in subsection (4);

(ii) the director determines that any material information submitted is substantially inaccurate; or

(iii) the director has been unable to complete the investigation of the organization, individual, or individuals who propose to acquire control because of any delay caused by or the inadequate cooperation of the organization, individual, or individuals.

(4) The department shall issue a notice approving the application only after the department is satisfied that both of the following apply:

(a) The organization, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the creditor in a legal and proper manner.

(b) The interests of the owners and creditors of the creditor and the interests of the public generally will not be jeopardized by the proposed change in control.

(5) The director may determine, in the director's discretion, that subsection (2) does not apply to a transaction if the director determines that the direct or beneficial ownership of the creditor will not change as a result of the transaction.

(6) The president or other chief executive officer of a creditor shall report to the director any transfer or sale of securities of the creditor that results in direct or indirect ownership by a holder or an affiliated group of holders of at least ten percent (10%) of the outstanding securities of the creditor. The report required by this subsection must be made not later than ten (10) days after the transfer of the securities on the books of the creditor.

(7) Depending on the circumstances of the transaction, the director may reserve the right to require the organization, individual, or individuals who propose to acquire control of a creditor licensed under this article to apply for a new license under section 503 of this chapter, instead of acquiring control of the licensee under this

section.
As added by P.L.89-2011, SEC.19. Amended by P.L.6-2012, SEC.167.

IC 24-4.5-3-601
Loans subject to article by agreement of parties

Sec. 601. Loans Subject to Article by Agreement of Parties — The parties to a loan other than a consumer loan may agree in writing signed by the parties that the loan is subject to the provisions of this Article applying to consumer loans. If the parties so agree, the loan is a consumer loan for the purposes of this Article.
(Formerly: Acts 1971, P.L.366, SEC.4.)

IC 24-4.5-3-602
"Consumer related loan"; loan finance charge; licensing and annual notice to department not required

Sec. 602. (1) A "consumer related loan" is a loan in which the following apply:

(a) The loan is made by a person who is not regularly engaged as a lender in credit transactions of the same kind.

(b) The debtor is a person other than an organization.

(c) The debt is primarily for a personal, family, or household purpose.

(d) Either the debt is payable in installments or a loan finance charge is made.

(e) Either:

(i) the loan amount does not exceed fifty-three thousand dollars ($53,000) or another amount as adjusted in accordance with the annual adjustment of the exempt threshold amount specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); or

(ii) the debt is secured by an interest in land or by personal property used or expected to be used as the principal dwelling of the debtor.

(2) With respect to a consumer related loan, including one made pursuant to a revolving loan account, the parties may contract for the payment by the debtor of a loan finance charge not in excess of that permitted by the provisions on loan finance charge for consumer loans other than supervised loans (IC 24-4.5-3-201).

(3) A person engaged in consumer related loans is not required to comply with:

(a) the licensing requirements set forth in section 503 of this chapter; or

(b) IC 24-4.5-6-201 through IC 24-4.5-6-203.

(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by Acts 1981, P.L.219, SEC.6; Acts 1982, P.L.149, SEC.6; Acts 1982, P.L.150, SEC.6; P.L.14-1992, SEC.40; P.L.122-1994, SEC.28; P.L.27-2012, SEC.24; P.L.216-2013, SEC.11.

IC 24-4.5-3-603

Applicability of other provisions to consumer related loans

Sec. 603. Applicability of Other Provisions to Consumer Related Loans — Except for the rate of the loan finance charge and the rights to prepay and to rebate upon prepayment, the provisions of Part 2 of this Chapter apply to a consumer related loan.

(Formerly: Acts 1971, P.L.366, SEC.4.)

IC 24-4.5-3-604

Limitation on default charges in consumer related loans

Sec. 604. Limitation on Default Charges in Consumer Related Loans — (1) The agreement with respect to a consumer related loan may provide for only the following charges as a result of the debtor's default:

(a) reasonable attorney's fees and reasonable expenses incurred in realizing on a security interest;

(b) deferral charges not in excess of twenty-one percent (21%) per year of the amount deferred for the period of deferral; and

(c) other charges that could have been made had the loan been a consumer loan.

(2) A provision in violation of this section is unenforceable.

(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by Acts 1982, P.L.150, SEC.7.

IC 24-4.5-3-605

Loan finance charge for other loans

Sec. 605. Loan Finance Charge for Other Loans — With respect to a loan other than a consumer loan or a consumer related loan, the parties may contract for the payment by the debtor of any loan finance charge.

(Formerly: Acts 1971, P.L.366, SEC.4.)

IC 24-4.5-3-606

Required disclosures; liability on fraudulently cashed instruments

Sec. 606. (1) In addition to any disclosures otherwise provided by law, a lender soliciting loans using a negotiable check, facsimile, or other negotiable instrument that may be used by a consumer to activate a new loan shall disclose the following:

"This is a solicitation for a loan. Read the enclosed disclosures before signing this agreement."

This notice shall be printed in at least ten point type and shall appear conspicuously on the offer.

(2) If a negotiable check, a facsimile, or another instrument is stolen or incorrectly received by someone other than the intended payee and the instrument is fraudulently cashed, the consumer who was the intended payee is not liable for the loan obligation.

As added by P.L.163-1999, SEC.3.

IC 24-4.5-3-701

Requirement to provide property tax information in certain transactions

Sec. 701. With respect to a consumer loan secured by an interest in land used or expected to be used as the principal dwelling of the debtor, a lender shall comply with IC 6-1.1-12-43.
As added by P.L.64-2004, SEC.15.

IC 24-4.5-4
Chapter 4. Insurance

(Part 1. Insurance in General)

IC 24-4.5-4-101
Short title

Sec. 101. Short Title — This Chapter shall be known and may be cited as Uniform Consumer Credit Code - Insurance.
(Formerly: Acts 1971, P.L.366, SEC.5.)

IC 24-4.5-4-102
Application; relation to credit insurance act

Sec. 102. (1) Except as provided in subsection (2), this chapter applies to insurance provided or to be provided in relation to a consumer credit sale (IC 24-4.5-1-301.5(8)), a consumer lease (IC 24-4.5-2-106), or a consumer loan (IC 24-4.5-1-301.5(9)).

(2) The provision on cancellation by a creditor (IC 24-4.5-4-304) applies to loans the primary purpose of which is the financing of insurance. No other provision of this chapter applies to insurance so financed.

(3) This chapter supplements and does not repeal IC 27-8-4 (the credit insurance act). The provisions of this article concerning administrative controls, liabilities, and penalties do not apply to persons acting as insurers, and the similar provisions of IC 27-8-4 do not apply to creditors and debtors.
(Formerly: Acts 1971, P.L.366, SEC.5.) As amended by P.L.153-1986, SEC.1; P.L.35-2010, SEC.61.

IC 24-4.5-4-103
"Consumer credit insurance" defined

Sec. 103. In this article, "consumer credit insurance" means insurance, other than insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided, but does not include:

(1) insurance issued as an isolated transaction on the part of the insurer not related to an agreement or plan for insuring debtors of the creditor; or

(2) insurance indemnifying the creditor against loss due to the debtor's default.

(Formerly: Acts 1971, P.L.366, SEC.5.) As amended by P.L.153-1986, SEC.2.

IC 24-4.5-4-104
Creditor's provisions of and charge for insurance; excess amount of charge

Sec. 104. Creditor's Provisions of and Charge for Insurance; Excess Amount of Charge - (1) Except as otherwise provided in this Chapter and subject to the provisions on additional charges (IC 24-4.5-2-202 and IC 24-4.5-3-202) and maximum charges (Part 2 of Chapter 2 and Chapter 3), a creditor may agree to provide insurance,

and may contract for and receive a charge for insurance separate from and in addition to other charges. A creditor need not make a separate charge for insurance provided or required by him. This Article does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance.

(2) The excess amount of a charge for insurance provided for in agreements in violation of this Chapter is an excess charge for the purposes of the provisions of the Chapter on remedies and penalties (Chapter 5) as to effect of violations on rights of parties (IC 24-4.5-5-202) and of the provisions of the Chapter on administration (Chapter 6) as to civil actions by the department (IC 24-4.5-6-113).
(Formerly: Acts 1971, P.L.366, SEC.5.) As amended by P.L.14-1992, SEC.41.

IC 24-4.5-4-105
Conditions applying to insurance to be provided by creditor

Sec. 105. Conditions Applying to Insurance to be Provided by Creditor — If a creditor agrees with a debtor to provide insurance

(1) the insurance shall be evidenced by an individual policy or certificate of insurance delivered to the debtor, or sent to him at his address as stated by him, within thirty (30) days after the term of the insurance commences under the agreement between the creditor and debtor; or

(2) the creditor shall promptly notify the debtor of any failure or delay in providing the insurance.
(Formerly: Acts 1971, P.L.366, SEC.5.)

IC 24-4.5-4-106
Unconscionability

Sec. 106. Unconscionability — (1) In applying the provisions of the Article on unconscionability (24-4.5-5-108 and 24-4.5-6-111) to a separate charge for insurance, consideration shall be given, among other factors, to

(a) potential benefits to the debtor including the satisfaction of his obligations;

(b) the creditor's need for the protection provided by the insurance; and

(c) the relation between the amount and terms of credit granted and the insurance benefits provided.

(2) If consumer credit insurance otherwise complies with this Chapter and other applicable law, neither the amount nor the term of the insurance nor the amount of a charge therefor is in itself unconscionable.
(Formerly: Acts 1971, P.L.366, SEC.5.)

IC 24-4.5-4-107
Maximum charge by creditor for insurance; methods for calculating charge

Sec. 107. Maximum Charge by Creditor for Insurance - (1) Except

as provided in subsection (2), if a creditor contracts for or receives a separate charge for insurance, the amount charged to the debtor for the insurance may not exceed the premium to be charged by the insurer, as computed at the time the charge to the debtor is determined, conforming to any rate filings required by law and made by the insurer with the Insurance Commissioner.

(2) A creditor who provides consumer credit insurance in relation to a revolving charge account (IC 24-4.5-2-108) or revolving loan account (IC 24-4.5-3-108) may calculate the charge to the debtor in each billing cycle by applying the current premium rate to:

(a) the average daily unpaid balance of the debt in the cycle;

(b) the unpaid balance of the debt or a median amount within a specified range of unpaid balances of debt on approximately the same day of the cycle. The day of the cycle need not be the day used in calculating the credit service charge (IC 24-4.5-2-207) or loan finance charge (IC 24-4.5-3-201 and IC 24-4.5-3-508), but the specified range shall be the range used for that purpose;

(c) the unpaid balances of principal calculated according to the actuarial method; or

(d) the amount of the insurance benefit for the cycle.

(Formerly: Acts 1971, P.L.366, SEC.5.) As amended by P.L.141-2005, SEC.2.

IC 24-4.5-4-108

Prepayment by proceeds of consumer credit insurance; refund required; documentation; amount; interest; civil penalty

Sec. 108. Refund or Credit Required; Amount — (1) Upon prepayment in full of a consumer credit sale or consumer loan by the proceeds of consumer credit insurance, the debtor or the debtor's estate is entitled to a refund of:

(a) any portion of a separate charge for insurance which by reason of prepayment is retained by the creditor or returned to the creditor by the insurer unless the charge was computed from time to time on the basis of the balances of the debtor's account; and

(b) any portion of an additional charge that is:

(i) assessed in accordance with IC 24-4.5-2-202(1)(c) or IC 24-4.5-3-202(1)(e); and

(ii) subject to rebate upon prepayment.

(2) This chapter does not require a creditor to grant a refund or credit to the debtor if all refunds and credits due to the debtor under this chapter amount to less than one dollar ($1), and except as provided in subsection (1) does not require the creditor to account to the debtor for any portion of a separate charge for insurance because:

(a) the insurance is terminated by performance of the insurer's obligation;

(b) the creditor pays or accounts for premiums to the insurer in amounts and at times determined by the agreement between them; or

(c) the creditor receives directly or indirectly under any policy

of insurance a gain or advantage not prohibited by law.

(3) Except as provided in subsection (2), the creditor or the creditor's assignee shall promptly make an appropriate refund or credit to the debtor for any separate charge made for insurance or for an additional charge described in subsection (1)(b) if:

(a) the insurance is not provided or is provided for a term shorter than the term for which the charge to the debtor for insurance was computed; or

(b) the insurance or the protection provided in exchange for the additional charge described in subsection (1)(b) terminates prior to the end of the scheduled term of the coverage because of prepayment in full or otherwise.

(4) An initial creditor, a subsequent creditor, or an assignee of an initial or a subsequent creditor, shall maintain documentation of any account that is subject to a refund or credit under this section. The information maintained under this subsection shall be made available to the department as necessary to determine compliance with this section.

(5) A refund or credit required by subsection (3) is appropriate as to amount if it is computed according to a method prescribed or approved by the insurance commissioner or a formula filed by the insurer with the insurance commissioner at least thirty (30) days before the debtor's right to a refund or credit becomes determinable, unless the method or formula is used after the insurance commissioner notifies the insurer that it is disapproved.

(6) If a refund or credit required by subsection (1) or (3) is not made to the debtor within sixty (60) days after the date the debt is terminated, due to prepayment in full or otherwise, the creditor shall pay to the debtor for each day after the sixty (60) day period has expired an amount equal to the daily interest at the contracted annual percentage rate on the amount of the refund required by subsection (1) due at the time of prepayment or termination. The director may impose an additional civil penalty of not greater than one thousand dollars ($1,000) per occurrence if a creditor engages in a pattern or practice of failing to comply with this subsection.

(Formerly: Acts 1971, P.L.366, SEC.5.) As amended by P.L.122-1994, SEC.29; P.L.172-1997, SEC.7; P.L.213-2007, SEC.13; P.L.217-2007, SEC.12; P.L.90-2008, SEC.12.

IC 24-4.5-4-109

Existing insurance; choice of insurer

Sec. 109. Existing Insurance; Choice of Insurer — If a creditor requires insurance, upon notice to the creditor the debtor shall have the option of providing the required insurance through an existing policy of insurance owned or controlled by the debtor, or through a policy to be obtained and paid for by the debtor, but the creditor may for reasonable cause decline the insurance provided by the debtor.

(Formerly: Acts 1971, P.L.366, SEC.5.)

IC 24-4.5-4-110

Charge for insurance connection with a deferral, refinancing, or consolidation; duplicate charges

Sec. 110. (1) A creditor may not contract for or receive a separate charge for insurance in connection with a deferral (IC 24-4.5-2-204 or IC 24-4.5-3-204), a refinancing (IC 24-4.5-2-205 or IC 24-4.5-3-205), or a consolidation (IC 24-4.5-2-206 or IC 24-4.5-3-206), unless:

(a) the debtor agrees at or before the time of the deferral, refinancing, or consolidation that the charge may be made;

(b) the debtor is or is to be provided with insurance for an amount or a term, or insurance of a kind, in addition to that to which he would have been entitled had there been no deferral, refinancing, or consolidation;

(c) the debtor receives a refund or credit on account of any unexpired term of existing insurance in the amount that would be required if the insurance were terminated (IC 24-4.5-4-108); and

(d) the charge does not exceed the amount permitted by this chapter (IC 24-4.5-4-107).

(2) A creditor may not contract for or receive a separate charge for insurance which duplicates insurance with respect to which the creditor has previously contracted for or received a separate charge.

(Formerly: Acts 1971, P.L.366, SEC.5.) As amended by P.L.152-1986, SEC.66.

IC 24-4.5-4-111

Cooperation between administrator and insurance commissioner

Sec. 111. Cooperation Between the Department and Insurance Commissioner - The department and the Insurance Commissioner are authorized and directed to consult and assist one another in maintaining compliance with this Chapter. They may jointly pursue investigations, prosecute suits, and take other official action, as may seem to them appropriate, if either of them is otherwise empowered to take the action. If the department is informed of a violation or suspected violation by an insurer of this Chapter, or of the insurance laws, rules, and regulations of this State, the department shall advise the Insurance Commissioner of the circumstances.

(Formerly: Acts 1971, P.L.366, SEC.5.) As amended by P.L.14-1992, SEC.42.

IC 24-4.5-4-112

Administrative action of commissioner of insurance

Sec. 112. (1) To the extent that his responsibility under this chapter requires, the commissioner of insurance shall issue rules with respect to insurers, and with respect to refunds (IC 24-4.5-4-108), forms, schedules of premium rates and charges (IC 24-4.5-4-203), and his approval or disapproval thereof and, in case of violation, may make an order for compliance.

(2) IC 4-21.5-3 applies to and governs all agency action taken by the commissioner of insurance pursuant to this section.

(Formerly: Acts 1971, P.L.366, SEC.5.) As amended by P.L.152-1986, SEC.67; P.L.7-1987, SEC.107.

(Part 2. Consumer Credit Insurance)

IC 24-4.5-4-201
Term of insurance

Sec. 201. Term of Insurance — (1) Consumer credit insurance provided by a creditor may be subject to the furnishing of evidence of insurability satisfactory to the insurer. Whether or not such evidence is required, the term of the insurance shall commence no later than when the debtor becomes obligated to the creditor or when the debtor applies for the insurance, whichever is later, except as follows:

(a) if any required evidence of insurability is not furnished until more than thirty (30) days after the term would otherwise commence, the term may commence on the date when the insurer determines the evidence to be satisfactory; or

(b) if the creditor provides insurance not previously provided covering debts previously created, the term may commence on the effective date of the policy.

(2) The originally scheduled term of the insurance shall extend at least until the due date of the last scheduled payment of the debt except as follows:

(a) if the insurance relates to a revolving charge account or revolving loan account, the term need extend only until the payment of the debt under the account and may be sooner terminated after at least thirty (30) days' notice to the debtor; or

(b) if the debtor is advised in writing that the insurance will be written for a specified shorter time, the term need extend only until the end of the specified time.

(3) The term of the insurance shall not extend more than fifteen (15) days after the originally scheduled due date of the last scheduled payment of the debt unless it is extended without additional cost to the debtor or as an incident to a deferral; refinancing, or consolidation.

(Formerly: Acts 1971, P.L.366, SEC.5.)

IC 24-4.5-4-202
Amount of insurance

Sec. 202. (1) Except as provided in subsection (2):

(a) in the case of consumer credit insurance providing life coverage, the amount of insurance may not initially exceed the debt and, if the debt is payable in instalments, may not at any time exceed the greater of the scheduled or actual amount of the debt; or

(b) in the case of any other consumer credit insurance, the total amount of periodic benefits payable may not exceed the total of scheduled unpaid instalments of the debt, and the amount of any periodic benefit may not exceed the original amount of debt

divided by the number of periodic instalments in which it is payable.

(2) If consumer credit insurance is provided in connection with a revolving charge account or revolving loan account, the amounts payable as insurance benefits may be reasonably commensurate with the amount of debt as it exists from time to time. If consumer credit insurance is provided in connection with a commitment to grant credit in the future, the amounts payable as insurance benefits may be reasonably commensurate with the total from time to time of the amount of debt and the amount of the commitment.

(Formerly: Acts 1971, P.L.366, SEC.5.) As amended by P.L.247-1983, SEC.20.

IC 24-4.5-4-203

Filing and approval of rates and forms

Sec. 203. (1) A creditor may not use a form, or a schedule of premium rates or charges, the filing of which is required by this section, if the insurance commissioner has disapproved the form or schedule and has notified the insurer of his disapproval. A creditor may not use a form or schedule unless:

(a) the form or schedule has been on file with the insurance commissioner for thirty (30) days, or has earlier been approved by him; and

(b) the insurer has complied with this section with respect to the insurance.

(2) Except as provided in subsection (3), all policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders relating to consumer credit insurance delivered or issued for delivery in this state, and the schedules of premium rates or charges pertaining thereto, shall be filed by the insurer with the insurance commissioner. Within thirty (30) days after the filing of any form or schedule, he shall disapprove it if the premium rates or charges are unreasonable in relation to the benefits provided under the form, or if the form contains provisions which are unjust, unfair, inequitable, or deceptive, or encourage misrepresentation of the coverage, or are contrary to any provision of IC 27 or of any rule promulgated under IC 27.

(3) If a group policy has been delivered in another state, the forms to be filed by the insurer with the insurance commissioner are the group certificates and notices of proposed insurance. He shall approve them if:

(a) they provide the information that would be required if the group policy were delivered in this state; and

(b) the applicable premium rates or charges do not exceed those established by his rules.

(Formerly: Acts 1971, P.L.366, SEC.5.) As amended by P.L.152-1986, SEC.68.

(Part 3. Property and Liability Insurance)

IC 24-4.5-4-301
Property insurance

Sec. 301. Property Insurance - (1) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless

(a) the insurance covers a substantial risk of loss of or damage to property related to the credit transaction;

(b) the amount, terms, and conditions of the insurance are reasonable in relation to the character and value of the property insured or to be insured; and

(c) the term of the insurance is reasonable in relation to the terms of credit.

(2) The term of the insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.

(3) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless the amount financed or principal exclusive of charges for the insurance is three hundred dollars ($300) or more, and the value of the property is three hundred dollar ($300) or more.

(4) The amounts of three hundred dollars ($300) in subsection (3) are subject to change pursuant to the provisions on adjustment of dollar amounts (24-4.5-1-106).

(Formerly: Acts 1971, P.L.366, SEC.5.)

IC 24-4.5-4-302
Insurance on creditor's interest only

Sec. 302. Insurance on Creditor's Interest Only — If a creditor contracts for or receives a separate charge for insurance against loss of or damage to property, the risk of loss or damage not willfully caused by the debtor is on the debtor only to the extent of any deficiency in the effective coverage of the insurance, even though the insurance covers only the interest of the creditor.

(Formerly: Acts 1971, P.L.366, SEC.5.)

IC 24-4.5-4-303
Liability insurance

Sec. 303. Liability Insurance — A creditor may not contract for or receive a separate charge for insurance against liability unless the insurance covers a substantial risk of liability arising out of the ownership or use of property related to the credit transaction.

(Formerly: Acts 1971, P.L.366, SEC.5.)

IC 24-4.5-4-304
Cancellation by creditor

Sec. 304. Cancellation by Creditor — A creditor shall not request cancellation of a policy of property or liability insurance except after the debtor's default or in accordance with a written authorization by the debtor, and in either case the cancellation does not take effect until written notice is delivered to the debtor or mailed to him at his address as stated by him. The notice shall state that the policy may

be cancelled on a date not less than ten (10) days after the notice is delivered, or, if the notice is mailed, not less than thirteen (13) days after it is mailed.
(Formerly: Acts 1971, P.L.366, SEC.5.)

IC 24-4.5-4-305
Refund of unearned premium for property insurance upon payment of loan

Sec. 305. Upon the payment in full of a consumer credit sale or consumer loan, the creditor or creditor's assignee shall promptly make an appropriate refund of the unearned premium for any property insurance with respect to which the creditor or the credit account of the consumer is a beneficiary.
As added by P.L.122-1994, SEC.30.

IC 24-4.5-5
Chapter 5. Remedies and Penalties

(Part 1. Limitations on Creditors' Remedies)

IC 24-4.5-5-0.1
Application of certain amendments to chapter

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

IC 24-4.5-5-101
Short title

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

IC 24-4.5-5-102
Scope

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

IC 24-4.5-5-103
Restrictions on deficiency judgments in consumer credit sales

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

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

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

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

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

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

(a) he may not repossess the collateral, and

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

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

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

IC 24-4.5-5-104

No garnishment before judgment

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

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

IC 24-4.5-5-105

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IC 24-4.5-5-106
No discharge from employment for garnishment

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

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

IC 24-4.5-5-107
Extortionate extensions of credit

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

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

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

IC 24-4.5-5-108
Unconscionability

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

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

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

(Part 2. Debtors' Remedies)

IC 24-4.5-5-201
First lien mortgage transactions; civil liability for disclosure violations; debtor's right to rescind

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

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

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

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

IC 24-4.5-5-202
Effect of violations on rights of parties

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

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

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

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

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

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

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

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

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

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

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

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

IC 24-4.5-5-203

Civil liability for violation of disclosure provisions

Sec. 203. Civil Liability for Violation of Disclosure Provisions — (1) Except as otherwise provided in this section, a creditor who, in violation of the provisions on disclosure (Part 3), of the Chapter on Credit Sales (Chapter 2) and the Chapter on Loans (Chapter 3), fails to disclose information to a person entitled to the information under this Article is liable to that person in an amount equal to the sum of:

(a) the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

IC 24-4.5-5-204

Debtor's right to rescind certain transactions

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

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

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

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

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

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

IC 24-4.5-5-205
Refunds and penalties as set-off to obligation

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

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

(Part 3. Criminal Penalties)

IC 24-4.5-5-301
Knowing violations

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

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

(3) A person who knowingly:

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

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

commits a Class A infraction.

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

IC 24-4.5-5-302
Disclosure violations

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

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

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

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; "consumer credit sale"; "consumer loan"
Sec. 102. (a) IC 24-4.5-6-101 through IC 24-4.5-6-117 apply to persons who:
(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; P.L.27-2012, SEC.25.

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; costs; 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 consumer credit sales, consumer leases, or consumer loans.

(b) The authority to require a creditor to comply with the prepayment 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) To discover violations of this article or to secure information necessary for the enforcement of this article, the department may investigate any:

(a) licensee or registrant; or

(b) person that the department suspects to be operating:

(i) without a license or registration, when a license or registration is required under this article; or

(ii) otherwise in violation of this article.

The department has all investigatory and enforcement authority under this article that the department has under IC 28-11 with respect to financial institutions. If the department conducts an investigation under this section, the licensee, registrant, or other person investigated shall pay all reasonably incurred costs of the

investigation in accordance with the fee schedule adopted under IC 28-11-3-5.

(8) 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; P.L.27-2012, SEC.26; P.L.216-2013, SEC.12.

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. (1) 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.

(2) A rule under subsection (1) adopted under IC 4-22-2-37.1 expires on the date the department is next required to issue a rule under the statute authorizing or requiring the rule.

(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; P.L.140-2013, SEC.19.

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 individuals; persons convicted of felonies; civil penalties; creditor's duty to notify department of discharge or termination

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 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 has been convicted of 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.

(e) A creditor shall give the department written notice of the resignation, discharge, or termination of an employee, independent contractor, or agent against whom allegations were made that

accused the employee, independent contractor, or agent of:

(1) violating this article or other laws, regulations, rules, or industry standards of conduct applicable to consumer credit transactions; or

(2) fraud, dishonesty, theft, or the wrongful taking of property.

The creditor shall provide the department the notice required under this subsection not later than thirty (30) days after the effective date of the resignation, discharge, or termination.

As added by P.L.35-2010, SEC.73. Amended by P.L.27-2012, SEC.27.

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 of 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 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; P.L.27-2012, SEC.28.

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 set 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 24-4.5-3-503.6 may deduct the fees paid under IC 24-4.5-3-503(8)(b) and IC 24-4.5-3-503(8)(c), as applicable, 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; P.L.27-2012, SEC.29.

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.

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 for a specific period, or receives the borrower's written authorization to debit the borrower's account (other than as a result of default) 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; P.L.216-2013, SEC.13.

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; security; partial payments; payments; loan documents; recision; renewal 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.

(4) After any payment is made on a small loan, whether the payment is made in part or in full before, on, or after the due date of the small loan, 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.

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

(6) 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.

(7) 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; P.L.27-2012, SEC.30.

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 Version a
Bond requirement

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

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 24-4.5-7-413 Version b
Surety bond; requirements; amount; termination; liability; notices

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

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 director.

(2) A surety bond issued under this section must:

(a) provide coverage for a lender engaged in making small loans under this chapter in an amount as prescribed in subsection (1);

(b) be in a form prescribed by the director;

(c) be in effect during the term of the lender's license under this chapter;

(d) remain in effect during the two (2) years after the lender ceases offering financial services to individuals in Indiana;

(e) be payable to the department for the benefit of:

(i) the state; and

(ii) individuals who reside in Indiana when they agree to receive financial services from the lender;

(f) be issued by a bonding, surety, or insurance company authorized to do business in Indiana and rated at least "A-" by at least one (1) nationally recognized investment rating service; and

(g) have payment conditioned upon the lender's or any of the lender's employees' or agents' noncompliance with or violation of this article or other applicable federal or state laws or regulations.

(3) The director may adopt rules or guidance documents with respect to the requirements for a surety bond as necessary to accomplish the purposes of this chapter.

(4) If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the lender for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in an amount set by the director. The amount of the new or additional bond set by the director must be at least the amount of the bond before payment of the claim or judgment.

(5) If for any reason a surety terminates a bond issued under this section, the lender shall immediately notify the department and file a new surety bond in an amount as prescribed in subsection (1).

(6) Cancellation of a surety bond issued under this section does not affect any liability incurred or accrued during the period when the surety bond was in effect.

(7) The director may obtain satisfaction from a surety bond issued under this section if the director incurs expenses, issues a final order, or recovers a final judgment under this chapter.

(8) Notices required under this section must be in writing and delivered by certified mail, return receipt requested and postage prepaid, or by overnight delivery using a nationally recognized carrier.

As added by P.L.38-2002, SEC.1. Amended by P.L.258-2003, SEC.3; P.L.35-2010, SEC.87; P.L.216-2013, SEC.14.

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.

IC 24-4.6

ARTICLE 4.6. SPECIAL PROVISIONS CONCERNING CERTAIN TRANSACTIONS

IC 24-4.6-1

Chapter 1. Interest Limits and Application of Other Laws

IC 24-4.6-1-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to section 101 of this chapter by P.L.149-1988 apply to the accrual of interest after June 30, 1988, on any part of a judgment that is unpaid after June 30, 1988, even if the judgment was rendered before July 1, 1988.

(2) The amendments made to section 101 of this chapter by P.L.208-1993 apply to the accrual of interest after December 31, 1993, on any part of a judgment that is unpaid after December 31, 1993, even if the judgment was rendered before January 1, 1994.

As added by P.L.220-2011, SEC.392.

IC 24-4.6-1-101

Money judgments

Sec. 101. Except as otherwise provided by statute, interest on judgments for money whenever rendered shall be from the date of the return of the verdict or finding of the court until satisfaction at:

(1) the rate agreed upon in the original contract sued upon, which shall not exceed an annual rate of eight percent (8%) even though a higher rate of interest may properly have been charged according to the contract prior to judgment; or

(2) an annual rate of eight percent (8%) if there was no contract by the parties.

(Formerly: Acts 1974, P.L.115, SEC.2.) As amended by Acts 1981, P.L.220, SEC.1; P.L.149-1988, SEC.1; P.L.208-1993, SEC.1.

IC 24-4.6-1-102

Rate in absence of agreement

Sec. 102. When the parties do not agree on the rate, interest on loans or forbearances of money, goods or things in action shall be at the rate of eight percent (8%) per annum until payment of judgment.

(Formerly: Acts 1974, P.L.115, SEC.2.)

IC 24-4.6-1-103

Date of accrual

Sec. 103. Interest at the rate of eight percent (8%) per annum shall be allowed:

(a) From the date of settlement on money due on any instrument in writing which does not specify a rate of interest and which is not covered by IC 1971, 24-4.5 or this article;

(b) And from the date an itemized bill shall have been rendered and payment demanded on an account stated, account closed or for money had and received for the use of another and retained without his consent.
(Formerly: Acts 1974, P.L.115, SEC.2.)

IC 24-4.6-1-104
Computation of interest; methods

Sec. 104. (a) The parties may agree upon any method of computing interest on a loan or a forbearance of money, goods, or things in action if the amount of interest on the unpaid balances of the principal does not exceed any limitation imposed by law upon charges incident to the extension of credit.

(b) Methods of computing interest to which parties may agree under this section include the following:

(1) Simple interest on the unpaid balances of the principal.

(2) Simple interest on the outstanding balance of the principal to which is added past due installments of interest, the sum of which forms the principal upon which interest thereafter shall be computed. The addition to principal in this manner may occur repeatedly but not more frequently than daily.

(c) Unless the parties agree otherwise, the method of computing interest agreed upon under this section continues to apply after the term of the loan or forbearance, including after the award of a judgment on the loan or forbearance, until all principal and interest and the amount of any judgment are paid.

(d) If the parties do not agree on the method of computation, interest shall be computed and charged:

(1) at the rate agreed to by the parties or as provided in section 102 of this chapter; and

(2) according to the method described in subsection (b)(2).
As added by P.L.140-1990, SEC.1.

IC 24-4.6-1-201
Law applicable to consumer credit sales or leases

Sec. 201. IC 24-5-2-21 through IC 24-5-2-24 apply to consumer credit sales, consumer leases, and assignees thereof.
(Formerly: Acts 1974, P.L.115, SEC.2.) As amended by P.L.10-2006, SEC.21 and P.L.57-2006, SEC.21.

IC 24-4.6-1-202
Applicability of IC 24-5-6 to sales at residence of consumer

Sec. 202. The provisions of IC 24-5-6 (repealed) concerning sales at the residence of a consumer shall not apply to consumer credit sales or consumer leases but shall apply to all other sales at the residence of a consumer.
(Formerly: Acts 1974, P.L.115, SEC.2.) As amended by P.L.1-2010, SEC.98.

IC 24-4.6-2
Repealed

(Repealed by P.L.2-2002, SEC.128.)

IC 24-4.6-2.1
Repealed

(Repealed by P.L.2-2002, SEC.128.)

IC 24-4.6-3

Chapter 3. Unauthorized Solicitation of Money Using the Name of a Public Safety Agency

IC 24-4.6-3-1

"Public safety agency" defined

Sec. 1. As used in this chapter, "public safety agency" means a state or local law enforcement or fire protection agency.

As added by P.L.173-1997, SEC.1.

IC 24-4.6-3-2

Permission for solicitation required; withdrawal of permission

Sec. 2. (a) A person may not solicit or otherwise request money from the public for any purpose:

(1) using the name of a public safety agency; or

(2) by using language that implies a connection to a public safety agency;

unless the person first receives express written permission from the public safety agency.

(b) Permission granted by a public safety agency under subsection (a) may be withdrawn by the agency if the agency finds that a person is or has been soliciting in a manner that:

(1) reflects negatively on the agency; or

(2) differs significantly from that for which permission was granted.

(c) A person shall immediately stop soliciting upon notification by a public service agency that the agency has withdrawn its permission.

As added by P.L.173-1997, SEC.1.

IC 24-4.6-3-3

Requirements for solicitation; violations

Sec. 3. (a) A solicitation of money in any form approved under section 2 of this chapter must:

(1) inform the public that the solicitation has been approved by the appropriate public safety agency; and

(2) use the correct name of the public safety agency.

(b) A person who violates this section commits a Class C infraction.

As added by P.L.173-1997, SEC.1.

IC 24-4.6-3-4

Violations

Sec. 4. A person who knowingly or intentionally violates section 2 of this chapter commits a Class A misdemeanor.

As added by P.L.173-1997, SEC.1.

IC 24-4.6-4

Chapter 4. Coalition to Support Indiana Seniors

IC 24-4.6-4-1

"Alternative payment date process" defined

Sec. 1. As used in this chapter, "alternative payment date process" refers to the process described in section 4(d) of this chapter.

As added by P.L.25-2002, SEC.1.

IC 24-4.6-4-2

"Coalition" defined

Sec. 2. As used in this chapter, "coalition" means the coalition to support Indiana seniors established by section 4(a) of this chapter.

As added by P.L.25-2002, SEC.1.

IC 24-4.6-4-3

"Senior citizen" defined

Sec. 3. As used in this chapter, "senior citizen" means a resident of Indiana who is at least sixty (60) years of age.

As added by P.L.25-2002, SEC.1.

IC 24-4.6-4-4

Establishment and membership

Sec. 4. (a) The coalition to support Indiana seniors is established.

(b) The coalition consists of businesses that meet the requirements of this chapter.

(c) To be admitted as a member of the coalition, a business must provide written notification to the lieutenant governor that the business seeks membership and that the business meets the requirements of subsection (d).

(d) A business is eligible for membership in the coalition if the business creates a process that allows a senior citizen to have an alternative payment date for all amounts due to the business that does not conflict or pose an undue hardship with the date the senior citizen receives payments from the Social Security Administration, a pension, or any other form of retirement income. The alternative payment date process must allow a senior citizen to elect to use the alternative payment date process by contacting the business.

(e) A business that creates an alternative payment date process must:

(1) notify each senior citizen who is required to make payments to the business that the alternative payment date process has been created; and

(2) provide information to the senior citizen on using the alternative payment date process.

(f) The business must allow a senior citizen to elect to use the alternative payment date process if the senior citizen contacts the business and requests to use the alternative payment date process.

As added by P.L.25-2002, SEC.1.

IC 24-4.6-4-5
Publishing of list of members

Sec. 5. (a) The lieutenant governor shall compile a list of the members of the coalition.

(b) Not later than July 1 and December 1 of each year, the lieutenant governor shall publish the list of members of the coalition.
As added by P.L.25-2002, SEC.1.

IC 24-4.6-4-6
Member advertising

Sec. 6. A member of the coalition may display and use in advertising the following phrase:

"Member of the Coalition to Support Indiana Seniors".

As added by P.L.25-2002, SEC.1.

IC 24-4.6-5

Chapter 5. Vehicle Owner Liability for Motor Fuel Theft

IC 24-4.6-5-1

"Motor fuel"

Sec. 1. As used in this chapter, "motor fuel" includes gasoline (as defined in IC 6-6-1.1-103(g)), special fuel (as defined in IC 6-6-2.5-22), and alternative fuel (as defined in IC 6-6-2.5-1).

As added by P.L.97-2011, SEC.2.

IC 24-4.6-5-2

"Retailer"

Sec. 2. As used in this chapter, "retailer" means a person that engages in the business of selling or distributing motor fuel to an end user within Indiana.

As added by P.L.97-2011, SEC.2.

IC 24-4.6-5-3

"Vehicle"

Sec. 3. As used in this chapter, "vehicle" has the meaning set forth in IC 6-6-5-1(a).

As added by P.L.97-2011, SEC.2.

IC 24-4.6-5-4

Owner liability to retailer

Sec. 4. (a) Subject to section 6(b) of this chapter, if:

(1) motor fuel from a retailer is pumped into a vehicle; and

(2) proper payment is not made to the retailer for the motor fuel;

the owner of the vehicle is liable to the retailer for the total pump price of the motor fuel pumped into the vehicle plus a service charge of fifty dollars ($50), and the cost of certified mail, return receipt requested, or as provided in IC 1-1-7-1(a).

(b) The service charge may be imposed upon a vehicle owner when notice is mailed to the vehicle owner under section 5 of this chapter. Only one (1) service charge may be imposed under this section for each incident in which motor fuel is pumped into a vehicle and proper payment is not made.

As added by P.L.97-2011, SEC.2.

IC 24-4.6-5-5

Collection of a liability

Sec. 5. (a) To collect a liability from a vehicle owner under this chapter, an association of retailers must first send a notice of nonpayment to the vehicle owner by certified mail, return receipt requested, to the address indicated by records obtained under section 8 of this chapter.

(b) A notice sent under subsection (a) must:

(1) state the total pump price of the motor fuel pumped into the vehicle owner's vehicle and the amount of the service charge;

(2) state how the vehicle owner is to pay the liability;
(3) include a copy of this chapter and IC 34-24-3;
(4) state that, subject to section 6(b) of this chapter, the vehicle owner is subject to liability for an amount equal to triple the total pump price of the motor fuel received plus other damages under IC 34-24-3-1 if the liability is not paid within thirty (30) days; and
(5) include a signed statement by the retailer or the employee of the retailer who reported the incident in which motor fuel was pumped into the vehicle owner's vehicle and proper payment was not made, setting forth:
(A) the date, time, and location of the incident; and
(B) the license plate number of the vehicle into which the motor fuel was pumped.

As added by P.L.97-2011, SEC.2.

IC 24-4.6-5-6
Notice to owner of vehicle

Sec. 6. (a) Subject to subsection (b), if a vehicle owner does not pay the total pump price of the motor fuel pumped and the service charge within thirty (30) days after the association of retailers sends the notice to the vehicle owner under section 5 of this chapter, the vehicle owner:
(1) is liable to the retailer for:
(A) the total pump price of the motor fuel pumped, as set forth in the notice sent under section 5 of this chapter; and
(B) the service charge under section 4 of this chapter; and
(2) is subject to liability to the retailer for other damages, costs, fees, and expenses in an action brought by the retailer under IC 34-24-3-1.

(b) If a vehicle owner, not more than thirty (30) days after the association of retailers sends the notice to the vehicle owner under section 5 of this chapter, sends written notice to the association of retailers:
(1) disputing the retailer's claim that motor fuel was pumped into the vehicle owner's vehicle and proper payment was not made; or
(2) stating that, when motor fuel was pumped into the vehicle owner's vehicle and proper payment was not made, the vehicle owner was not operating the vehicle and was not responsible for paying for the motor fuel pumped into the vehicle;

the vehicle owner does not become liable to the retailer under subsection (a)(1), and the association of retailers shall cease communications and all collection efforts under this chapter. However, the retailer may pursue a civil action against the vehicle owner under IC 34-24-3-1.

As added by P.L.97-2011, SEC.2.

IC 24-4.6-5-7
Civil liability of vehicle owner

Sec. 7. If a vehicle owner does not:

(1) pay the total pump price of the motor fuel pumped and the service charge in response to a notice sent by a retailer under this chapter; or

(2) reply to the retailer's notice with a written notice under section 6(b)(1) or 6(b)(2) of this chapter;

the vehicle owner's civil liability under this chapter does not preclude criminal liability under IC 35-43-4-2, IC 35-43-4-3, IC 35-43-4-8, or any other law.

As added by P.L.97-2011, SEC.2.

IC 24-4.6-5-8

Bureau of motor vehicles rules, agreements with association of retailers, release of information; owner payment of fees

Sec. 8. (a) The bureau of motor vehicles shall adopt rules under IC 4-22-2 to implement a system by which an association of retailers may obtain the name and mailing address of the owner of a vehicle involved in an incident in which motor fuel is pumped into the vehicle and proper payment is not made. The bureau of motor vehicles may integrate any system established under this section with its existing programs for the release of information under IC 9-14-3.

(b) The bureau of motor vehicles may enter into an agreement with an association of retailers to establish:

(1) a fee different from the fees provided for in IC 9-29-2-2(a); or

(2) other negotiated terms for the release of vehicle owner records;

for purposes of the system established under this section.

(c) Any release of information by the bureau of motor vehicles under this section must be:

(1) consistent with the authority of the bureau of motor vehicles under IC 9-14-3.5; and

(2) in compliance with 18 U.S.C. 2721 et seq.

(d) The name and mailing address of the owner of a vehicle released by the bureau of motor vehicles under subsection (a) may be used by an association of retailers only for purposes of collection efforts under this chapter.

(e) If the owner of a vehicle makes complete payment:

(1) as set forth in section 4(a) of this chapter for the:

(A) price of motor fuel that has been pumped into the vehicle;

(B) service charge of fifty dollars ($50); and

(C) cost of certified mail; or

(2) for an amount equal to triple the pump price of the motor fuel received plus other damages under IC 34-24-3-1, as set forth in section 5(b)(4) of this chapter;

no criminal prosecution for a violation of IC 35-43-4 may be brought against the owner of the vehicle for the failure to make proper payment to a retailer under this chapter.

As added by P.L.97-2011, SEC.2.

IC 24-4.6-6

Chapter 6. Senior Consumer Protection

IC 24-4.6-6-1

Senior consumer protection act; application

Sec. 1. (a) This chapter shall be known and may be cited as the senior consumer protection act.

(b) This chapter does not apply to deception, intimidation, or other exploitation of a senior consumer in relation to insurance coverage or an insurance product that is regulated by the Indiana department of insurance. A senior consumer who is a victim of an act that is:

(1) described in section 4(a) or 4(b) of this chapter; and

(2) related to insurance coverage or an insurance product;

may report the act to the Indiana department of insurance for action by the insurance commissioner under IC 27. If the insurance commissioner determines that the person who committed the act is not subject to regulation by the Indiana department of insurance, the insurance commissioner shall immediately refer the senior consumer to the attorney general and the senior consumer may pursue remedies available under this chapter.

(c) This chapter does not apply to the exploitation of a senior consumer in relation to securities fraud that is regulated by the secretary of state's office. A senior consumer who is a victim of an act that is:

(1) described in section 4(a) or 4(b) of this chapter; and

(2) related to the Indiana uniform securities act under IC 23-19;

shall report the act to the secretary of state under IC 23-19. If the secretary of state's office determines the person who committed the act is not subject to the regulation of the secretary of state's office, the secretary of state's office shall immediately refer the senior consumer to the attorney general and the senior consumer may pursue remedies available under this chapter.

As added by P.L.250-2013, SEC.1.

IC 24-4.6-6-2

Purposes and policies

Sec. 2. (a) This chapter shall be liberally construed and applied to protect senior consumers.

(b) The purposes and policies of this chapter are to:

(1) simplify, clarify, and modernize the law concerning the ownership, control, and use of property or assets of senior consumers; and

(2) protect senior consumers from financial exploitation from persons, who by deception or intimidation, obtain control over the property or assets of a senior consumer.

As added by P.L.250-2013, SEC.1.

IC 24-4.6-6-3

Definitions

Sec. 3. The following definitions apply throughout this chapter:

(1) "Deception" means:

(A) misrepresentation or omission of any material fact relating to the terms of a contract or agreement entered into with a senior consumer or to the existing or pre-existing condition of any of the property involved in such a contract or agreement; or

(B) the use or employment of any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a senior consumer to enter into a contract or agreement.

(2) "Intimidation" means the conduct or communication by a person directed toward a senior consumer informing or implying to the senior consumer that the senior consumer will be deprived of food and nutrition, shelter, prescribed medication, or medical care and treatment if the senior consumer does not comply with the person's demands.

(3) "Person" means an individual, a corporation, the state of Indiana or its subdivisions or agencies, a business trust, an estate, a trust, a partnership, an association, a nonprofit corporation or organization, a cooperative, or any other legal entity.

(4) "Person in a position of trust and confidence" means a person, in relation to a senior consumer, who:

(A) is a parent, spouse, adult child, or other relative by blood or marriage of the senior consumer;

(B) is a joint tenant or tenant in common with the senior consumer;

(C) has a legal or fiduciary relationship with the senior consumer;

(D) is a financial planning or investment professional; or

(E) is a paid or unpaid caregiver for the senior consumer.

(5) "Senior consumer" means an individual who is at least sixty (60) years of age.

As added by P.L.250-2013, SEC.1.

IC 24-4.6-6-4

Financial exploitation of a senior consumer

Sec. 4. (a) A person commits financial exploitation of a senior consumer when the person knowingly and by deception or intimidation obtains control over the property of a senior consumer or illegally uses the assets or resources of a senior consumer.

(b) The illegal use of the assets or resources of a senior consumer includes, but is not limited to, the misappropriation of those assets or resources by undue influence, breach of a fiduciary relationship, fraud, deception, extortion, intimidation, or use of the assets or resources contrary to law.

(c) Nothing in this section shall be construed to impose civil liability on a person who has made a good faith effort to assist a senior consumer in the management of the senior consumer's

property, but through no fault of the person has been unable to provide such assistance.

(d) It is not a defense in an action under this chapter that a person reasonably believed that the victim was not a senior consumer.

As added by P.L.250-2013, SEC.1.

IC 24-4.6-6-5

Action by senior consumer victim; remedies; action by attorney general

Sec. 5. (a) A senior consumer who is a victim of an act described in section 4(a) or 4(b) of this chapter may bring an action against the person who commits the act.

(b) In an action brought against a person under this section, the court may order the person to:

(1) return property or assets improperly obtained, controlled, or used; and

(2) reimburse the senior consumer for any damages incurred or for the value of the property or assets lost as a result of the violation or violations of this chapter.

(c) In addition to the remedy provided in subsection (b), a court may order the following:

(1) For knowing violations committed by a person who is not in a position of trust and confidence:

(A) payment of two (2) times the amount of damages incurred or value of property or assets lost; and

(B) payment of a civil penalty not exceeding five thousand dollars ($5,000).

(2) For knowing violations committed by a person in a position of trust and confidence:

(A) payment of treble damages; and

(B) payment of a civil penalty not exceeding ten thousand dollars ($10,000).

(d) The court may award reasonable attorney's fees to a senior consumer that prevails in an action under this section. Actual damages awarded to a person under this section have priority over any civil penalty imposed under this chapter.

(e) The burden of proof in proving that a person committed financial exploitation of a senior consumer under section 4 of this chapter is by a preponderance of the evidence.

(f) The attorney general may bring an action to enjoin an alleged commission of financial exploitation of a senior consumer and may petition the court to freeze the assets of the person allegedly committing financial exploitation of a senior consumer in an amount equal to but not greater than the alleged value of lost property or assets for purposes of restoring to the victim the value of the lost property or assets. The burden of proof required to freeze the assets of a person allegedly committing financial exploitation of a senior consumer is by a preponderance of the evidence. In addition, the court may:

(1) issue an injunction;

(2) order the person to make payment of the money unlawfully received from the senior consumer or senior consumers, to be held in escrow for distribution to the aggrieved senior consumer or senior consumers;
(3) for knowing violations, increase the amount of restitution ordered under subdivision (2) in any amount up to three (3) times the amount of damages incurred or value of property or assets lost;
(4) order the person to pay to the state the reasonable costs of the attorney general's investigation and prosecution related to the action;
(5) provide for the appointment of a receiver;
(6) for knowing violations by a person who is not in a position of trust and confidence, order the person to pay a civil penalty of up to five thousand dollars ($5,000) per violation; and
(7) for knowing violations by a person in a position of trust and confidence, order the person to pay a civil penalty of up to ten thousand dollars ($10,000) per violation.

(g) In an action under subsection (a) or (f), the court may void or limit the application of contracts or clauses resulting from the financial exploitation.

(h) In an action under subsection (a), upon the filing of the complaint or on the appearance of any defendant, claimant, or other party, or at any later time, the trial court, the supreme court, or the court of appeals may require the plaintiff, defendant, claimant, or other party or parties to give security, or additional security, in a sum the court directs to pay all costs, expenses, and disbursements that are awarded against that party or that the party may be directed to pay by any interlocutory order, by the final judgment, or on appeal.

(i) Any person who violates the terms of an injunction issued under subsection (f) shall forfeit and pay to the state a civil penalty of not more than fifteen thousand dollars ($15,000) per violation. For the purposes of this section, the court issuing the injunction shall retain jurisdiction, the cause shall be continued, and the attorney general acting in the name of the state may petition for recovery of civil penalties. Whenever the court determines that an injunction issued under subsection (f) has been violated, the court shall award reasonable costs to the state.

As added by P.L.250-2013, SEC.1.

IC 24-4.6-6-6

Other rights and remedies available to senior consumers

Sec. 6. This chapter does not limit the rights or remedies that are otherwise available to a senior consumer under any other applicable provision of law.

As added by P.L.250-2013, SEC.1.

IC 24-4.7

ARTICLE 4.7. TELEPHONE SOLICITATION OF CONSUMERS

IC 24-4.7-1

Chapter 1. General Provisions

IC 24-4.7-1-1

Application

Sec. 1. This article does not apply to any of the following:

(1) A telephone call made in response to an express request of the person called.

(2) A telephone call made primarily in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call.

(3) A telephone call made on behalf of a charitable organization that is exempt from federal income taxation under Section 501 of the Internal Revenue Code, but only if all of the following apply:

(A) The telephone call is made by a volunteer or an employee of the charitable organization.

(B) The telephone solicitor who makes the telephone call immediately discloses all of the following information upon making contact with the consumer:

(i) The solicitor's true first and last name.

(ii) The name, address, and telephone number of the charitable organization.

(4) A telephone call made by an individual licensed under IC 25-34.1 if:

(A) the sale of goods or services is not completed; and

(B) the payment or authorization of payment is not required;

until after a face to face sales presentation by the seller.

(5) A telephone call made by an individual licensed under IC 27-1-15.6 or IC 27-1-15.8 when the individual is soliciting an application for insurance or negotiating a policy of insurance on behalf of an insurer (as defined in IC 27-1-2-3).

(6) A telephone call soliciting the sale of a newspaper of general circulation, but only if the telephone call is made by a volunteer or an employee of the newspaper.

As added by P.L.189-2001, SEC.1. Amended by P.L.97-2004, SEC.90.

IC 24-4.7-1-2

Compliance with other law

Sec. 2. This article does not relieve a person from complying with any other applicable law.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-2
Chapter 2. Definitions

IC 24-4.7-2-1
Applicability of definitions
Sec. 1. The definitions in this chapter apply throughout this article.
As added by P.L.189-2001, SEC.1.

IC 24-4.7-2-2
"Consumer"
Sec. 2. (a) "Consumer" means a residential telephone subscriber who:
(1) for the telephone service received:
(A) has a place of primary use in Indiana; or
(B) is issued an Indiana telephone number or an Indiana identification number; and
(2) is an actual or a prospective:
(A) purchaser, lessee, or recipient of consumer goods or services; or
(B) donor to a charitable organization.
(b) The term includes a user of a prepaid wireless calling service (as defined in IC 6-2.5-1-22.4) who:
(1) is issued an Indiana telephone number or an Indiana identification number for the service; or
(2) purchases prepaid wireless calling service in a retail transaction that is sourced to Indiana (as determined under IC 6-2.5-12-16).
As added by P.L.189-2001, SEC.1. Amended by P.L.226-2011, SEC.6.

IC 24-4.7-2-3
"Consumer goods or services"
Sec. 3. "Consumer goods or services" means any of the following:
(1) Tangible or intangible personal property or real property that is normally used for personal, family, or household purposes.
(2) Property intended to be attached to or installed on real property without regard to whether it is attached or installed.
(3) Services related to property described in subdivision (1) or (2).
(4) Credit cards or the extension of credit.
As added by P.L.189-2001, SEC.1.

IC 24-4.7-2-4
"Division"
Sec. 4. "Division" refers to the consumer protection division of the office of the attorney general.
As added by P.L.189-2001, SEC.1.

IC 24-4.7-2-5
"Doing business in Indiana"

Sec. 5. "Doing business in Indiana" means:

(1) making; or

(2) causing others to make;

telephone sales calls to consumers located in Indiana whether the telephone sales calls are made from a location in Indiana or outside Indiana.

As added by P.L.189-2001, SEC.1. Amended by P.L.226-2011, SEC.7.

IC 24-4.7-2-6
"Fund"

Sec. 6. "Fund" refers to the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-2-7
"Listing"

Sec. 7. "Listing" refers to the no telephone sales solicitation listing published by the division under IC 24-4.7-3 that lists the telephone numbers of consumers who do not wish to receive telephone sales calls.

As added by P.L.189-2001, SEC.1. Amended by P.L.226-2011, SEC.8.

IC 24-4.7-2-7.5
"Place of primary use"

Sec. 7.5. "Place of primary use", with respect to a telephone subscriber, means the street address representative of where the subscriber's use of the telephone service primarily occurs, which must be:

(1) the residential street address of the subscriber or, in the case of a subscriber of interconnected VOIP service, the subscriber's registered location (as defined in 47 CFR 9.3); and

(2) in the case of mobile telecommunications services (as defined in IC 6-8.1-15-7), within the licensed service area of the home service provider, as set forth in IC 6-8.1-15-8.

As added by P.L.226-2011, SEC.9.

IC 24-4.7-2-8
"Telephone number"

Sec. 8. "Telephone number" means a residential telephone number that:

(1) is assigned to a subscriber who has a place of primary use in Indiana; or

(2) otherwise represents an Indiana telephone number or is associated with an Indiana identification number.

As added by P.L.189-2001, SEC.1. Amended by P.L.226-2011, SEC.10.

IC 24-4.7-2-9
"Telephone sales call"

Sec. 9. (a) "Telephone sales call" means a telephone call made to a consumer for any of the following purposes:

(1) Solicitation of a sale of consumer goods or services.
(2) Solicitation of a charitable contribution.
(3) Obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

(b) The term includes any of the following:

(1) A call made by use of an automated dialing device.
(2) A call made by use of a recorded message device.
(3) Transmission of:
  (A) a text message; or
  (B) a graphic message;
using short message service (SMS).
(4) Transmission of:
  (A) an image;
  (B) a photograph; or
  (C) a multimedia message;
using multimedia messaging service (MMS).

As added by P.L.189-2001, SEC.1. Amended by P.L.226-2011, SEC.11.

IC 24-4.7-2-10
"Telephone solicitor"

Sec. 10. "Telephone solicitor" means an individual, a firm, an organization, a partnership, an association, or a corporation, including affiliates and subsidiaries, doing business in Indiana.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-3

Chapter 3. Duties of the Division

IC 24-4.7-3-1

Quarterly listing

Sec. 1. (a) A quarterly listing of telephone numbers of Indiana consumers who request not to be solicited by telephone shall be established, maintained, and published as provided in this section.

(b) The telephone number of a consumer shall be placed on the listing if the consumer requests to be added to the listing according to a procedure approved by the division.

(c) The listing shall be updated upon receipt of a request from a consumer.

(d) A telephone solicitor may obtain a copy of the listing upon request of the telephone solicitor as provided in this section.

(e) The division shall establish a fee to be paid by a telephone solicitor for obtaining a copy of the listing. The fee established under this subsection may not exceed the amount necessary to cover the cost of providing the listing to telephone solicitors.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-3-2

Agents

Sec. 2. (a) The division may contract with an agent to perform the division's duties under section 1 of this chapter if both of the following conditions are satisfied:

(1) The agent has demonstrated experience in maintaining a national no sales solicitation calls listing.

(2) The contract requires the vendor to provide the listing in:

(A) a printed hard copy format; and

(B) any other format offered;

at a cost that does not exceed the production cost of the format offered.

(b) If the division enters into a contract under this section, the division must retain the ultimate authority for the following:

(1) Approval of the procedures for establishment, maintenance, and publication of the listing.

(2) Establishing fees required by section 1(e) of this chapter.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-3-3

Investigation

Sec. 3. The division shall investigate complaints received concerning violations of this article.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-3-4

Division to notify Indiana residents of rights and duties

Sec. 4. The division shall notify Indiana residents of the rights and duties created by this article, including the right of any of the

following consumers to place a telephone number on the listing established and maintained under section 1 of this chapter:

(1) Subscribers of interconnected VOIP service.

(2) Subscribers of mobile telecommunications service (as defined in IC 6-8.1-15-7).

(3) Users of a prepaid wireless calling service, as described in IC 24-4.7-2-2(b).

As added by P.L.189-2001, SEC.1. Amended by P.L.226-2011, SEC.12.

IC 24-4.7-3-5

Reports

Sec. 5. (a) The division shall, after June 30 and before October 1 of each year, report to the regulatory flexibility committee established by IC 8-1-2.6-4 on the following:

(1) For the state fiscal year ending June 30, 2002, the expenses incurred by the division in establishing the listing.

(2) The total amount of fees deposited in the fund during the most recent state fiscal year.

(3) The expenses incurred by the division in maintaining and promoting the listing during the most recent state fiscal year.

(4) The projected budget required by the division to comply with this article during the current state fiscal year.

(5) Any other expenses incurred by the division in complying with this article during the most recent state fiscal year.

(6) The total number of subscribers on the listing at the end of the most recent state fiscal year.

(7) The number of new subscribers added to the listing during the most recent state fiscal year.

(8) The number of subscribers removed from the listing for any reason during the most recent state fiscal year.

(b) The regulatory flexibility committee shall, before November 1 of each year, issue in an electronic format under IC 5-14-6 a report and recommendations to the legislative council concerning the information received under subsection (a).

As added by P.L.189-2001, SEC.1. Amended by P.L.28-2004, SEC.163.

IC 24-4.7-3-6

Consumer protection division telephone solicitation fund

Sec. 6. (a) The consumer protection division telephone solicitation fund is established for the purpose of the administration of:

(1) this article;

(2) IC 24-5-0.5-3(a)(19); and

(3) IC 24-5-14.5.

The fund shall be used exclusively for this purpose.

(b) The division shall administer the fund.

(c) The division shall deposit all revenue received:

(1) under this article;

(2) from civil penalties deposited under IC 24-5-0.5-4(h); and

(3) from civil penalties deposited under IC 24-5-14.5-12;
in the fund.

(d) Money in the fund is continuously appropriated to the division for the administration of:

(1) this article;

(2) IC 24-5-0.5-3(a)(19); and

(3) IC 24-5-14.5.

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund. However, if the amount of money in the fund at the end of a particular state fiscal year exceeds two hundred thousand dollars ($200,000), the treasurer of state shall transfer the excess from the fund to the state general fund.

As added by P.L.189-2001, SEC.1. Amended by P.L.85-2006, SEC.1; P.L.151-2013, SEC.5.

IC 24-4.7-3-7

Adoption of rules

Sec. 7. The division may adopt rules under IC 4-22-2 to implement this article.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-4

Chapter 4. Telephone Solicitations

IC 24-4.7-4-1

Prohibitions

Sec. 1. A telephone solicitor may not make or cause to be made a telephone sales call to a telephone number if that telephone number appears in the most current quarterly listing published by the division.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-4-2

Violations; disclosure

Sec. 2. A telephone solicitor who makes a telephone sales call to a telephone number shall immediately disclose the following information upon making contact with the consumer:

(1) The solicitor's true first and last name.

(2) The name of the business on whose behalf the telephone solicitor is soliciting.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-4-3

Directories

Sec. 3. (a) This section does not apply to a person obtaining consumer information for inclusion in directory assistance and telephone directories sold by telephone companies.

(b) A telephone solicitor or person who obtains consumer information that includes telephone numbers shall exclude the telephone numbers that appear on the division's most current listing.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-4-4

Contracts and sales

Sec. 4. (a) This section does not apply to any of the following:

(1) A sale in which:

(A) no prior payment is made to a merchant;

(B) an invoice accompanies the goods or services; and

(C) a consumer is allowed seven (7) days to cancel the services or return the goods without obligation for payment.

(2) A contractual agreement that:

(A) requires payment; and

(B) allows the consumer at least ten (10) days to cancel the contract and receive a full refund of the payment.

(3) A sale regulated by 170 IAC 7-1.1-19.

(4) A newspaper subscription executed through a telephone call.

(b) A contract made under a telephone sales call is not valid and enforceable against a consumer unless the contract complies with this section.

(c) A contract made under a telephone sales call must satisfy all of the following:

(1) The contract must be reduced to writing and signed by the consumer.

(2) The contract must contain the name, address, and business telephone number of the seller, the total price of the contract, and a detailed description of the goods or services being sold.

(3) The description of goods or services as stated in the contract must be the same as the description principally used in the telephone solicitation.

(4) The contract must contain, in bold, conspicuous type immediately preceding the signature the words "you are not obligated to pay any money unless you sign this contract and return it to the seller".

(5) The contract may not exclude from its terms any oral or written representations made by the telephone solicitor to the consumer in connection with the transaction.

As added by P.L.189-2001, SEC.1. Amended by P.L.22-2002, SEC.1.

IC 24-4.7-4-5
Transactions

Sec. 5. (a) This section does not apply to any of the following:

(1) A transaction made in accordance with prior negotiations in the course of a visit by a consumer to a merchant that operates a retail business establishment that has a fixed, permanent location where consumer goods are displayed or offered for sale on a continuing basis.

(2) A transaction in which:

(A) a consumer may obtain a full refund for the return of undamaged and unused goods; or

(B) a consumer may, within seven (7) days after receipt of merchandise by a consumer, give a cancellation of services notice to a seller and return the merchandise, and the seller must process the refund within thirty (30) days after receipt of the returned merchandise.

(3) A transaction in which a consumer purchases goods or services under a television, radio, or print advertisement or a sample, brochure, or catalog of a merchant that contains:

(A) the name, address, and business telephone number of the merchant;

(B) a description of the goods or services being sold; and

(C) limitations or restrictions that apply to the offer.

(4) A transaction in which a merchant is a bona fide charitable organization.

(b) A contract made under a telephone sales call in violation of this section is not valid and enforceable against a consumer.

(c) A merchant who engages a telephone solicitor to make or cause to be made a telephone sales call may not:

(1) make or submit a charge to a consumer's credit card account; or

(2) make or cause to be made any electronic transfer of funds;

until the merchant receives from the consumer a copy of the contract,

signed by the consumer, that complies with this chapter.
As added by P.L.189-2001, SEC.1.

IC 24-4.7-4-6
Other applicable law

Sec. 6. A telephone solicitor must also comply with all other applicable laws, including the following, if applicable:

(1) IC 24-5-12.

(2) IC 24-5-14.

As added by P.L.189-2001, SEC.1. Amended by P.L.22-2002, SEC.2.

IC 24-4.7-5
Chapter 5. Civil Remedies

IC 24-4.7-5-0.1
Application of certain amendments to chapter

Sec. 0.1. The amendments made to section 1 of this chapter by P.L.222-2005 apply only to a contract entered into or renewed after July 1, 2005.

As added by P.L.220-2011, SEC.393.

IC 24-4.7-5-1
Deceptive acts; state contractors

Sec. 1. A telephone solicitor who fails to comply with any provision of IC 24-4.7-4 commits a deceptive act that is actionable by the attorney general under this chapter. In addition, a contractor who contracts or seeks to contract with the state:

(1) may be prohibited from contracting with the state; or
(2) may have an existing contract with the state voided;

if the contractor, an affiliate or principal of the contractor, or any agent acting on behalf of the contractor or an affiliate or principal of the contractor does not or has not complied with the terms of this article, even if this article is preempted by federal law.

As added by P.L.189-2001, SEC.1. Amended by P.L.165-2005, SEC.5 and P.L.222-2005, SEC.32.

IC 24-4.7-5-2
Remedies

Sec. 2. In an action under this chapter, the attorney general may obtain any or all of the following:

(1) An injunction to enjoin future violations of IC 24-4.7-4.
(2) A civil penalty of not more than the following:
  (A) Ten thousand dollars ($10,000) for the first violation of IC 24-4.7-4.
  (B) Twenty-five thousand ($25,000) dollars for each violation after the first violation.

For purposes of this subdivision, each telephone call in violation of IC 24-4.7-4-1 is considered a separate violation.

(3) All money the defendant obtained through violation of IC 24-4.7-4.
(4) The attorney general's reasonable costs in:
  (A) the investigation of the deceptive act; and
  (B) maintaining the action.
(5) Reasonable attorney's fees.
(6) Costs of the action.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-5-3
Voidable contracts

Sec. 3. In an action under this chapter, the court may void or limit the application of contracts or clauses resulting from deceptive acts

and order restitution to be paid to an aggrieved consumer.
As added by P.L.189-2001, SEC.1.

IC 24-4.7-5-4
Statute of limitations

Sec. 4. An action brought under this chapter may not be brought more than two (2) years after the occurrence of the deceptive act.
As added by P.L.189-2001, SEC.1.

IC 24-4.7-5-5
Jurisdiction

Sec. 5. An action under this chapter may be brought in the circuit or superior court of Marion County.
As added by P.L.189-2001, SEC.1.

IC 24-4.7-5-6
Representation of state

Sec. 6. The attorney general may employ counsel to represent the state in an action under this chapter.
As added by P.L.189-2001, SEC.1.

IC 24-4.8

ARTICLE 4.8. PROHIBITED SPYWARE

IC 24-4.8-1

Chapter 1. Definitions

IC 24-4.8-1-1

Application

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.115-2005, SEC.1.

IC 24-4.8-1-2

"Advertisement"

Sec. 2. "Advertisement" means a communication that has the primary purpose of promoting a commercial product or service.

As added by P.L.115-2005, SEC.1.

IC 24-4.8-1-3

"Computer software"

Sec. 3. (a) "Computer software" means a sequence of instructions written in any programming language that is executed on a computer.

(b) The term does not include computer software that is a web page or a data component of a web page that is not executable independently of the web page.

As added by P.L.115-2005, SEC.1.

IC 24-4.8-1-4

"Damage"

Sec. 4. "Damage" means a significant impairment to the integrity or availability of data, computer software, a system, or information.

As added by P.L.115-2005, SEC.1.

IC 24-4.8-1-5

"Execute"

Sec. 5. "Execute" means to perform a function or carry out an instruction of computer software.

As added by P.L.115-2005, SEC.1.

IC 24-4.8-1-6

"Intentionally deceptive means"

Sec. 6. "Intentionally deceptive means" means any of the following:

(1) A materially false statement that a person knows to be false.

(2) A statement or description made by a person who omits or misrepresents material information with the intent to deceive an owner or operator of a computer.

(3) The failure to provide notice to an owner or operator of a computer regarding the installation or execution of computer software with the intent to deceive the owner or operator.

As added by P.L.115-2005, SEC.1.

IC 24-4.8-1-7
"Internet"

Sec. 7. "Internet" has the meaning set forth in IC 5-22-2-13.5.
As added by P.L.115-2005, SEC.1.

IC 24-4.8-1-8
"Owner or operator"

Sec. 8. (a) "Owner or operator" means the person who owns or leases a computer or a person who uses a computer with the authorization of the person who owns or leases the computer.

(b) The term does not include a manufacturer, distributor, wholesaler, retail merchant, or any other person who owns or leases a computer before the first retail sale of the computer.
As added by P.L.115-2005, SEC.1.

IC 24-4.8-1-9
"Person"

Sec. 9. "Person" means an individual, a partnership, a corporation, a limited liability company, or another organization.
As added by P.L.115-2005, SEC.1.

IC 24-4.8-1-10
"Personally identifying information"

Sec. 10. "Personally identifying information" means the following information that refers to a person who is an owner or operator of a computer:

(1) Identifying information (as defined in IC 35-43-5-1).
(2) An electronic mail address.
(3) Any of the following information in a form that personally identifies an owner or operator of a computer:
(A) An account balance.
(B) An overdraft history.
(C) A payment history.

As added by P.L.115-2005, SEC.1.

IC 24-4.8-1-11
"Transmit"

Sec. 11. (a) Except as provided in subsection (b), "transmit" means to transfer, send, or otherwise make available computer software or a computer software component through a network, the Internet, a wireless transmission, or any other medium, including a disk or data storage device.

(b) "Transmit" does not include an action by a person who provides:

(1) the Internet connection, telephone connection, or other means of connection for an owner or operator, including a compact disc or DVD on which computer software to establish or maintain a connection is made available;

(2) the storage or hosting of computer software or an Internet web page through which the computer software was made available; or

(3) an information location tool, including a directory, an index, a reference, a pointer, or a hypertext link, through which the owner or operator of the computer located the software;

unless the person receives a direct economic benefit from the execution of the computer software.

As added by P.L.115-2005, SEC.1.

IC 24-4.8-2
Chapter 2. Prohibited Conduct

IC 24-4.8-2-1
Application

Sec. 1. This chapter does not apply to a person who monitors or interacts with an owner or operator's Internet connection, Internet service, network connection, or computer if the person is a telecommunications carrier, cable operator, computer hardware or software provider, or other computer service provider who monitors or interacts with an owner or operator's Internet connection, Internet service, network connection, or computer for one (1) or more of the following purposes:

(1) Network security.
(2) Computer security.
(3) Diagnosis.
(4) Technical support.
(5) Maintenance.
(6) Repair.
(7) Authorized updates of software or system firmware.
(8) Authorized remote system management.
(9) Detection or prevention of the unauthorized, illegal, or fraudulent use of a network, service, or computer software, including scanning for and removing computer software that facilitates a violation of this chapter.

As added by P.L.115-2005, SEC.1.

IC 24-4.8-2-2
Prohibited conduct by owners or operators of computers

Sec. 2. A person who is not the owner or operator of the computer may not knowingly or intentionally:

(1) transmit computer software to the computer; and
(2) by means of the computer software transmitted under subdivision (1), do any of the following:
  (A) Use intentionally deceptive means to modify computer settings that control:
    (i) the page that appears when an owner or operator opens an Internet browser or similar computer software used to access and navigate the Internet;
    (ii) the Internet service provider, search engine, or web proxy that an owner or operator uses to access or search the Internet; or
    (iii) the owner or operator's list of bookmarks used to access web pages.
  (B) Use intentionally deceptive means to collect personally identifying information:
    (i) through the use of computer software that records a keystroke made by an owner or operator and transfers that information from the computer to another person; or
    (ii) in a manner that correlates the personally identifying

information with data respecting all or substantially all of the web sites visited by the owner or operator of the computer, not including a web site operated by the person collecting the personally identifying information.

(C) Extract from the hard drive of an owner or operator's computer:

(i) a credit card number, debit card number, bank account number, or any password or access code associated with these numbers;

(ii) a Social Security number, tax identification number, driver's license number, passport number, or any other government issued identification number; or

(iii) the account balance or overdraft history of a person in a form that identifies the person.

(D) Use intentionally deceptive means to prevent reasonable efforts by an owner or operator to block or disable the installation or execution of computer software.

(E) Knowingly or intentionally misrepresent that computer software will be uninstalled or disabled by an owner or operator's action.

(F) Use intentionally deceptive means to remove, disable, or otherwise make inoperative security, antispyware, or antivirus computer software installed on the computer.

(G) Take control of another person's computer with the intent to cause damage to the computer or cause the owner or operator to incur a financial charge for a service that the owner or operator has not authorized by:

(i) accessing or using the computer's modem or Internet service; or

(ii) without the authorization of the owner or operator, opening multiple, sequential, standalone advertisements in the owner or operator's Internet browser that a reasonable computer user cannot close without turning off the computer or closing the browser.

(H) Modify:

(i) computer settings that protect information about a person with the intent of obtaining personally identifying information without the permission of the owner or operator; or

(ii) security settings with the intent to cause damage to a computer.

(I) Prevent reasonable efforts by an owner or operator to block or disable the installation or execution of computer software by:

(i) presenting an owner or operator with an option to decline installation of computer software knowing that the computer software will be installed even if the owner or operator attempts to decline installation; or

(ii) falsely representing that computer software has been disabled.

As added by P.L.115-2005, SEC.1.

IC 24-4.8-2-3

Prohibited conduct by persons who are not owners or operators of computers

Sec. 3. A person who is not the owner or operator may not knowingly or intentionally do any of the following:

(1) Induce the owner or operator to install computer software on the owner or operator's computer by knowingly or intentionally misrepresenting the extent to which installing the computer software is necessary for:

(A) computer security;

(B) computer privacy; or

(C) opening, viewing, or playing a particular type of content.

(2) Use intentionally deceptive means to execute or cause the execution of computer software with the intent to cause the owner or operator to use the computer software in a manner that violates subdivision (1).

As added by P.L.115-2005, SEC.1.

IC 24-4.8-3

Chapter 3. Relief and Damages

IC 24-4.8-3-1

Civil action

Sec. 1. In addition to any other remedy provided by law, a provider of computer software, the owner of a web site, or the owner of a trademark who is adversely affected by reason of the violation may bring a civil action against a person who violates IC 24-4.8-2:

(1) to enjoin further violations of IC 24-4.8-2; and

(2) to recover the greater of:

(A) actual damages; or

(B) one hundred thousand dollars ($100,000);

for each violation of IC 24-4.8-2.

As added by P.L.115-2005, SEC.1.

IC 24-4.8-3-2

Separate violations

Sec. 2. For purposes of section 1 of this chapter, conduct that violates more than one (1) subdivision, clause, or item of IC 24-4.8-2 constitutes a separate violation for each separate subdivision, clause, or item violated. However, a single action or course of conduct that causes repeated violations of a single subdivision, clause, or item of IC 24-4.8-2 constitutes one (1) violation.

As added by P.L.115-2005, SEC.1.

IC 24-4.9

ARTICLE 4.9. DISCLOSURE OF SECURITY BREACH

IC 24-4.9-1

Chapter 1. Application

IC 24-4.9-1-1

Applicability

Sec. 1. This article does not apply to:

(1) a state agency (as defined in IC 4-1-10-2); or

(2) the judicial or legislative department of state government.

As added by P.L.125-2006, SEC.6.

IC 24-4.9-2
Chapter 2. Definitions

IC 24-4.9-2-1
Applicability
Sec. 1. The definitions in this chapter apply throughout this article.
As added by P.L.125-2006, SEC.6.

IC 24-4.9-2-2
"Breach of the security of data"
Sec. 2. (a) "Breach of the security of data" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by a person. The term includes the unauthorized acquisition of computerized data that have been transferred to another medium, including paper, microfilm, or a similar medium, even if the transferred data are no longer in a computerized format.
(b) The term does not include the following:
(1) Good faith acquisition of personal information by an employee or agent of the person for lawful purposes of the person, if the personal information is not used or subject to further unauthorized disclosure.
(2) Unauthorized acquisition of a portable electronic device on which personal information is stored, if all personal information on the device is protected by encryption and the encryption key:
(A) has not been compromised or disclosed; and
(B) is not in the possession of or known to the person who, without authorization, acquired or has access to the portable electronic device.
As added by P.L.125-2006, SEC.6. Amended by P.L.136-2008, SEC.2; P.L.137-2009, SEC.3.

IC 24-4.9-2-3
"Data base owner"
Sec. 3. "Data base owner" means a person that owns or licenses computerized data that includes personal information.
As added by P.L.125-2006, SEC.6.

IC 24-4.9-2-4
"Doing business in Indiana"
Sec. 4. "Doing business in Indiana" means owning or using the personal information of an Indiana resident for commercial purposes.
As added by P.L.125-2006, SEC.6.

IC 24-4.9-2-5
Encrypted data
Sec. 5. Data are encrypted for purposes of this article if the data:
(1) have been transformed through the use of an algorithmic process into a form in which there is a low probability of

assigning meaning without use of a confidential process or key; or

(2) are secured by another method that renders the data unreadable or unusable.

As added by P.L.125-2006, SEC.6.

IC 24-4.9-2-6
"Financial institution"

Sec. 6. "Financial institution" means a financial institution as defined in:

(1) IC 28-1-1-3, other than a consumer finance institution licensed to make supervised or regulated loans under IC 24-4.5; or

(2) 15 U.S.C. 6809(3).

As added by P.L.125-2006, SEC.6.

IC 24-4.9-2-7
"Indiana resident"

Sec. 7. "Indiana resident" means a person whose principal mailing address is in Indiana, as reflected in records maintained by the data base owner.

As added by P.L.125-2006, SEC.6.

IC 24-4.9-2-8
"Mail"

Sec. 8. "Mail" has the meaning set forth in IC 23-1-20-15.

As added by P.L.125-2006, SEC.6.

IC 24-4.9-2-9
"Person"

Sec. 9. "Person" means an individual, a corporation, a business trust, an estate, a trust, a partnership, an association, a nonprofit corporation or organization, a cooperative, or any other legal entity.

As added by P.L.125-2006, SEC.6.

IC 24-4.9-2-10
"Personal information"

Sec. 10. "Personal information" means:

(1) a Social Security number that is not encrypted or redacted; or

(2) an individual's first and last names, or first initial and last name, and one (1) or more of the following data elements that are not encrypted or redacted:

(A) A driver's license number.

(B) A state identification card number.

(C) A credit card number.

(D) A financial account number or debit card number in combination with a security code, password, or access code that would permit access to the person's account.

The term does not include information that is lawfully obtained from

publicly available information or from federal, state, or local government records lawfully made available to the general public.
As added by P.L.125-2006, SEC.6.

IC 24-4.9-2-11
Redacted data or personal information

Sec. 11. (a) Data are redacted for purposes of this article if the data have been altered or truncated so that not more than the last four (4) digits of:

(1) a driver's license number;
(2) a state identification number; or
(3) an account number;

is accessible as part of personal information.

(b) For purposes of this article, personal information is "redacted" if the personal information has been altered or truncated so that not more than five (5) digits of a Social Security number are accessible as part of personal information.
As added by P.L.125-2006, SEC.6.

IC 24-4.9-3

Chapter 3. Disclosure and Notification Requirements

IC 24-4.9-3-1

Disclosure of breach

Sec. 1. (a) Except as provided in section 4(c), 4(d), and 4(e) of this chapter, after discovering or being notified of a breach of the security of data, the data base owner shall disclose the breach to an Indiana resident whose:

(1) unencrypted personal information was or may have been acquired by an unauthorized person; or

(2) encrypted personal information was or may have been acquired by an unauthorized person with access to the encryption key;

if the data base owner knows, should know, or should have known that the unauthorized acquisition constituting the breach has resulted in or could result in identity deception (as defined in IC 35-43-5-3.5), identity theft, or fraud affecting the Indiana resident.

(b) A data base owner required to make a disclosure under subsection (a) to more than one thousand (1,000) consumers shall also disclose to each consumer reporting agency (as defined in 15 U.S.C. 1681a(p)) information necessary to assist the consumer reporting agency in preventing fraud, including personal information of an Indiana resident affected by the breach of the security of a system.

(c) If a data base owner makes a disclosure described in subsection (a), the data base owner shall also disclose the breach to the attorney general.

As added by P.L.125-2006, SEC.6. Amended by P.L.137-2009, SEC.4.

IC 24-4.9-3-2

Notification of data base owner

Sec. 2. A person that maintains computerized data but that is not a data base owner shall notify the data base owner if the person discovers that personal information was or may have been acquired by an unauthorized person.

As added by P.L.125-2006, SEC.6.

IC 24-4.9-3-3

Delay of disclosure or notification

Sec. 3. (a) A person required to make a disclosure or notification under this chapter shall make the disclosure or notification without unreasonable delay. For purposes of this section, a delay is reasonable if the delay is:

(1) necessary to restore the integrity of the computer system;

(2) necessary to discover the scope of the breach; or

(3) in response to a request from the attorney general or a law enforcement agency to delay disclosure because disclosure will:

(A) impede a criminal or civil investigation; or

(B) jeopardize national security.

(b) A person required to make a disclosure or notification under this chapter shall make the disclosure or notification as soon as possible after:

(1) delay is no longer necessary to restore the integrity of the computer system or to discover the scope of the breach; or

(2) the attorney general or a law enforcement agency notifies the person that delay will no longer impede a criminal or civil investigation or jeopardize national security.

As added by P.L.125-2006, SEC.6.

IC 24-4.9-3-3.5

Duties of a data base owner; exceptions; enforcement powers

Sec. 3.5. (a) This section does not apply to a data base owner that maintains its own data security procedures as part of an information privacy, security policy, or compliance plan under:

(1) the federal USA PATRIOT Act (P.L. 107-56);

(2) Executive Order 13224;

(3) the federal Driver's Privacy Protection Act (18 U.S.C. 2721 et seq.);

(4) the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);

(5) the federal Financial Modernization Act of 1999 (15 U.S.C. 6801 et seq.); or

(6) the federal Health Insurance Portability and Accountability Act (HIPAA) (P.L. 104-191);

if the data base owner's information privacy, security policy, or compliance plan requires the data base owner to maintain reasonable procedures to protect and safeguard from unlawful use or disclosure personal information of Indiana residents that is collected or maintained by the data base owner and the data base owner complies with the data base owner's information privacy, security policy, or compliance plan.

(b) A data base owner shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect and safeguard from unlawful use or disclosure any personal information of Indiana residents collected or maintained by the data base owner.

(c) A data base owner shall not dispose of records or documents containing unencrypted and unredacted personal information of Indiana residents without shredding, incinerating, mutilating, erasing, or otherwise rendering the personal information illegible or unusable.

(d) A person that knowingly or intentionally fails to comply with any provision of this section commits a deceptive act that is actionable only by the attorney general under this section.

(e) The attorney general may bring an action under this section to obtain any or all of the following:

(1) An injunction to enjoin further violations of this section.

(2) A civil penalty of not more than five thousand dollars ($5,000) per deceptive act.

(3) The attorney general's reasonable costs in:
(A) the investigation of the deceptive act; and
(B) maintaining the action.

(f) A failure to comply with subsection (b) or (c) in connection with related acts or omissions constitutes one (1) deceptive act.
As added by P.L.137-2009, SEC.5.

IC 24-4.9-3-4
Method of disclosure; exceptions

Sec. 4. (a) Except as provided in subsection (b), a data base owner required to make a disclosure under this chapter shall make the disclosure using one (1) of the following methods:
(1) Mail.
(2) Telephone.
(3) Facsimile (fax).
(4) Electronic mail, if the data base owner has the electronic mail address of the affected Indiana resident.

(b) If a data base owner required to make a disclosure under this chapter is required to make the disclosure to more than five hundred thousand (500,000) Indiana residents, or if the data base owner required to make a disclosure under this chapter determines that the cost of the disclosure will be more than two hundred fifty thousand dollars ($250,000), the data base owner required to make a disclosure under this chapter may elect to make the disclosure by using both of the following methods:
(1) Conspicuous posting of the notice on the web site of the data base owner, if the data base owner maintains a web site.
(2) Notice to major news reporting media in the geographic area where Indiana residents affected by the breach of the security of a system reside.

(c) A data base owner that maintains its own disclosure procedures as part of an information privacy policy or a security policy is not required to make a separate disclosure under this chapter if the data base owner's information privacy policy or security policy is at least as stringent as the disclosure requirements described in:
(1) sections 1 through 4(b) of this chapter;
(2) subsection (d); or
(3) subsection (e).

(d) A data base owner that maintains its own disclosure procedures as part of an information privacy, security policy, or compliance plan under:
(1) the federal USA PATRIOT Act (P.L. 107-56);
(2) Executive Order 13224;
(3) the federal Driver's Privacy Protection Act (18 U.S.C. 2781 et seq.);
(4) the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);
(5) the federal Financial Modernization Act of 1999 (15 U.S.C. 6801 et seq.); or

(6) the federal Health Insurance Portability and Accountability Act (HIPAA) (P.L. 104-191);

is not required to make a disclosure under this chapter if the data base owner's information privacy, security policy, or compliance plan requires that Indiana residents be notified of a breach of the security of data without unreasonable delay and the data base owner complies with the data base owner's information privacy, security policy, or compliance plan.

(e) A financial institution that complies with the disclosure requirements prescribed by the Federal Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice or the Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice, as applicable, is not required to make a disclosure under this chapter.

(f) A person required to make a disclosure under this chapter may elect to make all or part of the disclosure in accordance with subsection (a) even if the person could make the disclosure in accordance with subsection (b).

As added by P.L.125-2006, SEC.6. Amended by P.L.137-2009, SEC.6.

IC 24-4.9-4

Chapter 4. Enforcement

IC 24-4.9-4-1

Failure to disclose or notify; deceptive act

Sec. 1. (a) A person that is required to make a disclosure or notification in accordance with IC 24-4.9-3 and that fails to comply with any provision of this article commits a deceptive act that is actionable only by the attorney general under this chapter.

(b) A failure to make a required disclosure or notification in connection with a related series of breaches of the security of data constitutes one (1) deceptive act.

As added by P.L.125-2006, SEC.6. Amended by P.L.137-2009, SEC.7.

IC 24-4.9-4-2

Action by attorney general

Sec. 2. The attorney general may bring an action under this chapter to obtain any or all of the following:

(1) An injunction to enjoin future violations of IC 24-4.9-3.

(2) A civil penalty of not more than one hundred fifty thousand dollars ($150,000) per deceptive act.

(3) The attorney general's reasonable costs in:

(A) the investigation of the deceptive act; and

(B) maintaining the action.

As added by P.L.125-2006, SEC.6.

IC 24-4.9-5
Chapter 5. Preemption

IC 24-4.9-5-1
Preemption

Sec. 1. This article preempts the authority of a unit (as defined in IC 36-1-2-23) to make an enactment dealing with the same subject matter as this article.

As added by P.L.125-2006, SEC.6.

IC 24-5

ARTICLE 5. CONSUMER SALES

IC 24-5-0.5

Chapter 0.5. Deceptive Consumer Sales

IC 24-5-0.5-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to sections 2, 3, and 4 of this chapter by P.L.24-1989 are clarifications only and should not be construed as modifications of existing law.

(2) The amendments made to sections 2 and 3 of this chapter by P.L.174-1997 apply to local telephone directories published after May 31, 1997.

As added by P.L.220-2011, SEC.394.

IC 24-5-0.5-1

Construction and purposes

Sec. 1. (a) This chapter shall be liberally construed and applied to promote its purposes and policies.

(b) The purposes and policies of this chapter are to:

(1) simplify, clarify, and modernize the law governing deceptive and unconscionable consumer sales practices;

(2) protect consumers from suppliers who commit deceptive and unconscionable sales acts; and

(3) encourage the development of fair consumer sales practices.

(Formerly: Acts 1971, P.L.367, SEC.1.) As amended by P.L.18-1997, SEC.2; P.L.1-2006, SEC.411.

IC 24-5-0.5-2

Definitions

Sec. 2. (a) As used in this chapter:

(1) "Consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible, except securities and policies or contracts of insurance issued by corporations authorized to transact an insurance business under the laws of the state of Indiana, with or without an extension of credit, to a person for purposes that are primarily personal, familial, charitable, agricultural, or household, or a solicitation to supply any of these things. However, the term includes the following:

(A) A transfer of structured settlement payment rights under IC 34-50-2.

(B) An unsolicited advertisement sent to a person by telephone facsimile machine offering a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an

intangible.

(C) Collecting or attempting to collect a debt owed or due, or asserted to be owed or due, to another person.

(2) "Person" means an individual, corporation, the state of Indiana or its subdivisions or agencies, business trust, estate, trust, partnership, association, nonprofit corporation or organization, or cooperative or any other legal entity.

(3) "Supplier" means the following:

(A) A seller, lessor, assignor, or other person who regularly engages in or solicits consumer transactions, including soliciting a consumer transaction by using a telephone facsimile machine to transmit an unsolicited advertisement. The term includes a manufacturer, wholesaler, or retailer, whether or not the person deals directly with the consumer.

(B) A person who contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes a pyramid promotional scheme.

(C) A debt collector.

(4) "Subject of a consumer transaction" means the personal property, real property, services, or intangibles offered or furnished in a consumer transaction.

(5) "Cure" as applied to a deceptive act, means either:

(A) to offer in writing to adjust or modify the consumer transaction to which the act relates to conform to the reasonable expectations of the consumer generated by such deceptive act and to perform such offer if accepted by the consumer; or

(B) to offer in writing to rescind such consumer transaction and to perform such offer if accepted by the consumer.

The term includes an offer in writing of one (1) or more items of value, including monetary compensation, that the supplier delivers to a consumer or a representative of the consumer if accepted by the consumer.

(6) "Offer to cure" as applied to a deceptive act is a cure that:

(A) is reasonably calculated to remedy a loss claimed by the consumer; and

(B) includes a minimum additional amount that is the greater of:

(i) ten percent (10%) of the value of the remedy under clause (A), but not more than four thousand dollars ($4,000); or

(ii) five hundred dollars ($500);

as compensation for attorney's fees, expenses, and other costs that a consumer may incur in relation to the deceptive act.

(7) "Uncured deceptive act" means a deceptive act:

(A) with respect to which a consumer who has been damaged by such act has given notice to the supplier under section 5(a) of this chapter; and

(B) either:

(i) no offer to cure has been made to such consumer within thirty (30) days after such notice; or

(ii) the act has not been cured as to such consumer within a reasonable time after the consumer's acceptance of the offer to cure.

(8) "Incurable deceptive act" means a deceptive act done by a supplier as part of a scheme, artifice, or device with intent to defraud or mislead. The term includes a failure of a transferee of structured settlement payment rights to timely provide a true and complete disclosure statement to a payee as provided under IC 34-50-2 in connection with a direct or indirect transfer of structured settlement payment rights.

(9) "Pyramid promotional scheme" means any program utilizing a pyramid or chain process by which a participant in the program gives a valuable consideration exceeding one hundred dollars ($100) for the opportunity or right to receive compensation or other things of value in return for inducing other persons to become participants for the purpose of gaining new participants in the program. The term does not include ordinary sales of goods or services to persons who are not purchasing in order to participate in such a scheme.

(10) "Promoting a pyramid promotional scheme" means:

(A) inducing or attempting to induce one (1) or more other persons to become participants in a pyramid promotional scheme; or

(B) assisting another in promoting a pyramid promotional scheme.

(11) "Senior consumer" means an individual who is at least sixty (60) years of age.

(12) "Telephone facsimile machine" means equipment that has the capacity to transcribe text or images, or both, from:

(A) paper into an electronic signal and to transmit that signal over a regular telephone line; or

(B) an electronic signal received over a regular telephone line onto paper.

(13) "Unsolicited advertisement" means material advertising the commercial availability or quality of:

(A) property;

(B) goods; or

(C) services;

that is transmitted to a person without the person's prior express invitation or permission, in writing or otherwise.

(14) "Debt" has the meaning set forth in 15 U.S.C. 1692a(5)).

(15) "Debt collector" has the meaning set forth in 15 U.S.C. 1692a(6). The term does not include a person admitted to the practice of law in Indiana if the person is acting within the course and scope of the person's practice as an attorney.

(b) As used in section 3(a)(15) and 3(a)(16) of this chapter:

(1) "Directory assistance" means the disclosure of telephone number information in connection with an identified telephone

service subscriber by means of a live operator or automated service.

(2) "Local telephone directory" refers to a telephone classified advertising directory or the business section of a telephone directory that is distributed by a telephone company or directory publisher to subscribers located in the local exchanges contained in the directory. The term includes a directory that includes listings of more than one (1) telephone company.

(3) "Local telephone number" refers to a telephone number that has the three (3) number prefix used by the provider of telephone service for telephones physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or 800-, 888-, or 900- exchange numbers listed in a local telephone directory.

(Formerly: Acts 1971, P.L.367, SEC.1.) As amended by Acts 1982, P.L.152, SEC.1; P.L.12-1986, SEC.4; P.L.24-1989, SEC.10; P.L.233-1995, SEC.1; P.L.174-1997, SEC.1; P.L.18-1997, SEC.3; P.L.219-2001, SEC.1; P.L.165-2005, SEC.6; P.L.85-2006, SEC.2; P.L.1-2007, SEC.165; P.L.226-2011, SEC.13; P.L.250-2013, SEC.2.

IC 24-5-0.5-3

Acts constituting deceptive acts

Sec. 3. (a) The following acts, and the following representations as to the subject matter of a consumer transaction, made orally, in writing, or by electronic communication, by a supplier, are deceptive acts:

(1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have.

(2) That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not.

(3) That such subject of a consumer transaction is new or unused, if it is not and if the supplier knows or should reasonably know that it is not.

(4) That such subject of a consumer transaction will be supplied to the public in greater quantity than the supplier intends or reasonably expects.

(5) That replacement or repair constituting the subject of a consumer transaction is needed, if it is not and if the supplier knows or should reasonably know that it is not.

(6) That a specific price advantage exists as to such subject of a consumer transaction, if it does not and if the supplier knows or should reasonably know that it does not.

(7) That the supplier has a sponsorship, approval, or affiliation in such consumer transaction the supplier does not have, and which the supplier knows or should reasonably know that the

supplier does not have.

(8) That such consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the supplier knows or should reasonably know that the representation is false.

(9) That the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a sale or lease in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit, rebate, or discount is contingent upon the occurrence of an event subsequent to the time the consumer agrees to the purchase or lease.

(10) That the supplier is able to deliver or complete the subject of the consumer transaction within a stated period of time, when the supplier knows or should reasonably know the supplier could not. If no time period has been stated by the supplier, there is a presumption that the supplier has represented that the supplier will deliver or complete the subject of the consumer transaction within a reasonable time, according to the course of dealing or the usage of the trade.

(11) That the consumer will be able to purchase the subject of the consumer transaction as advertised by the supplier, if the supplier does not intend to sell it.

(12) That the replacement or repair constituting the subject of a consumer transaction can be made by the supplier for the estimate the supplier gives a customer for the replacement or repair, if the specified work is completed and:

(A) the cost exceeds the estimate by an amount equal to or greater than ten percent (10%) of the estimate;

(B) the supplier did not obtain written permission from the customer to authorize the supplier to complete the work even if the cost would exceed the amounts specified in clause (A);

(C) the total cost for services and parts for a single transaction is more than seven hundred fifty dollars ($750); and

(D) the supplier knew or reasonably should have known that the cost would exceed the estimate in the amounts specified in clause (A).

(13) That the replacement or repair constituting the subject of a consumer transaction is needed, and that the supplier disposes of the part repaired or replaced earlier than seventy-two (72) hours after both:

(A) the customer has been notified that the work has been completed; and

(B) the part repaired or replaced has been made available for examination upon the request of the customer.

(14) Engaging in the replacement or repair of the subject of a consumer transaction if the consumer has not authorized the replacement or repair, and if the supplier knows or should

reasonably know that it is not authorized.

(15) The act of misrepresenting the geographic location of the supplier by listing a fictitious business name or an assumed business name (as described in IC 23-15-1) in a local telephone directory if:

(A) the name misrepresents the supplier's geographic location;

(B) the listing fails to identify the locality and state of the supplier's business;

(C) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the calling area covered by the local telephone directory; and

(D) the supplier's business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory.

(16) The act of listing a fictitious business name or assumed business name (as described in IC 23-15-1) in a directory assistance database if:

(A) the name misrepresents the supplier's geographic location;

(B) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the local calling area; and

(C) the supplier's business location is located in a county that is not contiguous to a county in the local calling area.

(17) The violation by a supplier of IC 24-3-4 concerning cigarettes for import or export.

(18) The act of a supplier in knowingly selling or reselling a product to a consumer if the product has been recalled, whether by the order of a court or a regulatory body, or voluntarily by the manufacturer, distributor, or retailer, unless the product has been repaired or modified to correct the defect that was the subject of the recall.

(19) The violation by a supplier of 47 U.S.C. 227, including any rules or regulations issued under 47 U.S.C. 227.

(20) The violation by a supplier of the federal Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.), including any rules or regulations issued under the federal Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.).

(21) A violation of IC 24-5-7 (concerning health spa services), as set forth in IC 24-5-7-17.

(22) A violation of IC 24-5-8 (concerning business opportunity transactions), as set forth in IC 24-5-8-20.

(23) A violation of IC 24-5-10 (concerning home consumer transactions), as set forth in IC 24-5-10-18.

(24) A violation of IC 24-5-11 (concerning home improvement contracts), as set forth in IC 24-5-11-14.

(25) A violation of IC 24-5-12 (concerning telephone solicitations), as set forth in IC 24-5-12-23.

(26) A violation of IC 24-5-13.5 (concerning buyback motor vehicles), as set forth in IC 24-5-13.5-14.
(27) A violation of IC 24-5-14 (concerning automatic dialing-announcing devices), as set forth in IC 24-5-14-13.
(28) A violation of IC 24-5-15 (concerning credit services organizations), as set forth in IC 24-5-15-11.
(29) A violation of IC 24-5-16 (concerning unlawful motor vehicle subleasing), as set forth in IC 24-5-16-18.
(30) A violation of IC 24-5-17 (concerning environmental marketing claims), as set forth in IC 24-5-17-14.
(31) A violation of IC 24-5-19 (concerning deceptive commercial solicitation), as set forth in IC 24-5-19-11.
(32) A violation of IC 24-5-21 (concerning prescription drug discount cards), as set forth in IC 24-5-21-7.
(33) A violation of IC 24-5-23.5-7 (concerning real estate appraisals), as set forth in IC 24-5-23.5-9.
(34) A violation of IC 24-5-26 (concerning identity theft), as set forth in IC 24-5-26-3.
(35) A violation of IC 24-5.5 (concerning mortgage rescue fraud), as set forth in IC 24-5.5-6-1.
(36) A violation of IC 24-8 (concerning promotional gifts and contests), as set forth in IC 24-8-6-3.
(37) A violation of IC 21-18.5-6 (concerning representations made by a postsecondary credit bearing proprietary educational institution), as set forth in IC 21-18.5-6-22.5.

(b) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such representation thereon or therein, or who authored such materials, and such other suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false.

(c) If a supplier shows by a preponderance of the evidence that an act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, such act shall not be deceptive within the meaning of this chapter.

(d) It shall be a defense to any action brought under this chapter that the representation constituting an alleged deceptive act was one made in good faith by the supplier without knowledge of its falsity and in reliance upon the oral or written representations of the manufacturer, the person from whom the supplier acquired the product, any testing organization, or any other person provided that the source thereof is disclosed to the consumer.

(e) For purposes of subsection (a)(12), a supplier that provides estimates before performing repair or replacement work for a customer shall give the customer a written estimate itemizing as closely as possible the price for labor and parts necessary for the specific job before commencing the work.

(f) For purposes of subsection (a)(15) and (a)(16), a telephone company or other provider of a telephone directory or directory

assistance service or its officer or agent is immune from liability for publishing the listing of a fictitious business name or assumed business name of a supplier in its directory or directory assistance database unless the telephone company or other provider of a telephone directory or directory assistance service is the same person as the supplier who has committed the deceptive act.

(g) For purposes of subsection (a)(18), it is an affirmative defense to any action brought under this chapter that the product has been altered by a person other than the defendant to render the product completely incapable of serving its original purpose.

(Formerly: Acts 1971, P.L.367, SEC.1.) As amended by Acts 1978, P.L.127, SEC.2; Acts 1982, P.L.153, SEC.1; Acts 1982, P.L.152, SEC.2; P.L.16-1983, SEC.16; P.L.239-1985, SEC.1; P.L.12-1986, SEC.5; P.L.24-1989, SEC.11; P.L.174-1997, SEC.2; P.L.21-2000, SEC.11; P.L.70-2002, SEC.1; P.L.85-2006, SEC.3; P.L.1-2009, SEC.137; P.L.226-2011, SEC.14; P.L.273-2013, SEC.31.

IC 24-5-0.5-4 Version a

Actions and proceedings; damages; injunction; civil penalties; offer to cure; violations involving debt collection

Note: This version of section effective until 7-1-2013. See also following version of this section, effective 7-1-2013.

Sec. 4. (a) A person relying upon an uncured or incurable deceptive act may bring an action for the damages actually suffered as a consumer as a result of the deceptive act or five hundred dollars ($500), whichever is greater. The court may increase damages for a willful deceptive act in an amount that does not exceed the greater of:

(1) three (3) times the actual damages of the consumer suffering the loss; or

(2) one thousand dollars ($1,000).

Except as provided in subsection (j), the court may award reasonable attorney fees to the party that prevails in an action under this subsection. This subsection does not apply to a consumer transaction in real property, including a claim or action involving a construction defect (as defined in IC 32-27-3-1(5)) brought against a construction professional (as defined in IC 32-27-3-1(4)), except for purchases of time shares and camping club memberships. This subsection does not apply with respect to a deceptive act described in section 3(a)(20) of this chapter. This subsection also does not apply to a violation of IC 24-4.7, IC 24-5-12, or IC 24-5-14. Actual damages awarded to a person under this section have priority over any civil penalty imposed under this chapter.

(b) Any person who is entitled to bring an action under subsection (a) on the person's own behalf against a supplier for damages for a deceptive act may bring a class action against such supplier on behalf of any class of persons of which that person is a member and which has been damaged by such deceptive act, subject to and under the Indiana Rules of Trial Procedure governing class actions, except as herein expressly provided. Except as provided in subsection (j), the

court may award reasonable attorney fees to the party that prevails in a class action under this subsection, provided that such fee shall be determined by the amount of time reasonably expended by the attorney and not by the amount of the judgment, although the contingency of the fee may be considered. Except in the case of an extension of time granted by the attorney general under IC 24-10-2-2(b) in an action subject to IC 24-10, any money or other property recovered in a class action under this subsection which cannot, with due diligence, be restored to consumers within one (1) year after the judgment becomes final shall be returned to the party depositing the same. This subsection does not apply to a consumer transaction in real property, except for purchases of time shares and camping club memberships. This subsection does not apply with respect to a deceptive act described in section 3(a)(20) of this chapter. Actual damages awarded to a class have priority over any civil penalty imposed under this chapter.

(c) The attorney general may bring an action to enjoin a deceptive act, including a deceptive act described in section 3(a)(20) of this chapter, notwithstanding subsections (a) and (b). However, the attorney general may seek to enjoin patterns of incurable deceptive acts with respect to consumer transactions in real property. In addition, the court may:

(1) issue an injunction;

(2) order the supplier to make payment of the money unlawfully received from the aggrieved consumers to be held in escrow for distribution to aggrieved consumers;

(3) order the supplier to pay to the state the reasonable costs of the attorney general's investigation and prosecution related to the action;

(4) provide for the appointment of a receiver; and

(5) order the department of state revenue to suspend the supplier's registered retail merchant certificate, subject to the requirements and prohibitions contained in IC 6-2.5-8-7(i), if the court finds that a violation of this chapter involved the sale or solicited sale of a synthetic drug (as defined in IC 35-31.5-2-321) or a synthetic drug lookalike substance (as defined in IC 35-31.5-2-321.5).

(d) In an action under subsection (a), (b), or (c), the court may void or limit the application of contracts or clauses resulting from deceptive acts and order restitution to be paid to aggrieved consumers.

(e) In any action under subsection (a) or (b), upon the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, the trial court, the supreme court, or the court of appeals may require the plaintiff, defendant, claimant, or any other party or parties to give security, or additional security, in such sum as the court shall direct to pay all costs, expenses, and disbursements that shall be awarded against that party or which that party may be directed to pay by any interlocutory order by the final judgment or on appeal.

(f) Any person who violates the terms of an injunction issued under subsection (c) shall forfeit and pay to the state a civil penalty of not more than fifteen thousand dollars ($15,000) per violation. For the purposes of this section, the court issuing an injunction shall retain jurisdiction, the cause shall be continued, and the attorney general acting in the name of the state may petition for recovery of civil penalties. Whenever the court determines that an injunction issued under subsection (c) has been violated, the court shall award reasonable costs to the state.

(g) If a court finds any person has knowingly violated section 3 or 10 of this chapter, other than section 3(a)(19) or 3(a)(20) of this chapter, the attorney general, in an action pursuant to subsection (c), may recover from the person on behalf of the state a civil penalty of a fine not exceeding five thousand dollars ($5,000) per violation.

(h) If a court finds that a person has violated section 3(a)(19) of this chapter, the attorney general, in an action under subsection (c), may recover from the person on behalf of the state a civil penalty as follows:

(1) For a knowing or intentional violation, one thousand five hundred dollars ($1,500).

(2) For a violation other than a knowing or intentional violation, five hundred dollars ($500).

A civil penalty recovered under this subsection shall be deposited in the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6 to be used for the administration and enforcement of section 3(a)(19) of this chapter.

(i) An elderly person relying upon an uncured or incurable deceptive act, including an act related to hypnotism, may bring an action to recover treble damages, if appropriate.

(j) An offer to cure is:

(1) not admissible as evidence in a proceeding initiated under this section unless the offer to cure is delivered by a supplier to the consumer or a representative of the consumer before the supplier files the supplier's initial response to a complaint; and

(2) only admissible as evidence in a proceeding initiated under this section to prove that a supplier is not liable for attorney's fees under subsection (k).

If the offer to cure is timely delivered by the supplier, the supplier may submit the offer to cure as evidence to prove in the proceeding in accordance with the Indiana Rules of Trial Procedure that the supplier made an offer to cure.

(k) A supplier may not be held liable for the attorney's fees and court costs of the consumer that are incurred following the timely delivery of an offer to cure as described in subsection (j) unless the actual damages awarded, not including attorney's fees and costs, exceed the value of the offer to cure.

(l) If a court finds that a person has knowingly violated section 3(a)(20) of this chapter, the attorney general, in an action under subsection (c), may recover from the person on behalf of the state a civil penalty not exceeding one thousand dollars ($1,000) per

consumer. In determining the amount of the civil penalty in any action by the attorney general under this subsection, the court shall consider, among other relevant factors, the frequency and persistence of noncompliance by the debt collector, the nature of the noncompliance, and the extent to which the noncompliance was intentional. A person may not be held liable in any action by the attorney general for a violation of section 3(a)(20) of this chapter if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid the error. A person may not be held liable in any action for a violation of this chapter for contacting a person other than the debtor, if the contact is made in compliance with the Fair Debt Collection Practices Act.

(Formerly: Acts 1971, P.L.367, SEC.1.) As amended by Acts 1978, P.L.127, SEC.3; Acts 1982, P.L.152, SEC.3; P.L.12-1986, SEC.6; P.L.3-1989, SEC.141; P.L.24-1989, SEC.12; P.L.233-1995, SEC.2; P.L.165-2005, SEC.7; P.L.222-2005, SEC.33; P.L.85-2006, SEC.4; P.L.121-2011, SEC.1; P.L.226-2011, SEC.15; P.L.196-2013, SEC.8.

IC 24-5-0.5-4 Version b

Actions and proceedings; damages; injunction; civil penalties; offer to cure; violations involving debt collection

Note: This version of section effective 7-1-2013. See also preceding version of this section, effective until 7-1-2013.

Sec. 4. (a) A person relying upon an uncured or incurable deceptive act may bring an action for the damages actually suffered as a consumer as a result of the deceptive act or five hundred dollars ($500), whichever is greater. The court may increase damages for a willful deceptive act in an amount that does not exceed the greater of:

(1) three (3) times the actual damages of the consumer suffering the loss; or

(2) one thousand dollars ($1,000).

Except as provided in subsection (j), the court may award reasonable attorney fees to the party that prevails in an action under this subsection. This subsection does not apply to a consumer transaction in real property, including a claim or action involving a construction defect (as defined in IC 32-27-3-1(5)) brought against a construction professional (as defined in IC 32-27-3-1(4)), except for purchases of time shares and camping club memberships. This subsection does not apply with respect to a deceptive act described in section 3(a)(20) of this chapter. This subsection also does not apply to a violation of IC 24-4.7, IC 24-5-12, IC 24-5-14, or IC 24-5-14.5. Actual damages awarded to a person under this section have priority over any civil penalty imposed under this chapter.

(b) Any person who is entitled to bring an action under subsection (a) on the person's own behalf against a supplier for damages for a deceptive act may bring a class action against such supplier on behalf of any class of persons of which that person is a member and which

has been damaged by such deceptive act, subject to and under the Indiana Rules of Trial Procedure governing class actions, except as herein expressly provided. Except as provided in subsection (j), the court may award reasonable attorney fees to the party that prevails in a class action under this subsection, provided that such fee shall be determined by the amount of time reasonably expended by the attorney and not by the amount of the judgment, although the contingency of the fee may be considered. Except in the case of an extension of time granted by the attorney general under IC 24-10-2-2(b) in an action subject to IC 24-10, any money or other property recovered in a class action under this subsection which cannot, with due diligence, be restored to consumers within one (1) year after the judgment becomes final shall be returned to the party depositing the same. This subsection does not apply to a consumer transaction in real property, except for purchases of time shares and camping club memberships. This subsection does not apply with respect to a deceptive act described in section 3(a)(20) of this chapter. Actual damages awarded to a class have priority over any civil penalty imposed under this chapter.

(c) The attorney general may bring an action to enjoin a deceptive act, including a deceptive act described in section 3(a)(20) of this chapter, notwithstanding subsections (a) and (b). However, the attorney general may seek to enjoin patterns of incurable deceptive acts with respect to consumer transactions in real property. In addition, the court may:

(1) issue an injunction;

(2) order the supplier to make payment of the money unlawfully received from the aggrieved consumers to be held in escrow for distribution to aggrieved consumers;

(3) for a knowing violation against a senior consumer, increase the amount of restitution ordered under subdivision (2) in any amount up to three (3) times the amount of damages incurred or value of property or assets lost;

(4) order the supplier to pay to the state the reasonable costs of the attorney general's investigation and prosecution related to the action;

(5) provide for the appointment of a receiver; and

(6) order the department of state revenue to suspend the supplier's registered retail merchant certificate, subject to the requirements and prohibitions contained in IC 6-2.5-8-7(i), if the court finds that a violation of this chapter involved the sale or solicited sale of a synthetic drug (as defined in IC 35-31.5-2-321) or a synthetic drug lookalike substance (as defined in IC 35-31.5-2-321.5).

(d) In an action under subsection (a), (b), or (c), the court may void or limit the application of contracts or clauses resulting from deceptive acts and order restitution to be paid to aggrieved consumers.

(e) In any action under subsection (a) or (b), upon the filing of the complaint or on the appearance of any defendant, claimant, or any

other party, or at any later time, the trial court, the supreme court, or the court of appeals may require the plaintiff, defendant, claimant, or any other party or parties to give security, or additional security, in such sum as the court shall direct to pay all costs, expenses, and disbursements that shall be awarded against that party or which that party may be directed to pay by any interlocutory order by the final judgment or on appeal.

(f) Any person who violates the terms of an injunction issued under subsection (c) shall forfeit and pay to the state a civil penalty of not more than fifteen thousand dollars ($15,000) per violation. For the purposes of this section, the court issuing an injunction shall retain jurisdiction, the cause shall be continued, and the attorney general acting in the name of the state may petition for recovery of civil penalties. Whenever the court determines that an injunction issued under subsection (c) has been violated, the court shall award reasonable costs to the state.

(g) If a court finds any person has knowingly violated section 3 or 10 of this chapter, other than section 3(a)(19) or 3(a)(20) of this chapter, the attorney general, in an action pursuant to subsection (c), may recover from the person on behalf of the state a civil penalty of a fine not exceeding five thousand dollars ($5,000) per violation.

(h) If a court finds that a person has violated section 3(a)(19) of this chapter, the attorney general, in an action under subsection (c), may recover from the person on behalf of the state a civil penalty as follows:

(1) For a knowing or intentional violation, one thousand five hundred dollars ($1,500).

(2) For a violation other than a knowing or intentional violation, five hundred dollars ($500).

A civil penalty recovered under this subsection shall be deposited in the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6 to be used for the administration and enforcement of section 3(a)(19) of this chapter.

(i) A senior consumer relying upon an uncured or incurable deceptive act, including an act related to hypnotism, may bring an action to recover treble damages, if appropriate.

(j) An offer to cure is:

(1) not admissible as evidence in a proceeding initiated under this section unless the offer to cure is delivered by a supplier to the consumer or a representative of the consumer before the supplier files the supplier's initial response to a complaint; and

(2) only admissible as evidence in a proceeding initiated under this section to prove that a supplier is not liable for attorney's fees under subsection (k).

If the offer to cure is timely delivered by the supplier, the supplier may submit the offer to cure as evidence to prove in the proceeding in accordance with the Indiana Rules of Trial Procedure that the supplier made an offer to cure.

(k) A supplier may not be held liable for the attorney's fees and court costs of the consumer that are incurred following the timely

delivery of an offer to cure as described in subsection (j) unless the actual damages awarded, not including attorney's fees and costs, exceed the value of the offer to cure.

(l) If a court finds that a person has knowingly violated section 3(a)(20) of this chapter, the attorney general, in an action under subsection (c), may recover from the person on behalf of the state a civil penalty not exceeding one thousand dollars ($1,000) per consumer. In determining the amount of the civil penalty in any action by the attorney general under this subsection, the court shall consider, among other relevant factors, the frequency and persistence of noncompliance by the debt collector, the nature of the noncompliance, and the extent to which the noncompliance was intentional. A person may not be held liable in any action by the attorney general for a violation of section 3(a)(20) of this chapter if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid the error. A person may not be held liable in any action for a violation of this chapter for contacting a person other than the debtor, if the contact is made in compliance with the Fair Debt Collection Practices Act.

(Formerly: Acts 1971, P.L.367, SEC.1.) As amended by Acts 1978, P.L.127, SEC.3; Acts 1982, P.L.152, SEC.3; P.L.12-1986, SEC.6; P.L.3-1989, SEC.141; P.L.24-1989, SEC.12; P.L.233-1995, SEC.2; P.L.165-2005, SEC.7; P.L.222-2005, SEC.33; P.L.85-2006, SEC.4; P.L.121-2011, SEC.1; P.L.226-2011, SEC.15; P.L.196-2013, SEC.8; P.L.151-2013, SEC.6; P.L.250-2013, SEC.3.

IC 24-5-0.5-5
Limitation of actions

Sec. 5. (a) No action may be brought under this chapter, except under section 4(c) of this chapter, unless (1) the deceptive act is incurable or (2) the consumer bringing the action shall have given notice in writing to the supplier within the sooner of (i) six (6) months after the initial discovery of the deceptive act, (ii) one (1) year following such consumer transaction, or (iii) any time limitation, not less than thirty (30) days, of any period of warranty applicable to the transaction, which notice shall state fully the nature of the alleged deceptive act and the actual damage suffered therefrom, and unless such deceptive act shall have become an uncured deceptive act.

(b) No action may be brought under this chapter except as expressly authorized in section 4(a), 4(b), or 4(c) of this chapter. Any action brought under this chapter may not be brought more than two (2) years after the occurrence of the deceptive act.

(Formerly: Acts 1971, P.L.367, SEC.1.) As amended by Acts 1982, P.L.152, SEC.4; P.L.211-1993, SEC.1; P.L.45-1995, SEC.17.

IC 24-5-0.5-6
Application of law

Sec. 6. This chapter does not apply to an act or practice that is:

(1) required or expressly permitted by federal law, rule, or regulation; or

(2) required or expressly permitted by state law, rule, regulation, or local ordinance.

(Formerly: Acts 1971, P.L.367, SEC.1.) As amended by P.L.1-2006, SEC.412.

IC 24-5-0.5-7

Assurances of voluntary compliance

Sec. 7. (a) In the administration of this chapter, the attorney general may accept an assurance of voluntary compliance with respect to any deceptive act from any person who has engaged in, is engaging in, or is about to engage in such deceptive act. The assurance of voluntary compliance may include a stipulation for the voluntary payment by the person of the costs of investigation or payment of an amount to be held in escrow pending the outcome of an action or as restitution to aggrieved consumers, or both. The assurance of voluntary compliance shall be in writing and shall be filed with and subject to the approval of the court having jurisdiction.

(b) The assurance of voluntary compliance shall not be considered an admission of a deceptive act for any purpose; however, any violation of the terms of the assurance constitutes prima facie evidence of a deceptive act. Matters thus closed may at any time be reopened by the attorney general for further proceedings in the public interest.

As added by Acts 1978, P.L.127, SEC.4.

IC 24-5-0.5-8

Incurable deceptive act; civil penalty

Sec. 8. A person who commits an incurable deceptive act is subject to a civil penalty of a fine of not more than five hundred dollars ($500) for each violation. The attorney general, acting in the name of the state, has the exclusive right to petition for recovery of such a fine, and this fine may be recovered only in an action brought under section 4(c) of this chapter.

As added by Acts 1978, P.L.127, SEC.5. Amended by Acts 1982, P.L.152, SEC.5.

IC 24-5-0.5-9

Cooperative purchase supplier contracts; maximum duration; civil penalty

Sec. 9. A supplier which is organized primarily to provide benefits to persons from the cooperative purchase of the subject of a consumer transaction shall not offer a contract for that purpose that is to be effective for more than five (5) years. A supplier that violates this section is subject to a civil penalty of a fine of not more than five hundred dollars ($500) for each violation. The attorney general, acting in the name of the state, has the exclusive right to petition for recovery of such a fine, and this fine may be recovered only in an

action brought under section 4(c) of this chapter.
As added by Acts 1978, P.L.127, SEC.6. Amended by Acts 1982, P.L.152, SEC.6.

IC 24-5-0.5-10
Suppliers; deceptive and unconscionable acts

Sec. 10. (a) A supplier commits a deceptive act if the supplier gives any of the following representations, orally or in writing, or does any of the following acts:

(1) Either:

(A) solicits to engage in a consumer transaction without a permit or other license required by law;

(B) solicits to engage in a consumer transaction if a permit or other license is required by law to engage in the consumer transaction and the supplier is not qualified to obtain the required permit or other license or does not intend to obtain the permit or other license; or

(C) engages in a consumer transaction without a permit or other license required by law.

(2) Commits a violation of IC 24-5-10.

(3) Contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes a pyramid promotional scheme.

(b) A supplier commits an unconscionable act that shall be treated the same as a deceptive act under this chapter if the supplier solicits a person to enter into a contract or agreement:

(1) that contains terms that are oppressively one sided or harsh;

(2) in which the terms unduly limit the person's remedies; or

(3) in which the price is unduly excessive;

and there was unequal bargaining power that led the person to enter into the contract or agreement unwillingly or without knowledge of the terms of the contract or agreement. There is a rebuttable presumption that a person has knowledge of the terms of a contract or agreement if the person signs a written contract.
As added by P.L.12-1986, SEC.7. Amended by P.L.251-1987, SEC.1; P.L.18-1997, SEC.4.

IC 24-5-0.5-12
False claim of doctoral degree

Sec. 12. (a) It is an incurable deceptive act for an individual, while soliciting or performing a consumer transaction, to claim, either orally or in writing, to possess a doctorate degree or use a title, a word, letters, an insignia, or an abbreviation associated with a doctorate degree, unless the individual:

(1) has been awarded a doctorate degree from an institution that is:

(A) accredited by a regional or professional accrediting agency recognized by the United States Department of Education or the Council on Postsecondary Accreditation;

(B) a religious seminary, institute, college, or university whose certificates, diplomas, or degrees clearly identify the

religious character of the educational program; or

(C) operated and supported by a governmental agency; or

(2) meets the requirements approved by one (1) of the following boards:

(A) Medical licensing board of Indiana.

(B) State board of dental examiners.

(C) Indiana optometry board.

(D) Board of podiatric medicine.

(E) State psychology board.

(F) Board of chiropractic examiners.

(G) Indiana board of veterinary medical examiners.

(H) Indiana board of pharmacy.

(I) Indiana state board of nursing.

(b) It is an incurable deceptive act for an individual, while soliciting or performing a consumer transaction, to claim to be a:

(1) physician unless the individual holds an unlimited license to practice medicine under IC 25-22.5;

(2) chiropractic physician unless the individual holds a license as a chiropractor under IC 25-10-1; or

(3) podiatric physician unless the individual holds a license as a podiatrist under IC 25-29.

(c) The attorney general shall enforce this section in the same manner as any other incurable deceptive act under this chapter.

As added by P.L.175-1997, SEC.1. Amended by P.L.246-1999, SEC.1; P.L.12-2000, SEC.1.

IC 24-5-1
Repealed

(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2
Chapter 2. Sales Competition

IC 24-5-2-1
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-2
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-3
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-4
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-5
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-6
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-7
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-8
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-9
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-10
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-11
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-12
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-13
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-14
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-15
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-16
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-17
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-18
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-19
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-20
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-21
Contracts to prevent competition
Sec. 21. No manufacturer shall sell or contract to sell specific goods which may become the subject-matter of a retail installment sale in this state, whether patented or unpatented, to any retail seller in this state on the condition or with an agreement or understanding, express or implied, that the retail seller shall sell, assign or transfer any retail installment contracts arising from the retail installment sales of the goods, or any part thereof, only to a designated licensee or class of licensees, when the effect of the condition, agreement or understanding may be to lessen or eliminate competition, or create, or tend to create, a monopoly in the licensee or class designated. Any such condition, agreement or understanding with any retail seller in this state is hereby declared to be against the public policy of this state and to be unlawful and void.
(Formerly: Acts 1935, c.231, s.21.)

IC 24-5-2-22
Acts tending to prevent competition

Sec. 22. Any threat, express or implied, made directly or indirectly to any retail seller in this state by any manufacturer that the manufacturer will discontinue or cease to sell, or refuse to enter into a contract to sell, or will terminate a contract to sell, specific goods which may become the subject matter of a retail installment sale in this state, whether patented or unpatented, to the retail seller, unless the retail seller sells, assigns, or transfers the retail installment contracts arising from his retail installment sales to any designated licensee or class of licensees, shall be prima facie evidence that the manufacturer has sold or intends to sell such specific goods on the condition or with the agreement or understanding prohibited by section 21 of this chapter.

(Formerly: Acts 1935, c.231, s.22.) As amended by P.L.152-1986, SEC.74.

IC 24-5-2-23
Further acts tending to prevent competition

Sec. 23. Any threat, express or implied, made directly or indirectly to any retail seller in this state by any licensee hereunder that is affiliated with or controlled by any manufacturer that the manufacturer will terminate his contract with or cease to sell specific goods which may become the subject matter of a retail installment sale to the retail seller, unless the retail seller sells, assigns, or transfers the retail installment contracts arising from his retail installment sales to the licensee making the threat, shall be presumed to be made at the direction of and with the authority of the manufacturer and shall be prima facie evidence of the fact that the manufacturer has sold or intends to sell the specific goods on the condition or with the agreement or understanding prohibited by section 21 of this chapter.

(Formerly: Acts 1935, c.231, s.23.) As amended by P.L.152-1986, SEC.75.

IC 24-5-2-24
Subsidy of licensees

Sec. 24. No manufacturer shall pay or give or contract to pay or give any thing or service of value to any licensee in this state, and no licensee in this state shall accept or receive or contract or agree to accept or receive, directly or indirectly, any payment, thing or service of value from any manufacturer, if the effect of the payment or giving of any such thing or service of value by the manufacturer, or the acceptance or receipt thereof by the licensee, may be to lessen or eliminate competition or tend to create or create a monopoly in the licensee that accepts or receives the payment, thing or service of value or contracts or agrees to accept or receive the same.

(Formerly: Acts 1935, c.231, s.24.)

IC 24-5-2-25

Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-26
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-27
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-28
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-29
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-30
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-31
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-32
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-2-33
Repealed
(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-3
Repealed

(Repealed by P.L.10-2006, SEC.81 and P.L.57-2006, SEC.81.)

IC 24-5-4
Repealed

(Repealed by Acts 1971, P.L.366, SEC.10.)

IC 24-5-5

Chapter 5. Unsolicited Merchandise

IC 24-5-5-1

Refusal to accept merchandise; gift to receiver

Sec. 1. Where unsolicited merchandise is delivered to a person for whom it is intended such person has a right to refuse to accept delivery of this merchandise or he may deem it to be a gift and use it or dispose of it in any manner without any obligation to the sender. *(Formerly: Acts 1967, c.55, s.1.)*

IC 24-5-6
Repealed

(Repealed by P.L.251-1987, SEC.5.)

IC 24-5-7

Chapter 7. Health Spa Services

IC 24-5-7-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to sections 1, 2, 5, and 17 of this chapter by P.L.24-1989 are clarifications only and should not be construed as modifications of existing law.

As added by P.L.220-2011, SEC.395.

IC 24-5-7-1

Definitions

Sec. 1. As used in this chapter:

"Business day" means a day other than Sunday or a legal holiday.

"Buyer" means a purchaser of services under a contract for health spa services.

"Contract" means a contract for health spa services entered into after August 31, 1983. The term includes all financial agreements provided or arranged by the health spa or the health spa's affiliates.

"Health spa" means any business entity, other than an entity that is exempt from taxation under Section 501 of the Internal Revenue Code, offering health spa services to the public.

"Health spa services" means instruction, training, or assistance in physical culture, bodybuilding, exercising, reducing, figure development, or any other health spa service, for the use of the facilities of a health spa, figure salon, weight loss clinic, gymnasium, or other facility used for the delivery of health spa services, or for membership in any group, club, association, or organization formed to deliver health spa services.

"Seller" means a seller of services under a contract for health spa services.

As added by P.L.249-1983, SEC.1. Amended by P.L.24-1989, SEC.13.

IC 24-5-7-2

Contracts; requisites

Sec. 2. Every contract for health spa services shall be in writing and a copy shall be furnished to the buyer at the time the contract is formed.

As added by P.L.249-1983, SEC.1. Amended by P.L.24-1989, SEC.14.

IC 24-5-7-3

Contracts; term; limitations

Sec. 3. (a) No contract for health spa services may require payments or financing by the buyer over a period in excess of thirty-six (36) months from the date that the contract is entered into. The term of a contract may not be measured by or be for the life of the buyer.

(b) The term of a contract may not exceed three (3) years from the

date that the contract is entered into. A buyer may renew a contract for additional periods, but the contract price for the renewal of a contract must be at least twenty-four dollars ($24) per year.
As added by P.L.249-1983, SEC.1. Amended by P.L.24-1989, SEC.15.

IC 24-5-7-4
Contracts; time for performance; voidability

Sec. 4. (a) A contract for health spa services to be rendered at an existing health spa facility must provide that the performance of the agreed upon services is to begin within forty-five (45) days from the date that the contract is entered into.

(b) A contract for health spa services at a planned spa facility or spa facility under construction is voidable at the option of the buyer if the health spa facilities and the agreed upon services are not available within twelve (12) months from the date the contract is entered into.
As added by P.L.249-1983, SEC.1.

IC 24-5-7-5
Contracts; cancellation; notice; refunds

Sec. 5. (a) A copy of the buyer's cancellation rights under this chapter shall be furnished in writing to the buyer at the time the contract is formed.

(b) In at least 10 point boldface type, every contract for health spa services must provide that the contract may be cancelled before midnight of the third full business day after the buyer signs the contract.

(c) A buyer may cancel the contract by written notice, in any form, delivered in person or mailed by certified or registered mail to the seller at the address specified in the contract. The notice must be accompanied by the membership cards previously delivered to the buyer.

(d) All money paid under a contract shall be refunded within thirty (30) days of receipt of the notice of cancellation.
As added by P.L.249-1983, SEC.1. Amended by P.L.24-1989, SEC.16.

IC 24-5-7-6
Contracts; cancellation provisions; contingencies

Sec. 6. (a) In at least ten (10) point boldface type, every health spa services contract that has not been cancelled under section 5 of this chapter must provide that the buyer or the buyer's estate may cancel the contract if any of the following occur:

(1) The buyer dies.

(2) The buyer becomes totally physically disabled for the duration of the contract.

(3) The health spa facility operated by the seller is moved to a location that is more than five (5) miles from the original facility. However, if a health spa facility is closed at any site

and a facility with similar health spa services is operated less than five (5) miles away from the closed facility, then the buyer's contract may be transferred to the operating facility, if the operator of the facility to which the contract is to be transferred accepts the transfer.

(4) The services are no longer available as provided in the contract because of the seller's permanent discontinuance of operation.

(b) This section does not restrict the seller from offering or providing in a contract additional or broader reasons for cancellation.

As added by P.L.249-1983, SEC.1. Amended by P.L.12-1986, SEC.8.

IC 24-5-7-7

Contracts; cancellation provisions; evidence of disability or death

Sec. 7. The health spa may require and verify reasonable evidence of total physical disability or death. In the case of total physical disability, the health spa may also require that the buyer submit to a physical examination by a doctor agreeable to the buyer and the health spa. The cost of the examination shall be borne by the health spa.

As added by P.L.249-1983, SEC.1.

IC 24-5-7-8

Contracts cancelled; refunds; proration, cancellation of loan agreements

Sec. 8. (a) All money paid pursuant to a contract for health spa services that is cancelled under this chapter shall be refunded within thirty (30) days of receipt of a notice of cancellation. However, in a cancellation under section 6 of this chapter, the seller may retain the portion of the total price representing the services used or completed plus reimbursement for the expenses incurred in an amount not to exceed twenty-five percent (25%) of the total contract price. In no instance may the seller demand more than the full contract price from the buyer.

(b) If the buyer has executed any credit or loan agreement to pay for all or part of the cancelled health spa services, that agreement shall also be cancelled and returned within thirty (30) days. Notice of the duty described by this subsection must be included in each health spa services contract, in at least ten (10) point boldface type.

As added by P.L.249-1983, SEC.1. Amended by P.L.12-1986, SEC.9.

IC 24-5-7-9

Compliance with other provisions of law

Sec. 9. The provisions of this chapter are not exclusive and do not relieve the parties from compliance with other applicable provisions of law.

As added by P.L.249-1983, SEC.1.

IC 24-5-7-10

Contracts; voidability for noncompliance; cure by seller; actions

Sec. 10. (a) A contract for health spa services that does not comply with this chapter is voidable at the option of the buyer.

(b) The seller may cure noncompliance with this chapter, and no legal action may be brought by the buyer for relief under this chapter unless, following receipt of written notice of such noncompliance, the seller:

(1) fails within thirty (30) days of receipt of the notice of noncompliance to notify all buyers with whom the seller has contracted since August 31, 1983, of the noncompliance; or

(2) fails to make all contracts for health spa services which the seller has entered into after August 31, 1983, comply with this chapter.

As added by P.L.249-1983, SEC.1.

IC 24-5-7-11

Contracts; voidability for false information or advertisement

Sec. 11. Any contract for health spa services entered into in reliance upon any willfully or fraudulently disseminated false or misleading information, representation, notice, or advertisement of the seller is void and unenforceable.

As added by P.L.249-1983, SEC.1.

IC 24-5-7-12

Waiver of chapter provisions void

Sec. 12. Any waiver by the buyer of part or all of this chapter is contrary to public policy and is void and unenforceable.

As added by P.L.249-1983, SEC.1.

IC 24-5-7-13

Surety bonds; contracts for services to be rendered at planned facilities

Sec. 13. A health spa that sells contracts for health spa services to be rendered at a planned health spa facility or a health spa facility under construction shall file with the secretary of state a bond issued by a surety company admitted to do business in Indiana in the amount of twenty-five thousand dollars ($25,000) or such greater amount as the secretary of state may specify by rule. The health spa is relieved from the obligation to maintain such a bond upon commencing health spa service.

As added by P.L.249-1983, SEC.1.

IC 24-5-7-14

Surety bonds; requisites; cancellation; notices; new bond

Sec. 14. (a) The state of Indiana shall be the obligee under the bond.

(b) The bond shall be:

(1) executed by the health spa as principal and by a corporate surety licensed to do business in Indiana as surety;

(2) in such form and shall contain such terms and conditions as the secretary of state prescribes;

(3) conditioned upon the faithful performance of all obligations of a health spa to construct or commence operations at its planned facility; and

(4) effective from the date of filing with the secretary of state and shall continue in full force and effect until cancelled.

(c) The total and aggregate liability of the surety on a bond is limited to the amount specified in the bond.

(d) A health spa may not cancel a bond prior to the commencement of health spa services without the prior written approval of the secretary of state and without the secretary's approval of a substitute bond so as to provide continuous bonding of the health spa's activities prior to the commencement of health spa services.

(e) The surety on a bond may cancel a bond filed under this chapter only after the expiration of ninety (90) days from the date the surety, by registered or certified mail, return receipt requested, mails to the secretary of state and to the principal on the bond a notice of intent to cancel.

(f) Not later than thirty (30) days prior to the date upon which a bond cancellation becomes effective, the health spa shall give written notice to the secretary of state that a new bond has been obtained so as to provide continuous bond coverage of the health spa's activities prior to the commencement of health spa services.

As added by P.L.249-1983, SEC.1.

IC 24-5-7-15

Surety bonds claims against bonds; hearing and determination; distribution of bond proceeds

Sec. 15. (a) If any health spa fails, or is alleged to have failed, to meet its obligations prior to the commencement of health spa services, the secretary of state shall hold a hearing and determine whether there has been such a failure, determine those persons who, as buyers, have sustained financial losses recoverable under the bond and, if appropriate, distribute the bond proceeds to the persons sustaining losses, to the extent of their losses.

(b) Actions upon the bond and the right to payment under the bond extend solely to the secretary of state. However, if the secretary of state has not initiated an action upon the bond by scheduling and holding a hearing within thirty (30) days of a written request to do so, any claimant may initiate an action in the circuit court of Marion County, Indiana, to require the secretary of state to take action.

(c) If, upon a hearing, the secretary of state determines that the claims of persons who have sustained financial losses recoverable under the seller's bond exceed the amount of the bond proceeds, the proceeds shall be prorated among those persons according to the ratio that each person's loss bears to the total amount of all proven losses.

(d) The determination of the secretary of state as to liability under the bond and the amount distributed under the bond is binding upon the principal and surety of the bond.

(e) All hearings held under this section shall be held in

accordance with IC 4-21.5-3.

(f) The existence of the bond and the bond recovery procedure in no way affect or alter any other right or remedy which a person may have under applicable law.

As added by P.L.249-1983, SEC.1. Amended by P.L.7-1987, SEC.109.

IC 24-5-7-16

Purchase of facility; assumption of membership contract liability; preservation of actions or defenses

Sec. 16. (a) A purchaser of a health spa facility that offers health spa services to the public assumes all membership contract liability from the previous seller.

(b) Any right of action or defense arising out of a health spa services contract that the buyer has against the seller is preserved against an assignee of or successor to the contract.

As added by P.L.249-1983, SEC.1. Amended by P.L.24-1989, SEC.17.

IC 24-5-7-16.5

Refunds; options; repair and maintenance

Sec. 16.5. (a) Except as provided in subsection (d), if any of a health spa's facilities or services described in the contract are no longer provided before full receipt of the services and use of facilities for which the buyer contracted, the buyer is entitled to a refund based on the total consideration proportional to the elapsed time portion of the contract at the time of the unavailability, or may exercise the option provided by subsection (b).

(b) A buyer has the option, instead of the proportional refund provided in subsection (a), to choose to complete the unused portion of the contract, including renewal periods, at another location that is owned, controlled, affiliated with, or operated by the seller. A modification of the contract must be made in writing.

(c) This section does not restrict a health spa's ability to:

(1) make improvements to the facilities or services; or

(2) replace a facility or service with a superior facility or service.

(d) If a health spa ceases to provide services or access to facilities in order to perform regular maintenance or to repair equipment, a buyer may not exercise the rights provided in subsection (a) or (b) until the health spa has failed to provide services or access to facilities for a continuous period of thirty (30) days. However, if a health spa that has ceased to provide services or access to facilities in order to perform regular maintenance or repair equipment is unable to resume providing services or access to facilities within thirty (30) days due to circumstances beyond the control of the operator of the health spa, a buyer may not exercise the rights provided in subsection (a) or (b) until the health spa has failed to provide services or access to facilities for a continuous period of sixty (60) days.

As added by P.L.24-1989, SEC.18.

IC 24-5-7-17
Violations by buyer or seller; actions; penalties

Sec. 17. A purchaser of a health spa facility or a seller who violates this chapter commits a deceptive act that is actionable by the attorney general or by a buyer under IC 24-5-0.5, and is subject to the penalties set forth in that chapter.

As added by P.L.249-1983, SEC.1. Amended by P.L.24-1989, SEC.19.

IC 24-5-7-18
Enforcement powers

Sec. 18. The secretary of state shall have all powers necessary to accomplish the responsibilities assigned to him in this chapter including but not limited to the authority to compel the production of financial statements and such other information as the secretary of state may deem necessary.

As added by P.L.249-1983, SEC.1.

IC 24-5-8

Chapter 8. Business Opportunity Transactions

IC 24-5-8-1

Definitions

Sec. 1. As used in this chapter:

"Business opportunity" means an investment that:

(1) involves the sale or lease or offer to sell or lease any goods or services to an investor that are to be used by the investor in beginning or operating a business;

(2) involves an initial payment by the investor of more than five hundred dollars ($500) and an initial cash payment of less than fifty thousand dollars ($50,000); and

(3) involves a solicitation of investors in which the seller represents that:

(A) the investor may or will earn an amount in excess of the initial payment as a result of the investment;

(B) a market exists for any goods to be made or services to be rendered by the investor;

(C) the seller may buy from the investor any goods to be made or services to be rendered by the investor;

(D) the seller or a person referred by the seller to the investor may or will sell, lease, or distribute the goods made or services rendered by the investor; or

(E) the seller may or will pay to the investor the difference between the initial payment and the investor's earnings from the investment.

"Business opportunity" does not include an investment that involves:

(1) the sale of a franchise as defined by IC 23-2-2.5-1 or IC 23-2-2.7-5;

(2) the sale of any assets (other than inventory) of an ongoing business by the owner of the business;

(3) the not-for-profit sale of sales demonstration equipment, materials, or samples for a total price of five hundred dollars ($500) or less; or

(4) the sale of all or substantially all of the assets of an ongoing business.

"Contract" means any agreement relating to a business opportunity.

"Goods" means any merchandise, equipment, product, supply, or material.

"Initial cash payment" means that portion of the initial payment that the investor is obligated to pay to the seller before or at the time of delivery of goods or services. The term does not include any amount financed by the seller, any amount for which financing is to be obtained by the seller, any amount that the seller assists in financing, or any amount required by the seller to be deposited as security for the performance by an investor of the operation of the business or that secures an extension of credit.

"Initial payment" means the total amount an investor is obligated to pay under the terms of the contract before or at the time of delivery of the goods or services to the investor or within six (6) months of the date that the investor commences operation of the business. If the contract states a total price for the business opportunity and provides that the total price is to be paid partially as an initial cash payment and the remainder in specific monthly payments, the term means the total price. The term does not include any amount required by the seller to be deposited as security for the performance by an investor of the operation of the business or that secures an extension of credit.

"Investor" means a person who is solicited to become obligated or does become obligated on a contract.

"Offer" includes every attempt to dispose of a business opportunity or an interest in a business opportunity for value.

"Person" means a human being, corporation, limited liability company, partnership, unincorporated association, trust, or governmental entity.

"Sale" includes every contract to sell or dispose of a business opportunity or an interest in a business opportunity for value.

"Seller" means a person, or his agent, who sells or leases or offers to sell or lease a business opportunity.

"Service" means any assistance, guidance, direction, work, labor, or such other act as may be provided by the seller in the initiation or maintenance of a business.

"Substantial seller" means a seller who has a net worth on a consolidated basis, according to current financial statements certified by an independent certified public accountant, of:

(1) at least five million dollars ($5,000,000); or

(2) at least one million dollars ($1,000,000) if the seller is at least eighty percent (80%) owned by a corporation that has a net worth on a consolidated basis, according to current financial statements certified by an independent certified public accountant, of at least five million dollars ($5,000,000).

As added by P.L.134-1984, SEC.1. Amended by P.L.239-1985, SEC.2; P.L.12-1986, SEC.10; P.L.252-1987, SEC.1; P.L.8-1993, SEC.361.

IC 24-5-8-1.5

Substantial sellers; application of certain sections

Sec. 1.5. Sections 2, 3, 4, 13, 15, and 19 of this chapter do not apply to a substantial seller.

As added by P.L.252-1987, SEC.2.

IC 24-5-8-2

Disclosure document; cover sheet; contents

Sec. 2. (a) At least seventy-two (72) hours before the time the investor signs a contract, or at least seventy-two (72) hours before receipt of any consideration by the seller, whichever occurs first, the seller shall provide the investor a written disclosure document, the

cover sheet of which is entitled in at least ten (10) point bold face capital letters "DISCLOSURES REQUIRED BY INDIANA LAW". Under this title, the following statement must appear in at least ten (10) point type: "The state of Indiana has not reviewed and does not approve, recommend, endorse, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract.". Nothing except the title and statement may appear on the cover sheet.

(b) The disclosure document must also contain the following information:

(1) The name of the seller, whether the seller is doing business as an individual, partnership, limited liability company, or corporation, the names under which the seller has done, is doing, or intends to do business, and the name of any parent or affiliated company that will engage in business transactions with the investor or that will take responsibility for statements made by the seller.

(2) The names, business addresses, business telephone numbers, and titles of the seller's officers, directors, trustees, general partners, general managers, principal executives, and any other persons charged with responsibility for the seller's business activities relating to the sale of business opportunities.

(3) The names, business addresses, and business telephone numbers of all the seller's representatives who are soliciting business opportunities in Indiana.

(4) The length of time the seller has:

(A) solicited business opportunities; and

(B) solicited business opportunities involving the goods or services currently being offered to the investor.

(5) A statement of the initial payment to be paid by the investor, or when not known, a statement of the approximate initial payment to be paid.

(6) An unexecuted copy of all contracts.

(7) The following financial statements:

(A) A balance sheet of the seller as of the close of its last fiscal year.

(B) Income statements for each of the seller's last three (3) fiscal years or for the period of the seller's and any predecessor's existence, if the seller and any predecessor have been in existence for less than three (3) years.

(8) A complete and detailed description of any service that the seller undertakes to perform for the investor.

(9) A complete description of any training offered by the seller, the length of training, and a detailed itemization of all costs to be covered by any fee to be charged for the training.

(10) A statement disclosing the names, home addresses, and home telephone numbers of all persons who have been investors in a business opportunity offered by the seller within the last two (2) year period.

(11) A statement listing the name, home address, and home telephone number of any investor who has requested within the preceding three (3) year period that the seller return his money.
(12) A statement as to whether the seller or any of its officers, directors, trustees, general partners, general managers, principal executives, or representatives has been:

(A) held liable in a civil action for unfair, false, misleading, or deceptive practices;

(B) convicted of a crime involving fraud, embezzlement, conversion, or theft during the most recent seven (7) year period; or

(C) declared bankrupt in any judicial proceeding during the most recent seven (7) year period.

(13) A statement as to whether the seller or any of its officers, directors, trustees, general partners, general managers, principal executives, or representatives has been a party to any legal cause of action brought by an investor within the most recent seven (7) year period.
(14) A statement as to whether the seller or any of its officers, directors, trustees, general partners, general managers, principal executives, or representatives is currently involved in litigation alleging unfair, false, misleading, or deceptive practices.
(15) A statement containing the name of the parties, the name of the court, the cause or docket number of the lawsuit, the date the suit was filed, and the date the judgment was entered, if applicable, for each answer to subdivisions (12), (13), and (14).
(16) The following statement: "As required by Indiana law, the seller has secured a bond issued by _____ (name and address of surety), a surety company authorized to do business in Indiana. Before signing a contract to invest in this business opportunity, you should check with the surety company to determine the bond's current status.".
(17) If the seller makes any statement concerning earnings or range of earnings that may be earned through the business opportunity, the seller must set forth the following:

"No guarantee of earnings or ranges of earnings can be made. The number of investors who have earned through this business opportunity an amount in excess of the amount of their initial payment is at least _____, which represents _____ percent of the total number of investors in this business opportunity.".

As added by P.L.134-1984, SEC.1. Amended by P.L.8-1993, SEC.362.

IC 24-5-8-3
Surety bonds; requirements; waiver

Sec. 3. (a) A seller shall obtain a surety bond issued by a surety company authorized to do business in Indiana. The amount of the bond must be at least twenty (20) times the initial payment required for the business opportunity, but not less than seventy-five thousand

dollars ($75,000). The bond must be in favor of the state for the use and benefit of investors.

(b) The attorney general may waive the bonding requirement under subsection (a) and accept in lieu of the bond an irrevocable letter of credit for an equivalent amount issued in the favor of the state.

As added by P.L.134-1984, SEC.1. Amended by P.L.12-1986, SEC.11.

IC 24-5-8-4

Requirements before advertising; amendment of filings; renewal fee; record of filings

Sec. 4. (a) Before placing any advertisement or making any other representations to any investor in Indiana, the seller shall:

(1) file a copy of the disclosure statement required by section 2 of this chapter and the bond required by section 3 of this chapter with the consumer protection division of the office of the attorney general; and

(2) pay an initial filing fee of fifty dollars ($50).

(b) The seller shall amend these filings when any material change in the information occurs and shall pay a fee of ten dollars ($10) for filing the amendment.

(c) If the seller continues to solicit business opportunities in Indiana, he shall pay annually a renewal fee of ten dollars ($10) on or before the anniversary date of the initial filing for the particular business opportunity.

(d) The director of the consumer protection division of the office of the attorney general or his designate shall maintain a record of all filings made under this chapter and shall assign a registration number to each of them. The seller shall be advised in writing of the assigned number. Any advertisements, pamphlets, brochures, or any other materials used in the solicitation of a business opportunity must include the assigned registration number in the following manner: "C.P.D. Reg. No. ____ .".

As added by P.L.134-1984, SEC.1.

IC 24-5-8-5

Representations of business opportunity; copy to investor, contents

Sec. 5. (a) If the seller represents that the business opportunity provides earning potential of any kind, the seller shall have data to substantiate the claims of earning potential and shall give to the investor at the first in person communication by the seller a copy of this data or a copy of any statement of estimated or projected earning potential prepared for presentation to prospective investors, together with an explanation of the statement. A mathematical computation of the number of sales multiplied by the amount of profit per sale to reach a projected earnings figure is not sufficient data to substantiate an earnings potential claim for the purposes of this section.

(b) The earning potential data given to the investor by a seller, except a substantial seller, must disclose:

(1) the length of time the seller has been soliciting the particular business opportunity;

(2) the number of investors in the particular business opportunity that were solicited by the seller and known to the seller to have made at least the same sales, earnings, or profits as those represented;

(3) the percentage the number in subdivision (2) represents of the total number of investors in the particular business opportunity that were solicited by the seller; and

(4) the current address of any person named by the seller as having profited from the particular business opportunity, a description of the circumstances under which the profit was earned, and a description of any interest held by the named person in the business opportunity being offered to the investor.

As added by P.L.134-1984, SEC.1. Amended by P.L.252-1987, SEC.3.

IC 24-5-8-6
Contracts; contents

Sec. 6. (a) The seller shall put every contract in writing and shall give the investor a copy of the contract at the time the investor signs the contract.

(b) The seller shall include in every contract the following:

(1) The seller's business address and the name and business address of the seller's agent in this state authorized to receive service of process.

(2) The terms and conditions of payment.

(3) A detailed description of any services that the seller undertakes to perform for the investor.

(4) A detailed description of any training that the seller undertakes to provide to the investor.

(5) The approximate delivery date of any goods the seller is to deliver to the investor.

(6) A statement of the investor's right to cancel that must:

(A) appear under the conspicuous caption, "INVESTOR'S RIGHT TO CANCEL WITHIN 30 DAYS"; and

(B) contain the following statement in no smaller type than the body portion of the contract: "THE INVESTOR IN THIS BUSINESS OPPORTUNITY HAS THE RIGHT TO CANCEL THIS CONTRACT FOR ANY REASON AT ANY TIME BEFORE MIDNIGHT OF THE 30TH CALENDAR DAY AFTER THIS CONTRACT IS ENTERED INTO. YOU MAY CANCEL THIS CONTRACT BY MAILING A NOTICE THAT YOU DO NOT WANT THE BUSINESS OPPORTUNITY TO THE SELLER BEFORE _____, 20__ AT 12:00 MIDNIGHT AT _____.".

(c) Subsection (b)(6) does not apply to a contract entered into by a substantial seller, unless required by the consumer protection division of the office of the attorney general for good cause shown

after notice.
As added by P.L.134-1984, SEC.1. Amended by P.L.252-1987, SEC.4; P.L.2-2005, SEC.62.

IC 24-5-8-7
Books, records, and accounts; documents

Sec. 7. (a) Every seller shall keep and maintain a complete set of books, records, and accounts of business opportunity transactions made by the seller.

(b) The seller shall keep all documents relating to each contract entered into by the seller for four (4) years after the date of the contract.
As added by P.L.134-1984, SEC.1.

IC 24-5-8-8
Validity of waiver of provisions by investor

Sec. 8. Any waiver by an investor of the provisions of this chapter is deemed contrary to public policy and is void and unenforceable.
As added by P.L.134-1984, SEC.1.

IC 24-5-8-9
Attempts to have investor waive rights

Sec. 9. A seller may not attempt to have an investor waive rights given to the investor by this chapter.
As added by P.L.134-1984, SEC.1.

IC 24-5-8-10
Cutting off right or defense of investor against seller

Sec. 10. A seller may not require the investor to execute any note that will cut off a right or defense that the investor or a third party may have against the seller.
As added by P.L.134-1984, SEC.1.

IC 24-5-8-11
Initial cash payment

Sec. 11. A seller may not require an initial cash payment that exceeds twenty percent (20%) of the initial payment.
As added by P.L.134-1984, SEC.1.

IC 24-5-8-12
Escrow accounts

Sec. 12. A seller may not require a payment before the delivery of any goods that exceeds twenty percent (20%) of the initial payment unless the amount in excess of the twenty percent (20%) payment is placed in an escrow account which provides that the money can not be released until:

(1) the investor notifies the escrow agent in writing of the receipt of the goods; or

(2) the seller presents to the escrow agent a bill of lading that proves shipment of the goods as required by the contract.

Notification of receipt by the investor to the escrow agent may not be unreasonably withheld.
As added by P.L.134-1984, SEC.1.

IC 24-5-8-13
Reference to compliance with chapter in advertisement

Sec. 13. A seller may not make any reference to its compliance with this chapter in any advertisement or other contact with an investor other than by setting forth the registration number as provided in section 4 of this chapter.
As added by P.L.134-1984, SEC.1.

IC 24-5-8-14
Use of commercial symbols

Sec. 14. A seller may not use the trademark, service mark, trade name, logotype, advertising, or other commercial symbol of any business that does not either control the ownership interest in the seller or accept responsibility for all representations made by the seller in regard to the business opportunity, unless it is clear from the circumstances that the owner of the commercial symbol is not involved in the business opportunity.
As added by P.L.134-1984, SEC.1.

IC 24-5-8-15
Cancellation of contract for seller's failure to comply

Sec. 15. If a seller fails to comply with section 2 of this chapter, the investor may cancel any contract by notifying the seller in any manner.
As added by P.L.134-1984, SEC.1.

IC 24-5-8-16
Voiding contracts

Sec. 16. (a) If a seller:

(1) uses any untrue, misleading, or deceptive statements in a business opportunity transaction;

(2) fails to deliver the goods or services necessary to begin substantial operation of the business within forty-five (45) days of the delivery date stated in the contract; or

(3) fails to comply with section 6 of this chapter;

the investor may void the contract within one (1) year of the date of the contract by giving written notice to the seller and is entitled to a return from the seller of all consideration paid to the seller.

(b) Upon receipt by the investor of the consideration paid to the seller, the investor shall make available to the seller, at a reasonable time and place, the goods received by the investor. However, the investor is not entitled to unjust enrichment by exercising the rights provided by this section.
As added by P.L.134-1984, SEC.1.

IC 24-5-8-17

Recovery of actual damages for seller's failure to comply with chapter or breach of contract

Sec. 17. Notwithstanding any other section of this chapter, a person who is damaged by a seller's failure to comply with this chapter or by a seller's breach of a contract may:

(1) bring an action for recovery of his actual damage including attorney fees; and

(2) bring an action against the bond required by section 3 of this chapter;

to recover an amount equal to his actual damages. However, the liability of the seller under this section may not exceed the amount of the bond.

As added by P.L.134-1984, SEC.1.

IC 24-5-8-18

Injunction

Sec. 18. Upon complaint by any person that a seller has failed to comply with this chapter, the circuit or superior court of the county of residence of the complainant may enjoin the seller from further violations.

As added by P.L.134-1984, SEC.1.

IC 24-5-8-19 Version a

Failure to comply; Class D felony

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

Sec. 19. A person who fails to comply with section 4 of this chapter commits a Class D felony.

As added by P.L.134-1984, SEC.1.

IC 24-5-8-19 Version b

Failure to comply; penalty

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

Sec. 19. A person who fails to comply with section 4 of this chapter commits a Level 6 felony.

As added by P.L.134-1984, SEC.1. Amended by P.L.158-2013, SEC.274.

IC 24-5-8-20

Failure to comply; deceptive act

Sec. 20. A person who fails to comply with any provision of this chapter commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4(c) and is subject to the penalties enumerated in IC 24-5-0.5.

As added by P.L.134-1984, SEC.1.

IC 24-5-8-21

Construction

Sec. 21. Nothing in this chapter shall be construed as relieving a

person from complying with IC 23-2-2.5, IC 23-2-2.7, and IC 23-19.
As added by P.L.134-1984, SEC.1. Amended by P.L.27-2007, SEC.24.

IC 24-5-9
Repealed

(Repealed by P.L.2-2002, SEC.128.)

IC 24-5-10
Chapter 10. Home Solicitation Sales

IC 24-5-10-1
"Business day" defined
Sec. 1. As used in this chapter, "business day" means a day other than Sunday or a legal holiday.
As added by P.L.251-1987, SEC.2.

IC 24-5-10-2
"Consumer" defined
Sec. 2. As used in this chapter, "consumer" means an individual who is the ultimate user of the subject of a consumer transaction.
As added by P.L.251-1987, SEC.2.

IC 24-5-10-3
"Consumer transaction" defined
Sec. 3. As used in this chapter, "consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible to an individual for purposes that are primarily personal, family, or household, or a solicitation to supply any of these things, with or without an extension of credit. The term does not include securities and policies or contracts of insurance issued by corporations authorized to transact an insurance business under the laws of Indiana.
As added by P.L.251-1987, SEC.2.

IC 24-5-10-4
"Home consumer transaction" defined
Sec. 4. As used in this chapter, "home consumer transaction" means a consumer transaction that the consumer did not solicit that results from the direct contact by a supplier at a place other than the supplier's permanent place of business. For purposes of this chapter, direct contact by the supplier does not include:
(1) contact conducted and consummated entirely by mail or telephone;
(2) contact between the buyer and seller or its representatives before delivery of the goods or performance of the services in the case of a supplier regulated under IC 23-7-8; or
(3) advertising to the general public.
As added by P.L.251-1987, SEC.2.

IC 24-5-10-5
"Person" defined
Sec. 5. As used in this chapter, "person" means an individual, a corporation, the state or its subdivisions or agencies, a business trust, an estate, a trust, a partnership, an association, a cooperative, or any other legal entity.
As added by P.L.251-1987, SEC.2.

IC 24-5-10-6
"Supplier" defined

Sec. 6. As used in this chapter, "supplier" means a seller, lessor, assignor, or other person who engages in or solicits consumer transactions, including a manufacturer, wholesaler, or retailer, whether or not the supplier deals directly with the consumer.
As added by P.L.251-1987, SEC.2.

IC 24-5-10-7
"Subject of a consumer transaction" defined

Sec. 7. As used in this chapter, "subject of a consumer transaction" means the personal property, real property, services, or intangibles furnished in a consumer transaction, whether the transaction is governed by a single contract or multiple contracts.
As added by P.L.251-1987, SEC.2.

IC 24-5-10-8
Cancellation of transaction; notice to supplier

Sec. 8. (a) A consumer may cancel a home consumer transaction if:

(1) the subject of the consumer transaction has a cash sales price of at least twenty-five dollars ($25); and

(2) the consumer gives the supplier a written notice that meets the requirements of 16 C.F.R. 429.1(a) and (b).

(b) The notice given under subsection (a)(2) must meet the following requirements:

(1) It must be given before midnight of the third business day after the later of the date:

(A) the supplier furnishes the consumer with the notice required by section 9 of this chapter; or

(B) the consumer and the supplier finally agree to the contract for the subject of the consumer transaction.

(2) It must express in any form the consumer's intention to cancel the consumer transaction.

(3) It must be delivered in person or sent by mail or other device to the address given in the supplier's notice required by section 9 of this chapter or to the address of the supplier last known to the consumer if such notice was not given.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-9
Cancellation rights; notice to consumer

Sec. 9. (a) The supplier in a home consumer transaction subject to section 8 of this chapter shall deliver to the consumer two (2) copies of a written notice of the consumer's right to cancel the transaction.

(b) The notice shall be on a separate document in at least ten (10) point boldface type and contain the following information:

(1) The address to which the consumer's notice of cancellation may be delivered or sent.

(2) A statement that the transaction may be cancelled before midnight of the third business day after the consumer and the supplier finally agree to the transaction.
(3) A statement of the explanation of the steps the consumer must take to cancel the home consumer transaction.
(4) A statement of the steps the consumer and supplier must take after cancellation of the home consumer transaction.
(5) The date by which the consumer must exercise the right to cancel the transaction.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-10
Supplier's address change as defense

Sec. 10. A change of the supplier's address is not a defense unless the consumer receives written notice of the change by delivery in person or by certified or registered mail within the time the consumer may exercise the consumer's right to cancel under this chapter.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-11
Final agreement

Sec. 11. Final agreement to a contract does not occur until the consumer and the supplier unequivocally agree to the contract and the supplier obtains any required approvals by another supplier or person.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-12
Return of consideration upon cancellation; emergency home improvements completed; quantum meruit

Sec. 12. If the consumer exercises the right to cancel under this chapter, the supplier shall, within ten (10) business days after the notice of cancellation is delivered, return to the consumer any payment or other consideration transferred to the supplier by the consumer. However, if the transaction constitutes a home improvement contract under IC 24-5-11 and if the home improvement has been made on an emergency basis within three (3) days after final agreement to the contract, the supplier is entitled to recover from the consumer the fair market value of the material and labor involved to alleviate the emergency.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-13
Repossession by supplier; conditions

Sec. 13. (a) If the consumer exercises the right to cancel under this chapter and has possession of the subject of the consumer transaction, the supplier may retake possession only:
(1) if the supplier has complied with section 12 of this chapter;
(2) if no more than ten (10) days have passed after compliance with section 12 of this chapter; and

(3) to the extent its return is feasible and can be done without causing damage to any other property of the consumer.

(b) If the supplier fails to take possession of the property within twenty (20) days after receipt of the notice of cancellation, the supplier's right to possession is forfeited.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-14
Mitigation of damages

Sec. 14. The supplier is not entitled to mitigation of damages if a consumer properly exercises the consumer's right to cancel under this chapter.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-15
Supplier provided remedies

Sec. 15. This chapter does not restrict the supplier from offering or providing additional or broader reasons for cancellation.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-16
Other remedies

Sec. 16. The consumer's right to cancel a home consumer transaction under this chapter is in addition to any other remedy available to the consumer. This right cannot be waived.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-17
Violations

Sec. 17. It is a violation of this chapter for a supplier to:

(1) fail to give the notice required by section 9 of this chapter;

(2) fail or refuse to make a full refund as required by this chapter; or

(3) knowingly interfere with the consumer's exercise of the consumer's rights under this chapter.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-18
Penalties

Sec. 18. A supplier who violates this chapter:

(1) commits a Class C infraction and is required to make a full refund as provided by section 12 of this chapter; and

(2) commits a deceptive act that is actionable by the attorney general or by a consumer under IC 24-5-0.5-4 and is subject to the remedies and penalties under IC 24-5-0.5.

As added by P.L.251-1987, SEC.2.

IC 24-5-11
Chapter 11. Home Improvement Contracts

IC 24-5-11-1
Application of chapter
Sec. 1. This chapter applies only to residential property.
As added by P.L.251-1987, SEC.3. Amended by P.L.82-2012, SEC.1.

IC 24-5-11-2
"Consumer"
Sec. 2. As used in this chapter, "consumer" means an individual who owns, leases, or rents the residential property that is the subject of a home improvement contract.
As added by P.L.251-1987, SEC.3.

IC 24-5-11-2.5
"Exterior home improvement"
Sec. 2.5. As used in this chapter, "exterior home improvement" means any alteration, repair, replacement, reconstruction, or other modification made to the exterior of residential property, including the exterior of any structure on or fixture or improvement to the property. The term also includes the alteration, repair, replacement, reconstruction, or other modification of a residential roof system.
As added by P.L.82-2012, SEC.2.

IC 24-5-11-3
"Home improvement"
Sec. 3. (a) As used in this chapter, "home improvement" means any alteration, repair, replacement, reconstruction, or other modification of residential property.
(b) The term includes an exterior home improvement.
As added by P.L.251-1987, SEC.3. Amended by P.L.82-2012, SEC.3.

IC 24-5-11-4
"Home improvement contract"
Sec. 4. As used in this chapter, "home improvement contract" means an agreement, oral or written, between a home improvement supplier and a consumer to make a home improvement and for which the contract price exceeds one hundred fifty dollars ($150).
As added by P.L.251-1987, SEC.3.

IC 24-5-11-5
"Home improvement contract price"
Sec. 5. As used in this chapter, "home improvement contract price" means the amount actually charged for the services, materials, and work to be performed under the home improvement contract but does not include financing costs, loan consolidation amounts, taxes, and governmental fees paid by or on behalf of the consumer, amounts returned to or on behalf of the consumer, or similar costs not related to the home improvement.

As added by P.L.251-1987, SEC.3.

IC 24-5-11-6
"Home improvement supplier"

Sec. 6. As used in this chapter, "home improvement supplier" means a person who engages in or solicits home improvement contracts whether or not the person deals directly with the consumer.
As added by P.L.251-1987, SEC.3.

IC 24-5-11-6.2
"Insured consumer"

Sec. 6.2. As used in this chapter, "insured consumer" refers to a person:

(1) who is a policyholder or an insured under a:
  (A) personal line policy of property and casualty insurance coverage; or
  (B) commercial line farm insurance policy that insures residential property; and
(2) who is or may become a consumer who enters into a home improvement contract under this chapter.

As added by P.L.82-2012, SEC.4.

IC 24-5-11-7
"Person"

Sec. 7. As used in this chapter, "person" means an individual, a corporation, the state or its subdivisions or agencies, a business trust, an estate, a trust, a partnership, an association, or a cooperative or any other legal entity.
As added by P.L.251-1987, SEC.3.

IC 24-5-11-7.5
"Residential property"

Sec. 7.5. (a) As used in this chapter, "residential property" means real property that:

(1) contains one (1) to four (4) units; and
(2) is used in whole or in part as a dwelling of a consumer.

(b) The term includes all fixtures to, structures on, and improvements to the real property.
As added by P.L.82-2012, SEC.5.

IC 24-5-11-7.7
"Roof system"

Sec. 7.7. As used in this chapter, "roof system" includes roof coverings, roof sheathing, roof weatherproofing, and insulation.
As added by P.L.82-2012, SEC.6.

IC 24-5-11-8
"Specifications"

Sec. 8. As used in this chapter, "specifications" means the plans, detailed drawings, lists of materials, or other methods customarily

used in the home improvement industry as a whole to describe with particularity the work, workmanship, materials, and quality of materials for each home improvement.
As added by P.L.251-1987, SEC.3.

IC 24-5-11-9
License or permit as prerequisite

Sec. 9. Where a license or permit is necessary for any part of a home improvement, the home improvement contract shall be subject to obtaining the necessary licenses or permits prior to any work commencing.
As added by P.L.251-1987, SEC.3.

IC 24-5-11-10
Contract requirements; insurance policies; exterior home improvements; statement of right to cancel; notice of cancellation; supplier's nexus with Indiana; contract modifications

Sec. 10. (a) The home improvement supplier shall provide a completed home improvement contract to the consumer before it is signed by the consumer. Except as provided in subsection (c), the contract must contain at a minimum the following:

(1) The name of the consumer and the address of the residential property that is the subject of the home improvement.

(2) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed.

(3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract.

(4) A reasonably detailed description of the proposed home improvements.

(5) If the description required by subdivision (4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications.

(6) The approximate starting and completion dates of the home improvements.

(7) A statement of any contingencies that would materially change the approximate completion date.

(8) The home improvement contract price.

(9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or a typed version of that person's name placed directly after or below the signature.

(b) The home improvement contract must be in a form that each consumer who is a party to it can reasonably read and understand.

(c) If a home improvement contract is entered into for damage,

loss, or expense that is to be paid, in whole or in part, from the proceeds of a personal line property and casualty insurance policy or a commercial line farm insurance policy that insures residential property, or for damage, loss, or expense for which a third party is liable, the following conditions and requirements apply to the home improvement contract:

(1) For the purpose of subsection (a)(4) through (a)(7), the description, completion dates, and statement of contingencies must be prepared for the proposed home improvements to the extent that the damage, loss, or expense is reasonably known by the home improvement supplier.

(2) For the purpose of subsection (a)(4), the requirement that a reasonably detailed description be included in the contract may be satisfied with a statement that the subject real estate will be repaired or restored to the same condition in which the real estate existed before the damage, loss, or expense occurred, or to a comparable condition.

(3) For the purpose of subsection (a)(6), the starting and completion dates may be expressed in terms of the number of days elapsed from the date when sufficient approval of the insurance carrier terms allowing for adequate repair or restoration is obtained.

(4) For the purpose of subsection (a)(8), the consumer or insured consumer may agree to a contract price expressed in terms of the consumer's or insured consumer's liability for payment after the application of insurance proceeds or payments from a liable third party.

(5) The consumer or insured consumer may elect, in writing, to authorize the commencement of work on the home before the consumer or insured consumer receives complete specifications. However, a consumer or an insured consumer who elects to authorize the commencement of work under this subdivision is obligated for the home improvements specified and agreed to by the insurance carrier.

(6) This subdivision applies to a home improvement contract that is entered into by a home improvement supplier and an insured consumer after June 30, 2012, and that includes one (1) or more exterior home improvements. Before entering into a home improvement contract that is to be paid, in whole or in part, from the proceeds of a personal line property and casualty insurance policy or a commercial line farm insurance policy that insures residential property, the home improvement supplier must inform the insured consumer of the insured consumer's rights under section 10.5(b) of this chapter by doing the following:

(A) Furnishing to the insured consumer the following statement: "You may cancel this contract at any time before midnight on the third business day after you have received written notification from your insurance company that all or any part of the claim or contract is not a covered loss under

the insurance policy. See attached notice of cancellation form for an explanation of this right.".

(B) Furnishing to the insured consumer a form, in duplicate, that is captioned "NOTICE OF CANCELLATION" and is attached to the contract but easily detachable, and that contains the following statement in at least 10 point, boldface type:

"NOTICE OF CANCELLATION

If you are notified by your insurance company that all or any part of the claim or contract is not a covered loss under the insurance policy, you may cancel the contract by mailing or delivering a signed and dated copy of this cancellation notice or any other written notice to (name of home improvement supplier) at (address of home improvement supplier's place of business) at any time before midnight on the third business day after you have received such notice from your insurance company.

If you cancel the contract, any payments made by you under the contract will be returned to you within ten (10) business days following receipt by (name of home improvement supplier) of your cancellation notice, minus any amounts you may owe for work already done by (name of home improvement supplier).

I HEREBY CANCEL THIS TRANSACTION

_____

(date)

_____

(insured consumer's signature)".

(7) This subdivision applies to a home improvement contract that is entered into as a result of damage, loss, or expense that is to be paid, in whole or in part, from the proceeds of a personal line property and casualty insurance policy or a commercial line farm insurance policy that insures residential property. However, this subdivision does not apply to a consumer and a home improvement supplier that have a prior business relationship. After June 30, 2012, a home improvement supplier may not enter into a home improvement contract to which this subdivision applies unless one (1) or more of the following apply:

(A) The home improvement supplier resides, is domiciled, or is authorized to do business in Indiana.

(B) The home improvement supplier maintains in Indiana one (1) or more fixed physical locations from which the home improvement supplier engages in or solicits home improvement contracts.

(C) The home improvement supplier has appointed a resident agent in Indiana for service of legal process.

(d) A modification to a home improvement contract is not enforceable against a consumer unless the modification is stated in a writing that is signed by the consumer.

As added by P.L.251-1987, SEC.3. Amended by P.L.119-2001, SEC.1; P.L.82-2012, SEC.7.

IC 24-5-11-10.5
Prohibited acts; contracts with insured consumers for exterior improvements; right to cancel; services performed; acting as public adjuster prohibited

Sec. 10.5. (a) A home improvement supplier shall not advertise, offer, or promise to pay or rebate any part of an insurance deductible to induce a person to enter into a home improvement contract or otherwise purchase goods or services from the home improvement supplier. Acts prohibited by this subsection include the following:

(1) Advertising, offering, or promising to grant an allowance or a discount against the home improvement contract price or against other fees or charges.

(2) Advertising, offering, or promising to pay to an insured consumer, or to any other person, any form of compensation, including a gift, prize, bonus, coupon, credit, referral fee, or other item of monetary value for any reason, including the display of a sign or advertisement on residential property.

(b) This subsection applies to a home improvement contract that is entered into by a home improvement supplier and an insured consumer after June 30, 2012, and that includes one (1) or more exterior home improvements. An insured consumer who enters into a home improvement contract for which the home improvement contract price, or charges for other goods and services under the contract, are to be paid, in whole or in part, from the proceeds of a personal line property and casualty insurance policy or a commercial line farm insurance policy that insures residential property, may cancel the contract before midnight on the third business day after the insured consumer has received written notice from the insurance company that any part of the claim or contract is not a covered loss under the insurance policy. An insured consumer who seeks to cancel a home improvement contract under this subsection must provide to the home improvement supplier, at the address specified in the form provided under section 10(c)(6)(B) of this chapter, written notice of the insured consumer's intent not to be bound by the contract. If the notice of cancellation is sent by mail, the notice is effective upon deposit of the notice into the United States mail, with postage prepaid and the notice properly addressed to the home improvement supplier. Subject to subsection (c), not later than ten (10) days after a home improvement contract is cancelled under this subsection, the home improvement supplier shall tender to the insured consumer:

(1) any payment or deposit made by the insured consumer; and

(2) any note or other evidence of indebtedness of the insured consumer.

(c) If:

(1) an insured consumer cancels a home improvement contract under subsection (b); and

(2) the home improvement supplier has performed emergency

or temporary services that the insured consumer acknowledged in writing before their performance to be necessary to prevent damage to the residential property;

the home improvement supplier is entitled to the reasonable value of the emergency or temporary services performed.

(d) A home improvement supplier shall not act as a public adjuster (as defined in IC 27-1-27-1).

As added by P.L.82-2012, SEC.8.

IC 24-5-11-11

Signature of supplier

Sec. 11. Before the consumer signs the home improvement contract and before the consumer can be required to make any down payment, the home improvement supplier must have agreed unequivocally by written signature to all of the terms of the home improvement contract.

As added by P.L.251-1987, SEC.3.

IC 24-5-11-12

Consumer's copy of dated contract

Sec. 12. The home improvement supplier shall give a fully executed copy of the home improvement contract to the consumer immediately after the consumer signs it. The contract must also show the dates the supplier and each consumer executed the contract.

As added by P.L.251-1987, SEC.3.

IC 24-5-11-13

Approval by consumer

Sec. 13. Any approval required by this chapter shall not be unreasonably withheld by the consumer.

As added by P.L.251-1987, SEC.3.

IC 24-5-11-14

Violation; penalties

Sec. 14. A home improvement supplier who violates this chapter commits a deceptive act that is actionable by the attorney general or by a consumer under IC 24-5-0.5-4 and is subject to the remedies and penalties under IC 24-5-0.5.

As added by P.L.251-1987, SEC.3.

IC 24-5-11.5
Repealed

(Repealed by P.L.2-2002, SEC.128.)

IC 24-5-12

Chapter 12. Telephone Solicitations

IC 24-5-12-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to section 2 of this chapter by P.L.24-1989 are clarifications only and should not be construed as modifications of existing law.

(2) The amendments made to section 23 of this chapter by P.L.222-2005 apply only to a contract entered into or renewed after July 1, 2005.

As added by P.L.220-2011, SEC.396.

IC 24-5-12-1

"Division" defined

Sec. 1. As used in this chapter, "division" means the consumer protection division of the office of the attorney general.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-2

"Item" defined

Sec. 2. As used in this chapter, "item" means tangible or intangible property or services. The term includes but is not limited to coupon books for use with a business other than the seller's business and certificates of a type that the purchaser must redeem to obtain the item described in the certificate.

As added by P.L.253-1987, SEC.1. Amended by P.L.24-1989, SEC.23.

IC 24-5-12-3

"Owner" defined

Sec. 3. As used in this chapter, "owner" means a person who owns or controls ten percent (10%) or more of the equity of a seller, or otherwise has a claim to ten percent (10%) or more of the net income of a seller.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-4

"Person" defined

Sec. 4. As used in this chapter, "person" means an individual, an incorporated or unincorporated organization or association, or any other legal entity.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-5

"Principal" defined

Sec. 5. As used in this chapter, "principal" means an owner, an officer, a general partner, a trustee, or other individual with

supervisory functions usually exercised by those persons.
As added by P.L.253-1987, SEC.1.

IC 24-5-12-6
"Prospect" defined

Sec. 6. As used in this chapter, "prospect" means a person solicited by a seller.
As added by P.L.253-1987, SEC.1.

IC 24-5-12-7
"Salesperson" defined

Sec. 7. As used in this chapter, "salesperson" means a person employed, authorized, or appointed by a seller, including an independent contractor, who solicits a sale on behalf of the seller.
As added by P.L.253-1987, SEC.1.

IC 24-5-12-8
"Seller" defined

Sec. 8. As used in this chapter, "seller" means a person who, personally, through salespersons, or through the use of an automated dialing and answering device, makes a solicitation if in the solicitation any one (1) of the following occurs:

(1) There is a false representation or implication that a prospect will receive a gift, prize, or the value of a gift or prize.

(2) There is an offer of a vacation at a reduced price if the vacation involves the prospect attending a presentation in which the prospect is solicited to purchase a time share or camping club membership and if the seller does not own the time share or camping club, does not represent the owner of the time share or camping club, or misrepresents the value of the vacation. Terms in this subdivision have the meaning set forth in IC 32-32.

(3) There is a representation or implication that a prospect who buys office equipment or supplies will, because of some unusual event or imminent price increase, be able to buy these items at prices that are below those that are usually charged or will be charged for the items if the price advantage for the prospect does not exist.

(4) There is a false representation or implication as to the identity of the person making the solicitation.

(5) There is a representation or implication that the items for sale are manufactured or supplied by a person other than the actual manufacturer or supplier.

(6) There is an offer to sell the prospect precious metals, precious stones, coal, or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, if the seller does not own the items, does not represent the owner, or misrepresents the value of the items.

As added by P.L.253-1987, SEC.1. Amended by P.L.2-2002, SEC.77.

IC 24-5-12-9
"Solicitation" defined

Sec. 9. As used in this chapter, "solicitation" means a telephone conversation or attempted telephone conversation in which the seller offers, or attempts to offer, an item to another person in exchange for money or other consideration.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-10
Registration of seller; requirement

Sec. 10. (a) Before doing business in Indiana a seller must register with the division if the seller attempts a solicitation under which the seller offers an item or items where the total consideration has a value of more than one hundred dollars ($100) and less than fifty thousand dollars ($50,000).

(b) A person does business in Indiana if the person solicits:

(1) from a location in Indiana; or

(2) a prospect who is located in Indiana.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-11
Registration statement; filing; fee

Sec. 11. To register under this chapter a person must file with the division a registration statement disclosing the information required by this chapter and pay a fifty dollar ($50) registration fee.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-12
Registration statement; required information

Sec. 12. The registration statement must contain the following information:

(1) The name of the seller.

(2) Whether the seller is doing business as a corporation, a partnership, an individual, or other legal entity.

(3) The names under which the seller has done, is doing, or intends to do business.

(4) The name of any parent or affiliated business that will engage in business transactions with the prospect or will take responsibility for statements made by the seller or a salesperson of the seller.

(5) The names, dates of birth, business addresses, business telephone numbers, and titles of all the seller's officers, directors, trustees, general partners, general managers, principals, executives, and any other person charged with responsibility for the seller's business activities relating to telephone sales.

(6) The length of time the seller has:

(A) solicited telephone sales; and

(B) solicited telephone sales for the items to be offered to the prospect.

(7) A statement of the amount to be paid by the prospect, or when not known, the approximate amount or range of amount to be paid.
(8) A complete and detailed description of any service that the seller proposes to undertake to perform for a prospect who purchases the item offered.
(9) An unexecuted copy of all contracts that may be offered in the transaction being solicited.
(10) The complete street address or addresses of all locations, designating the principal location from which the seller will be conducting business, and, if the principal location is outside Indiana, a designation of its principal location within Indiana.
(11) A listing of all telephone numbers to be used by the seller and the address of each location using these numbers.
(12) A copy of all sales scripts the seller requires salespersons to use when soliciting a prospect or, if no sales script is required to be used, a statement to that effect.
(13) The name and address of the seller's agent in Indiana, authorized to receive service of process in Indiana.
(14) A statement as to whether the seller or any of its officers, directors, trustees, general partners, managers, principals, executives, or representatives has been:
(A) held liable in a civil action for an unfair, false, misleading, or deceptive practice;
(B) convicted of a crime involving fraud, embezzlement, conversion, or theft during the most recent seven (7) year period; or
(C) declared bankrupt in any judicial proceeding during the most recent seven (7) year period.
(15) A statement containing the names of the parties, the name of the court, the cause or docket number of the lawsuit, the date the suit was filed, and the date the judgment was entered, if applicable, for each action under subdivision (14).

As added by P.L.253-1987, SEC.1.

IC 24-5-12-13
Registration statement; gifts, prizes, or other items represented or implied; additional information required

Sec. 13. If the seller represents or implies, or directs a salesperson to represent or imply, to a prospect that a purchaser will receive one (1) or more items (whether the items are designated as gifts, premiums, bonuses, prizes, or otherwise), the registration statement must also contain the following information:
(1) A list of items offered.
(2) The value of each item described to a prospect and the basis for the valuation.
(3) The price paid by the seller to its supplier for each of these items, and the names, business addresses, and business telephone numbers of the supplier of each item.
(4) The manner in which the seller decides which items a

prospect is to receive, if a purchaser is to receive fewer than all of the items described by the seller.

(5) The odds a prospect or purchaser has of receiving each described item, if a purchaser is to receive fewer than all of the items described by the seller.

(6) All terms and conditions that a prospect must meet in order to receive the item, if a purchaser is to receive fewer than all of the items described by the seller.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-14

Annual update of registration; additional fee

Sec. 14. On August 1 of each year, every person registered under this chapter shall file an update to the registration. The registrant shall pay an additional fifty dollars ($50) for filing the annual update.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-15

Disclosures required; update of changes; filing

Sec. 15. In addition to the annual update described in section 14 of this chapter, an update shall be filed whenever changes occur that make the disclosures required under this chapter inaccurate, false, or misleading.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-16

Record of filings; assigned registration number

Sec. 16. The director of the division shall maintain a record of all filings made under this chapter and shall assign a registration number to each of them. The director shall advise the seller, in writing, of the assigned number. All advertisements, pamphlets, brochures, or any other materials used in the solicitation or completion of telephonic sales must include the assigned registration number in the following manner: "C.P.D. Reg. No. T.S. _____.".

As added by P.L.253-1987, SEC.1.

IC 24-5-12-17

Reference to compliance with chapter restricted

Sec. 17. A seller may not make any reference to its compliance with this chapter other than by setting forth the registration number as provided in section 16 of this chapter.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-18

Failure to comply with sections 10 through 16; cancellation of contract

Sec. 18. If a seller fails to comply with sections 10 through 16 of this chapter, a purchaser may cancel any contract with the seller by notifying the seller in any manner.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-19
Deceptive statements; failure to deliver item ordered; voiding of contract; requisites

Sec. 19. If a seller:

(1) uses any untrue, misleading, or deceptive statement in a solicitation or sale; or

(2) fails to deliver an item ordered within four (4) weeks;

the purchaser may void the contract within ninety (90) days from the date of the contract by giving written notice to the seller and is entitled to a return from the seller of all consideration paid to the seller. Upon receipt by the purchaser of the consideration paid to the seller, the purchaser shall make available to the seller, at a reasonable time and place, the items received by the purchaser.

As added by P.L.253-1987, SEC.1. Amended by P.L.5-1988, SEC.131.

IC 24-5-12-20
Damages; costs and attorney's fees

Sec. 20. In addition to any other remedies or penalties under this chapter, a person who is damaged by a seller's failure to comply with this chapter or by a seller's breach of contract may bring an action for recovery of the person's actual damages, including court costs and attorney's fees.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-21
Violations; injunction

Sec. 21. Upon petition by any person that a seller has failed to comply with this chapter, the circuit or superior court of the county of residence of the petitioner may enjoin the seller from further violations.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-22 Version a
Failure to comply with sections 10 through 16; Class D felony

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

Sec. 22. A seller who fails to comply with sections 10 through 16 of this chapter commits a Class D felony.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-22 Version b
Failure to comply; penalty

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

Sec. 22. A seller who fails to comply with sections 10 through 16 of this chapter commits a Level 6 felony.

As added by P.L.253-1987, SEC.1. Amended by P.L.158-2013, SEC.275.

IC 24-5-12-23
Deceptive acts; injunction; venue

Sec. 23. A seller who fails to comply with any provision of:

(1) this chapter; or

(2) IC 24-4.7;

commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4(c) and is subject to the penalties set forth in IC 24-5-0.5. An action for a violation of IC 24-4.7 may be brought under IC 24-5-0.5-4(c) or IC 24-4.7-5. An action by the attorney general for a violation of this chapter or IC 24-4.7 may be brought in the circuit or superior court of Marion County.

As added by P.L.253-1987, SEC.1. Amended by P.L.24-1989, SEC.24; P.L.165-2005, SEC.8 and P.L.222-2005, SEC.34.

IC 24-5-12-24
Construction of chapter

Sec. 24. This chapter may not be construed to relieve a person from complying with any other statute or ordinance.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-25
Blocking telephone number or identity of solicitor; violations

Sec. 25. (a) If a person makes a solicitation to a prospect that is outside of the course of dealing (as described in IC 26-1-1-205), whether personally, through salespersons, or through the use of an automated dialing and answering device, the person may not knowingly or intentionally block or attempt to block the display of the person's:

(1) telephone number; or

(2) identity;

by a caller identification service (as defined in IC 24-5-14.5-3) when attempting to initiate a telephone conversation for the purpose of making a solicitation to a prospect.

(b) A person who knowingly or intentionally violates this section commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a previous unrelated conviction under this subsection.

As added by P.L.48-1998, SEC.7. Amended by P.L.151-2013, SEC.7.

IC 24-5-13
Chapter 13. Motor Vehicle Protection

IC 24-5-13-0.1
Repealed
(Repealed by P.L.63-2012, SEC.29.)

IC 24-5-13-1
Application of chapter
Sec. 1. This chapter applies to all:
(1) motor vehicles that are sold, leased, transferred, or replaced by a dealer or manufacturer in Indiana; and
(2) methamphetamine vehicles that are sold, leased, transferred, or replaced by a dealer or seller in Indiana.
As added by P.L.150-1988, SEC.1. Amended by P.L.76-2013, SEC.1.

IC 24-5-13-2
"Business day"
Sec. 2. As used in this chapter, "business day" means a day other than Sunday or a legal holiday (as defined in IC 1-1-9-1).
As added by P.L.150-1988, SEC.1.

IC 24-5-13-3
"Buyer"
Sec. 3. As used in this chapter, "buyer" means any person who, for purposes other than resale or sublease, enters into an agreement or contract within Indiana for the transfer, lease, or purchase of a motor vehicle covered under this chapter.
As added by P.L.150-1988, SEC.1.

IC 24-5-13-3.1
"Dealer"
Sec. 3.1. As used in this chapter, "dealer" has the meaning set forth in IC 9-13-2-42.
As added by P.L.76-2013, SEC.2.

IC 24-5-13-3.4
"Lease"
Sec. 3.4. As used in this chapter, "lease" means a contract in the form of a lease or bailment for the use of a motor vehicle by a person for more than four (4) months, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease.
As added by P.L.24-1989, SEC.25.

IC 24-5-13-3.7
"Lessor"
Sec. 3.7. As used in this chapter, "lessor" means a person who:
(1) holds title to a motor vehicle leased to a lessee under a written lease agreement; or

(2) holds the lessor's rights under an agreement described in subdivision (1).

As added by P.L.24-1989, SEC.26.

IC 24-5-13-4
"Manufacturer"

Sec. 4. As used in this chapter, "manufacturer" means any person who is engaged in the business of manufacturing motor vehicles, or, in the case of motor vehicles not manufactured in the United States, any person who is engaged in the business of importing motor vehicles.

As added by P.L.150-1988, SEC.1.

IC 24-5-13-4.1
"Methamphetamine vehicle"

Sec. 4.1. As used in this chapter, "methamphetamine vehicle" means any motor vehicle subject to registration and certificate of title provisions in which methamphetamine has been manufactured within the previous two (2) years. For the purposes of this chapter, a methamphetamine vehicle suffers from a nonconformity.

As added by P.L.76-2013, SEC.3.

IC 24-5-13-5
"Motor vehicle" and "vehicle"

Sec. 5. As used in this chapter, "motor vehicle" or "vehicle" means any self-propelled vehicle that:

(1) has a declared gross vehicle weight of less than ten thousand (10,000) pounds;

(2) is sold to:

(A) a buyer in Indiana and registered in Indiana; or

(B) a buyer in Indiana who is not an Indiana resident (as defined in IC 9-13-2-78);

(3) is intended primarily for use and operation on public highways; and

(4) is required to be registered or licensed before use or operation.

The term does not include conversion vans, motor homes, farm tractors, and other machines used in the actual production, harvesting, and care of farm products, road building equipment, truck tractors, road tractors, motorcycles, mopeds, snowmobiles, or vehicles designed primarily for offroad use.

As added by P.L.150-1988, SEC.1. Amended by P.L.141-1990, SEC.1; P.L.2-1991, SEC.84.

IC 24-5-13-6
"Nonconformity"

Sec. 6. As used in this chapter, "nonconformity" means any specific or generic defect or condition or any concurrent combination of defects or conditions that:

(1) substantially impairs the use, market value, or safety of a

motor vehicle; or

(2) renders the motor vehicle nonconforming to the terms of an applicable manufacturer's warranty.

As added by P.L.150-1988, SEC.1.

IC 24-5-13-6.1
"Seller"

Sec. 6.1. As used in this chapter, "seller" means a person who:

(1) sells, leases, exchanges, or transfers; or

(2) solicits a sale, lease, exchange, or transfer of;

a methamphetamine vehicle to a buyer.

As added by P.L.76-2013, SEC.4.

IC 24-5-13-7
"Term of protection"

Sec. 7. This section does not apply to a methamphetamine vehicle. As used in this chapter, "term of protection" means a period of time that:

(1) begins:

(A) on the date of original delivery of a motor vehicle to a buyer; or

(B) in the case of a replacement vehicle provided by a manufacturer to a buyer under this chapter, on the date of delivery of the replacement vehicle to the buyer; and

(2) ends the earlier of:

(A) eighteen (18) months after the date identified under subdivision (1); or

(B) the time the motor vehicle has been driven eighteen thousand (18,000) miles after the date identified under subdivision (1).

As added by P.L.150-1988, SEC.1. Amended by P.L.76-2013, SEC.5.

IC 24-5-13-8
Repair of nonconformities

Sec. 8. If a motor vehicle suffers from a nonconformity and the buyer reports the nonconformity within the term of protection to the manufacturer of the vehicle, its agent, or its authorized dealer then the manufacturer of the motor vehicle or the manufacturer's agent or authorized dealer shall make the repairs that are necessary to correct the nonconformity, even if the repairs are made after expiration of the term of protection.

As added by P.L.150-1988, SEC.1.

IC 24-5-13-9
Notification of claim; manufacturer's disclosure

Sec. 9. (a) A buyer must first notify the manufacturer of a claim under this chapter if the manufacturer has made the disclosure required by subsection (b). However, if the manufacturer has not made the required disclosure, the buyer is not required to notify the manufacturer of a claim under this chapter.

(b) The manufacturer shall clearly and conspicuously disclose to the buyer, in the warranty or owner's manual, that written notification of the nonconformity is required before the buyer may be eligible for a refund or replacement of the vehicle. The manufacturer shall include with the warranty or owner's manual the name and address to which the buyer must send notification.
As added by P.L.150-1988, SEC.1.

IC 24-5-13-9.3
Repealed
(Repealed by P.L.63-2012, SEC.30.)

IC 24-5-13-10
Return of vehicle upon failure to correct nonconformity; refund; replacement
Sec. 10. If, after a reasonable number of attempts, the manufacturer, its agent, or authorized dealer is unable to correct the nonconformity, the manufacturer shall accept the return of the vehicle from the buyer and, at the buyer's option, either, within thirty (30) days, refund the amount paid by the buyer or provide a replacement vehicle of comparable value.
As added by P.L.150-1988, SEC.1.

IC 24-5-13-11
Refund; computation of amount
Sec. 11. (a) If a refund is tendered under this chapter with respect to a vehicle that is not a leased vehicle, the refund must be the full contract price of the vehicle, including all credits and allowances for any trade-in vehicle and less a reasonable allowance for use.
(b) To determine a reasonable allowance for use under this section, multiply:
(1) the total contract price of the vehicle; by
(2) a fraction having as its denominator one hundred thousand (100,000) and having as its numerator the number of miles that the vehicle traveled before the manufacturer's acceptance of its return.
(c) The refund must also include reimbursement for the following incidental costs:
(1) All sales tax.
(2) The unexpended portion of the registration fee and excise tax that has been prepaid for any calendar year.
(3) All finance charges actually expended.
(4) The cost of all options added by the authorized dealer.
(d) Refunds made under this section shall be made to the buyer and lienholder, if any, as their respective interests appear on the records of ownership.
As added by P.L.150-1988, SEC.1. Amended by P.L.24-1989, SEC.27.

IC 24-5-13-11.5

Refund; leased motor vehicle; computation of amount

Sec. 11.5. (a) If a refund is tendered under this chapter with respect to a leased motor vehicle, the refund shall be made as follows:

(1) The lessee shall receive all deposit and lease payments paid by the lessee to the lessor, including all credits and allowances for any trade-in vehicles, less a reasonable allowance for use.

(2) The lessor shall receive:

(A) the lessor's purchase cost, including freight and accessories;

(B) any fee paid to another to obtain the lease;

(C) any insurance premiums or other costs expended by the lessor for the benefit of the lessee;

(D) sales tax paid by the lessor; and

(E) five percent (5%) of the amount described in subdivision (2)(A);

less the total of all deposit and lease payments paid by the lessee to the lessor, including all credits and allowances for any trade-in vehicle.

(b) To determine a reasonable allowance for use under this section, multiply:

(1) the total lease obligation of the lessee at the inception of the lease; by

(2) a fraction having as its denominator one hundred thousand (100,000) and as its numerator the number of miles that the vehicle traveled before the lessor's acceptance of its return.

As added by P.L.24-1989, SEC.28.

IC 24-5-13-12

Replacement of vehicle

Sec. 12. (a) If a vehicle is replaced by a manufacturer under this chapter, the manufacturer shall reimburse the buyer for any fees for the transfer of registration or any sales tax incurred by the buyer as a result of replacement.

(b) If a replaced vehicle was financed by the manufacturer, its subsidiary, or agent, the manufacturer, subsidiary, or agent may not require the buyer to enter into any refinancing agreement concerning a replacement vehicle that would create any financial obligations upon the buyer less favorable than those of the original financing agreement.

As added by P.L.150-1988, SEC.1.

IC 24-5-13-13

Reimbursement for towing and rental costs

Sec. 13. Whenever a vehicle is replaced or refunded under this chapter, the manufacturer shall reimburse the buyer for necessary towing and rental costs actually incurred as a direct result of the nonconformity.

As added by P.L.150-1988, SEC.1.

IC 24-5-13-14
Retention of vehicle pending replacement or refund

Sec. 14. A buyer has the option of retaining the use of any vehicle returned under this chapter until the time that the buyer has been tendered a full refund or replacement vehicle of comparable value. The use of any vehicle retained by a buyer after its return to a manufacturer under this chapter must, in cases in which a refund is tendered, be reflected in the reasonable allowance for use required by section 11 of this chapter.

As added by P.L.150-1988, SEC.1.

IC 24-5-13-15
Attempts to correct nonconformity; reasonable number of attempts; time period; extension

Sec. 15. (a) A reasonable number of attempts is considered to have been undertaken to correct a nonconformity if:

(1) the nonconformity has been subject to repair at least four (4) times by the manufacturer or its agents or authorized dealers, but the nonconformity continues to exist; or

(2) the vehicle is out of service by reason of repair of any nonconformity for a cumulative total of at least thirty (30) business days, and the nonconformity continues to exist.

(b) The thirty (30) business day period in subsection (a)(2) shall be extended by any period of time during which repair services are not available as a direct result of a strike, a period of civil unrest, a fire, a natural disaster, a terrorist attack, an act of God, or an act of war. The manufacturer, its agent, or an authorized dealer shall provide or make provision for the free use of a vehicle to any buyer whose vehicle is out of service by reason of repair during a strike, a period of civil unrest, a fire, a natural disaster, a terrorist attack, an act of God, or an act of war.

(c) The burden is on the manufacturer to show that the reason for an extension under subsection (b) was the direct cause for the failure of the manufacturer, its agent, or authorized dealer to cure any nonconformity during the time of the event.

As added by P.L.150-1988, SEC.1. Amended by P.L.92-2013, SEC.82.

IC 24-5-13-16
Refusal to diagnose or repair; written repair orders

Sec. 16. (a) A manufacturer, its agent, or authorized dealer may not refuse to diagnose or repair any vehicle for the purpose of avoiding liability under this chapter.

(b) A manufacturer, its agent, or authorized dealer shall provide a buyer with a written repair order each time the buyer's vehicle is brought in for examination or repair. The repair order must indicate all work performed on the vehicle including examination of the vehicle, parts, and labor.

As added by P.L.150-1988, SEC.1.

IC 24-5-13-16.1
Seller's duty to disclose methamphetamine vehicles

Sec. 16.1. (a) If a dealer or seller knows or reasonably should know that a motor vehicle is a methamphetamine vehicle, the dealer or seller shall disclose, in writing, to the buyer, prospective buyer, lessee, or prospective lessee that the motor vehicle is a methamphetamine vehicle.

(b) The written disclosure required under subsection (a) shall be provided before the dealer or seller sells, leases, exchanges, transfers, or accepts payment from a buyer, prospective buyer, lessee, or prospective lessee.

(c) A dealer may include a decontamination report or other relevant document with the written disclosure required under subsection (a).

As added by P.L.76-2013, SEC.6.

IC 24-5-13-16.2
Civil action by buyer for failure to disclose methamphetamine vehicles; remedies

Sec. 16.2. (a) In addition to any other remedy or penalty provided in this chapter, if a dealer or seller fails to make a disclosure required under section 16.1 of this chapter, a buyer or lessee may bring a civil action against the dealer or seller.

(b) In an action brought by a buyer or lessee under this section, a court may order a dealer or seller to perform either of the following:

(1) Decontaminate or contract for the decontamination of the methamphetamine vehicle in accordance with and to a standard set forth under 318 IAC 1.

(2) Reimburse a buyer or lessee who incurred damages or expenses to remediate or decontaminate a methamphetamine vehicle to address the nonconformity.

(c) In addition to the remedies described in subsection (b), a court may award liquidated damages to a buyer or lessee in an amount not to exceed ten thousand dollars ($10,000).

(d) This section does not eliminate or abrogate existing tort remedies that may be available to a buyer or lessee.

As added by P.L.76-2013, SEC.7.

IC 24-5-13-17
Repealed

(Repealed by P.L.65-1992, SEC.4.)

IC 24-5-13-18
Affirmative defenses

Sec. 18. It is an affirmative defense to any claim under this chapter that:

(1) the nonconformity, defect, or condition does not substantially impair the use, value, or safety of the motor vehicle; or

(2) the nonconformity, defect, or condition is the result of

abuse, neglect, or unauthorized modification or alteration of the motor vehicle by the buyer.

As added by P.L.150-1988, SEC.1.

IC 24-5-13-19
Informal procedures established by manufacturer

Sec. 19. This chapter does not apply to any buyer who has not first resorted to an informal procedure established by a manufacturer or in which a manufacturer participates if:

(1) the procedure is certified by the attorney general as:
(A) complying in all respects with 16 C.F.R. 703; and
(B) complying with any other rules concerning certification adopted by the attorney general, including but not limited to the requirement of oral hearings, pursuant to IC 4-22-2; and

(2) the buyer has received adequate written notice from the manufacturer of the existence of the procedure.

Adequate written notice includes the incorporation of the informal dispute settlement procedure into the terms of the written warranty to which the motor vehicle does not conform.

As added by P.L.150-1988, SEC.1. Amended by P.L.24-1989, SEC.29.

IC 24-5-13-20
Additional remedies

Sec. 20. This chapter does not limit the rights or remedies that are otherwise available to a buyer under any other applicable provision of law.

As added by P.L.150-1988, SEC.1.

IC 24-5-13-21
Civil enforcement actions

Sec. 21. A buyer may bring a civil action to enforce this chapter in any circuit or superior court.

As added by P.L.150-1988, SEC.1.

IC 24-5-13-22
Costs and expenses in recovery actions

Sec. 22. A buyer who prevails in any action brought under this chapter is entitled to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses, including attorney's fees based on actual time expended by the attorney, determined by the court to have been reasonably incurred by the buyer for or in connection with the commencement and prosecution of the action.

As added by P.L.150-1988, SEC.1.

IC 24-5-13-23
Limitations

Sec. 23. (a) This subsection does not apply to an action concerning a violation of section 16.1 of this chapter. An action brought under this chapter must be commenced within two (2) years

following the date the buyer first reports the nonconformity to the manufacturer, its agent, or authorized dealer.

(b) This subsection does not apply to an action concerning a violation of section 16.1 of this chapter. When the buyer has commenced an informal dispute settlement procedure described in section 19 of this chapter, the two (2) year period specified in subsection (a) is tolled during the time the informal dispute settlement procedure is being conducted.

(c) An action concerning a violation of section 16.1 of this chapter must be commenced within two (2) years following the date of the violation.

As added by P.L.150-1988, SEC.1. Amended by P.L.76-2013, SEC.8.

IC 24-5-13-24

Dealer's liability

Sec. 24. This section does not apply to a transaction or solicited transaction relating to a methamphetamine vehicle. Nothing in this chapter imposes any liability on a dealer or creates a cause of action by a consumer against a dealer, and a manufacturer may not, directly or indirectly, expose any franchised dealer to liability under this chapter.

As added by P.L.150-1988, SEC.1. Amended by P.L.76-2013, SEC.9.

IC 24-5-13.5
Chapter 13.5. Buyback Vehicle Disclosure

IC 24-5-13.5-1
Application of chapter
Sec. 1. This chapter applies to all motor vehicles that are sold, leased, transferred, or replaced by a dealer or manufacturer in Indiana.
As added by P.L.65-1992, SEC.3.

IC 24-5-13.5-2
"Bureau" defined
Sec. 2. As used in this chapter, "bureau" refers to the bureau of motor vehicles created by IC 9-14-1-1.
As added by P.L.65-1992, SEC.3.

IC 24-5-13.5-3
"Buyback vehicle" defined
Sec. 3. As used in this chapter, "buyback vehicle" means a motor vehicle that has been replaced or repurchased by a manufacturer or a nonresident manufacturer's agent or an authorized dealer, either under this chapter or IC 24-5-13 by judgment, decree, arbitration award, settlement agreement, or voluntary agreement in Indiana or another state, but does not include a motor vehicle that was repurchased pursuant to a guaranteed repurchase or satisfaction program advertised by the manufacturer and was not alleged or found to have a nonconformity as defined in IC 24-5-13-6.
As added by P.L.65-1992, SEC.3. Amended by P.L.118-1993, SEC.2.

IC 24-5-13.5-4
"Buyer" defined
Sec. 4. As used in this chapter, "buyer" means a person who, for purposes other than resale or sublease, enters into an agreement or a contract within Indiana for the transfer, lease, or purchase of a buyback vehicle.
As added by P.L.65-1992, SEC.3.

IC 24-5-13.5-5
"Dealer" defined
Sec. 5. As used in this chapter, "dealer" means a person engaged in the business of buying, selling, leasing, or exchanging motor vehicles. A person is a "dealer" under this section if the person sells, leases, or advertises the sale or lease of more than four (4) motor vehicles within a twelve (12) month period.
As added by P.L.65-1992, SEC.3.

IC 24-5-13.5-6
"Manufacturer" defined
Sec. 6. As used in this chapter, "manufacturer" has the meaning set forth in IC 24-5-13-4.

As added by P.L.65-1992, SEC.3.

IC 24-5-13.5-7
"Motor vehicle" defined

Sec. 7. As used in this chapter, "motor vehicle" has the meaning set forth in IC 24-5-13-5.

As added by P.L.65-1992, SEC.3.

IC 24-5-13.5-8
"Nonconformity" defined

Sec. 8. As used in this chapter, "nonconformity" has the meaning set forth in IC 24-5-13-6.

As added by P.L.65-1992, SEC.3.

IC 24-5-13.5-9
"Warranty" defined

Sec. 9. As used in this chapter, "warranty" means:

(1) a written warranty issued by the manufacturer; or

(2) an affirmation of fact or promise made by the manufacturer, excluding statements made by the dealer;

in connection with the sale or lease of a motor vehicle to a consumer that relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is free of defects or will meet a specified level of performance.

As added by P.L.65-1992, SEC.3.

IC 24-5-13.5-10
Resale; conditions

Sec. 10. A buyback motor vehicle may not be resold in Indiana unless the following conditions have been met:

(1) The manufacturer provides the same express warranty the manufacturer provided to the original purchaser, except that the term of the warranty need only last for twelve thousand (12,000) miles or twelve (12) months after the date of resale.

(2) The following disclosure language must be conspicuously contained in a contract for the sale or lease of a buyback vehicle to a consumer or contained in a form affixed to the contract:

"IMPORTANT

This vehicle was previously sold as new. It was subsequently returned to the manufacturer or authorized dealer in exchange for a replacement vehicle or a refund because it did not conform to the manufacturer's express warranty and the nonconformity was not cured within a reasonable time as provided by Indiana law.".

(3) The manufacturer provides the dealer a separate document with a written statement identifying the vehicle conditions that formed the basis for the previous owner's or lessee's dissatisfaction and the steps taken to deal with that dissatisfaction in 10-point all capital type.

As added by P.L.65-1992, SEC.3. Amended by P.L.118-1993, SEC.3.

IC 24-5-13.5-11

Express warranty; written statement of disclosure; buyer's acknowledgment of disclosure

Sec. 11. Before reselling a buyback motor vehicle in Indiana, a dealer must provide to the buyer the express warranty required by section 10(1) of this chapter and the written statement of disclosure required by section 10(3) of this chapter and obtain the buyer's acknowledgment of this disclosure at the time of sale or lease as evidenced by the buyer's signature on the statement of disclosure.

As added by P.L.65-1992, SEC.3. Amended by P.L.118-1993, SEC.4.

IC 24-5-13.5-12

Manufacturer's acceptance of return of buyback vehicle; duties

Sec. 12. A manufacturer who accepts return of a motor vehicle that is considered a buyback vehicle under this chapter shall do the following:

(1) Before transferring ownership of the buyback vehicle, stamp the words "Manufacturer Buyback – Disclosure on File" on the face of the original certificate of title.

(2) Not more than thirty-one (31) days after receipt of the certificate of title, apply to the bureau for a certificate of title in the name of the manufacturer and provide to the bureau a copy of the disclosure document required by section 10(3) of this chapter.

As added by P.L.65-1992, SEC.3. Amended by P.L.118-1993, SEC.5.

IC 24-5-13.5-13

Failure to comply; liability; actual damages; privity; prima facie evidence of violation; limitation of actions

Sec. 13. (a) A person who fails to comply with section 10, 11, or 12 of this chapter is liable for the following:

(1) Actual damages or the value of the consideration, at the election of the buyer.

(2) The costs of an action to recover damages and reasonable attorney's fees.

(3) Not more than three (3) times the value of the actual damages or the consideration as exemplary damages.

(4) Other equitable relief, including restitution, as is considered proper in addition to damages and costs.

(b) Actual damages under this section include the following:

(1) The difference between the actual market value of the vehicle at the time of purchase and the contract price of the vehicle.

(2) Towing, repair, and storage expenses.

(3) Rental of substitute transportation.

(4) Food and lodging expenses.

(5) Lost wages.

(6) Finance charges.

(7) Sales or use tax or other governmental fees.

(8) Lease charges.

(9) Other incidental and consequential damages.

(c) Lack of privity is not a bar to an action under this section.

(d) This subsection does not apply to consent orders or stipulated judgments in which there is no admission of liability by the defendant. A permanent injunction, final judgment, or final order of the court obtained by the attorney general under section 14 of this chapter is prima facie evidence in an action brought under this section that the defendant has violated section 10, 11, or 12 of this chapter.

(e) An action to enforce liability under this section may be brought within two (2) years from the date of discovery by the buyer.

As added by P.L.65-1992, SEC.3. Amended by P.L.1-1993, SEC.195; P.L.118-1993, SEC.6.

IC 24-5-13.5-14

Deceptive acts; remedies and penalties

Sec. 14. A manufacturer or dealer who fails to comply with section 10, 11, or 12 of this chapter, as applicable to the manufacturer or dealer, commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4 and is subject to the remedies and penalties set forth in IC 24-5-0.5.

As added by P.L.65-1992, SEC.3. Amended by P.L.118-1993, SEC.7.

IC 24-5-14

Chapter 14. Regulation of Automatic Dialing Machines

IC 24-5-14-1

Automatic dialing-announcing device

Sec. 1. As used in this chapter, "automatic dialing-announcing device" means a device that:

(1) selects and dials telephone numbers; and

(2) working alone or in conjunction with other equipment, disseminates a prerecorded or synthesized voice message to the telephone number called.

As added by P.L.151-1988, SEC.1.

IC 24-5-14-2

Caller

Sec. 2. As used in this chapter, "caller" means an individual, corporation, limited liability company, partnership, unincorporated association, or the entity that attempts to contact, or contacts, a subscriber in Indiana by using a telephone or telephone line.

As added by P.L.151-1988, SEC.1. Amended by P.L.8-1993, SEC.364.

IC 24-5-14-3

Commercial telephone solicitation

Sec. 3. (a) As used in this chapter, "commercial telephone solicitation" means any unsolicited call to a subscriber when:

(1) the person initiating the call has not had a prior business or personal relationship with the subscriber; and

(2) the purpose of the call is to solicit the purchase or the consideration of the purchase of goods or services by the subscriber.

(b) The term does not include calls initiated by the following:

(1) The state or a political subdivision (as defined by IC 36-1-2-13) for exclusively public purposes.

(2) The United States or any of its subdivisions for exclusively public purposes (involving real property in Indiana).

As added by P.L.151-1988, SEC.1.

IC 24-5-14-4

Subscriber

Sec. 4. As used in this chapter, "subscriber" means:

(1) a person who has subscribed to telephone service from a telephone company; or

(2) other persons living or residing with the subscribing person.

As added by P.L.151-1988, SEC.1.

IC 24-5-14-5

Restrictions on use of automatic dialing-announcing device

Sec. 5. (a) This section does not apply to messages:

(1) from school districts to students, parents, or employees;

(2) to subscribers with whom the caller has a current business or personal relationship; or

(3) advising employees of work schedules.

(b) A caller may not use or connect to a telephone line an automatic dialing-announcing device unless:

(1) the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or

(2) the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered.

As added by P.L.151-1988, SEC.1.

IC 24-5-14-6
Disconnect requirement

Sec. 6. A caller may not use an automatic dialing-announcing device unless the device is designed and operated to disconnect within ten (10) seconds after termination of the telephone call by the subscriber.

As added by P.L.151-1988, SEC.1.

IC 24-5-14-7
Live operator preceding message; disclosure

Sec. 7. When a message is immediately preceded by a live operator, the operator must, at the outset of the message, disclose the following:

(1) The name of the business, firm, organization, association, partnership, or entity for which the message is being made.

(2) The purpose of the message.

(3) The identity or kinds of goods or services the message is promoting.

(4) If applicable, the fact that the message intends to solicit payment or the commitment of funds.

As added by P.L.151-1988, SEC.1.

IC 24-5-14-8
Time restrictions

Sec. 8. (a) This section does not apply to messages described in section 5(a) of this chapter.

(b) A caller may not use an automatic dialing-announcing device for commercial telephone solicitation so that a subscriber receives a telephone call before 9 a.m. or after 8 p.m.

As added by P.L.151-1988, SEC.1.

IC 24-5-14-9
Failure to comply; petition; injunction

Sec. 9. Upon petition by any person that a caller has failed to comply with this chapter, the circuit or superior court of the county of residence of the petitioner may enjoin the caller from further violations.

As added by P.L.151-1988, SEC.1.

IC 24-5-14-10
Misdemeanor

Sec. 10. A caller who fails to comply with this chapter commits a Class C misdemeanor.

As added by P.L.151-1988, SEC.1.

IC 24-5-14-12
Prohibited use of automatic dialing-announcing device

Sec. 12. A caller may not use an automatic dialing-announcing device to make a telephone call to the following:

(1) A hospital (as defined in IC 16-18-2-179(b)).

(2) An ambulatory outpatient surgical center (as defined in IC 16-18-2-14).

(3) A health facility (as defined in IC 16-18-2-167).

(4) An emergency medical services facility (as defined in IC 16-18-2-111).

(5) A business providing emergency ambulance services (as defined in IC 16-18-2-107).

(6) A state institution (as defined in IC 12-7-2-184).

(7) A private mental health institution licensed under IC 12-25.

(8) A residential facility (as defined in IC 12-7-2-165).

(9) A law enforcement agency (as defined in IC 10-13-3-10).

(10) A fire department (as defined in IC 36-8-17-2).

As added by P.L.117-1992, SEC.1. Amended by P.L.2-1993, SEC.134; P.L.2-2003, SEC.63.

IC 24-5-14-13
Deceptive act of caller; remedies and penalties

Sec. 13. A caller who violates this chapter commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4 and that is subject to the remedies and penalties under IC 24-5-0.5-4(c), IC 24-5-0.5-4(d), IC 24-5-0.5-4(f), IC 24-5-0.5-4(g), and IC 24-5-0.5-8.

As added by P.L.117-1992, SEC.2.

IC 24-5-14.5

Chapter 14.5. False or Misleading Caller Identification

IC 24-5-14.5-1

Applicability

Sec. 1. This chapter applies to the transmission of information through a caller identification service with respect to calls made after June 30, 2013, to a subscriber.

As added by P.L.151-2013, SEC.8.

IC 24-5-14.5-2

"Caller identification information"

Sec. 2. As used in this chapter, "caller identification information" means information provided by a caller identification service regarding the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or interconnected VOIP service.

As added by P.L.151-2013, SEC.8.

IC 24-5-14.5-3

"Caller identification service"

Sec. 3. (a) As used in this chapter, "caller identification service" means any service or device designed to provide the user of the service or device with the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or interconnected VOIP service.

(b) The term includes automatic number identification (as defined in 47 CFR 20.3) services.

As added by P.L.151-2013, SEC.8.

IC 24-5-14.5-4

"Interconnected VOIP service"

Sec. 4. As used in this chapter, "interconnected VOIP service" has the meaning set forth in 47 CFR 9.3.

As added by P.L.151-2013, SEC.8.

IC 24-5-14.5-5

"Place of primary use"

Sec. 5. As used in this chapter, "place of primary use" means the street address representative of where a subscriber's use of a telecommunications service or interconnected VOIP service primarily occurs, which must be:

(1) the residential street address or the primary business street address of the subscriber or, in the case of a subscriber of interconnected VOIP service, the subscriber's registered location (as defined in 47 CFR 9.3);

(2) within the licensed service area of the provider; and

(3) in the case of:

(A) mobile telecommunications service, determined in the manner provided in IC 6-8.1-15; and

(B) nonmobile telecommunications communications service, determined in the manner provided in IC 6-2.5-12.

As added by P.L.151-2013, SEC.8.

IC 24-5-14.5-6
"Provider"

Sec. 6. As used in this chapter, "provider" means a person that offers telecommunications service or interconnected VOIP service.

As added by P.L.151-2013, SEC.8.

IC 24-5-14.5-7
"Subscriber"

Sec. 7. As used in this chapter, "subscriber" means a person:

(1) that subscribes to a caller identification service in connection with:

(A) a telecommunications service; or

(B) an interconnected VOIP service;

to which the person subscribes; and

(2) whose place of primary use for the service described in subdivision (1)(A) or (1)(B) is in Indiana.

As added by P.L.151-2013, SEC.8.

IC 24-5-14.5-8
"Telecommunications service"

Sec. 8. As used in this chapter, "telecommunications service" has the meaning set forth in 47 U.S.C. 153.

As added by P.L.151-2013, SEC.8.

IC 24-5-14.5-9
Prohibited acts; transmitting misleading or inaccurate caller identification information

Sec. 9. Except as provided in section 10 of this chapter, a person shall not, in connection with any telecommunications service or interconnected VOIP service, knowingly and with the intent to defraud or cause harm to another person or to wrongfully obtain anything of value, cause any caller identification service to transmit misleading or inaccurate caller identification information to a subscriber.

As added by P.L.151-2013, SEC.8.

IC 24-5-14.5-10
Exceptions

Sec. 10. This chapter does not prohibit or restrict any of the following:

(1) Subject to IC 24-5-12-25, blocking the capability of a caller identification service to transmit caller identification information.

(2) Any authorized activity of a law enforcement agency.

(3) Any lawfully authorized investigative, protective, or intelligence activity of:

(A) the United States or an intelligence agency of the United States;
(B) the state or a political subdivision of the state; or
(C) any other state or a political subdivision of that state.
(4) A court order that specifically authorizes the use of caller identification manipulation.
(5) The right of the attorney general to bring a civil action under 47 U.S.C. 227(e)(6) to enforce the federal Truth in Caller ID Act of 2009 (47 U.S.C. 227).
As added by P.L.151-2013, SEC.8.

IC 24-5-14.5-11
Knowing violations; Class B misdemeanor; Class A misdemeanor
Sec. 11. A person who knowingly violates this chapter commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a previous unrelated conviction under this chapter.
As added by P.L.151-2013, SEC.8.

IC 24-5-14.5-12
Violation a deceptive act; knowing or intentional violations; civil penalty
Sec. 12. (a) Except as provided in subsection (b), a person who violates this chapter commits a deceptive act that is:
(1) actionable by the attorney general under IC 24-5-0.5-4(c); and
(2) subject to the remedies and penalties set forth in IC 24-5-0.5.
An action by the attorney general for a violation of this chapter may be brought in the circuit or superior court of Marion County.
(b) If the attorney general brings an action under this section and proves by a preponderance of the evidence that a person has knowingly or intentionally violated section 9 of this chapter, the attorney general may recover from the person on behalf of the state a civil penalty of not more than ten thousand dollars ($10,000) per violation. A civil penalty recovered under this subsection shall be deposited in the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6 to be used for the administration and enforcement of this chapter.
As added by P.L.151-2013, SEC.8.

IC 24-5-14.5-13
Cause of action; damages; injunctive relief
Sec. 13. (a) Except as provided in section 14 of this chapter, any person who is aggrieved by a violation of this chapter may bring an action for the recovery of the person's actual damages, including court costs and attorney's fees, against any person:
(1) responsible for; or
(2) who knowingly participated in;
the violation. An action under this subsection may be brought in the

circuit or superior court of the aggrieved person's county of residence or principal place of business in Indiana.

(b) Upon petition by any person that another person has violated this chapter, the circuit or superior court of the petitioner's county of residence or principal place of business in Indiana may enjoin the respondent from further violations. The injunctive relief available under this subsection is in addition to any damages to which a person may be entitled under subsection (a).

As added by P.L.151-2013, SEC.8.

IC 24-5-14.5-14

Cause of action; gross negligence or intentional wrongdoing

Sec. 14. A person does not have a cause of action against a provider for a violation of this chapter unless the violation resulted from the provider's gross negligence or intentional wrongdoing.

As added by P.L.151-2013, SEC.8.

IC 24-5-15

Chapter 15. Credit Services Organizations

IC 24-5-15-1

"Buyer" defined

Sec. 1. As used in this chapter, "buyer" means an individual who is solicited to purchase or who purchases the services of a credit services organization.

As added by P.L.142-1990, SEC.1.

IC 24-5-15-2

"Credit services organization" defined

Sec. 2. (a) As used in this chapter, "credit services organization" means a person that, with respect to the extension of credit by another person, sells, provides, performs, or represents that the person can or will sell, provide, or perform, in return for the payment of money or other valuable consideration, any of the following services:

(1) Improving a buyer's credit record, credit history, or credit rating.

(2) Obtaining an extension of credit for a buyer.

(3) Obtaining a delay or forbearance of a buyer's obligation under a mortgage.

(4) Obtaining a lower interest rate for:

(A) a consumer loan; or

(B) a residential mortgage loan;

to which the buyer is a debtor or a prospective debtor.

(5) Providing debt settlement services on behalf of a buyer.

(6) Providing advice or assistance to a buyer concerning the services described in subdivisions (1) through (5).

(b) The term "credit services organization" does not include any of the following:

(1) A person authorized to make loans or extensions of credit under state or federal laws that is subject to regulation and supervision under state or federal laws, or a lender approved by the United States Secretary of Housing and Urban Development for participation in a mortgage insurance program under the federal National Housing Act (12 U.S.C. 1701 et seq.).

(2) A bank or savings association or a subsidiary of a bank or savings association that has deposits or accounts that are eligible for insurance by the Federal Deposit Insurance Corporation.

(3) A credit union doing business in Indiana.

(4) A nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(5) A person licensed as a real estate broker under IC 25-34.1 if the person is acting within the course and scope of the person's license.

(6) A person admitted to the practice of law in Indiana if the person is acting within the course and scope of the person's

practice as an attorney.

(7) A broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission if the broker-dealer is acting within the course and scope of the broker-dealer's regulation.

(8) A consumer reporting agency (as defined in the Federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.)).

(9) A loan servicer acting on behalf of the holder of:

(A) a consumer loan; or

(B) a residential mortgage loan.

(10) A debt management company (as defined in IC 28-1-29-1(2)).

As added by P.L.142-1990, SEC.1. Amended by P.L.8-1991, SEC.7; P.L.79-1998, SEC.27; P.L.171-2006, SEC.1; P.L.114-2010, SEC.13.

IC 24-5-15-2.5
"Debt settlement services" defined

Sec. 2.5. As used in this chapter, "debt settlement services" means any of the following services that a person performs, offers to perform, or represents, either directly or by implication, that the person will perform with respect to a debt between a buyer and one (1) or more unsecured creditors or debt collectors:

(1) A renegotiation of the debt.

(2) A settlement of the debt.

(3) An alteration of the terms of payment or other terms of the debt, including a reduction in the balance, interest rate, or fees owed by the buyer to the creditor or debt collector.

As added by P.L.114-2010, SEC.14.

IC 24-5-15-3
"Extension of credit" defined

Sec. 3. As used in this chapter, "extension of credit" means the right to:

(1) defer payment of debt offered or granted primarily for personal, family, or household purposes;

(2) incur debt and defer payment of the debt offered or granted primarily for personal, family, or household purposes; or

(3) delay or avoid foreclosure on a buyer's residence.

As added by P.L.142-1990, SEC.1. Amended by P.L.171-2006, SEC.2.

IC 24-5-15-4
"Person" defined

Sec. 4. As used in this chapter, "person" means an individual, a corporation, a partnership, a joint venture, or any other entity.

As added by P.L.142-1990, SEC.1.

IC 24-5-15-5
Deceptive acts

Sec. 5. The following are deceptive acts:

(1) To charge or receive money or other valuable consideration before the complete performance of services that a credit services organization has agreed to perform for or on behalf of a consumer, unless the credit services organization has under section 8 of this chapter:

(A) obtained a surety bond issued by a surety company admitted to do business in Indiana; or

(B) established an irrevocable letter of credit.

(2) To charge or receive money or other valuable consideration to refer a buyer to a retail seller that will or may extend credit to the buyer if the extension of credit is made upon substantially the same terms as those available to the general public.

(3) To make or to advise a buyer to make a statement with respect to the buyer's creditworthiness, credit standing, or credit capacity that is:

(A) false or misleading; or

(B) that should be known by the exercise of reasonable care to be false or misleading;

to a consumer reporting agency or to a person that has extended credit to the buyer or to whom the buyer is applying for an extension of credit.

(4) To make or use a false or misleading representation in an offer to sell or a sale of the services of a credit services organization, including:

(A) guaranteeing to "erase bad credit" or using words to that effect unless the representation clearly discloses that this can be done only if a person's credit history is inaccurate or obsolete;

(B) guaranteeing an extension of credit regardless of the buyer's previous credit history unless the representation clearly discloses the eligibility requirements for obtaining the extension of credit; or

(C) requiring a buyer to waive a right protected by a state or federal law.

(5) To take a power of attorney from a buyer for any purpose other than inspecting documents as provided by law.

As added by P.L.142-1990, SEC.1. Amended by P.L.171-2006, SEC.3.

IC 24-5-15-6

Written statement provided by credit services organization

Sec. 6. Before executing a contract or agreement with a buyer or receiving money or other valuable consideration, a credit services organization must provide the buyer with a written statement that contains the following:

(1) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of the services.

(2) A statement explaining the buyer's right to proceed against the bond or surety account required under section 8 of this

chapter.

(3) The name and address of the:

(A) surety company that issued a bond; or

(B) depository and the trustee of a surety account and the account number of the surety account;

required under section 8 of this chapter.

(4) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency as provided under the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(5) A statement that the buyer's file is available for review:

(A) at no charge at the times and under the circumstances set forth in 15 U.S.C. 1681j; and

(B) for a minimal charge at any other time as provided by 15 U.S.C. 1681j(f).

(6) A complete and accurate statement of the buyer's right to dispute the completeness or accuracy of an item contained in a file on the buyer maintained by a consumer reporting agency.

(7) A statement that accurate information cannot be permanently removed from the files of a consumer reporting agency.

(8) A complete and accurate statement indicating when consumer information becomes obsolete and when consumer reporting agencies are prevented from issuing reports containing obsolete information.

(9) A complete and accurate statement of the availability of nonprofit credit counseling services.

As added by P.L.142-1990, SEC.1. Amended by P.L.114-2010, SEC.15.

IC 24-5-15-7

Contract between consumer and credit services organization; notice of cancellation form

Sec. 7. (a) Except as provided in subsection (d), a contract between a consumer and a credit services organization concerning the purchase of the services of the credit services organization must be in writing, be dated and signed by both the consumer and the credit services organization, and include all of the following:

(1) A statement in at least 10 point boldface type in immediate proximity to the space reserved for the signature of the buyer that reads:

"You, the buyer, may cancel this contract at any time before midnight of the third business day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right.".

(2) The terms and conditions of payment, including the total amount of all payments to be made by the buyer to the credit services organization or to another person.

(3) A complete and detailed description of the services to be performed and the results to be achieved by the credit services

organization for or on behalf of the buyer, including all guarantees and all promises of full or partial refunds and a list of the adverse information appearing on the consumer's credit report that the credit services organization expects to have modified and the estimated date by which each modification will occur.

(4) The principal business address of the credit services organization and the name and address of the credit services organization's agent in Indiana authorized to receive service of process.

(b) A contract shall be accompanied by two (2) copies of a form captioned "NOTICE OF CANCELLATION" attached to the contract and that contains the following statement in at least 10 point boldface type:

NOTICE OF CANCELLATION

You may cancel this contract, without any penalty or obligation, at any time before midnight of the third business day after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within ten days following receipt by the seller of your cancellation notice, or any other written notice, to

_____

(name of seller)

_____

___

(address of seller) (place of business)

not later than midnight _____

(date)

"I hereby cancel this transaction". _____

(date)

_____

___

(buyer's signature)

(c) A credit services organization shall give a copy of the completed contract and all other documents required by the credit services organization to the buyer at the time the contract and the documents are signed.

(d) If a contract is subject to this chapter and to IC 24-5.5, IC 24-5.5-4 applies to the contract.

As added by P.L.142-1990, SEC.1. Amended by P.L.209-2007, SEC.1.

IC 24-5-15-8

Surety bond or irrevocable letter of credit; filing with attorney general

Sec. 8. (a) Before doing business in Indiana, a credit services organization must:

(1) obtain a surety bond in the amount of twenty-five thousand dollars ($25,000), issued by a surety company authorized to do business in Indiana in favor of the state for the benefit of a

person that is damaged by a violation of this chapter; and

(2) file a copy of the surety bond obtained under subdivision (1) with the attorney general.

(b) The attorney general may waive the bonding requirement under subsection (a) and, instead of the bond, accept an irrevocable letter of credit for an equivalent amount issued in favor of the state for the benefit of a person that is damaged by a violation of this chapter. A credit services organization that obtains an irrevocable letter of credit under this subsection must file a copy of the irrevocable letter of credit with the attorney general before doing business in Indiana.

As added by P.L.142-1990, SEC.1. Amended by P.L.171-2006, SEC.4; P.L.114-2010, SEC.16.

IC 24-5-15-9

Damage claims; alternative actions

Sec. 9. A person that is damaged by a credit services organization's violation of this chapter may:

(1) bring an action to recover the greater of two (2) times the amount of actual damages or one thousand dollars ($1,000) and attorney's fees; and

(2) bring an action against the bond or irrevocable letter of credit required under section 8 of this chapter to recover an amount equal to the person's actual damages.

As added by P.L.142-1990, SEC.1.

IC 24-5-15-10

Waiver of provisions

Sec. 10. A waiver of the provisions of this chapter by a buyer or credit services organization is void.

As added by P.L.142-1990, SEC.1.

IC 24-5-15-11

Violations; penalties; court jurisdiction

Sec. 11. A person who violates this chapter commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4 and is subject to the penalties and remedies available to the attorney general under IC 24-5-0.5. An action by the attorney general for violations of this chapter may be brought in the circuit or superior court of Marion County.

As added by P.L.142-1990, SEC.1.

IC 24-5-16

Chapter 16. Unlawful Motor Vehicle Subleasing

IC 24-5-16-1

"Buyer" defined

Sec. 1. As used in this chapter, "buyer" means a person who buys goods from a seller.

As added by P.L.80-1990, SEC.16.

IC 24-5-16-2

"Direct loan agreement" defined

Sec. 2. As used in this chapter, "direct loan agreement" means an agreement between a lender and a purchaser by which the lender has advanced funds under a loan secured by the vehicle that the purchaser has purchased.

As added by P.L.80-1990, SEC.16.

IC 24-5-16-3

"Installment sale agreement" defined

Sec. 3. As used in this chapter, "installment sale agreement" means a credit sale of goods by a seller to a buyer for a deferred payment price payable in one (1) or more installments.

As added by P.L.80-1990, SEC.16.

IC 24-5-16-4

"Lease contract" defined

Sec. 4. As used in this chapter, "lease contract" means a lease contract for or in contemplation of a lease for the use of a vehicle, and the purchase of services incidental to the lease, by an individual for a term exceeding four (4) months primarily for personal, family, household, business, commercial, or agricultural use.

As added by P.L.80-1990, SEC.16.

IC 24-5-16-5

"Person" defined

Sec. 5. As used in this chapter, "person" means an individual, a company, a firm, an association, a partnership, a trust, a corporation, or other legal entity.

As added by P.L.80-1990, SEC.16.

IC 24-5-16-6

"Purchaser" defined

Sec. 6. As used in this chapter, "purchaser" has the meaning set forth in IC 26-1-1-201(33).

As added by P.L.80-1990, SEC.16.

IC 24-5-16-7

"Secured party" defined

Sec. 7. As used in this chapter, "secured party" has the meaning set forth in IC 26-1-9.1-102(a)(72).

As added by P.L.80-1990, SEC.16. Amended by P.L.57-2000, SEC.8.

IC 24-5-16-8
"Security agreement" defined

Sec. 8. As used in this chapter, "security agreement" has the meaning set forth in IC 26-1-9.1-102(a)(73).

As added by P.L.80-1990, SEC.16. Amended by P.L.57-2000, SEC.9.

IC 24-5-16-9
"Security interest" defined

Sec. 9. As used in this chapter, "security interest" has the meaning set forth in IC 26-1-1-201(37).

As added by P.L.80-1990, SEC.16.

IC 24-5-16-10
"Seller" defined

Sec. 10. As used in this chapter, "seller" has the meaning set forth in IC 26-1-2-103(1)(d). The term includes the present holder of an installment sales agreement.

As added by P.L.80-1990, SEC.16.

IC 24-5-16-11
"Vehicle" defined

Sec. 11. As used in this chapter, "vehicle" has the meaning set forth in IC 24-4-9-8.

As added by P.L.80-1990, SEC.16.

IC 24-5-16-12
Unlawful subleasing; conditions

Sec. 12. (a) A person engages in an act of unlawful subleasing of a vehicle if all of the following conditions are met:

(1) The vehicle is subject to a lease contract, an installment sales agreement, or a security agreement, the terms of which prohibit the transfer or assignment of any right or interest in the vehicle or under the lease contract, installment sales agreement, or security agreement without consent of the lessor, seller, or secured party.

(2) The person is not a party to the lease contract, installment sales agreement, or security agreement.

(3) The person transfers or assigns, or purports to transfer or assign, a right or an interest in the vehicle under the lease contract, installment sales agreement, or security agreement to a person who is not a party to the lease contract, installment sales agreement, or security agreement.

(4) The person does not obtain, before the transfer or assignment described in subdivision (3), written consent to the transfer or assignment from the vehicle's lessor, seller, or secured party.

(5) The person receives compensation or some other consideration for the transfer or assignment described in

subdivision (3).

(b) A person engages in an act of unlawful subleasing of a vehicle when the person is not a party to the lease contract, installment sales agreement, or security agreement and assists, causes, or arranges an actual or purported transfer or assignment described in subsection (a)(3).

As added by P.L.80-1990, SEC.16.

IC 24-5-16-13

Transfer or assignment of right or interest in vehicle under lease contract

Sec. 13. (a) The actual or purported transfer or assignment, or the assisting, causing, or arranging of an actual or purported transfer or assignment, of a right or an interest in a vehicle under a lease contract, installment sales agreement, or security agreement by a person who is a party to the lease contract, installment sales agreement, or security agreement is not an act of unlawful subleasing of a motor vehicle and is not subject to prosecution.

(b) This section does not affect the enforceability of any provision of a lease contract, an installment sales agreement, a security agreement, or a direct loan agreement by a party to the agreement.

As added by P.L.80-1990, SEC.16.

IC 24-5-16-14

Civil action

Sec. 14. Any one (1) or more of the following who suffer any damage proximately resulting from one (1) or more acts of unlawful vehicle subleasing described in section 12 of this chapter may bring an action against the person who has engaged in those acts:

(1) A seller or other secured party under an installment sales agreement or a security agreement.

(2) A lender under a direct loan agreement.

(3) A lessor under a lease contract.

(4) A buyer under an installment sales agreement.

(5) A purchaser under a direct loan agreement, an agreement that provides for a security interest, or an agreement that is equivalent to these types of agreements.

(6) A lessee under a lease contract.

(7) An actual or a purported transferee or an assignee of a right or an interest of a buyer, a purchaser, or a lessee.

As added by P.L.80-1990, SEC.16.

IC 24-5-16-15

Remedies

Sec. 15. The court in an action under section 14 of this chapter may award the following:

(1) Actual damages.

(2) Equitable relief, including an injunction and restitution of money and property.

(3) Punitive damages.

(4) Reasonable attorney's fees and costs.
(5) Any other relief the court considers proper.
As added by P.L.80-1990, SEC.16.

IC 24-5-16-16
Class A misdemeanor
Sec. 16. A person who knowingly or intentionally engages in an act of unlawful subleasing of a vehicle as described in section 12 of this chapter commits a Class A misdemeanor.
As added by P.L.80-1990, SEC.16.

IC 24-5-16-17
Additional remedies or penalties
Sec. 17. The remedies and penalties under this chapter are in addition to any other remedies or penalties provided by law for the conduct proscribed by this chapter.
As added by P.L.80-1990, SEC.16.

IC 24-5-16-18
Violation; deceptive act; remedies and penalties
Sec. 18. A person who violates this chapter commits a deceptive act that is actionable by the attorney general and is subject to the remedies and penalties under IC 24-5-0.5.
As added by P.L.80-1990, SEC.16.

IC 24-5-16-19
Severability
Sec. 19. This chapter is severable in the manner provided by IC 1-1-1-8.
As added by P.L.80-1990, SEC.16.

IC 24-5-17

Chapter 17. Environmental Marketing Claims

IC 24-5-17-1

Policy

Sec. 1. It is the policy of the state to discourage deceptive environmental advertising claims.

As added by P.L.13-1991, SEC.2.

IC 24-5-17-2

Application of chapter; violations

Sec. 2. (a) This chapter applies to a person who represents in advertising or on the label or package of a consumer good that the consumer good the person manufactures or distributes, or its package, is not harmful to or is beneficial to the natural environment by terms such as the following:

(1) Environmental choice.
(2) Ecologically, earth, or environmentally friendly.
(3) Ecologically or environmentally sound.
(4) Ecologically or environmentally safe.
(5) Environmentally "lite".
(6) Green product.
(7) Any term or terms similar to the other terms listed in this chapter.

(b) It is a violation of this chapter for any person to represent that any consumer good which the person manufactures or distributes or its package is "ozone friendly", "biodegradable", "compostable", "photodegradable", "recyclable", or "recycled" unless that consumer good or its package meets the definitions contained in this chapter or meets definitions established in trade regulations or guides adopted by the Federal Trade Commission or in enforceable regulations adopted by another federal agency expressly for the purpose of establishing standards for environmental advertising or representations.

As added by P.L.13-1991, SEC.2.

IC 24-5-17-3

"Biodegradable" defined

Sec. 3. As used in this chapter, "biodegradable" means that material has the proven capability to decompose in less than one (1) year in the most common environment where the material is usually disposed through natural biological processes into nontoxic carbonaceous soil, water, or carbon dioxide.

As added by P.L.13-1991, SEC.2.

IC 24-5-17-4

"Compostable" defined

Sec. 4. As used in this chapter, "compostable" means that material will decompose into a soil-like material in less than one (1) year under controlled biological circumstances.

As added by P.L.13-1991, SEC.2.

IC 24-5-17-5
"Consumer goods" defined

Sec. 5. As used in this chapter, "consumer goods" means an article that is used or bought for use primarily for personal, family, or household purposes.
As added by P.L.13-1991, SEC.2.

IC 24-5-17-6
"Ozone friendly" defined

Sec. 6. As used in this chapter, "ozone friendly" or any similar term that connotes that stratospheric ozone is not being depleted through use or production of the product means that a chemical or material released into the environment as a result of the use or production of a product will not migrate to the stratosphere and cause unnatural and accelerated deterioration of ozone.
As added by P.L.13-1991, SEC.2.

IC 24-5-17-7
"Package" defined

Sec. 7. As used in this chapter, "package" means the coating, covering, container, or wrapping used during a product's life cycle, including any outer container, wrapping, or label used in the retail display of any consumer goods.
As added by P.L.13-1991, SEC.2.

IC 24-5-17-8
"Photodegradable" defined

Sec. 8. As used in this chapter, "photodegradable" means that material has the proven capability to decompose within one (1) year into nontoxic carbonaceous soil, water, or carbon dioxide in the most common environment where the material is usually disposed through physical processes such as exposure to heat and light.
As added by P.L.13-1991, SEC.2.

IC 24-5-17-9
"Recyclable" defined

Sec. 9. As used in this chapter, "recyclable" means that a material or product can be redeemed or returned at an identifiable recycling location for the purpose of returning the material to the economic mainstream in the form of raw material for new, reused, or reconstituted materials which meet quality standards necessary to be used in the marketplace.
As added by P.L.13-1991, SEC.2.

IC 24-5-17-10
"Recycled" defined

Sec. 10. As used in this chapter, "recycled" means that an article contains at least ten percent (10%) by weight of postconsumer or

post manufacture material.
As added by P.L.13-1991, SEC.2.

IC 24-5-17-11
Representations; determination of initiation

Sec. 11. For purposes of this chapter, a wholesaler or retailer is not considered to have made a representation if the wholesaler or retailer does not initiate a representation by placing the representation on a package.
As added by P.L.13-1991, SEC.2.

IC 24-5-17-12
Representation's validity; information and documentation requirements

Sec. 12. A person shall maintain in written form in the person's records the following information and documentation supporting the validity of the representation:

(1) The reasons why the person believes the representation to be true.

(2) Any significant adverse environmental impacts directly associated with the production, distribution, use, or disposal of the consumer good.

(3) Any measures that the person has taken to reduce the environmental impacts directly associated with the production, distribution, and disposal of the consumer good.

(4) Any violations of federal, state, or local permits directly associated with the production or distribution of the consumer good.

(5) Whether the consumer good is recycled, recyclable, biodegradable, photodegradable, compostable, or ozone friendly.

As added by P.L.13-1991, SEC.2.

IC 24-5-17-13
Disclosure requirements

Sec. 13. Upon the written request of the department of environmental management established by IC 13-13-1-1 or the office of the attorney general created under IC 4-6-1-2, a person shall fully disclose to the requesting office, within the limits of all applicable laws, the information and documentation maintained by the person under section 12 of this chapter. The requesting office shall make the information and documentation disclosed under this section available for public inspection and copying at its offices.
As added by P.L.13-1991, SEC.2. Amended by P.L.1-1996, SEC.79.

IC 24-5-17-14
Violations; penalties; claims for damages

Sec. 14. (a) A person who knowingly violates this chapter commits a deceptive act that is subject to remedies and penalties under IC 24-5-0.5.

(b) A person who suffers actual damages from a violation of this act may bring an action to recover the actual damage plus attorney's fees.

As added by P.L.13-1991, SEC.2.

IC 24-5-18

Chapter 18. Garage Door Opening Systems

IC 24-5-18-1

"Automatic garage door opening system"

Sec. 1. As used in this chapter, "automatic garage door opening system" means a system of devices and equipment that is not a commercial garage door operator and that when connected to a garage door automatically opens and closes the garage door.

As added by P.L.212-1993, SEC.1.

IC 24-5-18-2

"Automatic reversing requirement"

Sec. 2. As used in this chapter, "automatic reversing requirement" refers to the requirements specified in paragraphs 30.1 and 30.2 of Underwriters Laboratories, Inc., Standards for Safety-UL 325, third edition, as revised May 4, 1988, for an automatic garage door opening system.

As added by P.L.212-1993, SEC.1.

IC 24-5-18-3

"Garage"

Sec. 3. As used in this chapter, "garage" means a building or a part of a building designed or used for the storage, repair, or keeping of a motor vehicle.

As added by P.L.212-1993, SEC.1.

IC 24-5-18-4

"Person"

Sec. 4. As used in this chapter, "person" means an individual, a corporation, a partnership, an association, or other legal entity.

As added by P.L.212-1993, SEC.1.

IC 24-5-18-5

"Residential building"

Sec. 5. As used in this chapter, "residential building" means a structure such as a home or an apartment for one (1) or more families or persons that includes an attached or unattached garage.

As added by P.L.212-1993, SEC.1.

IC 24-5-18-6

"Supplier"

Sec. 6. As used in this chapter, "supplier" means a seller, lessor, assignor, or other person who regularly engages in or solicits consumer transactions.

As added by P.L.212-1993, SEC.1.

IC 24-5-18-7

Repair or installation without onsite reversal test forbidden; exceptions

Sec. 7. (a) A supplier may not:

(1) repair; or

(2) install;

an automatic garage door opening system in a residential building unless the system passes the onsite test described in section 8 of this chapter.

(b) This section does not prevent the servicing or repair of an automatic garage door opening system if, after the repair or service:

(1) the system complies with subsection (a); or

(2) the supplier complies with section 8 of this chapter.

As added by P.L.212-1993, SEC.1.

IC 24-5-18-8

Onsite reversal test procedure; warning tag; notice

Sec. 8. (a) A supplier who installs, services, or repairs an automatic garage door opening system in a residential building shall conduct an onsite reversal test of the system. In order to pass the onsite reversal test, the system must reverse the door upon contact with a rigid two inch (2") high obstacle (or a 2 by 4 block of wood) placed on the surface beneath the garage door.

(b) If the automatic garage door opening system does not pass the onsite reversal test required by subsection (a), the supplier conducting the test shall complete and conspicuously attach to the automatic garage door opening system a label or tag that contains the following information (The following language complies with this requirement, but other language may be used that conveys the equivalent information.):

WARNING

This garage door opener was tested and does not meet the current requirements for a working safety reverse feature. This can be dangerous and may cause serious injury or death. You are advised to disconnect the opener from the door immediately and operate the door manually until the opener has been repaired or replaced with an opener that meets current safety standards relating to automatic reversal.

Model (if known)	Printed Name and Signature of Tester
_____	_____
_____	_____
Manufacturer (if known)	Employer Name
_____	_____
_____	_____
Serial Number (if known)	Employer Address/ Phone Number
_____	_____
_____	_____
	Date
	_____

(c) The word "WARNING" on the label or tag described in subsection (b) shall be in the foreground and background colors that

comply with the standards of the American National Standards Institute (ANSI) that are in effect at the time that the label or tag is affixed.

(d) The employer of the person who attaches a label or tag under subsection (b) shall notify the occupant of the residence within ten (10) working days in writing that the residence's automatic garage door opening system does not comply with this chapter.

As added by P.L.212-1993, SEC.1. Amended by P.L.1-1994, SEC.119.

IC 24-5-18-9
Local ordinance

Sec. 9. This chapter does not preclude a political subdivision from adopting, by ordinance, rules for the installation and repair of automatic garage door opening systems that are more restrictive than the standards set forth in this chapter.

As added by P.L.212-1993, SEC.1.

IC 24-5-18-10
Violations; penalty

Sec. 10. (a) A supplier who knowingly violates the requirements of this chapter is subject to a civil penalty of five hundred dollars ($500) for each violation.

(b) The attorney general may bring an action on behalf of the state to recover the penalty imposed by subsection (a) from the supplier.

As added by P.L.212-1993, SEC.1.

IC 24-5-19
Chapter 19. Deceptive Commercial Solicitation

IC 24-5-19-1
Application of chapter

Sec. 1. This chapter applies to a person that sends, delivers, or transmits by mail, private delivery, facsimile transmission, or electronic mail a solicitation offering goods or services for sale, lease, or rent if the person:

(1) creates, prepares, packages, or handles the solicitation in Indiana;

(2) sends the solicitation from a location in Indiana;

(3) sends the solicitation from outside Indiana to a location or person in Indiana;

(4) uses a post office box, mailing service, or facsimile transmission service in Indiana;

(5) remails, forwards, redirects, or retransmits the solicitation from Indiana to a location in Indiana or outside Indiana; or

(6) directly or indirectly uses another person in Indiana to create, prepare, package, handle, send, deliver, transmit, remail, forward, redirect, or retransmit a solicitation.

As added by P.L.176-1997, SEC.1.

IC 24-5-19-2
"Person" defined

Sec. 2. As used in this chapter, "person" has the meaning set forth in IC 24-5-0.5-2.

As added by P.L.176-1997, SEC.1.

IC 24-5-19-3
Solicitation of payment by bill, invoice, or statement of account due

Sec. 3. A person may not, with intent to deceive, knowingly or intentionally send, deliver, or transmit a bill, an invoice, or a statement of account due, or a writing that could reasonably be interpreted as a bill, an invoice, or a statement of account due, to solicit payment of money by another person for goods not yet ordered or for services not yet performed and not yet ordered.

As added by P.L.176-1997, SEC.1.

IC 24-5-19-4
Solicitation of payment by compliance notice, legal notice, or other notice of governmental entity

Sec. 4. A person that is not a governmental entity may not knowingly or intentionally send, deliver, or transmit a writing that purports to be a compliance notice, legal notice, or other notice of a governmental entity, or a writing that could reasonably be interpreted to be a compliance notice, legal notice, or other notice of a governmental entity, to solicit payment of money by another person for goods not yet ordered or for services not yet performed and not yet ordered.

As added by P.L.176-1997, SEC.1.

IC 24-5-19-5
Solicitation when goods not shipped or services not performed

Sec. 5. A person may not knowingly or intentionally send, deliver, or transmit a solicitation for goods if the solicitation indicates that goods have been shipped to or services performed for the recipient and the goods have not been shipped or the services have not been performed.
As added by P.L.176-1997, SEC.1.

IC 24-5-19-6
Compliance with other provisions of law

Sec. 6. The provisions of this chapter are not exclusive and do not relieve a person of compliance with other applicable provisions of law.
As added by P.L.176-1997, SEC.1.

IC 24-5-19-7
Voidable contracts

Sec. 7. A contract entered into in reliance on a solicitation that does not comply with this chapter is voidable by the party that relied on the solicitation.
As added by P.L.176-1997, SEC.1.

IC 24-5-19-8
Waiver

Sec. 8. A waiver of a person's rights under all or part of this chapter is void and unenforceable.
As added by P.L.176-1997, SEC.1.

IC 24-5-19-9
Power to bring action, seek injunction, or submit matter to attorney general

Sec. 9. A person that receives a solicitation that violates the provisions of this chapter may:

(1) bring an action in the circuit or superior court of the county of the person's residence for recovery of the person's actual damages resulting from the violation, including court costs and attorney's fees;

(2) petition the circuit or superior court of the person's county of residence to enjoin the sender of the solicitation from further violation; and

(3) whether or not the recipient of the solicitation is actually deceived, submit the matter to the attorney general for action under IC 24-5-0.5.

As added by P.L.176-1997, SEC.1.

IC 24-5-19-10
Violation of chapter; Class A misdemeanor

Sec. 10. A person that violates the provisions of this chapter commits a Class A misdemeanor.
As added by P.L.176-1997, SEC.1.

IC 24-5-19-11
Penalties

Sec. 11. (a) A person that violates this chapter is subject to the penalties set forth in IC 24-5-0.5.

(b) The penalties set forth in IC 24-5-0.5 apply whether or not a recipient of the person's solicitation is actually deceived.
As added by P.L.176-1997, SEC.1.

IC 24-5-20

Chapter 20. Assistive Device Warranties

IC 24-5-20-1

Applicability of chapter

Sec. 1. This chapter does not apply to assistive devices purchased by, leased by, or transferred to a consumer before July 1, 1999.

As added by P.L.85-1999, SEC.1.

IC 24-5-20-2

"Assistive device" defined

Sec. 2. As used in this chapter, "assistive device" means any new device, including a demonstrator, that a consumer purchases or accepts transfer of in Indiana that is used for a major life activity. The term includes the following devices:

(1) Manual wheelchairs, motorized wheelchairs, motorized scooters, and other aids that enhance the mobility of an individual.

(2) Hearing aids, telephone communication devices for the deaf (TTD, TTY), assistive listening devices, visual and audible signal systems, and other aids that enhance an individual's ability to hear.

(3) Voice synthesized computer modules, optical scanners, talking software, braille printers, and other devices that enhance a sight impaired individual's ability to communicate.

(4) Any other device that enables an individual with a disability to communicate, see, hear, or maneuver.

The term does not include surgical implants, dental and ocular prostheses, batteries, tires, or nonfunctional accessories.

As added by P.L.85-1999, SEC.1.

IC 24-5-20-3

"Collateral costs" defined

Sec. 3. As used in this chapter, "collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the reasonable costs of obtaining an alternative assistive device. The term does not include the cost of an alternative assistive device.

As added by P.L.85-1999, SEC.1.

IC 24-5-20-4

"Consumer" defined

Sec. 4. As used in this chapter, "consumer" means any of the following:

(1) An individual who is a person with a disability as defined in the federal Americans With Disabilities Act (42 U.S.C. 12101(2)) or the individual's legal representative:

(A) who has purchased an assistive device from an assistive device dealer or manufacturer for purposes other than resale;

(B) to whom the assistive device is transferred for purposes

other than resale, if the transfer occurs before the expiration of any warranty established by this chapter; or

(C) who leases a new assistive device from an assistive device lessor under a written lease.

(2) A person that purchases or leases an assistive device using state or federal funds for the use of an individual with a disability.

(3) An insurer or self-insurer that purchases or leases an assistive device for the use of an individual with a disability.

As added by P.L.85-1999, SEC.1.

IC 24-5-20-5
"Dealer" defined

Sec. 5. As used in this chapter, "dealer" means a person who is in the business of selling or dispensing assistive devices.

As added by P.L.85-1999, SEC.1.

IC 24-5-20-6
"Demonstrator" defined

Sec. 6. As used in this chapter, "demonstrator" means an assistive device used primarily for the purpose of demonstration to the public or loan to a consumer.

As added by P.L.85-1999, SEC.1.

IC 24-5-20-7
"Manufacturer" defined

Sec. 7. As used in this chapter, "manufacturer" means a person that manufactures or assembles assistive devices. The term includes the agents of that person, an importer, a factory branch, and any warrantors of the person's assistive device. The term does not include a professional who fabricates, without charge, a device for use in the course of treatment.

As added by P.L.85-1999, SEC.1.

IC 24-5-20-8
"Nonconformity" defined

Sec. 8. (a) As used in this chapter, "nonconformity" means a condition or defect that significantly impairs the use, value, function, or safety of an assistive device or any of its components.

(b) The term does not include a condition or defect of the assistive device that:

(1) is the result of:

(A) abuse, misuse, or neglect by a consumer;

(B) modifications or alterations not authorized by the manufacturer;

(C) normal wear, including accumulation of ear wax, perspiration, or moisture;

(D) normal use that may be resolved through a fitting adjustment, routine maintenance, preventative maintenance, or proper care; or

(E) a consumer's failure to follow any manufacturer's written service and maintenance guidelines furnished at the time of purchase; or

(2) indicates the need for:

(A) routine adjustment, modification, or upgrade; or

(B) an adjustment:

(i) due to an exacerbation in the condition of the individual with a disability; or

(ii) to improve the fit of the assistive device.

As added by P.L.85-1999, SEC.1.

IC 24-5-20-9

Reasonable attempt to repair

Sec. 9. For purposes of this chapter, a "reasonable attempt to repair" has occurred if, within one (1) year after the date of first delivery of the assistive device, either of the following applies:

(1) The same nonconformity has been subject to repair two (2) or more times by the manufacturer, assistive device lessor, or any assistive device dealer authorized by the manufacturer to repair the assistive device, and the nonconformity continues to exist and interfere with the assistive device's operation.

(2) The assistive device is out of service because of nonconformities, with no fungible loaner available, for a cumulative total of at least thirty (30) business days (not including any necessary time in shipment), due to repair by the manufacturer, assistive device lessor, or any assistive device dealer authorized by the manufacturer to repair the assistive device. For purposes of this subdivision a loaner hearing aid is considered fungible with the consumer's hearing aid if the loaner hearing aid improves the consumer's hearing. This subdivision does not apply if the repairs could not be performed because of conditions beyond the control of the manufacturer, its agents, or authorized dealers, including war, invasion, strike, fire, flood, or other natural disasters.

As added by P.L.85-1999, SEC.1.

IC 24-5-20-10

Implied warranties regarding nonconformity

Sec. 10. Notwithstanding any other law, in addition to any express warranty furnished by the manufacturer of an assistive device, the manufacturer is also considered to have warranted both of the following for a period of one (1) year from the date of first delivery to the consumer purchasing or leasing the assistive device in Indiana:

(1) That the assistive device, when used as intended, will be free from any nonconformity.

(2) That any nonconformity will be repaired (including parts and labor) by the manufacturer or its agent, without charge to the consumer.

As added by P.L.85-1999, SEC.1.

IC 24-5-20-11
Return of nonconforming assistive device

Sec. 11. If, after reasonable attempt to repair, a nonconformity is not repaired, the consumer must return the assistive device to the dealer and the manufacturer shall do either of the following:

(1) Do both of the following:

(A) Accept return of the nonconforming assistive device.

(B) Not later than fourteen (14) days after return of the assistive device, refund to the consumer or consumers:

(i) the full purchase price of the assistive device, excluding the cost of services associated with the device's initial purchase, together with reasonable collateral costs, less a reasonable allowance for use; or

(ii) if the device was leased, all lease payments made through the date of return together with a proportional share of any required deposit.

A refund of the amounts described in this clause to a consumer or consumers shall be made to the extent of each consumer's bearing the initial purchase or lease cost and bearing of any collateral costs.

(2) Accept return of the nonconforming assistive device and replace the nonconforming assistive device with one (1) of comparable market value, function, and usefulness as appropriate to the consumer within thirty (30) business days of the return, not including, in the case of a hearing aid, scheduling time for professional fitting and dispensing.

As added by P.L.85-1999, SEC.1.

IC 24-5-20-12
Resale of nonconforming assistive devices prohibited

Sec. 12. An assistive device returned due to a nonconformity under this chapter by a consumer or an assistive device lessor in Indiana or any other state may not be sold or leased again in Indiana unless full disclosure of the reason for the return is made to any prospective buyer or lessee.

As added by P.L.85-1999, SEC.1.

IC 24-5-20-13
Remedies

Sec. 13. (a) The remedies afforded by this chapter are:

(1) cumulative;

(2) not exclusive; and

(3) in addition to any other legal or equitable remedies available to the consumer.

(b) In addition to any other remedies available, a consumer who suffers loss as a result of any violation of this chapter may:

(1) bring an action to recover damages; or

(2) submit the matter to arbitration under IC 34-57-2.

As added by P.L.85-1999, SEC.1.

IC 24-5-20-14

Limitation of warranties and waiver of rights prohibited

Sec. 14. (a) A manufacturer's exclusion or limitation of the warranties or consumer remedies provided by this chapter is void.

(b) A purported waiver of rights to legal action or arbitration by a consumer within an assistive device purchase agreement is void.

As added by P.L.85-1999, SEC.1.

IC 24-5-21

Chapter 21. Prescription Drug Discount Cards

IC 24-5-21-1

Applicability

Sec. 1. This chapter does not apply to the following:

(1) Eye or vision care services, glasses, or contact lenses provided by an optometrist or ophthalmologist.

(2) A card, device, or other purchasing mechanism that is not insurance but that is administered in conjunction with a health or medical benefit by an insurance company, a nonprofit health service plan corporation, or a health maintenance organization.

(3) A benefit administered by or under contract with the state of Indiana.

(4) A customer discount or membership card issued by a store or buying club for use at that store or buying club.

As added by P.L.230-2001, SEC.1.

IC 24-5-21-2

"Person" defined

Sec. 2. As used in this chapter, "person" has the meaning set forth in IC 24-5-0.5-2.

As added by P.L.230-2001, SEC.1.

IC 24-5-21-3

Prohibitions against sale or distribution of card

Sec. 3. A person may not sell, market, promote, advertise, or distribute a card, device, or other purchasing mechanism that purports to offer discounts or access to discounts from a pharmacy for prescription drug or device purchases in the following situations:

(1) The card, device, or other purchasing mechanism does not expressly state in bold and prominent type, which is prominently placed, that the discounts are not insurance.

(2) The discounts are not specifically authorized by an individual and separate contract with each pharmacy listed with the card, device, or other purchasing mechanism.

(3) The discounts or access to discounts offered, or the range of discounts or access to the range of discounts offered are deceptive or misleading.

As added by P.L.230-2001, SEC.1.

IC 24-5-21-4

Indiana resident designated as agent for service of process

Sec. 4. A person who is not exempt under section 1 of this chapter and who sells, markets, promotes, advertises, or distributes a card, device, or other purchasing mechanism that purports to offer discounts or access to discounts from a pharmacy for prescription drug or device purchases shall designate a resident in Indiana as an agent for service of process and register the agent with the secretary of state.

As added by P.L.230-2001, SEC.1.

IC 24-5-21-5
Card voidable for noncompliance

Sec. 5. A contract entered into to purchase a card, device, or other purchasing mechanism that purports to offer discounts or access to discounts from a pharmacy for prescription drug or device purchases that does not comply with this chapter is voidable by the purchaser.
As added by P.L.230-2001, SEC.1.

IC 24-5-21-6
Legal action for violations

Sec. 6. (a) The attorney general, a prosecuting attorney, or an individual may maintain an action to enjoin any act that is in violation of this chapter and for the recovery of damages.

(b) An action brought under this section may be brought in the county where:

(1) the plaintiff resides or conducts business;

(2) the defendant resides or conducts business; or

(3) the card, device, or other purchasing mechanism that purports to offer discounts or access to discounts from a pharmacy for prescription drug or device purchases was sold, marketed, promoted, advertised, or distributed.

(c) If the court finds that the defendant violated any provision of this chapter, the court shall enjoin the defendant from continuing the acts that are in violation of this chapter.

(d) A plaintiff who prevails in an action under this chapter may recover the following:

(1) A sum equal to one hundred dollars ($100) per card, device, or other purchasing mechanism that is sold or distributed in Indiana by the defendant or ten thousand dollars ($10,000), whichever is greater.

(2) Three (3) times the amount of actual damages, if any.

(3) Reasonable attorney's fees.

(4) Court costs.

(5) Any other relief that the court considers proper.

As added by P.L.230-2001, SEC.1.

IC 24-5-21-7
Provisions not exclusive

Sec. 7. (a) The provisions of this chapter are not exclusive and do not relieve a person from compliance with other applicable provisions of law.

(b) The penalties in this chapter are cumulative and in addition to any other applicable penalties.

(c) A person that violates this chapter is subject to the penalties set forth in IC 24-5-0.5.

(d) All actions brought under this chapter must be brought within two (2) years after the date on which the violation of this chapter occurred.

As added by P.L.230-2001, SEC.1.

IC 24-5-22

Chapter 22. Deceptive Commercial Electronic Mail

IC 24-5-22-1

"Assist the transmission"

Sec. 1. As used in this chapter, "assist the transmission" means to provide substantial assistance or support that enables a person to formulate, compose, send, originate, initiate, or transmit a commercial electronic mail message when the person providing the assistance knows or consciously avoids knowing that the initiator of the commercial electronic mail message is engaged or intends to engage in a practice that violates this chapter.

As added by P.L.36-2003, SEC.1.

IC 24-5-22-2

"Commercial electronic mail message"

Sec. 2. (a) As used in this chapter, "commercial electronic mail message" refers to an electronic mail message sent to promote the sale or lease of real property, goods, or services.

(b) The term does not include an electronic mail message to which an interactive computer service provider has attached an advertisement in exchange for free use of an electronic mail account, if the sender has agreed to such an arrangement.

As added by P.L.36-2003, SEC.1.

IC 24-5-22-3

"Electronic mail address"

Sec. 3. As used in this chapter, "electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

As added by P.L.36-2003, SEC.1.

IC 24-5-22-4

"Initiate the transmission"

Sec. 4. (a) As used in this chapter, "initiate the transmission" refers to the action by the original sender of an electronic mail message.

(b) The term does not include an action by any intervening interactive computer service that handles or retransmits the message.

As added by P.L.36-2003, SEC.1.

IC 24-5-22-5

"Interactive computer service"

Sec. 5. (a) As used in this chapter, "interactive computer service" means an information service, a system, or an access software provider that provides or enables computer access to a computer server by multiple users.

(b) The term includes the following:

(1) A service or system that provides access to the Internet.

(2) A system operated or services offered by a library, a school,

a state educational institution, or a private postsecondary educational institution.

As added by P.L.36-2003, SEC.1. Amended by P.L.2-2007, SEC.317.

IC 24-5-22-6

"Internet domain name"

Sec. 6. As used in this chapter, "Internet domain name" refers to a globally unique, hierarchical reference to an Internet host or service, assigned through centralized Internet naming authorities, comprising a series of character strings separated by periods, with the right most string specifying the top of the hierarchy.

As added by P.L.36-2003, SEC.1.

IC 24-5-22-7

Indiana recipient of commercial electronic mail message; transmission of commercial electronic mail message; application

Sec. 7. (a) For purposes of this section, a person knows that the intended recipient of a commercial electronic mail message is an Indiana resident if that information is available, upon request, from the registrant of the Internet domain name contained in the recipient's electronic mail address.

(b) Subsection (c) applies only to a commercial electronic mail message that:

(1) uses a third party's Internet domain name without permission of the third party;

(2) otherwise misrepresents or obscures any information in identifying the point of origin or the transmission path of the commercial electronic mail message; or

(3) contains false or misleading information in the subject line.

(c) A person may not initiate or assist the transmission of a commercial electronic mail message described in subsection (b):

(1) from a computer located in Indiana; or

(2) to an electronic mail address that the sender:

(A) knows; or

(B) has reason to know;

is held by a resident of Indiana.

As added by P.L.36-2003, SEC.1. Amended by P.L.97-2004, SEC.91.

IC 24-5-22-8

Commercial electronic mail; prohibited practices

Sec. 8. A person may not do any of the following:

(1) Send unsolicited commercial electronic mail and fail to use "ADV:" as the initial four (4) characters in the subject line of the electronic mail. This subdivision does not apply if any of the following apply:

(A) The sender of the electronic mail has a current business relationship with the recipient of the electronic mail.

(B) The sender of the electronic mail is an organization using the electronic mail to communicate with its members.

(C) The sender of the electronic mail is an organization

using the electronic mail to communicate exclusively with the organization's employees or contractors, or both.

(2) Send unsolicited commercial electronic mail and fail to use "ADV:ADLT" as the first eight (8) characters in the subject line of the electronic mail if the unsolicited commercial electronic mail is any of the following:

(A) The unsolicited commercial electronic mail contains a solicitation for the sale or lease of services or tangible or intangible personal or real property that may not be purchased, leased, or possessed by a minor under Indiana law.

(B) The unsolicited commercial electronic mail contains a solicitation for an extension of credit.

(C) The unsolicited commercial electronic mail contains matter that is harmful to minors under Indiana law.

(3) Send unsolicited commercial electronic mail and fail to provide a means for the recipient easily and at no cost to the recipient to remove the recipient's name from the sender's electronic mail address lists.

(4) Send unsolicited commercial electronic mail to a recipient who has asked the sender to remove the recipient's electronic mail address from the sender's electronic mail address lists.

(5) Provide to a third person the electronic mail address of a recipient who has asked the sender to remove the recipient's electronic mail address from the sender's electronic mail address lists. This subdivision applies to a third person who is a part of the sender's business organization. This subdivision does not prohibit providing a recipient's electronic mail address to a third person for the sole purpose of inclusion of the electronic mail address on a do-not-mail list.

As added by P.L.36-2003, SEC.1.

IC 24-5-22-9

Interactive computer services; blocking transmission of commercial electronic mail; liability

Sec. 9. (a) An interactive computer service may, upon its own initiative, block the receipt or transmission through its service of any commercial electronic mail message that it reasonably believes is or will be sent in violation of this chapter.

(b) An interactive computer service is not liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any commercial electronic mail message that it reasonably believes is or will be sent in violation of this chapter.

As added by P.L.36-2003, SEC.1.

IC 24-5-22-10

Right of action; exclusions; defenses; remedies; jurisdiction

Sec. 10. (a) The following have a right of action against a person who initiates or assists the transmission of a commercial electronic mail message that violates this chapter:

(1) A person who receives the commercial electronic mail message.

(2) An interactive computer service that handles or retransmits the commercial electronic mail message.

(b) This chapter does not provide a right of action against:

(1) an interactive computer service; or

(2) a communications service provider (as defined in IC 8-1-2.6-13);

whose equipment is used to transport, handle, or retransmit a commercial electronic mail message that violates this chapter.

(c) It is a defense to an action under this section if the defendant shows by a preponderance of the evidence that the violation of this chapter resulted from a good faith error and occurred notwithstanding the maintenance of procedures reasonably adopted to avoid violations of this chapter.

(d) If the plaintiff prevails in an action filed under this section, the plaintiff is entitled to the following:

(1) An injunction to enjoin future violations of this chapter.

(2) Compensatory damages equal to any actual damage proven by the plaintiff to have resulted from the initiation of the commercial electronic mail message. If the plaintiff does not prove actual damage, the plaintiff is entitled to presumptive damages of five hundred dollars ($500) for each commercial electronic mail message that violates this chapter and that is sent by the defendant:

(A) to the plaintiff; or

(B) through the plaintiff's interactive computer service.

(3) The plaintiff's reasonable attorney's fees and other litigation costs reasonably incurred in connection with the action.

(e) A person outside Indiana who:

(1) initiates or assists the transmission of a commercial electronic mail message that violates this chapter; and

(2) knows or should know that the commercial electronic mail message will be received in Indiana;

submits to the jurisdiction of Indiana courts for purposes of this chapter.

As added by P.L.36-2003, SEC.1. Amended by P.L.132-2012, SEC.6.

IC 24-5-23

Chapter 23. Marketing by Mortgage Lenders

IC 24-5-23-1

"Mortgage lender"

Sec. 1. As used in this chapter, "mortgage lender" means the original lender under a mortgage and the original lender's successors and assigns, including insurance companies, trust companies, banks, investment companies, savings banks, savings associations, credit unions, executors, trustees, and other fiduciaries, or any other mortgagee authorized to do business in this state.

As added by P.L.10-2006, SEC.22 and P.L.57-2006, SEC.22.

IC 24-5-23-2

Marketing materials and solicitations; use of name of existing mortgage lender prohibited; permissible uses and references; remedies

Sec. 2. (a) Except as provided in subsection (b), a person, firm, limited liability company, or corporation may not use the name of an existing mortgage lender or a name confusingly similar to that of an existing mortgage lender when marketing to or soliciting business from a customer or prospective customer if the reference to the existing mortgage lender is:

(1) without the consent of the existing mortgage lender; and

(2) made in a manner that could cause a reasonable person to believe that the marketing material or solicitation:

(A) originated from;

(B) is endorsed by; or

(C) is in any other way the responsibility of;

the existing mortgage lender.

(b) This section does not prohibit the use of or reference to the name of an existing mortgage lender in marketing materials or solicitations if the use or reference does not deceive or confuse a reasonable person regarding whether the marketing material or solicitation:

(1) originated from;

(2) is endorsed by; or

(3) is in any other way the responsibility of;

the existing mortgage lender.

(c) A mortgage lender whose name is used in violation of this section may bring an action to recover the greater of:

(1) two (2) times the amount of actual damages incurred by the mortgage lender as a result of the violation; or

(2) one thousand dollars ($1,000) plus attorney's fees.

(d) A mortgage lender that is a bank or a bank holding company is entitled to any relief available under both:

(1) subsection (c); and

(2) IC 28-1-20-4(m);

with respect to the same violation.

As added by P.L.10-2006, SEC.22 and P.L.57-2006, SEC.22.

IC 24-5-23.5
Chapter 23.5. Real Estate Appraisals

IC 24-5-23.5-1
"Appraisal"

Sec. 1. (a) As used in this chapter, "appraisal" means an estimation that:

(1) represents the final opinion of the value of real property that is the subject of a real estate transaction; and

(2) serves as the basis for the extension of credit, in the case of a real estate transaction involving the making, refinancing, or consolidation of a mortgage loan.

(b) The term may include any of the following:

(1) The results of an automated valuation model.

(2) A broker's price opinion.

(3) A desktop evaluation.

As added by P.L.52-2009, SEC.2.

IC 24-5-23.5-2
"Appraisal company"

Sec. 2. As used in this chapter, "appraisal company" means a sole proprietorship, firm, corporation, partnership, limited liability company, limited liability partnership, joint venture, trust, or other business unit or association that:

(1) performs appraisals on a regular basis for compensation through one (1) or more owners, officers, employees, or agents; or

(2) holds itself out to the public as performing appraisals.

As added by P.L.52-2009, SEC.2.

IC 24-5-23.5-3
"Creditor"

Sec. 3. (a) As used in this chapter, "creditor" means a person:

(1) that regularly engages in Indiana in the extension of mortgage loans that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and

(2) to whom the obligation arising from a mortgage loan is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.

(b) The term does not include a person described in:

(1) IC 24-9-2-6(a)(2) if the person described in IC 24-9-2-6(a)(2) is not the person extending the credit in the transaction; or

(2) IC 24-9-2-6(b).

As added by P.L.52-2009, SEC.2.

IC 24-5-23.5-3.7
"Land contract"

Sec. 3.7. As used in this chapter, "land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.
As added by P.L.89-2011, SEC.20.

IC 24-5-23.5-4
"Mortgage loan"

Sec. 4. (a) As used in this chapter, "mortgage loan" means a loan in which a mortgage (or another equivalent consensual security interest) that constitutes a lien is created or retained against an interest in real property in Indiana.

(b) The term includes the following:

(1) A home loan subject to IC 24-9.

(2) A loan described in IC 24-9-1-1, to the extent allowed under federal law.

(3) A first lien mortgage transaction (as defined in IC 24-4.4-1-301) subject to IC 24-4.4.

(4) A consumer credit sale subject to IC 24-4.5-2 in which a mortgage (or another equivalent consensual security interest) that constitutes a lien is created or retained against an interest in real property in Indiana.

(5) A consumer loan subject to IC 24-4.5-3 in which a mortgage (or another equivalent consensual security interest) that constitutes a lien is created or retained against an interest in real property in Indiana.

(6) A loan in which a mortgage (or another equivalent consensual security interest) that constitutes a lien is created or retained against land:

(A) that is located in Indiana;

(B) upon which there is a dwelling that is not or will not be used by the borrower primarily for personal, family, or household purposes; and

(C) that is classified as residential for property tax purposes.

The term includes a loan that is secured by land in Indiana upon which there is a dwelling that is purchased by or through the borrower for investment or other business purposes.

(c) The term does not include a land contract.
As added by P.L.52-2009, SEC.2. Amended by P.L.35-2010, SEC.88; P.L.89-2011, SEC.21; P.L.13-2013, SEC.66.

IC 24-5-23.5-5
"Real estate appraiser"

Sec. 5. As used in this chapter, "real estate appraiser" means a person who prepares the appraisal for a real estate transaction in Indiana, regardless of whether the person is licensed or certified, or required to be licensed or certified, under the real estate appraiser licensure and certification program established under IC 25-34.1-3-8.
As added by P.L.52-2009, SEC.2.

IC 24-5-23.5-6
"Real estate transaction"

Sec. 6. As used in this chapter, "real estate transaction" means a transaction that involves one (1) or both of the following:

(1) The sale or lease of any legal or equitable interest in real estate located in Indiana.

(2) The making, refinancing, or consolidation of a mortgage loan.

As added by P.L.52-2009, SEC.2.

IC 24-5-23.5-7
Prohibition against corrupting or improperly influencing a real estate appraiser or an appraisal

Sec. 7. A person shall not corrupt or improperly influence, or attempt to corrupt or improperly influence:

(1) the independent judgment of a real estate appraiser with respect to the value of the real estate that is the subject of a real estate transaction; or

(2) the development, reporting, result, or review of an appraisal prepared in connection with a real estate transaction;

through bribery, coercion, extortion, intimidation, collusion, or any other manner.

As added by P.L.52-2009, SEC.2.

IC 24-5-23.5-8
Creditor's duty to provide notice concerning homeowner protection unit's contact information and borrower's right to inspect settlement statement before closing; unit to prescribe form of notice; promotion of unit's contact information; information sharing; exemption from liability for disclosing suspected violation; report to legislative council of complaints received

Sec. 8. (a) This subsection applies with respect to a completed application for a mortgage loan that is received by a creditor after December 31, 2009. A creditor shall, not later than three (3) business days after receiving a completed written application for a mortgage loan from a borrower or prospective borrower, provide to the borrower or prospective borrower a notice, on a form prescribed by the homeowner protection unit under subsection (b), that includes the following:

(1) Contact information for the homeowner protection unit established by the attorney general under IC 4-6-12, including:

(A) an electronic mail address for the homeowner protection unit; and

(B) the toll free telephone number described in IC 4-6-12-3.5.

(2) A statement that the borrower or prospective borrower may contact the homeowner protection unit to report:

(A) a suspected violation of section 7 of this chapter; or

(B) other information about suspected fraudulent residential real estate transactions, as authorized by IC 4-6-12-3.5(b).

(3) A statement that the borrower in a real estate transaction that involves the making, refinancing, or consolidation of a mortgage loan has the right to inspect the HUD-1 or HUD-1A settlement statement during the business day immediately preceding settlement, as provided by the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

The creditor shall provide the notice required by this subsection by delivering it to the borrower or prospective borrower or placing it in the United States mail to the borrower or prospective borrower within the time prescribed by this subsection.

(b) Not later than September 1, 2009, the home owner protection unit established by the attorney general under IC 4-6-12 shall prescribe the form required under subsection (a) for use by creditors who receive completed written applications for mortgage loans after December 31, 2009.

(c) The homeowner protection unit established by the attorney general under IC 4-6-12, in cooperation with the real estate appraiser licensure and certification board created by IC 25-34.1-8-1, shall publicize and promote awareness of the availability of the:

(1) electronic mail address; and

(2) toll free telephone number;

described in subsection (a)(1) to accept complaints from real estate appraisers, creditors, borrowers, potential borrowers, and other persons concerning suspected violations of section 7 of this chapter.

(d) A creditor may share any information obtained concerning a suspected violation of section 7 of this chapter with the homeowner protection unit established by the attorney general under IC 4-6-12. The homeowner protection unit may, in turn, share any information received from a creditor under this subsection with the following:

(1) Federal, state, and local law enforcement agencies and federal regulatory agencies in accordance with IC 4-6-12-3(a)(4).

(2) Any entity listed in IC 4-6-12-4 that may have jurisdiction over any person who is suspected of violating section 7 of this chapter, including any entity that may have jurisdiction over the creditor or an agent of the creditor if the homeowner protection unit suspects that the creditor or an agent of the creditor has violated section 7 of this chapter. However, the homeowner protection unit and any entity listed in IC 4-6-12-4 that receives information under this subdivision shall treat the information, including information concerning the identity of the complainant, as confidential and shall exercise all necessary caution to avoid disclosure of the information, except as otherwise permitted or required by law.

(e) Any:

(1) real estate appraiser, creditor, borrower, potential borrower, or other person that makes, in good faith, a voluntarily disclosure of a suspected violation of section 7 of this chapter to the homeowner protection unit under this section or

otherwise; and

(2) director, officer, manager, employee, or agent of a person described in subdivision (1) who makes, or requires another person to make, a disclosure described in subdivision (1);

is not liable to any person under any law or regulation of the United States, under any constitution, law, or regulation of any state or a political subdivision of any state, or under any contract or other legally enforceable agreement, including an arbitration agreement, for a disclosure described in subdivision (1) or for failing to provide notice of a disclosure described in subdivision (1) to any person who is the subject of the disclosure.

(f) Beginning in 2009, the report provided by the mortgage lending and fraud prevention task force to the legislative council under P.L.145-2008, SECTION 35, must include the following information:

(1) The total number of complaints or reports:

(A) received by the homeowner protection unit during the most recent state fiscal year; and

(B) concerning a suspected violation of section 7 of this chapter.

(2) From the total number of complaints or reports reported under subdivision (1), a breakdown of the sources of the complaints or reports, classified according to the complainants' interest in or relationship to the real estate transactions upon which the complaints or reports are based.

(3) A description of any:

(A) disciplinary or enforcement actions taken; or

(B) criminal prosecutions pursued;

by the homeowner protection unit or any entity listed in IC 4-6-12-4 and having jurisdiction in the matter, as applicable, in connection with the complaints or reports reported under subdivision (1).

The homeowner protection unit shall make available to the mortgage lending and fraud prevention task force any information necessary to provide the information required under this subsection in the task force's report to the legislative council.

As added by P.L.52-2009, SEC.2.

IC 24-5-23.5-9

Violation a Class A misdemeanor and a deceptive act; action for injunctive relief by attorney general; civil penalty; cumulative enforcement procedures

Sec. 9. (a) A person that knowingly or intentionally violates section 7 of this chapter commits:

(1) a Class A misdemeanor; and

(2) an act that is:

(A) actionable by the attorney general under IC 24-5-0.5; and

(B) subject to the penalties listed in IC 24-5-0.5.

(b) The attorney general may maintain an action in the name of

the state of Indiana to enjoin a person from violating section 7 of this chapter. A court in which the action is brought may:

(1) issue an injunction;

(2) order the person to make restitution;

(3) order the person to reimburse the state for the attorney general's reasonable costs of investigating and prosecuting the violation; and

(4) impose a civil penalty of not more than ten thousand dollars ($10,000) per violation.

(c) A person that violates an injunction issued under this section is subject to a civil penalty of not more than ten thousand dollars ($10,000) per violation. The court that issues the injunction retains jurisdiction over a proceeding seeking the imposition of a civil penalty under this subsection.

(d) A civil penalty imposed and collected under this section shall be deposited in the investigative fund established by IC 25-34.1-8-7.5.

(e) The enforcement procedures established by this section are cumulative and an enforcement procedure available under this section is supplemental to any other enforcement procedure available under:

(1) this section; or

(2) any other state or federal law, rule, or regulation;

for a violation of section 7 of this chapter.

As added by P.L.52-2009, SEC.2.

IC 24-5-23.6

Chapter 23.6. Five Star Mortgages

IC 24-5-23.6-1

"Creditor"

Sec. 1. (a) As used in this chapter, "creditor" means:

(1) a person:

(A) that engages in Indiana in the extension of mortgages that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and

(B) to whom the obligation arising from a mortgage is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract; or

(2) a person who brokers a mortgage, including a person who:

(A) directly or indirectly solicits, processes, places, or negotiates mortgages for others;

(B) offers to solicit, process, place, or negotiate mortgages for others; or

(C) closes mortgages that may be in the person's own name with funds provided by others and that are thereafter assigned to the person providing funding for the mortgages.

(b) The term does not include a person described in IC 24-9-2-6(b).

As added by P.L.115-2010, SEC.20.

IC 24-5-23.6-2

"Debtor"

Sec. 2. (a) As used in this chapter, "debtor", with respect to a mortgage, refers to the maker of the note secured by the mortgage.

(b) The term includes a prospective debtor with respect to a mortgage for which a closing has not occurred.

As added by P.L.115-2010, SEC.20.

IC 24-5-23.6-3

"Department"

Sec. 3. As used in this chapter, "department" refers to the department of financial institutions established by IC 28-11-1-1.

As added by P.L.115-2010, SEC.20.

IC 24-5-23.6-4

"Dwelling"

Sec. 4. As used in this chapter, "dwelling" means a residential structure that is located in Indiana and that contains one (1) to four (4) units, regardless of whether the structure is permanently attached to real property. The term includes an individual:

(1) condominium unit;

(2) cooperative unit;

(3) mobile home; or

(4) trailer;
that is used as a residence.
As added by P.L.115-2010, SEC.20.

IC 24-5-23.6-5
"Five star mortgage lender"

Sec. 5. As used in this chapter, "five star mortgage lender" means a creditor that:

(1) offers at least one (1) mortgage product that qualifies as a five star mortgage under the program; and

(2) has a current and accurate certification on file with the department, as described in section 9(a)(3) of this chapter.

As added by P.L.115-2010, SEC.20.

IC 24-5-23.6-6
"Indiana customer"

Sec. 6. As used in this chapter, "Indiana customer", with respect to a mortgage offered by a creditor, means an individual who:

(1) is an Indiana resident at the time the mortgage is offered by the creditor; or

(2) would become an Indiana resident after purchasing and occupying the dwelling that is the subject of the mortgage being offered.

As added by P.L.115-2010, SEC.20.

IC 24-5-23.6-7
"Mortgage"

Sec. 7. (a) As used in this chapter, "mortgage" means a sale or loan, or the refinancing or consolidation of a sale or loan, in which a first mortgage deed of (or another equivalent consensual security interest) that constitutes a first lien, is created or retained against land that is located in Indiana and upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(b) The term includes any of the following that meets the conditions set forth in subsection (a):

(1) A home loan subject to IC 24-9.

(2) A loan described in IC 24-9-1-1, to the extent allowed under federal law.

(3) A first lien mortgage transaction (as defined in IC 24-4.4-1-301) subject to IC 24-4.4.

(c) The term does not include a land contract (as defined in IC 24-4.4-1-301(36)).

As added by P.L.115-2010, SEC.20. Amended by P.L.89-2011, SEC.22.

IC 24-5-23.6-8
"Program"

Sec. 8. As used in this chapter, "program" refers to the five star mortgage program established by section 9 of this chapter.

As added by P.L.115-2010, SEC.20.

IC 24-5-23.6-9
Five star mortgage program established; guidelines; requirements; certifications; fees; investigations; enforcement

Sec. 9. (a) The five star mortgage program is established. Not later than June 1, 2010, the department shall adopt guidelines to implement the program. The program established by this section, as implemented through the department's guidelines, must meet the following criteria:

(1) The program must be available on a voluntary basis to creditors that offer mortgages to Indiana customers after June 30, 2010.

(2) To participate in the program, a creditor must submit a certification, on a form prescribed by the department, attesting that the creditor qualifies as a five star mortgage lender.

(3) To qualify as a five star mortgage lender under the program, a creditor must certify, on the form described in subdivision (2), that the creditor meets the following conditions:

(A) The creditor offers or will offer to Indiana customers after June 30, 2010, at least one (1) mortgage product that qualifies as a five star mortgage under the program.

(B) The creditor does not have a record of any significant or recurring violation of:

(i) IC 24-5-23.5-7; or

(ii) any other state or federal law, regulation, or rule applicable to mortgage transactions;

as of the date of the creditor's certification. If the creditor is not certain whether it meets the criterion set forth in this clause, the creditor shall consult with the department before filing a certification to participate in the program.

(C) The creditor does not have a director or an executive officer who 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, as of the date of the creditor's certification. If the creditor is not certain whether it meets the criterion set forth in this clause, the creditor shall consult with the department before filing a certification to participate in the program.

(4) To qualify as a five star mortgage under the program, a mortgage must include the following terms and conditions:

(A) If the mortgage involves a purchase money transaction, the mortgage must require a down payment by the debtor, or a person acting on behalf of the debtor, of at least ten percent (10%) of the purchase price of the dwelling that is the subject of the mortgage. If the mortgage involves the refinancing of an existing mortgage, the customer must have equity of at least ten percent (10%) in the dwelling that is the subject of the mortgage.

(B) The mortgage must have a fixed rate of interest.

(C) The mortgage must provide for an escrow account that:

(i) is established by the creditor, or a person acting on behalf of the creditor, for the benefit of the debtor;

(ii) is maintained by the creditor, or a person acting on behalf of the creditor, during the life of the mortgage; and

(iii) is used during the life of the mortgage to pay taxes and insurance owed with respect to the dwelling that is the subject of the mortgage.

However, this clause does not apply if, in the creditor's ordinary course of business, the creditor does not regularly establish and maintain, or contract for the establishment and maintenance of, escrow accounts for the payment of taxes and insurance, on behalf of the creditor's customers.

(D) The term of the mortgage may not exceed thirty (30) years.

(E) The mortgage may not include a prepayment penalty or fee.

(5) A creditor that qualifies as a five star mortgage lender and files a certification with the department under subdivision (3) shall provide a written statement, on a form and in the manner prescribed by the department, to any Indiana customer who:

(A) applies for a five star mortgage offered by the creditor; and

(B) does not qualify for the five star mortgage based on the creditor's underwriting standards for the five star mortgage.

The statement must set forth the reasons why the Indiana customer did not qualify for the five star mortgage.

(6) A creditor that qualifies as a five star mortgage lender and files a certification with the department may include that fact in any marketing material or solicitation directed at Indiana customers, subject to any conditions or limitations imposed by the department in the guidelines adopted under this section.

(7) If a creditor:

(A) holds itself out as a five star mortgage lender and:

(i) the creditor has not filed an accurate certification, including any renewal certification required by the department under subsection (b)(3), with the department under this chapter; or

(ii) the creditor has filed a certification or a renewal certification with the department under this chapter and subsequently ceases offering at least one (1) mortgage product that qualifies as a five star mortgage; or

(B) fails to comply with any program requirement;

the department, upon discovering the act described in clause (A) or (B), shall immediately provide written notice to the creditor that the creditor does not qualify for participation in the program, or no longer qualifies for participation in the program, as appropriate. The notice provided under this subdivision must inform the creditor of the reason or reasons the creditor does

not qualify for participation in the program, or no longer qualifies for participation in the program, as appropriate. Not later than seven (7) days after the date of the notice provided to the creditor under this subdivision, the department shall remove the creditor from the list of creditors published on the department's Internet web site under subsection (c), as appropriate, and shall post, on the same Internet web page on which the list described in subsection (c) is published, a link to the notice provided to the creditor under this subdivision.

(b) In addition to the program criteria required by subsection (a), the guidelines adopted by the department under this section may include the following:

(1) Provisions allowing a creditor that qualifies as a five star mortgage lender and files a certification with the department to include in the paperwork associated with a five star mortgage:

(A) a statement;

(B) a seal; or

(C) any other designation considered appropriate by the department;

indicating that the particular mortgage product is a five star mortgage.

(2) A requirement that a creditor that qualifies as a five star mortgage lender and files a certification with the department shall report the following information to the department on an annual basis, or any other basis determined appropriate by the department:

(A) The total number and types of residential mortgage products that were offered by the creditor to Indiana customers during the applicable reporting period, including any five star mortgages reported under clause (C).

(B) The total number of residential mortgages described in clause (A) that were closed by the creditor during the applicable reporting period, including any five star mortgages that were closed during the reporting period, as reported under clause (D).

(C) The number of mortgage products that:

(i) qualified as five star mortgages under the program; and

(ii) were offered by the creditor to Indiana customers;

during the applicable reporting period.

(D) The number of five star mortgages offered to Indiana customers that were closed by the creditor during the applicable reporting period.

(3) A requirement that a creditor that qualifies as a five star mortgage lender and files a certification with the department shall periodically submit to the department a renewal certification, on a form prescribed by the department, in conjunction with a report filed under subdivision (2), or at such other time as the department determines appropriate. In any renewal certification required under this subdivision, a creditor must attest that the creditor:

(A) continued to meet the criteria necessary to qualify as a five star mortgage lender; and

(B) complied with all program requirements;

during the applicable reporting period.

(4) A fee fixed by the department under IC 28-11-3-5 for each certification and recertification submitted by a creditor under this chapter. However, any fee fixed by the department under this subdivision may not exceed the department's actual costs to:

(A) process certifications and renewal certifications;

(B) publish the list described in subsection (c) on the department's Internet web site; and

(C) otherwise administer the program.

(5) Any other program requirements, criteria, or incentives that the department determines necessary to implement and evaluate a program to encourage creditors to offer stable mortgage products to qualified Indiana customers.

(c) The department shall publish on the department's Internet web site a list of all creditors that have a current and accurate:

(1) certification under this chapter; or

(2) renewal certification under this chapter;

on file with the department. The Indiana housing and community development authority and the securities division of the office of the secretary of state shall provide a link to the list described in this subsection on their respective Internet web sites.

(d) The program guidelines established by the department under subsections (a) and (b) must be made available:

(1) for public inspection and copying at the offices of the department under IC 5-14-3; and

(2) on the department's Internet web site.

(e) The department shall investigate any credible complaint received by any means alleging that a creditor has committed a violation described in subsection (a)(7). If the creditor that is the subject of a complaint under this subsection is not subject to regulation by the department, the department shall forward the complaint to the appropriate state or federal regulatory agency.

(f) Notwithstanding subsection (a), the department may adopt a different name for the program, other than the five star mortgage program, in adopting the guidelines to implement the program.

As added by P.L.115-2010, SEC.20.

IC 24-5-24

Chapter 24. Security Freezes for Consumer Reports

IC 24-5-24-1

"Consumer"

Sec. 1. As used in this chapter, "consumer" means an individual:

(1) whose principal residence is in Indiana; and

(2) whose credit information and history is recorded in a consumer report.

As added by P.L.104-2007, SEC.1.

IC 24-5-24-2

"Consumer report"

Sec. 2. (a) As used in this chapter, "consumer report" means any written, oral, or other communication of any information that:

(1) is made by a consumer reporting agency;

(2) bears on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and

(3) is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing a consumer's eligibility for credit to be used primarily for personal, family, or household purposes.

(b) The term includes a consumer's credit score.

As added by P.L.104-2007, SEC.1.

IC 24-5-24-3

"Consumer reporting agency"

Sec. 3. (a) As used in this chapter, "consumer reporting agency" means any person that, for monetary fees or dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating information concerning a consumer's credit or other information for the purpose of furnishing a consumer report to another person.

(b) The term does not include an entity designated as a commercially reasonable private consumer credit reporting entity under IC 24-4.5-7-404(5).

As added by P.L.104-2007, SEC.1.

IC 24-5-24-4

"Security freeze"

Sec. 4. As used in this chapter, "security freeze" means a designation placed on a consumer's consumer report:

(1) by a consumer reporting agency; and

(2) at the request of the consumer;

that prohibits the consumer reporting agency from releasing the consumer report without the authorization of the consumer.

As added by P.L.104-2007, SEC.1.

IC 24-5-24-5

Requesting and placing a security freeze; requirements; exception; electronic mail connection

Sec. 5. (a) A consumer may place a security freeze on the consumer's consumer report by:

(1) sending a written request by United States mail to an address designated by the consumer reporting agency; or

(2) subject to subsection (d), making a request to a consumer reporting agency through a secure electronic mail connection provided by the consumer reporting agency.

(b) Except as provided in subsection (c) and section 11 of this chapter, a consumer reporting agency that receives a request under subsection (a) shall place a security freeze on the consumer's consumer report not later than five (5) business days after receipt of the request.

(c) A consumer reporting agency is not required to place a security freeze on a consumer report under this section if the consumer reporting agency determines that the request for a security freeze:

(1) is materially false; or

(2) does not clearly identify the person making the request as the consumer.

(d) Not later than January 1, 2009, a consumer reporting agency shall develop and make available to consumers a secure electronic mail connection by which a consumer can request:

(1) the placement of a security freeze on the consumer's consumer report under this section; or

(2) the same or a new personal identification number or password under section 6(b) of this chapter.

As added by P.L.104-2007, SEC.1.

IC 24-5-24-6

Written confirmation of security freeze; unique personal identification number or password; instructions; time requirements

Sec. 6. (a) Not later than ten (10) business days after receiving a request for a security freeze under section 5 of this chapter, a consumer reporting agency shall issue to the consumer a written confirmation that a security freeze has been placed on the consumer's consumer report. The confirmation required by this section must include the following:

(1) A unique:

(A) personal identification number; or

(B) password;

other than the consumer's Social Security number, or any multiple digit segment of the consumer's Social Security number, to be used by the consumer to perform any of the acts described in subdivision (2).

(2) Written instructions explaining how the consumer may:

(A) release the consumer's consumer report to one (1) or more specified third parties;

(B) temporarily lift the security freeze for a specified period; or

(C) remove the security freeze.

(3) Written instructions explaining how the consumer may request, using one (1) of the methods described in section 5(a) of this chapter, that the consumer reporting agency issue the same or a new personal identification number or password to the consumer if the consumer fails to retain the original personal identification number or password issued by the consumer reporting agency under subdivision (1).

(b) Upon receiving a request described in subsection (a)(3), the consumer reporting agency shall issue the same or a new personal identification number or password to the requesting consumer if the consumer has provided information sufficient to identify the consumer, as specified by the consumer reporting agency in the instructions provided to the consumer under subsection (a)(3). If the consumer's request is made using the method described in section 5(a)(1) of this chapter, the consumer reporting agency shall send, by United States mail, the personal identification number or password to the consumer not later than five (5) business days after receiving the consumer's request. If the consumer's request is made using the method described in section 5(a)(2) of this chapter, the consumer reporting agency shall issue the personal identification number or password not later than:

(1) subject to the exceptions set forth in sections 7(e)(2) and 9(c)(2) of this chapter, as applicable, fifteen (15) minutes after receiving the request, if the consumer reporting agency elects to issue the personal identification number or password by a secure electronic mail connection provided by the consumer reporting agency under section 5(d) of this chapter; or

(2) five (5) business days after receiving the request, if the consumer reporting agency elects to issue the personal identification number or password by United States mail.

As added by P.L.104-2007, SEC.1.

IC 24-5-24-7

Releasing the consumer report upon authorization; developing secure procedures; time requirements; exceptions

Sec. 7. (a) Except as provided in section 10 of this chapter, if a security freeze has been placed on a consumer's consumer report, the consumer reporting agency that placed the security freeze on the consumer report shall not release the consumer's consumer report unless the consumer authorizes the consumer reporting agency to:

(1) release the consumer's consumer report to one (1) or more specified third parties; or

(2) temporarily lift the security freeze for a specified period.

(b) A consumer who seeks to authorize the release of the consumer's consumer report under subsection (a)(1) or (a)(2) shall request the release by contacting the consumer reporting agency by any method:

(1) described in section 5(a) of this chapter; or

(2) developed by the consumer reporting agency under subsection (d).

(c) A request by a consumer under subsection (b) must include the following:

(1) Information sufficient to identify the consumer, as specified by the consumer reporting agency in the instructions provided to the consumer under section 6(a)(2) of this chapter.

(2) The unique personal identification number or password assigned to the consumer under section 6(a)(1) or 6(a)(3) of this chapter.

(3) If the consumer seeks to authorize the release of the consumer's consumer report under subsection (a)(1), information sufficient to identify the parties to whom the consumer report is to be released, as specified by the consumer reporting agency in the instructions provided to the consumer under section 6(a)(2) of this chapter.

(4) If the consumer seeks to authorize the consumer reporting agency to temporarily lift a security freeze under subsection (a)(2), the period during which the security freeze is to be temporarily lifted.

(d) Not later than January 1, 2009, a consumer reporting agency shall develop and make available to consumers secure procedures to authorize the release of a consumer's consumer report under subsection (a)(1), or to authorize the temporary lifting of a security freeze under subsection (a)(2), within fifteen (15) minutes of receiving a request under subsection (b), by any of the following methods:

(1) Telephone.

(2) The Internet.

(3) Other electronic media, if provided by the consumer reporting agency.

The procedures developed by a consumer reporting agency under this subsection must require the consumer to provide the information set forth in subsection (c).

(e) A consumer reporting agency that receives a request from a consumer under this section shall comply with the request within the following time frames:

(1) Not later than three (3) business days after receiving the request, if the consumer makes the request by the method described in section 5(a)(1) of this chapter.

(2) Not later than fifteen (15) minutes after receiving the request, if the consumer makes the request using the method described in section 5(a)(2) of this chapter or by any method developed by the consumer reporting agency under subsection (d). However, a consumer reporting agency is not required to comply with a consumer's request within the fifteen (15) minute time frame set forth in this subdivision if:

(A) the consumer does not provide one (1) or more of the items listed in subsection (c); or

(B) the consumer reporting agency's ability to comply with the request within the fifteen (15) minute time frame set forth in this subdivision is prevented by any of the following:

(i) An act of God, including fire, an earthquake, a hurricane, a storm, or a similar natural disaster or phenomenon.

(ii) Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrences.

(iii) An operational interruption, including an electrical failure, an unanticipated delay in the delivery of equipment or replacement parts, computer hardware or software failures inhibiting response time, or similar disruptions.

(iv) A governmental action, including an emergency order or regulation, a judicial action, a law enforcement action, or a similar directive.

(v) Regularly scheduled maintenance of, or updates to, the consumer reporting agency's computer systems, if the maintenance activities or updates occur other than during normal business hours.

(vi) Commercially reasonable maintenance of, or repairs to, the consumer reporting agency's computer systems, if the maintenance activities or repairs are unexpected or are necessitated by unanticipated conditions or malfunctions.

(vii) For a request made by telephone, receipt of a request under this section other than during the consumer reporting agency's normal business hours, including any extended business hours observed by the consumer reporting agency. The exemption provided by this item does not apply to a request made by a consumer through the Internet or other electronic media. A consumer reporting agency must comply with a request made by a consumer through the Internet or other electronic media within the fifteen (15) minute time frame set forth in this subdivision, even if the request is made at a time other than during the consumer reporting agency's normal or extended business hours.

As added by P.L.104-2007, SEC.1.

IC 24-5-24-8

Application treated as incomplete by third party; notification of security freeze

Sec. 8. (a) A third party that requests a consumer's consumer report in connection with an application by the consumer for credit shall treat the application for credit as incomplete if:

(1) a security freeze has been placed on the consumer's consumer report;

(2) the consumer has not authorized the release of the

consumer's consumer report under section 7 of this chapter; and

(3) the consumer reporting agency refuses to release the consumer report to the third party based on subdivisions (1) and (2).

(b) A consumer reporting agency that refuses under subsection (a)(3) to release a consumer report shall notify the third party requesting the consumer report of the existence of a security freeze as the basis for the refusal to release the consumer report to the third party.

(c) A consumer reporting agency shall not:

(1) state; or

(2) otherwise imply;

to a third party that the consumer's security freeze under this chapter reflects a negative credit score, history, report, or rating.

As added by P.L.104-2007, SEC.1.

IC 24-5-24-9

Security freeze remains in effect; requesting removal; requirements; time requirements; exceptions

Sec. 9. (a) A security freeze remains in effect until the consumer who requested the security freeze requests that the security freeze be removed. A consumer who seeks to authorize a consumer reporting agency to remove a security freeze shall request the removal by contacting the consumer reporting agency by any method:

(1) described in section 5(a) of this chapter; or

(2) developed by a consumer reporting agency under section 7(d) of this chapter for receiving a consumer's request to authorize the release of a consumer report or the temporary lifting of a security freeze.

(b) A request by a consumer under subsection (a) must include the following:

(1) Information sufficient to identify the consumer, as specified by the consumer reporting agency in the instructions provided to the consumer under section 6(a)(2) of this chapter.

(2) The unique personal identification number or password assigned to the consumer under section 6(a)(1) or 6(a)(3) of this chapter.

(c) Subject to subsection (d), a consumer reporting agency must remove a security freeze within the following time frames:

(1) Not later than three (3) business days after receiving a request under subsection (a), if the consumer makes the request by the method described in section 5(a)(1) of this chapter.

(2) Not later than fifteen (15) minutes after receiving a request under subsection (a), if the consumer makes the request using the method described in section 5(a)(2) of this chapter or by any method developed by the consumer reporting agency under section 7(d) of this chapter. However, a consumer reporting agency is not required to comply with a consumer's request within the fifteen (15) minute time frame set forth in this subdivision if:

(A) the consumer does not provide one (1) or more of the items listed in subsection (b); or

(B) the consumer reporting agency's ability to comply with the request within the fifteen (15) minute time frame set forth in this subdivision is prevented by any of the following:

(i) An act of God, including fire, an earthquake, a hurricane, a storm, or a similar natural disaster or phenomenon.

(ii) Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrences.

(iii) An operational interruption, including an electrical failure, an unanticipated delay in the delivery of equipment or replacement parts, computer hardware or software failures inhibiting response time, or similar disruptions.

(iv) A governmental action, including an emergency order or regulation, a judicial action, a law enforcement action, or a similar directive.

(v) Regularly scheduled maintenance of, or updates to, the consumer reporting agency's computer systems, if the maintenance activities or updates occur other than during normal business hours.

(vi) Commercially reasonable maintenance of, or repairs to, the consumer reporting agency's computer systems, if the maintenance activities or repairs are unexpected or are necessitated by unanticipated conditions or malfunctions.

(vii) For a request made by telephone, receipt of a request under this section other than during the consumer reporting agency's normal business hours, including any extended business hours observed by the consumer reporting agency. The exemption provided by this item does not apply to a request made by a consumer through the Internet or other electronic media. A consumer reporting agency must comply with a request made by a consumer through the Internet or other electronic media within the fifteen (15) minute time frame set forth in this subdivision, even if the request is made at a time other than during the consumer reporting agency's normal or extended business hours.

(d) A consumer reporting agency is not required to remove a security freeze under this section if the consumer reporting agency determines that the request to remove the security freeze:

(1) is materially false; or

(2) does not clearly identify the person making the request as the consumer.

As added by P.L.104-2007, SEC.1.

IC 24-5-24-10

Persons excluded from security freeze restrictions

Sec. 10. The placement of a security freeze on a consumer's consumer report does not prohibit a consumer reporting agency from providing the consumer's consumer report to the following persons without the authorization of the consumer:

(1) A person, including a subsidiary, an affiliate, an agent, an assignee of a financial obligation owed by the consumer to the person, or a prospective assignee of a financial obligation owed by the consumer to the person in connection with the proposed purchase of the financial obligation, to whom the consumer owes a financial obligation in connection with any of the following:

(A) An account, including a demand deposit account, that the consumer has with the person, for the purpose of:

(i) reviewing the account, including activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements; or

(ii) collecting the obligation owed in connection with the account.

(B) A contract, for the purpose of collecting the obligation owed in connection with the contract.

(C) A negotiable instrument that the consumer has issued to the person, for the purpose of collecting the obligation owed in connection with the negotiable instrument.

(2) A person, including a subsidiary, an affiliate, an agent, or an assignee of a financial obligation owed by the consumer to the person, to whom the consumer has authorized the release of the consumer's consumer report under section 7(a)(1) of this chapter, for the purpose of facilitating the extension of credit or for any permissible purpose under subdivision (1).

(3) A law enforcement agency.

(4) Any person for the purpose of prescreening, as provided in the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(5) Any person administering a credit monitoring subscription service to which the consumer has subscribed.

(6) The consumer, upon the consumer's request, or any other person for the purpose of providing the consumer with a copy of the consumer's consumer report, upon the consumer's request.

(7) Any of the following that provides services to a consumer:

(A) An insurer licensed under IC 27.

(B) An insurance producer licensed under IC 27.

(C) An agent, a vendor, or an employee of:

(i) an insurer licensed under IC 27; or

(ii) an insurance producer licensed under IC 27;

while acting on behalf of the insurer or the insurance producer.

As added by P.L.104-2007, SEC.1.

"Energy utility"; "specialized credit reporting tool"; persons excluded from security freeze requirements

Sec. 11. (a) As used in this section, "energy utility" has the meaning set forth in IC 8-1-2.5-2.

(b) As used in this section, "specialized credit reporting tool" means a scoring model that:

(1) is available only to an energy utility; and

(2) is used by the energy utility to validate a consumer's identity and creditworthiness.

(c) The following persons are not required to place a security freeze on a consumer's consumer report:

(1) A consumer reporting agency that acts only as a reseller (as defined in 15 U.S.C. 1681a(u)) of information. However, a consumer reporting agency must honor any security freeze placed on a consumer's consumer report by another consumer reporting agency.

(2) A:

(A) check services; or

(B) fraud prevention services;

company that reports on incidents of fraud or issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payment.

(3) A deposit account information service company that issues reports concerning account closures due to:

(A) fraud;

(B) substantial overdrafts;

(C) ATM abuse; or

(D) similar negative information concerning a consumer;

to inquiring financial institutions for use only in reviewing a consumer's request for a deposit account at the inquiring financial institution.

(4) A consumer reporting agency that furnishes specialized credit reporting tools to an energy utility.

As added by P.L.104-2007, SEC.1.

IC 24-5-24-12

Written confirmation of change to official information; exception for technical modification

Sec. 12. (a) Except as provided in subsection (b), if a security freeze is in place with respect to a consumer's consumer report, a consumer reporting agency may not change any of the following official information on the consumer's consumer report without sending written confirmation of the change to the consumer not later than thirty (30) days after the change is posted to the consumer's consumer report:

(1) Name.

(2) Date of birth.

(3) Social Security number.

(4) Address.

In the case of an address change, the written confirmation required under this section shall be sent to both the new address and the old address.

(b) Written confirmation is not required under this section for technical modifications of a consumer's official information, including changes involving:

(1) the use of name or street:

(A) abbreviations; or

(B) complete spellings; or

(2) transpositions of numbers or letters in a consumer's name or address.

As added by P.L.104-2007, SEC.1.

IC 24-5-24-13

Notice with written disclosure; content

Sec. 13. A consumer reporting agency shall provide to a consumer notice with each written disclosure by the consumer reporting agency as required under Section 609 of the federal Fair Credit Reporting Act (15 U.S.C. 1681g) that the consumer may place a security freeze on the consumer's consumer report. The notice under this section must be in the following form:

"UNDER IC 24-5-24, YOU MAY OBTAIN A SECURITY FREEZE ON YOUR CONSUMER REPORT TO PROTECT YOUR PRIVACY AND ENSURE THAT CREDIT IS NOT GRANTED IN YOUR NAME WITHOUT YOUR KNOWLEDGE. THE SECURITY FREEZE WILL PROHIBIT A CONSUMER REPORTING AGENCY FROM RELEASING ANY INFORMATION IN YOUR CONSUMER REPORT WITHOUT YOUR EXPRESS AUTHORIZATION OR APPROVAL. THE SECURITY FREEZE IS DESIGNED TO PREVENT CREDIT LOANS AND SERVICES FROM BEING APPROVED IN YOUR NAME WITHOUT YOUR CONSENT. WHEN YOU PLACE A SECURITY FREEZE ON YOUR CONSUMER REPORT, WITHIN TEN (10) BUSINESS DAYS YOU WILL BE PROVIDED A PERSONAL IDENTIFICATION NUMBER TO USE IF YOU CHOOSE TO REMOVE THE SECURITY FREEZE OR TO TEMPORARILY AUTHORIZE THE RELEASE OF YOUR CONSUMER REPORT FOR A PERIOD OF TIME OR TO A SPECIFIC PERSON AFTER THE SECURITY FREEZE IS IN PLACE. A SECURITY FREEZE DOES NOT APPLY TO PERSONS OR ENTITIES LISTED IN IC 24-5-24-11. IF YOU ARE ACTIVELY SEEKING CREDIT, YOU SHOULD UNDERSTAND THAT THE PROCEDURES INVOLVED IN LIFTING A SECURITY FREEZE MAY SLOW YOUR OWN APPLICATIONS FOR CREDIT. YOU HAVE A RIGHT TO BRING A CIVIL ACTION AGAINST SOMEONE WHO VIOLATES YOUR RIGHTS UNDER IC 24-5-24.".

As added by P.L.104-2007, SEC.1.

IC 24-5-24-14
Fee prohibited

Sec. 14. A consumer reporting agency may not impose a charge on a consumer for a request from the consumer to do any of the following:

(1) Place a security freeze on a consumer's consumer report under section 5 of this chapter.

(2) Issue the same or a new personal identification number or password to a consumer under section 6 of this chapter.

(3) Release a consumer's consumer report to a third party upon request of the consumer under section 7(a)(1) of this chapter. In addition a consumer reporting agency may not impose a charge on the third party to whom the consumer's consumer report is released under section 7(a)(1) of this chapter in connection with the release.

(4) Temporarily lift a security freeze under section 7(a)(2) of this chapter.

(5) Remove a security freeze under section 9 of this chapter.

As added by P.L.104-2007, SEC.1.

IC 24-5-24-15
Civil action; liability

Sec. 15. (a) A consumer who suffers injury by an act of a consumer reporting agency that violates this chapter may bring a civil action against the consumer reporting agency in a circuit or superior court in the county in which the consumer resides.

(b) A person who knowingly or intentionally fails to comply with any requirement imposed under this chapter with respect to a consumer is liable to that consumer in an amount equal to the sum of the following:

(1) The greater of:

(A) the amount of actual damages sustained by the consumer as a result of the failure to comply; or

(B) five hundred dollars ($500).

However, the amount awarded to a consumer under this subdivision may not exceed six thousand dollars ($6,000), regardless of the consumer's actual damages.

(2) Such punitive damages as the court may allow.

(3) In the case of a successful action by a consumer under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

As added by P.L.104-2007, SEC.1.

IC 24-5-24-16
Civil penalty

Sec. 16. (a) The attorney general may bring an action to recover from a person on behalf of the state a civil penalty described in subsection (b).

(b) A person who knowingly or intentionally violates this chapter is subject to a civil penalty of:

(1) not more than two thousand five hundred dollars ($2,500) for a violation or series of violations concerning one (1) consumer; or

(2) not more than a total of one hundred thousand dollars ($100,000) for related violations concerning more than one (1) consumer.

As added by P.L.104-2007, SEC.1.

IC 24-5-24-17

Severability

Sec. 17. The provisions of this chapter are severable as provided in IC 1-1-1-8(b).

As added by P.L.104-2007, SEC.1.

IC 24-5-25

Chapter 25. Truth in Music Advertising

IC 24-5-25-1

"Performing group"

Sec. 1. As used in this chapter, "performing group" means a vocal or an instrumental group seeking to use the name of another group that has previously released a commercial sound recording under the name of the other group.

As added by P.L.56-2008, SEC.1.

IC 24-5-25-2

"Recording group"

Sec. 2. As used in this chapter, "recording group" means a vocal or an instrumental group, at least one (1) of whose members has released a commercial sound recording under the group's name, and in which the member or members:

(1) have a legal right by virtue of use or operation under the group's name;

(2) have not abandoned the name; and

(3) have not abandoned affiliation with the group.

As added by P.L.56-2008, SEC.1.

IC 24-5-25-3

"Sound recording"

Sec. 3. As used in this chapter, "sound recording" means a work that results from the placement on a material object of a series of musical, spoken, or other sounds regardless of the nature of the material object, such as a compact disc, cassette, tape, or phonograph record, in which the sounds are placed.

As added by P.L.56-2008, SEC.1.

IC 24-5-25-4

Prohibited conduct; exceptions

Sec. 4. (a) Except as provided in subsection (b), a person, other than a media source that carries advertising or a press release for the performance or production, may not advertise or conduct a live musical performance or production in Indiana through actions that falsely, deceptively, or misleadingly imply the existence of an affiliation, a connection, or an association between a performing group and a recording group.

(b) This section does not apply if:

(1) the performing group is the authorized registrant and owner of a federal service mark for the recording group with the same name registered in the United States Patent and Trademark Office;

(2) at least one (1) member of the performing group was a member of the recording group and:

(A) has a legal right by virtue of use or operation under the group name;

(B) has not abandoned the name; and
(C) has not abandoned affiliation with the group;
(3) the live musical performance or production is identified in all advertising and promotion as a salute or tribute;
(4) the advertising does not relate to a live musical performance or production taking place in Indiana; or
(5) the performance or production is expressly authorized by the recording group.

As added by P.L.56-2008, SEC.1.

IC 24-5-25-5
Action to enjoin

Sec. 5. The attorney general or any aggrieved person may bring an action to enjoin a person from violating section 4 of this chapter. If an injunction is issued, the court may order the defendant to restore to any person in interest any money or property that was acquired by means of a violation of this chapter.

As added by P.L.56-2008, SEC.1.

IC 24-5-25-6
Penalties

Sec. 6. A person who violates section 4 of this chapter commits a Class A infraction. Each performance or production in violation of section 4 of this chapter constitutes a separate violation.

As added by P.L.56-2008, SEC.1.

IC 24-5-26
Chapter 26. Identity Theft

IC 24-5-26-1
"Identity theft"

Sec. 1. As used in this chapter, "identity theft" means:

(1) identity deception (IC 35-43-5-3.5);

(2) synthetic identity deception (IC 35-43-5-3.8); or

(3) a substantially similar crime committed in another jurisdiction.

As added by P.L.137-2009, SEC.8.

IC 24-5-26-2
Duties concerning a victim of identity theft

Sec. 2. A person shall not do any of the following in the conduct of trade or commerce:

(1) Deny credit or public utility service to or reduce the credit limit of a consumer solely because the consumer was a victim of identity theft, if the person had prior knowledge that the consumer was a victim of identity deception or synthetic identity deception. A consumer is presumed to be a victim of identity theft for purposes of this subdivision if the consumer provides to the person:

(A) a copy of a police report evidencing the claim of the victim of identity theft; and

(B) either:

(i) a properly completed copy of a standardized affidavit of identity theft developed and made available by the Federal Trade Commission under 15 U.S.C. 1681g; or

(ii) an affidavit of fact that is acceptable to the person for that purpose.

This subdivision does not prohibit denial of credit or public utility service if a consumer has placed a security freeze on the consumer's consumer report and does not wish to temporarily lift the freeze for purposes of the credit or public utility service request or application.

(2) Solicit to extend credit to a consumer who does not have an existing line of credit, or has not had or applied for a line of credit within the preceding year, through the use of an unsolicited check that includes personal identifying information other than the recipient's name, address, and a partial, encoded, or truncated personal identifying number. In addition to any other penalty or remedy under this chapter or under IC 24-5-0.5, a credit card issuer, financial institution, or other lender that violates this subdivision, and not the consumer, is liable for the amount of the instrument if the instrument is used by an unauthorized user and for any fees assessed to the consumer if the instrument is dishonored.

(3) Solicit to extend credit to a consumer who does not have a current credit card, or has not had or applied for a credit card

within the preceding year, through the use of an unsolicited credit card sent to the consumer. In addition to any other penalty or remedy under this chapter or under IC 24-5-0.5, a credit card issuer, financial institution, or other lender that violates this subdivision, and not the consumer, is liable for any charges if the credit card is used by an unauthorized user and for any interest or finance charges assessed to the consumer.

(4) Extend credit to a consumer without exercising reasonable procedures to verify the identity of that consumer. Compliance with regulations issued for depository institutions, and to be issued for other financial institutions, by the United States Department of Treasury under Section 326 of the USA PATRIOT Act, 31 U.S.C. 5318, is considered compliance with this subdivision. This subdivision does not apply to a purchase of a credit obligation in an acquisition, a merger, a purchase of assets, or an assumption of liabilities or any change to or review of an existing credit account.

As added by P.L.137-2009, SEC.8.

IC 24-5-26-3
Violation; remedies

Sec. 3. A person who knowingly or intentionally violates this chapter commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4 and is subject to the penalties and remedies available to the attorney general under IC 24-5-0.5. This section does not affect the availability of any civil remedy for a violation of this chapter, IC 24-5-0.5, or any other state or federal law.

As added by P.L.137-2009, SEC.8.

IC 24-5.5

ARTICLE 5.5. MORTGAGE RESCUE PROTECTION FRAUD

IC 24-5.5-1

Chapter 1. Application

IC 24-5.5-1-1

Application of article

Sec. 1. This article does not apply to the following:

(1) A person organized or chartered under the laws of this state, any other state, or the United States that relate to a bank, a trust company, a savings association, a savings bank, a credit union, or an industrial loan and investment company.

(2) The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a Federal Home Loan Bank.

(3) A department or agency of the United States or of Indiana.

(4) A person that is servicing or enforcing a loan that it owns.

(5) A person that is servicing a loan:

(A) for a person described in subdivisions (1) through (4); or

(B) insured by the Department of Housing and Urban Development or guaranteed by the Veterans Administration.

(6) An attorney licensed to practice law in Indiana who is representing a mortgagor.

As added by P.L.209-2007, SEC.2. Amended by P.L.105-2009, SEC.4; P.L.68-2010, SEC.1.

IC 24-5.5-2
Chapter 2. Definitions

IC 24-5.5-2-1
Application of definitions

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-2-2
"Foreclosure consultant"

Sec. 2. "Foreclosure consultant" means a person who, directly or indirectly, makes a solicitation, a representation, or an offer to a homeowner to perform, with or without compensation, any service that the person represents will:

(1) prevent or postpone the initiation of a foreclosure proceeding, or reverse the effect of a foreclosure proceeding;

(2) allow the homeowner to become a lessee or renter in the homeowner's residence during or after a foreclosure proceeding; or

(3) allow the homeowner to have an option to repurchase the homeowner's residence after a foreclosure proceeding.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-2-3
"Foreclosure purchaser"

Sec. 3. "Foreclosure purchaser" means a person who purchases real property in a foreclosure proceeding.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-2-4
"Foreclosure reconveyance"

Sec. 4. "Foreclosure reconveyance" means a transaction involving:

(1) the transfer of interest in real property by a homeowner to a person during or incident to a proposed foreclosure proceeding, either by:

(A) transfer of interest from the homeowner to the person; or

(B) creation of a mortgage, trust, or other lien or encumbrance during the foreclosure process;

that allows the person to obtain legal or equitable title to all or part of the real property; and

(2) the subsequent conveyance, or promise of subsequent conveyance, of interest back to the homeowner by the person or the person's agent that allows the homeowner to possess the real property following the completion of the foreclosure proceeding.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-2-5

"Formal settlement"

Sec. 5. "Formal settlement" means a face-to-face meeting with a homeowner to complete final documents incident to the:

(1) sale or transfer of real property; or

(2) creation of a mortgage or equitable interest in real property;

conducted by a person who is not employed by or an affiliate of the foreclosure purchaser.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-2-6

"Homeowner"

Sec. 6. "Homeowner" means a person who holds record title to residential real property as of the date on which:

(1) a contract with a foreclosure consultant; or

(2) a foreclosure reconveyance agreement;

with respect to the residential real property is entered into.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-3
Repealed

(Repealed by P.L.68-2010, SEC.5.)

IC 24-5.5-4

Chapter 4. Rescission of Contracts With Foreclosure Consultants and Foreclosure Reconveyance Agreements

IC 24-5.5-4-1

Homeowner's right to rescind foreclosure consultant contract and foreclosure reconveyance agreement; timing

Sec. 1. In addition to any other right under law to cancel or rescind a contract, a homeowner may rescind a:

(1) contract with a foreclosure consultant at any time before midnight of the seventh business day after the date the contract is signed; and

(2) foreclosure reconveyance agreement at any time before midnight of the seventh business day after the homeowner's transfer of the interest in the real property that is the subject of the agreement, as described in IC 24-5.5-2-4(1).

As added by P.L.209-2007, SEC.2.

IC 24-5.5-4-2

Notice of rescission of foreclosure consultant contract

Sec. 2. A homeowner effectively rescinds a contract with a foreclosure consultant if the homeowner gives written notice of a rescission to the foreclosure consultant by one (1) of the following:

(1) Mailing the rescission to the address specified in the contract.

(2) Sending the rescission through any facsimile or electronic mail address identified in the contract or other material provided to the homeowner by the foreclosure consultant.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-4-3

Notice sent by mail; time of effectiveness; inconsistent recission requirements

Sec. 3. (a) If a notice of rescission under this chapter is sent by mail, the rescission is effective three (3) days after the notice is deposited in the U.S. mail, properly addressed, with postage prepaid.

(b) A homeowner is not required to give notice of rescission in the form required under the contract if the form under the contract is inconsistent with the requirements under this chapter.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-4-4

Homeowner's duty to repay amounts advanced before rescission

Sec. 4. (a) If a homeowner rescinds a contract with a foreclosure consultant or a foreclosure reconveyance agreement, the homeowner shall, not later than thirty (30) days after the date of rescission, repay any amounts paid or advanced by:

(1) the foreclosure consultant or the foreclosure consultant's agent under the terms of the foreclosure consulting contract; or

(2) a person under a foreclosure reconveyance agreement.

(b) A rescission by a homeowner under this chapter is void if the payments required under this section are not made within the time set forth in subsection (a).
As added by P.L.209-2007, SEC.2.

IC 24-5.5-4-5
Foreclosure consultant's duty to return payments made by homeowner

Sec. 5. If a homeowner rescinds a contract with a foreclosure consultant, not less than ten (10) days following the effective date of the rescission, the consultant shall return to the homeowner any payments made by the homeowner, less any amounts for actual services rendered.
As added by P.L.209-2007, SEC.2.

IC 24-5.5-5

Chapter 5. Limitations on Foreclosure Consultants and Foreclosure Reconveyances

IC 24-5.5-5-1

Rebuttable presumptions; homeowner's ability to pay upon reconveyance

Sec. 1. For purposes of this chapter, there is a rebuttable presumption that:

(1) a homeowner has a reasonable ability to pay for a subsequent reconveyance of real property if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed sixty percent (60%) of the homeowner's monthly gross income; and

(2) the foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the homeowner of assets, liability, and income.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-5-2

Foreclosure consultants; prohibited acts

Sec. 2. In addition to any prohibitions that apply under IC 24-5-15-1 through IC 24-5-15-8, a foreclosure consultant may not:

(1) enter into or attempt to enter into a foreclosure consultant contract with a homeowner unless the foreclosure consultant first provides the homeowner written notice of the homeowner's rights under this article;

(2) demand or receive compensation until after the foreclosure consultant has fully performed all services the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform, unless the foreclosure consultant complies with the security requirements under IC 24-5-15-8;

(3) demand or receive a fee, interest, or any other compensation that exceeds eight percent (8%) per year of the amount of any loan that the foreclosure consultant makes to the homeowner;

(4) take a wage assignment, a lien of any type on real or personal property, or any other security to secure the payment of compensation;

(5) receive consideration from a third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed in writing to the homeowner;

(6) acquire any interest, directly or indirectly, in residential real property in foreclosure from a homeowner with whom the foreclosure consultant has contracted;

(7) except to inspect documents as provided by law, take any power of attorney from a homeowner for any purpose;

(8) execute any contract or agreement with a homeowner or receive money or other valuable consideration from a homeowner without providing the homeowner with the written statement required by IC 24-5-15-6; or

(9) fail to provide a homeowner with a written contract that includes the notice of cancellation required by IC 24-5-15-7.

As added by P.L.209-2007, SEC.2. Amended by P.L.231-2013, SEC.4.

IC 24-5.5-5-3

Foreclosure purchasers; prohibited acts

Sec. 3. A foreclosure purchaser may not enter into or attempt to enter into a foreclosure reconveyance agreement with a homeowner unless the:

(1) foreclosure purchaser verifies and demonstrates that the homeowner has or will have a reasonable ability to:

(A) pay for the subsequent reconveyance of the property back to the homeowner on completion of the terms of the foreclosure conveyance; or

(B) if the foreclosure conveyance provides for a lease with an option to repurchase the real property, make the lease payment and repurchase the real property within the period of the option to repurchase;

(2) foreclosure purchaser provides the homeowner written notice of the homeowner's rights under this article;

(3) foreclosure purchaser and the homeowner complete a formal settlement before any transfer of interest in the affected property; and

(4) foreclosure purchaser complies with the security requirements under IC 24-5-15-8.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-5-4

Foreclosure purchasers; duties to homeowners

Sec. 4. A foreclosure purchaser shall:

(1) ensure that title to real property has been reconveyed to the homeowner in a timely manner if the terms of a foreclosure reconveyance agreement require a reconveyance; or

(2) if the real property subject to a foreclosure reconveyance agreement is sold within eighteen (18) months after entering into the foreclosure reconveyance agreement, make payment to the homeowner not later than ninety (90) days after the resale of the real property in an amount equal to at least sixty-six percent (66%) of the net proceeds from the resale of the property.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-5-5

Foreclosure purchasers; unfair conduct; prohibited representations and acts

Sec. 5. A foreclosure purchaser may not:

(1) enter into repurchase or lease terms as part of the foreclosure reconveyance that are unfair or commercially unreasonable or engage in any other unfair conduct;

(2) represent, directly or indirectly, that the:

(A) foreclosure purchaser is acting:

(i) as an adviser or a consultant; or

(ii) in any other manner on behalf of the homeowner;

(B) foreclosure purchaser is assisting the homeowner to save the residence; or

(C) foreclosure purchaser is assisting the homeowner in preventing a foreclosure if the result of the transaction is that the homeowner will not complete a redemption of the property; or

(3) until the homeowner's right to rescind or cancel the foreclosure reconveyance agreement has expired:

(A) record any document, including an instrument or conveyance, signed by the homeowner; or

(B) transfer to a third party or encumber, or purport to transfer to a third party or encumber, any interest in the residential real property in foreclosure.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-5-6

Foreclosure purchasers; accounting to homeowner after resale of property

Sec. 6. A foreclosure purchaser shall make a detailed accounting of the basis for the amount of payment made to a homeowner of real property resold within eighteen (18) months after entering into a foreclosure reconveyance agreement on a form prescribed by the attorney general.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-5-7.2

Duty to retain records for three years

Sec. 7.2. A foreclosure consultant shall retain all records and documents, including the foreclosure consultant contract, related to services performed on behalf of a homeowner for at least three (3) years after the termination or conclusion of the foreclosure consultant contract entered into by the foreclosure consultant and the homeowner.

As added by P.L.52-2009, SEC.3; P.L.105-2009, SEC.6.

IC 24-5.5-5-8

Foreclosure consultant representations

Sec. 8. A foreclosure consultant may not represent to a homeowner that the foreclosure consultant is endorsed, sponsored, or affiliated with any governmental or government sponsored agency or program.

As added by P.L.231-2013, SEC.5.

IC 24-5.5-6

Chapter 6. Enforcement

IC 24-5.5-6-1

Violations; deceptive act; Class A misdemeanor

Sec. 1. A person who knowingly or intentionally violates this article commits:

(1) a Class A misdemeanor;

(2) a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4 and is subject to the penalties and remedies available to the attorney general under IC 24-5-0.5; and

(3) a deceptive act that is actionable by the attorney general under IC 24-9-8-2 and is subject to the penalties and remedies available to the attorney general under IC 24-9.

As added by P.L.209-2007, SEC.2. Amended by P.L.114-2010, SEC.17; P.L.231-2013, SEC.6.

IC 24-5.5-6-2

Homeowner's cause of action; damages; attorney's fees

Sec. 2. (a) A homeowner may bring an action against a person for damages incurred as a result of a violation of this article.

(b) A homeowner who:

(1) brings an action under this section; and

(2) is awarded damages;

may seek reasonable attorney's fees.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-6-3

Attorney's fees; treble damages

Sec. 3. (a) A court may award attorney's fees under section 2(b) of this chapter.

(b) If the court finds that a person willfully or knowingly violated this article, the court may award damages equal to three (3) times the amount of actual damages.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-6-4

Indiana housing and community development authority; list of nonprofit organizations

Sec. 4. (a) The Indiana housing and community development authority shall maintain a list of nonprofit organizations that:

(1) offer counseling or advice to homeowners in foreclosure or loan defaults; and

(2) do not contract for services with for-profit lenders or foreclosure purchasers.

(b) The Indiana housing and community development authority shall provide names and telephone numbers of the organizations described in subsection (a) to a homeowner upon request.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-6-5
Attorney general's authority to adopt rules

Sec. 5. The attorney general may adopt rules under IC 4-22-2 necessary to implement this article.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-6-6
Credit services organizations statute not preempted

Sec. 6. Except as provided in IC 24-5-15-7(d), this article may not be construed to preempt the provisions of IC 24-5-15-1 through IC 24-5-15-11.

As added by P.L.209-2007, SEC.2.

IC 24-6

ARTICLE 6. WEIGHTS, MEASURES, AND LABELING

IC 24-6-1

Chapter 1. Standard Weights and Measures

IC 24-6-1-1

Standards; violation

Sec. 1. (a) The avoirdupois weight of beef or pork in each barrel shall be two hundred (200) pounds; and of flour in each barrel, one hundred and ninety-six (196) pounds; of sorghum molasses, eleven (11) pounds per gallon; of maple molasses, eleven (11) pounds per gallon; of hay, straw, ice, coal or coke, two thousand (2,000) pounds shall be given and taken for a ton. A bushel of the respective articles hereinafter mentioned shall mean the amount of weight, avoirdupois, in this section specified, as follows:

Of wheat, sixty (60) pounds;

Of oats, thirty-two (32) pounds;

Of buckwheat, fifty (50) pounds;

Of popcorn, fifty-six (56) pounds;

Of cornmeal, fifty (50) pounds;

Of shelled corn, fifty-six (56) pounds;

Of corn in the ear until December 1, seventy (70) pounds; corn in the ear after December 1, sixty-eight (68) pounds;

Of rye, fifty-six (56) pounds;

Of barley, forty-eight (48) pounds;

Of malt rye, thirty-five (35) pounds;

Of flax seed, fifty-six (56) pounds;

Of kaffir corn, fifty-six (56) pounds;

Of rough rice, forty-five (45) pounds;

Of beans, sixty (60) pounds;

Of cow peas, sixty (60) pounds;

Of soy soja beans, sixty (60) pounds;

Of clover seed, sixty (60) pounds;

Of hemp seed, forty-four (44) pounds;

Of sorghum seed, fifty (50) pounds;

Of blue grass seed, fourteen (14) pounds;

Of orchard grass seed, fourteen (14) pounds;

Of timothy seed, forty-five (45) pounds;

Of millet, fifty (50) pounds;

Of herds-grass seed, forty-five (45) pounds;

Of rape seed, fifty (50) pounds;

Of red top grass seed, fourteen (14) pounds;

Of alfalfa seed, sixty (60) pounds;

Of peaches, forty-eight (48) pounds;

Of dried peaches, thirty-three (33) pounds;

Of apples, forty-two (42) pounds;

Of dried apples, twenty-five (25) pounds;

Of quinces, forty-eight (48) pounds;
Of pears, fifty (50) pounds;
Of onions, fifty-seven (57) pounds;
Of beets, sixty (60) pounds;
Of carrots, fifty (50) pounds;
Of parsnips, fifty-five (55) pounds;
Of turnips, fifty-five (55) pounds;
Of tomatoes, sixty (60) pounds;
Of cucumbers, forty-eight (48) pounds;
Of potatoes, sixty (60) pounds;
Of sweet potatoes, fifty (50) pounds;
Of cranberries, thirty-three (33) pounds;
Of gooseberries, forty (40) pounds;
Of hickory nuts, fifty (50) pounds;
Of walnuts, fifty (50) pounds;
Of middlings, coarse, thirty (30) pounds;
Of bran, twenty (20) pounds;
Of coal, mineral, eighty (80) pounds;
Of charcoal, twenty (20) pounds;
Of coke, forty (40) pounds;
Of coarse salt, fifty (50) pounds;
Of fine salt, fifty-five (55) pounds.

(b) A person who buys or sells any of the articles or commodities enumerated in this section at a measure or fraction thereof differing in the weight from the standard herein prescribed commits a Class B misdemeanor.

(Formerly: Acts 1905, c.169, s.697; Acts 1917, c.153, s.1.) As amended by Acts 1976, P.L.118, SEC.1; Acts 1978, P.L.2, SEC.2417.

IC 24-6-2

Chapter 2. Retention of Weights and Measures By Counties

IC 24-6-2-1

Procurement of weights and measures

Sec. 1. The several boards of county commissioners within this state be, and they are hereby authorized and required to procure for their respective counties, and at the expense of the same, a set of the following measures and weights for the use of their county: that is; one (1) measure of one (1) foot or twelve (12) inches, English measure, so-called; also one (1) measure of three (3) feet, or thirty-six (36) inches, as aforesaid; also, one half (1/2) bushel measure for dry measure, which shall contain one thousand and seveny-five and one-fifth (1,075 1/5) solid inches; also one gallon measure, which shall contain two hundred and thirty-one (231) solid inches; which measures are to be of wood or of any metal the court may think proper; also, one (1) set of weights commonly called avoirdupois weights; and sealed with the name or initial letters of the county inscribed thereon; and shall be kept by the county auditor of each and every county in this state, for the purpose of trying and sealing the weights and measures used in their counties.

(Formerly: Acts 1852, 1RS, c.117, s.1.)

IC 24-6-3

Chapter 3. State and Local Weights and Measures Program

IC 24-6-3-1

Weights and measures furnished by United States government

Sec. 1. The:

(1) standard weights and measures furnished by the government of the United States and certified by the National Institute of Standards and Technology; and

(2) weights, measures, balances, and apparatus as may be added by the division of weights and measures and verified by the National Institute of Standards and Technology;

are the standards by which all state, county, and city standards shall be tried, proved, and sealed.

(Formerly: Acts 1925, c.86, s.1.) As amended by P.L.3-1989, SEC.142; P.L.2-1992, SEC.749.

IC 24-6-3-2

Division of weights and measures; powers and duties

Sec. 2. (a) The division of weights and measures shall take charge of the standards adopted by this chapter as the standards of the state, cause them to be kept in a fireproof building belonging to the state, and from which they shall not be removed except for repairs or for certification, and take all other necessary precautions for their safekeeping.

(b) The division shall maintain the state standards in good order and shall submit them once in ten (10) years to the National Institute of Standards and Technology for certification. The division or inspectors at the division's direction, shall correct the standards of the several cities and counties, and as often as once in two (2) years compare the same with those in the division's possession, and where not otherwise provided by law the division shall have the general supervision of the weights, measures, and measuring and weighing devices in use in Indiana.

(c) The division of weights and measures is also authorized to adopt rules, specifications, and tolerances necessary for the enforcement of this chapter. The division shall, upon the written request of any Indiana citizen, firm, corporation, limited liability company, or institution, test or calibrate weights, measures, weighing, or measuring devices and instruments or apparatus used as standards in Indiana. The division or inspectors at the division's direction, shall at least once annually test all scales, weights, and measures and devices used in checking the receipt or disbursement of supplies in every institution under the jurisdiction of the department of child services and the division shall report in writing the findings to the executive officer of the institution concerned.

(d) The division of weights and measures shall keep a complete record of the standards, balances, and other apparatus belonging to the state and take a receipt for the same from the successor in office to the head of the division.

(e) The division or inspectors at the division's direction, shall at least once in two (2) years visit the various cities and counties in Indiana that have appointed sealers of weights and measures in order to inspect the work of the local sealers. In the performance of such duties, the division may inspect the weights, measures, balances, or any other weighing or measuring appliances of any person.

(f) The division of weights and measures shall issue from time to time rules for the guidance of state, county, and city sealers or inspectors. The rules shall govern the procedure to be followed by those officers in the discharge of their duties.

(Formerly: Acts 1925, c.86, s.2.) As amended by Acts 1978, P.L.2, SEC.2418; Acts 1979, P.L.17, SEC.38; Acts 1981, P.L.33, SEC.29; P.L.3-1989, SEC.143; P.L.2-1992, SEC.750; P.L.8-1993, SEC.365; P.L.145-2006, SEC.156.

IC 24-6-3-3

County inspectors; appointment; compensation

Sec. 3. The board of commissioners of every county of thirty thousand (30,000) population or more shall, and the board of commissioners of any county of less than thirty thousand (30,000) population may appoint a county inspector of weights and measures. No person shall be appointed as a county inspector of weights and measures in any county unless such person shall have been approved by the division of weights and measures of the state department of health, and no county inspector of weights and measures in any county shall be removed by the board of commissioners without the approval and consent of the division of weights and measures. The compensation of a county inspector of weights and measures shall be determined by the board and paid out of the county treasury. It shall not be obligatory upon the board of county commissioners of such counties containing a city or cities which are already provided with an inspector of weights and measures or city sealers to make such appointments. The board shall provide the necessary apparatus and supplies for the said inspector of weights and measures and the county councils of such counties shall appropriate such sums of money as are necessary for the salary and maintenance of the office. Two (2) or more adjoining counties, by appropriate action of the boards of commissioners of such counties, may form an inspection district and provide by mutual agreement for the appointment of a district inspector of weights and measures. The compensation of such inspector shall be apportioned among the counties forming the district in proportion to the population thereof.

(Formerly: Acts 1925, c.86, s.3; Acts 1955, c.229, s.1.) As amended by P.L.152-1986, SEC.85; P.L.2-1992, SEC.751.

IC 24-6-3-4

City inspectors; appointment, service and removal

Sec. 4. (a) The legislative body of a city having a population of at least twenty thousand (20,000) may provide for the appointment by the board of public safety of an inspector of weights and measures

and provide for the inspector's compensation and for the necessary apparatus and expenses to be paid out of the city treasury. The inspector of weights and measures shall serve continuously during good behavior under the provisions of IC 36-8-3-4 governing the fire and police force. The inspector of weights and measures shall not be removed for any political reason and only for good and sufficient cause after an opportunity for hearing is given by the board of public safety. However, this subsection does not affect the power of the division of weights and measures of the state department of health to discharge county or city inspectors of weights and measures under section 6 of this chapter.

(b) A person may not be appointed as a city inspector of weights and measures unless the person is approved by the division of weights and measures. A city inspector of weights and measures may not be removed without the approval and consent of the division of weights and measures.

(c) The same person may be employed as a city and county inspector of weights and measures. If the same person is so employed, the compensation and expenses of the inspector shall be divided between the city and county, as agreed upon under IC 36-1-7.

(d) If a city having a population of at least twenty thousand (20,000) does not provide for the appointment of an inspector of weights and measures, the executive of the county containing the city shall require the county inspector of weights and measures to perform those duties for that city.

(Formerly: Acts 1925, c.86, s.4.) As amended by Acts 1981, P.L.44, SEC.29; P.L.40-1989, SEC.41; P.L.2-1992, SEC.752.

IC 24-6-3-5

Powers and duties of county and city inspectors

Sec. 5. The county or city inspector of weights and measures when appointed shall be a deputy inspector under the direction of the division of weights and measures. The inspector shall take charge of and safely keep the county or city standards. When not otherwise provided by law, the county or city inspector of weights and measures shall have the power within the county or city to inspect, test, try and ascertain if they are correct, all weights, scales, beams, measures of every kind, instruments or mechanical devices for measurement and the tools, appliances or accessories, connected with any or all such instruments or measurements used or employed within the county or city by any proprietor, agent, lessee or employee in determining the size, quantity, extent or measurement of quantities, things, produce, articles for distribution or consumption offered or submitted by such person or persons for sale, for hire or award. The inspector shall at least once in each year and as much oftener as he may deem necessary see that the weights, measures and all apparatus used in the county or city are correct. The county or city inspector of weights and measures shall keep a complete record of the work done by the inspector and shall make a monthly and annual report to the division and the board of county commissioners or to

the mayor. The annual report shall be duly sworn and submitted to the division of weights and measures, not later than the fifteenth of October. Upon appointment, the county or city inspector of weights and measures shall, in the manner prescribed by IC 5-4-1, give a bond for the faithful performance of the duties of the office. The county inspector of weights and measures shall have jurisdiction over the whole county except as to incorporated cities which have provided for a city inspector of weights and measures under the provisions of this chapter.
(Formerly: Acts 1925, c.86, s.5.) As amended by Acts 1981, P.L.47, SEC.19; P.L.2-1992, SEC.753.

IC 24-6-3-6
Qualifications of inspectors; discharge and removal

Sec. 6. Only those persons shall be eligible to appointment to the position of county or city inspectors of weights and measures who on March 9, 1925, are county or city sealers or inspectors of weights and measures or who have passed an examination which shall be given by the division of weights and measures of the state department of health to test the ability of the person so examined to perform satisfactorily the duties of a county or city inspector of weights and measures. If it is evident to the division of weights and measures that any county or city inspector of weights and measures is not properly and faithfully performing the duties of the office, the division of weights and measures shall have power to discharge such county or city inspector of weights and measures. Such removal, however, shall not be made until five (5) days' notice of the charge or charges shall have been mailed to him by the division, naming a time and place for a hearing not less than two (2) weeks later than the time of mailing such notice to the county or city inspector of weights and measures; provided, however, that any county or city inspector of weights and measures so removed by the division of weights and measures shall have the right to appeal from the action of the division to the circuit or superior court of the county in which such county or city inspector of weights and measures resides, and during the pendency of such appeal, such county or city inspector of weights and measures may serve in the inspector's official capacity. Any county or city inspector of weights and measures discharged as provided in this section shall be ineligible to hold the position of county or city inspector of weights and measures for four (4) years, and the vacancy shall be filled by the proper authorities as provided in this chapter.
(Formerly: Acts 1925, c.86, s.6.) As amended by P.L.152-1986, SEC.86; P.L.2-1992, SEC.754.

IC 24-6-3-7
Inspection of devices; confirmation to legal standards; tagging nonconforming devices

Sec. 7. Whenever the inspector of the city or county or the division of weights and measures, or the division's inspectors test and

compare scales, weights, measures, or weighing or measuring devices and finds that they correspond with the standards in the inspector's possession, the inspector shall seal and mark such scales, weights, measures, or weighing and measuring devices by stamping upon them the letters "Ind. S.," meaning Indiana Standard, and the last two (2) figures of the year in which the same is done. If any scales, weights, measures, or weighing or measuring devices, or parts thereof, be found not to conform to the legal standard the same may be tagged by the inspector "condemned until repaired" which tag shall not be removed until said apparatus is properly repaired. If the scales, weights, measures, or weighing or measuring devices, or parts thereof are found to be false and fraudulent, or can not be made to conform to the legal standard, the same shall be condemned and confiscated by the inspector.
(Formerly: Acts 1925, c.86, s.7.) As amended by P.L.2-1992, SEC.755; P.L.1-1993, SEC.196.

IC 24-6-3-8
Seizure of nonconforming devices

Sec. 8. The division of weights and measures, the division's deputies and inspectors, and the county and city inspectors of weights and measures are hereby made special policemen and are authorized and empowered to arrest without formal warrant for any violation of the statutes in relation to scales, weights and measures, and to seize and use for evidence and without formal warrant any false weight, scales, measure, or weighing or measuring device, or packages or amounts of commodities found to be used, retained or offered or exposed for sale or sold in violation of law.
(Formerly: Acts 1925, c.86, s.8.) As amended by P.L.2-1992, SEC.756.

IC 24-6-3-9
Entry without warrant; prosecution; hindrance of inspector

Sec. 9. (a) The division of weights and measures, the division's agents, deputies, or inspectors, and the county and city inspectors of weights and measures may go into or upon without formal warrant any stand, place, building or premises, or may stop any vender, peddler, junk dealer, coal wagon, ice wagon, or any dealer, for the purpose of making the proper test and for the purpose of ascertaining the proper weights and measures of all commodities found therein or thereon. Whenever the division, the division's agents, deputies, or inspectors, or the county and city inspectors of weights and measures find a violation of law relating to weights and measures, the individual shall cause the violator to be prosecuted.

(b) No person may molest, hinder or obstruct in any way the division of weights and measures, the division's agents, deputies, or inspectors, or any county or city inspector of weights and measures in the performance of official duties.
(Formerly: Acts 1925, c.86, s.9.) As amended by Acts 1978, P.L.2, SEC.2419; P.L.2-1992, SEC.757.

IC 24-6-3-10
Commodity sold by numerical count; weight per ton

Sec. 10. All commodities shall be sold by standard weight or measure except as otherwise provided in this chapter; provided, however, that the provisions of this section shall not apply to commodities which are usually and customarily sold by numerical count, or in gross, or are sold in packages prepared and put up for sale; provided, that all commodities packed in such packages shall be so marked as to plainly indicate the net contents in terms of weight, measure, or numerical count; provided, also, that two thousand (2,000) pounds net avoirdupois shall constitute a ton.
(Formerly: Acts 1925, c.86, s.10.) As amended by P.L.152-1986, SEC.87.

IC 24-6-3-10.5
Items that may be sold as unweighed, uncounted units

Sec. 10.5. Notwithstanding any other provision, a packaged decorative fruit basket or a delicatessen tray or platter containing meat or cheese may be sold or offered for sale by weight, by numerical count, or as an unweighed, uncounted unit for sale.
As added by P.L.80-1999, SEC.4.

IC 24-6-3-11
Use or retention of false scales; removal of tag

Sec. 11. No person, firm, limited liability company, or corporation shall use or retain in the person's, firm's, company's, or corporation's possession any false scales, weights, or measures or measuring device or any weight or measure or weighing or measuring device in the buying or selling of any commodity or thing or in calculating or measuring service, or dispose of any condemned scales, weights, measures, or weighing or measuring device, except in accordance with such rules, specifications, and tolerances as may be adopted by the division of weights and measures of the state department of health as provided in section 2 of this chapter, or remove any tag, stamp, or mark placed thereon by the inspector; and no person, firm, limited liability company, or corporation shall sell or offer or expose for sale or deliver less than the quantity the person, firm, limited liability company, or corporation represents, or sell, offer for sale, or have in the person's, firm's, limited liability company's, or corporation's possession for the purpose of selling any false scales, weight, or measure, or any device or instrument to be used or calculated to falsify any weight or measure.
(Formerly: Acts 1925, c.86, s.11.) As amended by P.L.152-1986, SEC.88; P.L.2-1992, SEC.758; P.L.8-1993, SEC.366.

IC 24-6-3-12
Dry capacity measure; sale of fruits and vegetables; commodities; original standard container; definitions

Sec. 12. (a) All commodities shall be offered for sale or sold upon the basis of avoirdupois net weight or by numerical count only, and

it shall be unlawful for anyone to use or employ any dry capacity measure, basket, barrel, or container of any kind as a means of determining the amounts or quantities of any commodities offered for sale or sold; provided, however, that the provisions of this chapter shall not be construed to apply to fruits and vegetables sold in the original standard container, nor to vegetables which by common custom are offered for sale or sold by the bunch; nor shall the provisions of this chapter be construed to apply to fresh berries and to other small fruits which are customarily offered for sale and sold by the box, basket, or other receptacle, except, however, when such fresh berries or such other small fruits are offered for sale or sold in bulk, in which case the provisions of this chapter shall apply to the extent that such fresh berries and such other small fruits shall be offered for sale and sold by avoirdupois net weight only; provided, further, however, that all fresh berries and such other small fruits when offered for sale or sold shall be so offered or sold in boxes, baskets, or receptacles of uniform size to hold one (1) quart or one (1) pint dry measure only, which said boxes, baskets, or other receptacles shall be uniformly and evenly filled throughout.

(b) The term "commodities" as used in this section shall be construed to mean commodities or articles (other than liquids) which are capable of being measured by dry capacity measure.

(c) The term "original standard container" as used in this section shall be construed to mean and include only barrels, boxes, baskets, hampers, or similar containers the dimensions or capacity of which is established by Indiana or federal statute, the contents of which have not been removed or repacked, and upon which is plainly and conspicuously marked the net quantity of contents thereof in terms of weight, measure, or numerical count.

(Formerly: Acts 1925, c.86, s.12.) As amended by P.L.152-1986, SEC.89.

IC 24-6-3-13

Weighmaster; appointment; powers and duties

Sec. 13. The division of weights and measures upon application of any county, city, town, corporation, limited liability company, individual, firm, association, or institution may designate one (1) or more employees or some other suitable person or persons, to act as weighmaster for such county, city, town, corporation, limited liability company, individual, firm, association, or institution. Such weighmaster shall be appointed for a specified term and shall, before entering upon official duties, make oath faithfully to execute trust as weighmaster. The division of weights and measures shall issue and keep record of a certificate of appointment which shall designate the location of the scale or scales or measuring devices to be operated by said weighmaster. The rights and duties of weighmasters shall be prescribed by the division and such weighmasters shall not receive compensation from the state for duties so performed. Any weighmaster who commits misconduct in the execution of duties shall forfeit the certificate as weighmaster.

(Formerly: Acts 1925, c.86, s.13.) As amended by Acts 1978, P.L.2, SEC.2420; P.L.2-1992, SEC.759; P.L.8-1993, SEC.367.

IC 24-6-3-14
Definitions

Sec. 14. The word "person" as used in this chapter shall be considered to include also firms, copartnerships, limited liability companies, or corporations. The term "device" or "devices" as used in this chapter shall be construed to include all weights, scales, beams, mechanical devices, or other instruments. The word "sell", "sale", or "buy" as used in this chapter shall be construed to include barter and exchange.

(Formerly: Acts 1925, c.86, s.14.) As amended by P.L.152-1986, SEC.90; P.L.8-1993, SEC.368.

IC 24-6-3-15
Violations

Sec. 15. A person who recklessly violates this chapter commits a Class B misdemeanor.

(Formerly: Acts 1925, c.86, s.15.) As amended by Acts 1978, P.L.2, SEC.2421.

IC 24-6-3-16
Standards for weights and measures; emergency rule adoption; federal standards

Sec. 16. (a) The state department may adopt emergency rules under IC 4-22-2-37.1 to establish standards for weights and measures to be used by the state department. A standard adopted under this section must be the same as or at least as effective as the standards adopted by the National Conference on Weights and Measures, including amendments to those standards in effect on June 30, 1993, and found in:

(1) Handbook 44: Specification, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices;
(2) Handbook 130: Chapter A, Uniform Packaging and Labeling Regulation;
(3) Handbook 130: Chapter B, Uniform Regulation for the Method of Sale of Commodities, except for Section 2.20; and
(4) Handbook 133: Checking the Net Contents of Packaged Goods;

all published by the National Institute of Standards and Technology.

(b) The state department may determine when an amendment to federal standards described in subsection (a) has been adopted. If the state department determines that an amendment to the federal standards has been adopted, the state department may adopt emergency rules under IC 4-22-2-37.1 to amend the rules adopted by the state department under subsection (a). An emergency rule adopted under this subsection must provide a standard that is:

(1) the same as; or
(2) at least as effective as;

the amendment to the federal standards for weights and measures. An emergency rule adopted under this subsection must take effect not later than sixty (60) days after the date of publication of the amendment to the federal standards.
As added by P.L.177-1993, SEC.19. Amended by P.L.123-1994, SEC.1.

IC 24-6-3-17
Adoption of rules requiring posting notices concerning oxygenates at service stations; prohibition

Sec. 17. The state department may not adopt rules requiring the posting of notices concerning oxygenates on or near engine fuel dispensers located at retail service stations.
As added by P.L.123-1994, SEC.2.

IC 24-6-4
Repealed

(Repealed by P.L.104-2003, SEC.10.)

IC 24-6-5

Chapter 5. Containers for Agricultural Produce

IC 24-6-5-1
Repealed
(Repealed by P.L.104-2003, SEC.10.)

IC 24-6-5-2
Repealed
(Repealed by P.L.104-2003, SEC.10.)

IC 24-6-5-3
Repealed
(Repealed by P.L.104-2003, SEC.10.)

IC 24-6-5-4
Repealed
(Repealed by P.L.104-2003, SEC.10.)

IC 24-6-5-5
Repealed
(Repealed by P.L.104-2003, SEC.10.)

IC 24-6-5-6
Repealed
(Repealed by P.L.104-2003, SEC.10.)

IC 24-6-5-7
Repealed
(Repealed by P.L.104-2003, SEC.10.)

IC 24-6-5-8
Repealed
(Repealed by P.L.104-2003, SEC.10.)

IC 24-6-5-9
Repealed
(Repealed by P.L.104-2003, SEC.10.)

IC 24-6-5-10
Repealed
(Repealed by P.L.104-2003, SEC.10.)

IC 24-6-5-11
Repealed
(Repealed by Acts 1978, P.L.2, SEC.2426.)

IC 24-6-5-12
Duties of division of weights and measures
Sec. 12. It shall be the duty of the division of weights and

measures of the state department of health to enforce all the provisions of this chapter, and it shall prescribe such rules as it may find necessary for carrying into effect the provisions of this chapter, and shall cause such examinations and tests to be made as may be necessary in order to determine whether hampers, round stave baskets, splint baskets, climax baskets, and baskets or containers for berries or other small fruits and vegetables, or parts thereof, subject to this chapter, meet its requirements. For this purpose, the authorized officers and agents of the division of weights and measures may visit factories, stock rooms, and other places of business where such hampers, baskets, and containers, or parts thereof, are manufactured or held for sale or shipment, or offered for sale, and may enter cars, vessels, other vehicles, and places under the control of carriers engaged in the transportation of such hampers, baskets, and containers, or parts thereof, and may take samples of such hampers, baskets, and boxes, or parts thereof or, upon written request from the division of weights and measures or its authorized agents. Any manufacturers, shippers, carriers, or holders of such hampers, baskets, and containers or parts thereof shall furnish samples of such hampers, baskets, and containers, or parts thereof, as are required for the purpose of inspection as in this chapter provided.

(Formerly: Acts 1923, c.44, s.12.) As amended by P.L.152-1986, SEC.96; P.L.2-1992, SEC.762.

IC 24-6-5-13
Official cooperation

Sec. 13. For carrying out the purpose of this chapter, the division of weights and measures of the state department of health is authorized to cooperate with state, county, and municipal authorities, manufacturers, dealers, and shippers.

(Formerly: Acts 1923, c.44, s.13.) As amended by P.L.152-1986, SEC.97; P.L.2-1992, SEC.763.

IC 24-6-5-14
Repealed

(Repealed by P.L.104-2003, SEC.10.)

IC 24-6-5-15
Sale by weight or numerical count

Sec. 15. Nothing in this chapter shall be construed to permit sales by standard hampers, baskets, or containers without regard to weight or numerical count when required by law to be sold by weight or numerical count.

(Formerly: Acts 1923, c.44, s.15.) As amended by P.L.152-1986, SEC.99.

IC 24-6-6

Chapter 6. Labeling Produce Containers

IC 24-6-6-1

Package defined

Sec. 1. The term "package" as used in this chapter shall be construed to mean any container which is used for the transportation of or sale of fruits and vegetables within the state.

(Formerly: Acts 1935, c.65, s.1.) As amended by P.L.152-1986, SEC.100.

IC 24-6-6-2

Fruit and vegetable containers; packing requirements

Sec. 2. Every person, firm, limited liability company, or corporation who, by himself or by his agent or employee, packs or repacks fresh fruits or vegetables in containers intended for sale, either privately or on the open market, shall cause the same to be marked in a plain and indelible manner, as follows:

(1) With his full name and address, including the name of the state where such fresh fruits and vegetables are grown or packed.

(2) The net contents, by weight, if not in a standard container built in accordance with the specifications of the federal or state standard container act, in which case the cubical contents shall be sufficient.

(3) The grade, in accordance with the standards established by this act.

All markings shall be in letters not less than one-half (1/2) of an inch in height.

(Formerly: Acts 1935, c.65, s.2.) As amended by P.L.152-1986, SEC.101; P.L.8-1993, SEC.370.

IC 24-6-6-3

Unlawful sales

Sec. 3. No person shall sell, offer for sale, expose, or have in his possession for sale, either privately or on the open market, any fresh fruits or vegetables packed in containers and intended for sale, unless such containers are marked in accordance with the provisions of this chapter.

(Formerly: Acts 1935, c.65, s.3.) As amended by P.L.152-1986, SEC.102.

IC 24-6-6-4

Prohibition against certain markings

Sec. 4. No person shall sell, offer, expose or have in his possession for sale, any fresh fruits or vegetables, packed in any package, upon which package is marked any designation which represents such fruit as "No. 1," "Finest," "Best", "Extra Good", "Fancy," "Selected," "Prime," "Standard," or other name denoting superior grade or quality, unless such fruit or vegetables consist of

well-grown specimens, sound, of nearly uniform size, normal shape, good color for the variety, and not less than ninety per cent (90%) free from injurious or disfiguring bruises, diseases, insect injuries or other defects, natural deterioration and decay in transit or storage excepted.
(Formerly: Acts 1935, c.65, s.4.)

IC 24-6-6-5
Misrepresentation by package

Sec. 5. No person shall sell, offer or have in his possession for sale, either privately or on the open market, packed in any package in which the face or shown surface gives a false representation of the contents of such package, and it shall be considered a false representation if such face shows more than ten per cent (10%), by count, or weight, larger in size or superior in grade to or different in variety than the remaining portion of the package, natural deterioration and decay in transit or storage excepted.
(Formerly: Acts 1935, c.65, s.5.)

IC 24-6-6-6
Used containers; marking requirements

Sec. 6. When fruits and vegetables, packed in used containers, are offered for sale carrying any markings pertaining to the previous contents, the words "not original contents," shall be conspicuously marked, labeled, or tagged on the outside of each container in letters not less than one-fourth (1/4) of one (1) inch in height.
(Formerly: Acts 1935, c.65, s.6.)

IC 24-6-6-7
Commodities packed in another state; exception

Sec. 7. Fruits and vegetables packed in original containers and graded according to the legal grades of the state wherein they originated shall be exempt from the provisions of this chapter provided such packages are marked with the grade, grower or distributor, and address, and the state wherein grown, and providing the grades of such state are the equivalent to or are more rigid than the federal grade.
(Formerly: Acts 1935, c.65, s.7.) As amended by P.L.152-1986, SEC.103.

IC 24-6-6-8
Repacking procedure; shipping requirements

Sec. 8. (a) Fruits and vegetables originating outside of the state of Indiana, and which are repacked within the state, shall have the name of the repacker or distributor and the name of the state where the product originated clearly marked on the package, in letters not less than one-half (1/2) inch in height.

(b) Fruits and vegetables originating outside of the state of Indiana which are transported by motor vehicles or by railroad cars, whether shipped in bulk or in containers, shall be accompanied by a

certificate showing that such fruit or vegetables comply in all respects with the requirements of the state and federal laws and the several rules and regulations issued thereunder by the properly constituted state and federal agencies.
(Formerly: Acts 1935, c.65, s.8.)

IC 24-6-6-9
Enforcement of chapter

Sec. 9. The state department of health, its division of weights and measures, food inspectors, sealers of weights and measures, and agents are hereby charged with the enforcement of the provisions of this chapter. It shall be the duty of every prosecuting attorney to whom the state department of health or any of its agents shall report any violation of the provisions of this chapter to cause proceedings to be commenced against the person or persons so violating the provisions of this chapter and to prosecute the same to final termination.
(Formerly: Acts 1935, c.65, s.9.) As amended by P.L.152-1986, SEC.104; P.L.2-1992, SEC.764.

IC 24-6-6-10
Products in transit

Sec. 10. This chapter shall not apply to products in transit from point of origin to place of processing, or further grading or conditioning.
(Formerly: Acts 1935, c.65, s.10.) As amended by P.L.152-1986, SEC.105.

IC 24-6-6-11
Violations

Sec. 11. A person who violates this chapter commits a Class C misdemeanor.
(Formerly: Acts 1935, c.65, s.11.) As amended by Acts 1978, P.L.2, SEC.2423.

IC 24-6-6-12
Federal grading

Sec. 12. Federal grades, with any additions or changes, as well as any grades covering additional products, are hereby adopted by the state of Indiana and shall be applied under the terms of this chapter.
(Formerly: Acts 1935, c.65, s.12.) As amended by P.L.152-1986, SEC.106.

IC 24-6-7
Repealed

(Repealed by P.L.120-2008, SEC.94.)

IC 24-6-8
Chapter 8. Standard Weights for Certain Grain Products

IC 24-6-8-1
Standard weights; violation; exceptions

Sec. 1. It is a Class C infraction for a person to pack for sale, sell, offer, or expose for sale any of the following commodities except in containers of net avoirdupois weights of five (5), ten (10), twenty-five (25), fifty (50), and one hundred (100) pounds, and multiples of one hundred (100) pounds: Wheat flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, corn meals, hominy and hominy grits. However, this section does not apply to (1) the retailing of flours, meals, hominy and hominy grits direct to the consumer from bulk stock, (2) the sale of flours and meals to commercial bakers or blenders in containers of more than one hundred (100) pounds, (3) the sale of flours and meals for export, (4) flours, meals, hominy and hominy grits packed in containers the net contents of which are less than three (3) pounds, or (5) the exchange of wheat for flour by mills grinding for toll.
(Formerly: Acts 1945, c.150, s.1; Acts 1947, c.130, s.1.) As amended by Acts 1978, P.L.2, SEC.2425.

IC 24-6-8-2
Repealed

(Repealed by Acts 1978, P.L.2, SEC.2426.)

IC 24-6-9

Chapter 9. Grades for Sweet Potatoes

IC 24-6-9-1

Indiana grades for sweet potatoes

Sec. 1. The following grades for sweet potatoes are hereby established and shall be known as the Indiana Grades for sweet potatoes.

Grade No. 1 shall consist of cured sweet potatoes from warm air storage, shall be not less than one and one-half (1 1/2) inches and not more than three and one-half (3 1/2) inches in diameter, and not less than four (4) inches and not more than eleven (11) inches in length, but the length may be less than four (4) inches if the diameter is two and one-fourth (2 1/4) inches or more. Sweet potatoes which are graded at the time they are dug shall be not less than one and three-fourths (1 3/4) inches and not more than four (4) inches in diameter. All sweet potatoes classed as grade No. 1 sweet potatoes shall be sound, of similar varietal characteristics, practically free from dirt or other foreign matter, frost injury, decay, bruises, cuts, scars, cracks and damage caused by heat, disease, insects or mechanical or other means. For the purposes of allowing for variations incident to commercial grading and handling, five per cent (5%) by weight, of any lot may not meet the requirements as to diameter and length, and, in addition, six per cent (6%) by weight may be below the other requirements of this grade.

Grade No. 2 shall consist of sound sweet potatoes, of similar varietal characteristics, not meeting the requirements of grade No. 1, which are free from serious damage caused by dirt or other foreign matter, frost injury, decay, bruises, cuts, scars, cracks, heat, disease, insects or mechanical or other means. Cured or dried sweet potatoes classified as grade No. 2 shall be not less than one (1) inch and not more than one and one-half (1 1/2) inches in diameter. Green sweet potatoes shall be not less than one and one-half (1 1/2) inches and not more than two (2) inches in diameter. For the purpose of allowing for variations incident to commercial grading and handling, five per cent (5%) by weight, of any lot of cured or dried sweet potatoes may not meet the requirements as to diameter and length, and, in addition, six per cent (6%) by weight, may be below the other requirements of this grade; and five per cent (5%) by weight, of any lot of green sweet potatoes may not meet the requirements as to diameter and length.

(Formerly: Acts 1925, c.136, s.1.)

IC 24-7

ARTICLE 7. RENTAL PURCHASE AGREEMENTS

IC 24-7-1

Chapter 1. Application

IC 24-7-1-0.1

Application of article

Sec. 0.1. The addition of this article by P.L.254-1987 does not apply to rental purchase agreements consummated before September 1, 1987.

As added by P.L.220-2011, SEC.399.

IC 24-7-1-1

Rental purchase agreements affected; lessee's residence

Sec. 1. (a) This article applies to a rental purchase agreement if:

(1) the rental purchase agreement is entered into in Indiana;

(2) the lessee is a resident of Indiana at the time a lessor offering the rental purchase agreement solicits the rental purchase agreement or a modification of the rental purchase agreement by any mode of communication; or

(3) the lessee is a resident of Indiana at the time the lessor offering a rental purchase agreement receives either a signed writing evidencing the creation or modification of a rental purchase agreement or a written offer from the lessee to enter into or modify a rental purchase agreement.

(b) For the purposes of this article, the residence of a lessee is the address given by the lessee as the lessee's residence in any writing signed by the lessee in connection with a rental purchase agreement. Until the lessee notifies the lessor of a new or different residence address, the given residence address is presumed to be unchanged.

As added by P.L.254-1987, SEC.1.

IC 24-7-1-2

Inapplicable law

Sec. 2. Except as provided in this article, the provisions of:

(1) the Federal Consumer Credit Protection Act and regulations adopted under it;

(2) IC 24-4.5;

(3) IC 26-1-1-201(37);

(4) IC 26-1-2 concerning the creation of a security interest in property;

(5) IC 26-1-9.1; and

(6) rules adopted under the statutes described in subdivisions (2) through (5);

do not apply to a rental purchase agreement.

As added by P.L.254-1987, SEC.1. Amended by P.L.57-2000, SEC.10.

IC 24-7-1-3

Waiver of statutory protections; settlement

Sec. 3. Except as provided in this article, a lessor or lessee may not waive or agree to forego rights or benefits under this article. However, this article does not prohibit the settlement of a claim under this article.

As added by P.L.254-1987, SEC.1.

IC 24-7-1-4

Legal and equitable principles applicable

Sec. 4. Except as provided in this article, this article does not limit the application of the principles of law and equity to a rental purchase agreement.

As added by P.L.254-1987, SEC.1.

IC 24-7-1-5

Agreements involving titled property prohibited

Sec. 5. Rental purchase agreements involving:

(1) motor vehicles (as defined in IC 9-13-2-105(a)); or

(2) other titled property;

are prohibited under this article.

As added by P.L.138-1990, SEC.3. Amended by P.L.2-1991, SEC.85; P.L.63-2001, SEC.5 and P.L.134-2001, SEC.5; P.L.213-2007, SEC.28; P.L.217-2007, SEC.27.

IC 24-7-1-6

Inapplicability to rental of musical instruments through programs at schools

Sec. 6. This article does not apply to the rental of a musical instrument through a program offered at an elementary or a secondary school with the approval of the school.

As added by P.L.90-2008, SEC.19. Amended by P.L.35-2010, SEC.89.

IC 24-7-1-7

Inapplicability to rental purchase of a dwelling

Sec. 7. This article does not apply to the rental purchase of a dwelling (as defined in IC 24-4.4-1-301(11)), regardless of whether the dwelling is assessed as real or personal property for property tax purposes.

As added by P.L.89-2011, SEC.23.

IC 24-7-2
Chapter 2. Definitions

IC 24-7-2-1
Applicability of definitions
Sec. 1. The definitions in this chapter apply throughout this article.
As added by P.L.254-1987, SEC.1.

IC 24-7-2-2
"Department" defined
Sec. 2. "Department" has the meaning set forth in IC 24-4.5-6-103.
As added by P.L.254-1987, SEC.1. Amended by P.L.14-1992, SEC.62.

IC 24-7-2-3
"Consummation" defined
Sec. 3. "Consummation" means the time or date on which the lessee signs a rental purchase agreement.
As added by P.L.254-1987, SEC.1.

IC 24-7-2-4
"Federal Consumer Credit Protection Act" defined
Sec. 4. "Federal Consumer Credit Protection Act" has the meaning set forth in IC 24-4.5-1-302.
As added by P.L.254-1987, SEC.1.

IC 24-7-2-5
"Lessee" defined
Sec. 5. "Lessee" means an individual who rents property under a rental purchase agreement.
As added by P.L.254-1987, SEC.1.

IC 24-7-2-6
"Lessor" defined
Sec. 6. "Lessor" means an individual or other person who, in the ordinary course of business:
(1) leases;
(2) offers to lease;
(3) arranges for the leasing of; or
(4) accepts assignments of leases of;
property under a rental purchase agreement.
As added by P.L.254-1987, SEC.1. Amended by P.L.138-1990, SEC.4.

IC 24-7-2-7
"Period" defined
Sec. 7. "Period" means a day, week, month, or other subdivision of a year.

As added by P.L.254-1987, SEC.1.

IC 24-7-2-8
"Property" defined

Sec. 8. "Property" means any property that:

(1) is not real property or intangible personal property under Indiana law; and

(2) is made available under a rental purchase agreement.

As added by P.L.254-1987, SEC.1.

IC 24-7-2-9
"Rental purchase agreement" defined

Sec. 9. (a) "Rental purchase agreement" means an agreement between a lessor and a lessee that:

(1) provides for the use of personal property by an individual primarily for personal, family, or household purposes;

(2) has an initial period of four (4) months or less;

(3) is automatically renewable with each rental payment; and

(4) permits the lessee to become the owner of the property.

(b) The term includes:

(1) an agreement; or

(2) a transaction;

that the director determines to be a rental purchase agreement, despite efforts by a person to structure the transaction in a manner that the director determines is being used to avoid application of this article.

As added by P.L.254-1987, SEC.1. Amended by P.L.138-1990, SEC.5; P.L.213-2007, SEC.29; P.L.217-2007, SEC.28.

IC 24-7-3

Chapter 3. Disclosures; Form of Rental Purchase Agreement

IC 24-7-3-1

Written agreement

Sec. 1. The lessor shall reduce a rental purchase agreement to writing.

As added by P.L.254-1987, SEC.1.

IC 24-7-3-2

Alternate disclosure requirements

Sec. 2. A lessor shall disclose to a lessee the information required under section 3 of this chapter. However, if the Federal Consumer Credit Protection Act is amended to govern lease-purchase disclosures, the lessor may disclose the information required under the Federal Consumer Credit Protection Act instead of the disclosures required under this chapter.

As added by P.L.254-1987, SEC.1.

IC 24-7-3-3

Disclosures required

Sec. 3. The lessor shall disclose the following:

(1) A brief description of the property sufficient to identify the property to the lessee and lessor.

(2) The total number, total amount, and timing of all rental payments, including taxes paid to or through the lessor, necessary to acquire ownership of the property.

(3) A statement that the lessee will not own the property until the lessee has:

(A) made the number of rental payments and the total of rental payments necessary to acquire ownership of the property; or

(B) exercised an early purchase option.

(4) A statement that charges in addition to the total rental payments necessary to acquire ownership of the leased property may be imposed under the agreement and that the lessee should read the contract for an explanation of these charges.

(5) A brief explanation of all additional charges that may be imposed under the agreement. If a security deposit is required, the explanation must include an explanation of the conditions under which the deposit will be returned to the lessee.

(6) A statement indicating who is responsible for property if it is lost, stolen, damaged, or destroyed.

(7) A statement indicating that the value of lost, stolen, damaged, or destroyed property is its fair market value on the date that it is lost, stolen, damaged, or destroyed.

(8) A statement indicating whether the property is new or used. However, property that is new may be described as used.

(9) A statement that the lessee has an early purchase option to purchase the property at any time during the period that the

rental purchase agreement is in effect. The statement must specify the price or the formula or other method for determining the price at which the property may be purchased.

(10) A brief explanation of the lessee's right to reinstate a rental purchase agreement and a description of the amount, or method of determining the amount, of any penalty or other charge applicable under IC 24-7-5 to the reinstatement of a rental purchase agreement.

As added by P.L.254-1987, SEC.1.

IC 24-7-3-4
Form of disclosures

Sec. 4. (a) The disclosures required under section 3 of this chapter shall be stated:

(1) clearly and conspicuously; and

(2) in words and phrases that have a nontechnical meaning.

(b) Except as provided in the rules adopted by the department, the disclosures required under section 3 of this chapter may be included in the rental purchase agreement or in a separate writing that references the rental purchase agreement.

(c) Except as provided in the rules adopted by the department, the disclosures required under section 3 of this chapter may be provided in a different sequence than the sequence set forth in section 3 of this chapter.

(d) Additional information or explanations supplied by the lessor may not have the effect of circumventing, evading, or unduly complicating the information required to be disclosed.

As added by P.L.254-1987, SEC.1. Amended by P.L.172-1997, SEC.10.

IC 24-7-3-5
Time of disclosure

Sec. 5. The lessor shall disclose all information required in section 3 of this chapter before the rental purchase agreement is consummated.

As added by P.L.254-1987, SEC.1.

IC 24-7-3-6
Copy of written and signed agreement to lessee

Sec. 6. Before any rental payment is due under the rental purchase agreement, the lessor shall obtain the signature of the lessee on the writing containing the terms of the rental purchase agreement and shall furnish the lessee with a copy of the written and signed rental purchase agreement. If there is more than one (1) lessee in a rental purchase agreement, delivery of a copy of the rental purchase agreement to one (1) of the lessees is sufficient to comply with this section.

As added by P.L.254-1987, SEC.1.

IC 24-7-3-7

Size of print

Sec. 7. The terms of the rental purchase agreement shall be set forth in not less than 8 point type.

As added by P.L.254-1987, SEC.1.

IC 24-7-3-8

Rental payment receipts

Sec. 8. The lessor shall furnish the lessee, without request by the lessee, a written receipt for each rental payment made:

(1) in cash; or

(2) by another method of rental payment that does not provide evidence of the rental payment.

As added by P.L.254-1987, SEC.1.

IC 24-7-4

Chapter 4. Limitations

IC 24-7-4-1

Ownership acquisition

Sec. 1. At any time after the first rental payment is made, the lessee may acquire ownership of the property under the terms specified in the rental purchase agreement.

As added by P.L.254-1987, SEC.1.

IC 24-7-4-2

Contractual abridgement of rights and duties

Sec. 2. A rental purchase agreement may not contain a provision that conflicts with the rights and duties imposed under this article.

As added by P.L.254-1987, SEC.1.

IC 24-7-4-3

Assignment of earnings as payment

Sec. 3. (a) A lessor may not accept an assignment of earnings from the lessee for payment or as security for payment for a charge arising under a rental purchase agreement.

(b) An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the lessee.

(c) This section does not prohibit a lessee from authorizing deductions from the lessee's earnings if the authorization is revocable and is otherwise permitted by law.

As added by P.L.254-1987, SEC.1.

IC 24-7-4-4

Acceptance of authorization on behalf of lessee waiving service of process, confessing judgment, or enforcing payment

Sec. 4. A lessor may not take or accept a power of attorney or other authorization from the lessee, or other person acting on the lessee's behalf, to waive service of process, confess judgment, or enforce payment of money claimed by the lessor in violation of IC 34-54-3 or IC 34-54-4.

As added by P.L.254-1987, SEC.1. Amended by P.L.1-1998, SEC.130.

IC 24-7-4-5

Required waiver of lessee's defenses, counterclaims, or rights of action in collecting payments or charges

Sec. 5. A lessor may not require a lessee to waive any defense, counterclaim, or right of action against:

(1) the lessor; or

(2) a person acting on the lessor's behalf, as the lessee's agent;

in collection of rental payments or charges under the rental purchase agreement.

As added by P.L.254-1987, SEC.1.

IC 24-7-4-6
Repossession limited

Sec. 6. A lessor may not require a lessee to authorize the lessor or a person acting on the lessor's behalf to unlawfully enter upon the lessee's premises or to commit any breach of the peace in the repossession of the property.

As added by P.L.254-1987, SEC.1.

IC 24-7-4-7
Prejudgment garnishment

Sec. 7. A lessor may not require a lessee to authorize a prejudgment garnishment of the lessee's wages.

As added by P.L.254-1987, SEC.1.

IC 24-7-4-8
Repealed

(Repealed by P.L.45-1995, SEC.33.)

IC 24-7-4-9
Assignee of lessor's rights; lessee's rights against assignee; contractual abridgement of lessee's claims or defenses

Sec. 9. (a) With respect to a rental purchase agreement, an assignee of the rights of the lessor is subject to all claims and defenses of the lessee against the lessor arising from the lease of property or services.

(b) A claim or defense of a lessee specified in subsection (a) may be asserted against the assignee under this section only if the lessee has made a good faith attempt to obtain satisfaction from the lessor with respect to the claim or defense and then only to the extent of the amount owing the assignee with respect to the sale or the lease of the property or services to which the claim or defense arose at the time the assignee has written notice of the claim or defense. Written notice of the claim or defense may be given before the attempts specified in this subsection. For the purposes of this subsection, written notice is any written notification other than notice on a coupon, billing statement, or any other payment medium or material supplied by the assignee.

(c) An agreement may not limit or waive the claims or defenses of a lessee under this section.

As added by P.L.254-1987, SEC.1. Amended by P.L.45-1995, SEC.18.

IC 24-7-4-10
Notice and proof of assignment

Sec. 10. (a) The lessee may pay the original lessor until the lessee receives written notification:

(1) that assignment of the rights to rental payments under the rental purchase agreement has occurred; and

(2) of the person to whom rental payments are to be made.

(b) A notification that does not reasonably identify the rights

assigned is ineffective.

(c) If requested by the lessee, the assignee must take reasonable steps to furnish proof that the assignment has been made. Unless the assignee furnishes the proof, the lessee may pay the original lessor.
As added by P.L.254-1987, SEC.1.

IC 24-7-4-11
Additional payments

Sec. 11. Except as provided in section 1 of this chapter, a lessee may not be required to:

(1) make any payment in addition to regular rental payments in order to acquire ownership of the property; or

(2) pay rental payments totaling more than the cost to acquire ownership stated in the rental purchase agreement.

As added by P.L.254-1987, SEC.1.

IC 24-7-4-12
Mandatory insurance; early termination of agreement or item return penalties; fees or charges imposed on cosigner

Sec. 12. A lessor may not require any of the following:

(1) The mandatory purchase of insurance by the lessee from the lessor.

(2) A penalty for early termination of a rental purchase agreement or for the return of an item at any point, except charges authorized under IC 24-7-5.

(3) A payment by a cosigner of the rental purchase agreement for any fees or charges that may not be imposed on the lessee as part of the rental purchase agreement.

As added by P.L.254-1987, SEC.1.

IC 24-7-4-13
Acceptance and application of payments; payments exceeding scheduled amount due

Sec. 13. (a) Except as provided in subsection (b), a lessor may not accept payment from a lessee and hold the amount of the payment in a reserve account for future payments. Any amounts paid by a lessee must be applied as a rental payment or to an accrued permissible additional charge.

(b) If a lessee makes a payment that exceeds the sum of the scheduled rental payment and any permitted additional charges that are due, the lessor may hold the excess funds in a reserve account subject to the following conditions:

(1) The balance of the lessee's reserve account may not exceed the amount of the next scheduled rental payment.

(2) If the balance in the lessee's reserve account reaches the limit specified in subdivision (1), the lessor shall apply the funds to the lessee's next scheduled rental payment.

(c) This section may not be construed to preclude a lessor from accepting and applying multiple rental payments before the rental payments' scheduled due dates.

As added by P.L.35-2010, SEC.90.

IC 24-7-5

Chapter 5. Additional Charges

IC 24-7-5-1

Nonrefundable processing fee

Sec. 1. A lessor may contract for and receive an initial nonrefundable processing fee not to exceed ten dollars ($10).

As added by P.L.254-1987, SEC.1. Amended by P.L.138-1990, SEC.6.

IC 24-7-5-2

Security deposit refunds

Sec. 2. A lessor may refuse to refund any part of a security deposit provided by a lessee only under the conditions authorized in the rental purchase agreement.

As added by P.L.254-1987, SEC.1.

IC 24-7-5-3

Delivery charges

Sec. 3. (a) A lessor may contract for and receive a reasonable delivery charge if the lessor actually delivers the item to the lessee at a place other than the lessor's place of business.

(b) The delivery charge may be assessed in lieu of and not in addition to any initial processing charge imposed under section 1 of this chapter.

As added by P.L.254-1987, SEC.1.

IC 24-7-5-4

Rental payment pickup charges

Sec. 4. (a) A lessor may contract for and receive a charge for picking up rental or other payments from the lessee if the lessor is required or requested to visit the lessee to pick up a payment at a place other than the lessor's place of business.

(b) A charge assessed under this section may not exceed ten dollars ($10).

As added by P.L.254-1987, SEC.1. Amended by P.L.138-1990, SEC.7.

IC 24-7-5-5

Late charges or delinquency fees

Sec. 5. (a) The parties may contract for late charges or delinquency fees as follows:

(1) For rental purchase agreements with monthly renewal dates, a late charge not exceeding eight dollars ($8) may be assessed on any rental payment not made within five (5) days after:

(A) the renewal date for the agreement; or

(B) the return of the property is required under the rental purchase agreement.

(2) For rental purchase agreements with weekly or biweekly renewal dates, a late charge not exceeding the amount specified

in subsection (e) may be assessed on any rental payments not made within two (2) days after:

(A) the renewal date for the agreement; or

(B) the return of the property is required under the rental purchase agreement.

(b) A late charge on a rental purchase agreement may be collected only once on any accrued rental payment, no matter how long it remains unpaid.

(c) A late charge may be collected at any time after it accrues.

(d) A late charge may not be assessed against a rental payment that is timely made, even though an earlier late charge has not been paid in full.

(e) The amount that may be assessed under subsection (a)(2) is as follows:

(1) Three dollars ($3) for any payment not greater than twenty dollars ($20).

(2) Five dollars ($5) for any payment greater than twenty dollars ($20).

As added by P.L.254-1987, SEC.1. Amended by P.L.138-1990, SEC.8; P.L.14-1992, SEC.63; P.L.213-2007, SEC.30; P.L.217-2007, SEC.29.

IC 24-7-5-5.5

Charge for dishonored checks, negotiable orders, or share drafts

Sec. 5.5. A lessor may contract for and receive a charge not to exceed twenty-five dollars ($25) for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the lessee.

As added by P.L.213-2007, SEC.31; P.L.217-2007, SEC.30.

IC 24-7-5-6

Reinstatement fee

Sec. 6. A reinstatement fee imposed under IC 24-7-6-2 may not exceed five dollars ($5).

As added by P.L.254-1987, SEC.1. Amended by P.L.138-1990, SEC.9.

IC 24-7-5-7

Sales and use taxes

Sec. 7. In addition to those charges allowable by this chapter, the lessor may require the lessee to pay any state sales and use taxes levied in connection with a rental purchase agreement.

As added by P.L.254-1987, SEC.1.

IC 24-7-5-8

Official fees

Sec. 8. In addition to those charges allowable by this chapter, a lessor may contract for and receive from the lessee an amount equal to all official fees required to be paid under a rental purchase agreement.

As added by P.L.254-1987, SEC.1.

IC 24-7-5-10
Liability of lessee for replacement cost of leased property; fair market value

Sec. 10. If a lessee is liable to a lessor for the replacement cost of property leased under a rental purchase agreement, the lessor may not charge the lessee more than the fair market value for the property.

As added by P.L.138-1990, SEC.10.

IC 24-7-5-11
Liability waiver fees

Sec. 11. (a) In addition to the other charges permitted by this chapter, a lessor and a lessee may contract for a liability waiver fee in the following amounts:

(1) In the case of a rental purchase agreement with weekly or biweekly renewal dates, the liability waiver fee may not exceed the greater of:

(A) ten percent (10%) of a periodic lease payment due; or

(B) two dollars ($2).

(2) In the case of a rental purchase agreement with monthly renewal dates, the liability may not exceed the greater of:

(A) ten percent (10%) of a periodic lease payment due; or

(B) five dollars ($5).

(b) The selling or offering for sale of a liability damage waiver under this section is subject to the following prohibitions and requirements:

(1) A lessor may not sell or offer to sell a liability damage waiver unless all restrictions, conditions, and exclusions are:

(A) printed in the rental purchase agreement, or in a separate agreement, in 8 point type or larger; or

(B) written in ink or typewritten in or on the face of the rental purchase agreement in a blank space provided therefor.

(2) The liability damage waiver may exclude only loss or damage to the property that is the subject of the rental purchase agreement caused by moisture, scratches, mysterious disappearance, vandalism, abandonment of the property, or any other damage intentionally caused by the lessee or that results from the lessee's willful or wanton misconduct.

(3) The liability damage waiver agreement must include a statement of the total charge for the liability damage waiver. The liability damage waiver agreement must display in 8 point boldface type the following:

"NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A LIABILITY DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE PROPERTY. BEFORE DECIDING WHETHER TO PURCHASE THE LIABILITY DAMAGE

WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN HOMEOWNERS OR CASUALTY INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL PROPERTY, AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS LIABILITY DAMAGE WAIVER IS NOT MANDATORY AND MAY BE DECLINED.".

(4) The restrictions, conditions, and exclusions of the liability damage waiver must be disclosed on the agreement or on a separate agreement, sheet, or handout given to the lessee before entering into the rental purchase agreement. The separate contract, sheet, or handout must be signed or otherwise acknowledged by the lessee as being received before entering into the rental purchase agreement.

(5) The lessor shall keep and maintain records as prescribed by the director of the department. The director of the department may inspect the records and determine whether the rates charged under this section are fair and reasonable.

As added by P.L.42-1993, SEC.17. Amended by P.L.172-1997, SEC.11.

IC 24-7-5-12

Fee for accepting rental payments by telephone

Sec. 12. (a) A lessor may contract for and receive a fee for accepting rental payments by telephone in connection with a rental purchase agreement, if all of the following conditions are met:

(1) The fee is assessed only upon request by the lessee for the underlying payment by telephone service.

(2) The payment by telephone service is not established in advance, under the rental purchase agreement or otherwise, as the expected method for making rental payments under the rental purchase agreement.

(3) The fee does not exceed one dollar and fifty cents ($1.50).

(4) The lessee retains the right to make rental payments by payment methods in connection with which no additional fee would be assessed or incurred (including in-person payments and payments by mail) as a result of such alternative payment methods.

(5) The fee is contracted for and disclosed by the lessor in the rental purchase agreement.

(6) The lessor posts a sign at each store location disclosing to existing and prospective lessees:

(A) the amount of the fee;

(B) the lessee's right and option to make rental payments by alternative payment methods and not be assessed or incur an additional fee; and

(C) the alternative payment methods offered by the lessor in connection with which no additional fee would be assessed or incurred.

(7) The lessor's books and records provide an audit trail sufficient to allow the department and its examiners to confirm the lessee's compliance with the conditions listed in subdivisions (1) through (6).

(b) A fee may not be charged under this section unless there is interaction between a live employee or representative of the lessor and the lessee.

As added by P.L.222-2013, SEC.4.

IC 24-7-6

Chapter 6. Reinstatement; Garnishment; Unconscionable Agreements

IC 24-7-6-1

Reinstatement of original agreement; conditions

Sec. 1. A lessee who fails to make timely rental payments has the right to reinstate the original rental purchase agreement under the original terms of the agreement without losing any rights or options previously acquired under the rental purchase agreement and without additional charges or penalties, except charges or penalties authorized under section 2 of this chapter, if:

(1) subsequent to having failed to make a timely rental payment, the lessee surrenders the property to the lessor not later than seven (7) days after the date the lessor requests the property be surrendered; and

(2) not more than one hundred twenty (120) days elapse after the date the lessee surrenders the property.

As added by P.L.254-1987, SEC.1. Amended by P.L.222-2013, SEC.5.

IC 24-7-6-2

Condition precedent to reinstatement; charges

Sec. 2. (a) As a condition precedent to reinstatement of the rental purchase agreement, a lessor may charge:

(1) the outstanding balance of any accrued rental payments and delinquency charges;

(2) a reinstatement fee not exceeding the amount allowed under IC 24-7-5-6; and

(3) delivery charges not exceeding the amounts allowed under IC 24-7-5-3 if redelivery of the item is necessary.

(b) A reinstatement fee may not be charged under subsection (a)(2) unless the property has been returned to the lessor and is in the lessor's possession.

As added by P.L.254-1987, SEC.1. Amended by P.L.138-1990, SEC.11.

IC 24-7-6-3

Same or substituted leased item upon reinstatement; revised disclosures

Sec. 3. If reinstatement occurs under sections 1 through 2 of this chapter, the lessor shall provide the lessee with either the same item leased by the lessee before reinstatement or a substitute item of comparable quality and condition. If any information disclosed under IC 24-7-3-2 is inaccurate after the delivery of a substitute item, the lessor shall provide the lessee with a revised set of disclosures. If there is more than one (1) lessee in a rental purchase agreement, delivery of a copy of the revised set of disclosures to one (1) of the lessees is sufficient to comply with this section.

As added by P.L.254-1987, SEC.1.

IC 24-7-6-4
Prejudgment garnishment proceedings

Sec. 4. (a) IC 24-4.5-5-105 and IC 24-4.5-5-106 apply to garnishments related to a rental purchase agreement.

(b) With respect to a debt arising from a rental purchase agreement, regardless of where made, the lessor may not attach unpaid earnings of the debtor by garnishment proceedings or other similar proceedings before the entry of a judgment in an action against the lessee arising from a rental purchase agreement.

As added by P.L.254-1987, SEC.1.

IC 24-7-6-5
Unconscionable agreements

Sec. 5. (a) If the court as a matter of law finds the rental purchase agreement or any clause of a rental purchase agreement to have been unconscionable at the time it was made the court may:

(1) refuse to enforce the rental purchase agreement;

(2) enforce the remainder of the rental purchase agreement without the unconscionable clause; or

(3) limit the application of any unconscionable clause to avoid an unconscionable result.

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

(c) For the purposes of this section, a rental payment, charge, or practice expressly permitted by this article is not in itself unconscionable.

As added by P.L.254-1987, SEC.1.

IC 24-7-7

Chapter 7. Enforcement; Adjustment in Maximum Fees

IC 24-7-7-1

Enforcement by department; civil penalty

Sec. 1. (a) The department shall enforce this article. To carry out this responsibility, the department may do the following:

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

(2) Issue and enforce administrative orders under IC 4-21.5.

(3) Counsel persons and groups on their rights and duties under this article.

(4) Establish programs for the education of consumers with respect to rental purchase agreement practices and problems.

(5) Make studies appropriate to effectuate the purposes and policies of this article and make the results available to the public.

(6) Adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to carry out this article.

(7) Maintain more than one (1) office within Indiana.

(8) Bring a civil action to restrain a person from violating this article and for other appropriate relief.

(b) If the department determines, after notice and an opportunity 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.

As added by P.L.254-1987, SEC.1. Amended by P.L.1-1990, SEC.245; P.L.138-1990, SEC.12; P.L.172-1997, SEC.12; P.L.35-2010, SEC.91; P.L.89-2011, SEC.24.

IC 24-7-7-2

Examinations of books and records; record keeping requirements; investigations; court order compelling compliance; confidentiality; record retention; examination of vendors

Sec. 2. (a) A person subject to this article shall make the books and records of the person reasonably available for inspection by the department or the department's representative. At a minimum, every lessor shall keep a record of all payments remitted by the lessee on a rental purchase agreement, including the following:

(1) The name of the lessee.

(2) The date of each transaction.

(3) The total amount of each payment.

(4) A breakdown of each payment reflecting:

(A) each type of charge; and

(B) the amount of each type of charge.

The method of maintaining this data is at the discretion of the lessor, if hard copies of the required data are readily available. The record keeping system of the lessor shall be made available in Indiana for

examination. The director shall determine the sufficiency of the records and whether the lessor has made the required information reasonably available.

(b) In administering this article and in order to determine compliance with this article, the department or the department's representative may examine the books and records of persons subject to the article and may make investigations of persons necessary to determine compliance. For this purpose, the department may administer oaths or affirmations, and, upon the department's own motion or upon request of any party, may subpoena witnesses, compel their attendance, compel testimony, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(c) If the person's records are located outside Indiana, the person shall, at the person's option, either make them available to the department at a convenient location in Indiana, or pay the reasonable and necessary expenses for the department or the department's representative to examine them at the place where they are maintained. The department may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the department's behalf.

(d) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the department may apply to a court for an order compelling compliance.

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

(f) A lessor shall use generally accepted accounting principles and practices in keeping books and records so that the department or the department's representative may determine if the lessor is in compliance with this article or a rule adopted under this article.

(g) A lessor shall keep the lessor's books and records that pertain to a rental purchase agreement for at least two (2) years after the rental purchase agreement has terminated.

(h) If a lessor contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the lessor and be subject to the department's routine examination procedures, the person that provides the service to the lessor 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 lessor that receives services from the person refusing the examination to:

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

(2) otherwise cease conducting business with the person.

As added by P.L.254-1987, SEC.1. Amended by P.L.138-1990, SEC.13; P.L.172-1997, SEC.13; P.L.35-2010, SEC.92.

IC 24-7-7-3

Assurance of discontinuance of misconduct

Sec. 3. If it is claimed that a person has engaged in conduct subject to an order by the department or by a court under this chapter, 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 before the assurance the person engaged in the conduct described in the assurance.

As added by P.L.254-1987, SEC.1. Amended by P.L.172-1997, SEC.14.

IC 24-7-7-4

Repealed

(Repealed by P.L.138-1990, SEC.15.)

IC 24-7-8
Chapter 8. Registration of Lessors

IC 24-7-8-1
Notification by lessor

Sec. 1. A lessor shall file notification with the department:

(1) within thirty (30) days after soliciting or entering into a rental purchase agreement subject to this article; and

(2) before February 1 in each subsequent year that the lessor solicits or enters into a rental purchase agreement subject to this article.

As added by P.L.254-1987, SEC.1. Amended by P.L.172-1997, SEC.15.

IC 24-7-8-2
Contents of notification

Sec. 2. The notification required under section 1 of this chapter must include the following:

(1) The name of the lessor.

(2) The name in which business is transacted if different from subdivision (1).

(3) The address of the principal office, which may be outside Indiana.

(4) The address of all offices or stores, if any, in Indiana at which rental purchase agreements are made.

(5) If rental purchase agreements are made in a place other than an office or retail store in Indiana, a brief description of the manner in which they are made.

(6) The address of the designated agent upon whom service of process may be made in Indiana.

(7) Other information required by the director of the department.

As added by P.L.254-1987, SEC.1. Amended by P.L.35-2010, SEC.93.

IC 24-7-8-3
Corrective notification

Sec. 3. After a lessor has filed an initial or a subsequent notification under section 1 of this chapter, the lessor shall notify the department not later than thirty (30) days after:

(1) the lessor has a change in name or address;

(2) the lessor opens a new office or store, closes an existing office or store, or relocates an existing office or store;

(3) the lessor files for bankruptcy or reorganization; or

(4) the lessor is notified that the lessor is subject to revocation or suspension proceedings by a state or governmental authority with respect to the lessor's rental purchase activities.

As added by P.L.254-1987, SEC.1. Amended by P.L.216-2013, SEC.15.

IC 24-7-8-4

Fees; costs of examination by department; late fees

Sec. 4. (a) A lessor required to file a notification with the department under section 1 of this chapter shall pay to the department the following fees:

(1) A fee fixed by the department under IC 28-11-3-5 with the initial notification filed with the department.

(2) A fee fixed by the department under IC 28-11-3-5 for each place of business operated by the lessor on December 31 of the preceding year with each annual notification subsequently filed with the department.

(b) In addition to the fee required under subsection (a)(2), if the department examines the books and records of the lessor, the lessor shall pay to the department all reasonably incurred costs of the examination in accordance with the fee schedule adopted by the department under IC 28-11-3-5.

(c) The department may impose a fee fixed by the department under IC 28-11-3-5 for each day a lessor is late in:

(1) submitting the information required under IC 24-7-8-2; or

(2) paying a fee under subsection (a) or (b).

As added by P.L.254-1987, SEC.1. Amended by P.L.138-1990, SEC.14; P.L.14-1992, SEC.64; P.L.45-1995, SEC.19; P.L.10-2006, SEC.23 and P.L.57-2006, SEC.23; P.L.35-2010, SEC.94; P.L.27-2012, SEC.31.

IC 24-7-8-5

Directors, executive officers, Indiana store managers; criminal background checks

Sec. 5. Before appointing or hiring any director, executive officer, or Indiana store manager, a lessor must perform a criminal background check on the candidate and retain, until the department's next examination of the lessor is completed, records of the background check in the lessor's files.

As added by P.L.216-2013, SEC.16.

IC 24-7-9

Chapter 9. Violations; Civil Damages

IC 24-7-9-1

False or inaccurate information in agreements or disclosures; offense

Sec. 1. A lessor who knowingly gives false or inaccurate information in a rental purchase agreement or a written disclosure required under this article commits a Class C misdemeanor.

As added by P.L.254-1987, SEC.1.

IC 24-7-9-2

Failure to provide required information; offense

Sec. 2. A lessor who knowingly fails to provide information that the lessor is required to disclose to a lessee or provide to the department under this article commits a Class C misdemeanor.

As added by P.L.254-1987, SEC.1. Amended by P.L.172-1997, SEC.16.

IC 24-7-9-3

Unauthorized or excessive charges; offense

Sec. 3. A lessor who knowingly makes a charge under a rental purchase agreement that:

(1) is not authorized under this article; or

(2) exceeds the amount authorized under this article;

commits a Class C misdemeanor.

As added by P.L.254-1987, SEC.1.

IC 24-7-9-4

Civil damages recoverable by lessee

Sec. 4. (a) If a lessor violates this article and a lessee who is a party to the agreement prevails in the proceeding, the lessee may:

(1) recover from the lessor committing the violation; or

(2) set off in a counterclaim in any action by the lessor committing the violation;

the amounts described in subsection (b).

(b) The lessee in an action described in subsection (a) may recover all of the following:

(1) Reasonable attorney's fees, as determined by the court.

(2) Court costs.

(3) The greater of:

(A) the actual damages incurred by the lessee as a result of the violation;

(B) three hundred dollars ($300); or

(C) twenty-five percent (25%) of the total rental payments necessary to acquire ownership of the property leased under the agreement.

As added by P.L.254-1987, SEC.1.

IC 24-7-9-5

Defenses; clerical error and correction

Sec. 5. It is a defense in a criminal proceeding under sections 1 through 3 of this chapter or a civil proceeding under section 4 of this chapter that the lessor or an assignee of a lessor:

(1) failed to comply with this article as a result of a bona fide clerical error; and

(2) corrected the error after the date of execution of the rental purchase agreement.

As added by P.L.254-1987, SEC.1.

IC 24-7-9-6

Defense; compliance with rules

Sec. 6. It is a defense in a criminal proceeding under sections 1 through 3 of this chapter or a civil proceeding under section 4 of this chapter that the lessor complied with a rule adopted by the department.

As added by P.L.254-1987, SEC.1. Amended by P.L.172-1997, SEC.17.

IC 24-7-9-7

Limitation of actions

Sec. 7. Notwithstanding any other law, an action to recover the amounts described in section 4 of this chapter must be commenced within one (1) year after the action accrues.

As added by P.L.254-1987, SEC.1.

IC 24-8

ARTICLE 8. PROMOTIONAL GIFTS AND CONTESTS

IC 24-8-1

Chapter 1. Applicability

IC 24-8-1-1

Applicability of article

Sec. 1. This article applies to a promotion offer made:

(1) by a person in Indiana; or

(2) to a person in Indiana.

As added by P.L.233-1989, SEC.1.

IC 24-8-2
Chapter 2. Definitions

IC 24-8-2-1
Applicability
Sec. 1. The definitions in this chapter apply throughout this article.
As added by P.L.233-1989, SEC.1.

IC 24-8-2-2
"Person" defined
Sec. 2. "Person" means an individual, corporation, the state or its subdivisions or agencies, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.
As added by P.L.233-1989, SEC.1.

IC 24-8-2-3
"Prize" defined
Sec. 3. "Prize" means a gift, award, or other item distributed in a promotion.
As added by P.L.233-1989, SEC.1.

IC 24-8-2-4
"Promoter" defined
Sec. 4. "Promoter" means a person conducting a promotion.
As added by P.L.233-1989, SEC.1.

IC 24-8-2-5
"Promotion" defined
Sec. 5. "Promotion" means a written notice offering:
(1) property; or
(2) a chance to obtain property;
to a person based on a representation that the person has been awarded or may have been awarded a prize.
As added by P.L.233-1989, SEC.1.

IC 24-8-2-6
"Property"
Sec. 6. "Property" has the meaning set forth in IC 35-31.5-2-253.
As added by P.L.233-1989, SEC.1. Amended by P.L.114-2012, SEC.49.

IC 24-8-2-7
"Sponsor" defined
Sec. 7. "Sponsor" means a person on whose behalf a promotion is conducted to promote or advertise goods, services, or property of that person.
As added by P.L.233-1989, SEC.1.

IC 24-8-2-8

"Verifiable retail value" defined

Sec. 8. "Verifiable retail value" means:

(1) a price at which a promoter or sponsor can demonstrate that a substantial number of prizes have been sold at retail by a person other than the promoter or sponsor; or

(2) if substantiation described in this section is not available to a promoter or sponsor, no more than one and one-half (1.5) times the amount a promoter or sponsor paid for a prize.

As added by P.L.233-1989, SEC.1.

IC 24-8-3

Chapter 3. Notice

IC 24-8-3-1

Delivery

Sec. 1. Notice may be delivered by any of the following methods:

(1) Hand.

(2) Mail.

(3) Newspaper.

(4) Other periodical.

(5) Electronic mail or any other form of electronic, digital, or Internet based communication.

As added by P.L.233-1989, SEC.1. Amended by P.L.222-2005, SEC.35.

IC 24-8-3-2

Names and addresses

Sec. 2. The notice must contain the name and address of the promoter and the sponsor of the promotion.

As added by P.L.233-1989, SEC.1.

IC 24-8-3-3

Statement of verifiable retail value of prizes

Sec. 3. The notice must state the verifiable retail value of each prize a participant has been awarded or may have been awarded.

As added by P.L.233-1989, SEC.1.

IC 24-8-3-4

Statement of odds

Sec. 4. (a) If an element of chance is involved, each notice must state the odds the participant has of receiving each prize.

(b) The statement of the odds must include, for each prize, the total number of prizes to be given away and the total number of notices distributed.

(c) The total number of notices must include all notices in which a prize may be given including notices for other sponsors.

(d) If the odds of winning a prize are not accurately stated on the basis of the number of notices, the odds shall be stated in a manner that will not deceive or mislead a participant regarding the participant's chance of receiving a prize.

As added by P.L.233-1989, SEC.1.

IC 24-8-3-5

Location and size of statement of verifiable retail value and odds

Sec. 5. (a) The verifiable retail value and odds for each prize must be stated in immediate proximity with each listing of the prize in each place it appears on the notice.

(b) The verifiable retail value and odds for each prize must be listed in the same size type and boldness as the prize.

As added by P.L.233-1989, SEC.1.

IC 24-8-3-6
Attendance at sales presentation

Sec. 6. If a person is required or invited to view, hear, or attend a sales presentation in order to claim a prize that has been awarded or may have been awarded, the requirement or invitation must be conspicuously disclosed to the person in the notice in at least 10 point boldface type on the first page of the notice.
As added by P.L.233-1989, SEC.1.

IC 24-8-3-7
Additional purchases

Sec. 7. (a) If a prize is offered or given that will require a person to purchase additional goods or services, including shipping fees, handling fees, or any other charge, the requirement and additional cost to the person must be clearly disclosed on the first page of the notice.

(b) Disclosure must be made by using the following appropriately completed statement:

"You must pay $ _____ in order to receive this item.".

(c) The disclosure statement must be in at least 10 point boldface type.
As added by P.L.233-1989, SEC.1.

IC 24-8-3-8
Eligibility limitations

Sec. 8. A limitation on the eligibility of persons must be clearly disclosed in the notice in at least 10 point boldface type.
As added by P.L.233-1989, SEC.1.

IC 24-8-3-9
Presentation of winning ticket necessary

Sec. 9. If prizes will not be awarded or given if a winning ticket, token, number, lot, or other device used to determine winners in a particular promotion is not presented to a promoter or a sponsor, this fact must be clearly stated in the notice.
As added by P.L.233-1989, SEC.1.

IC 24-8-3-10
Applicability of chapter to certain book, record, video, and magazine promotions

Sec. 10. Sections 3, 5 and 7 of this chapter shall not apply in a promotion only for books, records, videos, or magazines when the person has the right to review the merchandise without obligation for at least seven (7) days and the right to obtain a full refund for the return of undamaged merchandise.
As added by P.L.233-1989, SEC.1.

IC 24-8-4

Chapter 4. Presentation

IC 24-8-4-1

Disclosure of prizes

Sec. 1. Before a demonstration, seminar, or sales presentation begins, the promoter shall inform the person of the prize, if any, the person will receive.

As added by P.L.233-1989, SEC.1.

IC 24-8-4-2

Time prizes, vouchers, or certificates given

Sec. 2. A prize or a voucher, certificate, or other evidence of obligation given instead of a prize shall be given to a person at the time the person is informed of the prize, if any, the person will receive.

As added by P.L.233-1989, SEC.1.

IC 24-8-4-3

Notices; return

Sec. 3. The notice shall be returned to the person receiving the prize at the time the prize is awarded.

As added by P.L.233-1989, SEC.1.

IC 24-8-5

Chapter 5. Prizes

IC 24-8-5-1

Substitutions for unavailable prizes; applicability to certain book, record, video, and magazine promotions

Sec. 1. (a) If the prize described in this article is not available, the person who is to receive the prize shall be given the option of choosing one (1) of the following:

(1) A prize of equal or greater value.

(2) The verifiable retail value of the prize in cash or by a valid check.

(3) A voucher, certificate, or other evidence of obligation stating that the prize will be shipped to the person within thirty (30) days at no cost to the person.

(b) If a voucher, certificate, or other evidence of obligation described in subsection (a) cannot be honored within thirty (30) days, the sponsor shall mail to a person a valid check or money order for the verifiable retail value of the prize described in this article.

(c) Subsection (b) of this section shall not apply in a promotion only for books, records, videos, or magazines when the person has the right to review the merchandise without obligation for at least seven (7) days and the right to obtain a full refund for the return of undamaged merchandise.

As added by P.L.233-1989, SEC.1.

IC 24-8-5-2

Honor of evidence of obligation by sponsors

Sec. 2. A sponsor shall honor a voucher, certificate, or other evidence of obligation if the person named as being responsible fails to honor the voucher, certificate, or other evidence of obligation.

As added by P.L.233-1989, SEC.1.

IC 24-8-6
Chapter 6. Penalty; Civil Action

IC 24-8-6-1 Version a
Violations of article; felony

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

Sec. 1. A person who knowingly or intentionally violates this article commits a Class D felony.

As added by P.L.233-1989, SEC.1.

IC 24-8-6-1 Version b
Penalty for violations

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

Sec. 1. A person who knowingly or intentionally violates this article commits a Level 6 felony.

As added by P.L.233-1989, SEC.1. Amended by P.L.158-2013, SEC.276.

IC 24-8-6-2
Civil liability

Sec. 2. A sponsor or promoter who violates this article is liable to an aggrieved person for the greater of:

(1) two (2) times the actual damages sustained by the person; or
(2) five hundred dollars ($500) plus attorney's fees.

As added by P.L.233-1989, SEC.1.

IC 24-8-6-3
Deceptive consumer sales actions; penalties

Sec. 3. A person who violates this article commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

As added by P.L.233-1989, SEC.1.

IC 24-9

ARTICLE 9. HOME LOAN PRACTICES

IC 24-9-1

Chapter 1. Application

IC 24-9-1-1

Application of article

Sec. 1. Except for IC 24-9-3-7(c)(3), IC 24-9-3-7(c)(4), and IC 24-9-3-7(c)(5), this article does not apply to:

(1) a loan made or acquired by a person organized or chartered under the laws of this state, any other state, or the United States relating to banks, trust companies, savings associations, savings banks, credit unions, or industrial loan and investment companies; or

(2) a loan:

(A) that can be purchased by the Federal National Mortgage Association, the Federal Home Loan Mortgage Association, or the Federal Home Loan Bank;

(B) to be insured by the United States Department of Housing and Urban Development;

(C) to be guaranteed by the United States Department of Veterans Affairs;

(D) to be made or guaranteed by the United States Department of Agriculture Rural Housing Service;

(E) to be funded by the Indiana housing and community development authority; or

(F) with a principal amount that exceeds the conforming loan size limit for a single family dwelling as established by the Federal National Mortgage Association.

As added by P.L.73-2004, SEC.33. Amended by P.L.1-2006, SEC.414 and P.L.181-2006, SEC.58; P.L.52-2009, SEC.4; P.L.105-2009, SEC.7.

IC 24-9-2
Chapter 2. Definitions

IC 24-9-2-1
Applicability
Sec. 1. The definitions in this chapter apply throughout this article.
As added by P.L.73-2004, SEC.33.

IC 24-9-2-2
"Benchmark rate"
Sec. 2. "Benchmark rate" means the interest rate established under Section 152 of the Federal Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1602 (aa)) and the regulations adopted under that act by the Federal Reserve Board, including 12 CFR 226.32 and the Official Staff Commentary to the regulations as amended.
As added by P.L.73-2004, SEC.33.

IC 24-9-2-3
"Bona fide discount points"
Sec. 3. "Bona fide discount points" means loan discount points that:
(1) are knowingly paid by the borrower;
(2) are paid for the express purpose of reducing the interest rate applicable to the loan;
(3) reduce the interest rate from an interest rate that does not exceed the benchmark rate; and
(4) are recouped within the first four (4) years of the scheduled loan payments;
if the reduction in the interest rate that is achieved by the payment of the loan discount points reduces the interest charged on the scheduled payments so that the borrower's dollar amount of savings in interest during the first four (4) years of the loan is equal to or greater than the dollar amount of loan discount points paid by the borrower.
As added by P.L.73-2004, SEC.33.

IC 24-9-2-4
"Borrower"
Sec. 4. "Borrower" means a person obligated to repay a home loan, including a coborrower, cosigner, or guarantor.
As added by P.L.73-2004, SEC.33.

IC 24-9-2-5
"Bridge loan"
Sec. 5. "Bridge loan" means temporary or short term financing with a maturity of less than eighteen (18) months that requires payments of interest only until the entire unpaid balance is due and payable.
As added by P.L.73-2004, SEC.33.

IC 24-9-2-6
"Creditor"

Sec. 6. (a) "Creditor" means:

(1) a person:

(A) who regularly extends consumer credit that is subject to a finance charge or that is payable by written agreement in more than four (4) installments; and

(B) to whom the debt arising from a home loan transaction is initially payable; or

(2) a person who brokers a home loan, including a person who:

(A) directly or indirectly solicits, processes, places, or negotiates home loans for others;

(B) offers to solicit, process, place, or negotiate home loans for others; or

(C) closes home loans that may be in the person's own name with funds provided by others and that are thereafter assigned to the person providing funding for the loans.

(b) The term does not include:

(1) a servicer;

(2) a state or local housing finance authority;

(3) any other state or local governmental or quasi-governmental entity; or

(4) an attorney providing legal services in association with the closing of a home loan.

As added by P.L.73-2004, SEC.33.

IC 24-9-2-7
"Deceptive act"

Sec. 7. (a) "Deceptive act" means:

(1) an act or a practice as part of a mortgage transaction (as defined in IC 24-9-3-7(a)), or of a real estate transaction (as defined in IC 24-9-3-7(b)), in which a person at the time of the transaction knowingly or intentionally:

(A) makes a material misrepresentation; or

(B) conceals material information regarding the terms or conditions of the transaction; or

(2) a violation of IC 24-5.5 concerning mortgage rescue protection fraud as set forth in IC 24-5.5-6-1.

(b) For purposes of this section, "knowingly" means having actual knowledge at the time of the transaction.

As added by P.L.73-2004, SEC.33. Amended by P.L.226-2011, SEC.16; P.L.231-2013, SEC.7.

IC 24-9-2-8
"High cost home loan"

Sec. 8. (a) "High cost home loan" means a home loan with:

(1) a trigger rate that exceeds the benchmark rate; or

(2) total points and fees that exceed:

(A) five percent (5%) of the loan principal for a home loan having a loan principal of at least forty thousand dollars

($40,000); or

(B) six percent (6%) of the loan principal for a home loan having a loan principal of less than forty thousand dollars ($40,000).

(b) Beginning July 1, 2006, the dollar amounts set forth in this section are subject to change at the times 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.

As added by P.L.73-2004, SEC.33.

IC 24-9-2-9
"Home loan"

Sec. 9. (a) "Home loan" means a loan, other than an open end credit plan, a reverse mortgage transaction, or a loan described in IC 24-9-1-1, that is secured by a mortgage or deed of trust on real estate in Indiana on which there is located or will be located a structure or structures:

(1) designed primarily for occupancy of one (1) to four (4) families; and

(2) that is or will be occupied by a borrower as the borrower's principal dwelling.

(b) The term does not include a land contract.

As added by P.L.73-2004, SEC.33. Amended by P.L.141-2005, SEC.4; P.L.89-2011, SEC.25.

IC 24-9-2-9.5
"Land contract"

Sec. 9.5. "Land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.

As added by P.L.89-2011, SEC.26.

IC 24-9-2-10
"Points and fees"

Sec. 10. (a) Except as provided in subsection (b), "points and fees" means the total of the following:

(1) Points and fees (as defined in 12 CFR 226.32(b)(1) on January 1, 2004).

(2) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in the broker's own name.

As used in subdivision (2), "compensation" does not include a payment included in subdivision (1).

(b) The term does not include the following:

(1) Bona fide discount points.

(2) An amount not to exceed one and one-half (1 1/2) points in indirect broker compensation, if the terms of the loan do not include:

(A) a prepayment penalty, in the case of a home loan described in IC 24-9-3-6(b); or

(B) a prepayment penalty that exceeds two percent (2%) of the home loan principal, in the case of a home loan other than a home loan described in IC 24-9-3-6(b).

(3) Reasonable fees paid to an affiliate of the creditor.

(4) Interest prepaid by the borrower for the month in which the home loan is closed.

As added by P.L.73-2004, SEC.33. Amended by P.L.52-2009, SEC.5.

IC 24-9-2-11
"Political subdivision"

Sec. 11. "Political subdivision" means a municipality, school district, public library, local housing authority, fire protection district, public transportation corporation, local building authority, local hospital authority or corporation, local airport authority, special service district, special taxing district, or any other type of local governmental corporate entity.

As added by P.L.73-2004, SEC.33.

IC 24-9-2-12
"Rate"

Sec. 12. "Rate" means the interest rate charged on a home loan, based on an annual simple interest yield.

As added by P.L.73-2004, SEC.33.

IC 24-9-2-13
"Total loan amount"

Sec. 13. "Total loan amount" means the principal of the home loan minus the points and fees that are included in the principal amount of the loan.

As added by P.L.73-2004, SEC.33.

IC 24-9-2-14
"Trigger rate"

Sec. 14. "Trigger rate" means:

(1) for fixed rate home loans in which the interest rate will not vary during the term of the loan, the rate as of the date of closing;

(2) for home loans in which the interest varies according to an index, the sum of the index rate as of the date of closing plus the maximum margin permitted at any time under the loan agreement; or

(3) for all other home loans in which the rate may vary at any time during the term of the loan, the maximum rate that may be charged during the term of the home loan.

As added by P.L.73-2004, SEC.33.

IC 24-9-3

Chapter 3. Prohibited Lending Practices Generally

IC 24-9-3-0.1

Chapter not applicable to loans made before January 1, 2005

Sec. 0.1. Notwithstanding the addition of this chapter and IC 24-9-4 by P.L.73-2004, a person is not subject to a prohibition or requirement of this chapter and IC 24-9-4, both as added by P.L.73-2004, with respect to a loan made before January 1, 2005.

As added by P.L.220-2011, SEC.400.

IC 24-9-3-1

Financing of certain premiums, penalties, and fees prohibited

Sec. 1. (a) A creditor making a home loan may not finance, directly or indirectly, any:

(1) credit life insurance;

(2) credit disability insurance;

(3) credit unemployment insurance;

(4) credit property insurance; or

(5) payments directly or indirectly for any cancellation suspension agreement or contract.

(b) Insurance premiums, debt cancellation fees, or suspension fees calculated and paid on a monthly basis are not considered to be financed by the creditor for purposes of this chapter.

As added by P.L.73-2004, SEC.33.

IC 24-9-3-2

Subsidized low rate loans

Sec. 2. (a) A creditor may not knowingly or intentionally replace or consolidate a zero (0) interest rate or other subsidized low rate loan made by a governmental or nonprofit lender with a high cost home loan within the first ten (10) years of the subsidized low rate loan unless the current holder of the loan consents in writing to the refinancing.

(b) For purposes of this section, a "subsidized low rate loan" is a loan that carries a current interest rate of at least two (2) percentage points below the current yield on treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped up rate, as appropriate, should be used instead of the current rate to determine whether a loan is a subsidized low rate loan.

(c) Each mortgage or deed of trust securing a zero (0) interest rate or other subsidized low rate loan executed after January 1, 2005, must prominently display the following on the face of the instrument:

"This instrument secures a zero (0) interest rate or other subsidized low rate loan subject to IC 24-9-3-2.".

(d) A creditor may reasonably rely on the presence or absence of the statement described in subsection (c) on the face of an instrument executed after January 1, 2005, as conclusive proof of the existence

or nonexistence of a zero (0) interest rate or other subsidized low rate loan.
As added by P.L.73-2004, SEC.33.

IC 24-9-3-3
Default on existing loan

Sec. 3. A creditor may not recommend or encourage default on an existing loan or other debt before and in connection with the closing or planned closing of a home loan that refinances all or part of the existing loan or debt.
As added by P.L.73-2004, SEC.33.

IC 24-9-3-4
Date of payment

Sec. 4. A creditor shall treat each payment made by a borrower in regard to a home loan as posted on the same business day as the payment was received by the creditor, servicer, or creditor's agent, or at the address provided to the borrower by the creditor, servicer, or creditor's agent for making payments.
As added by P.L.73-2004, SEC.33.

IC 24-9-3-5
Loan acceleration

Sec. 5. (a) A home loan agreement may not contain a provision that permits the creditor, in the creditor's sole discretion, to accelerate the indebtedness without material cause.

(b) This section does not prohibit acceleration of a home loan in good faith due to the borrower's failure to abide by the material terms of the loan.
As added by P.L.73-2004, SEC.33.

IC 24-9-3-6
Fee prohibited for payoff statement or written release; prepayment penalty prohibited for adjustable rate home loans; short sale; acknowledgment of offer; acceptance or rejection; liability for failure to respond

Sec. 6. (a) A creditor may not charge a fee for informing or transmitting to a person the balance due to pay off a home loan or to provide a written release upon prepayment. A creditor must provide, in writing, a payoff balance not later than seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the request is received by the creditor. A payoff statement provided by a creditor under this subsection must show the date the statement was prepared and itemize the unpaid principal balance and each fee, charge, or other sum included within the payoff amount. For purposes of this subsection, "fee" does not include actual charges incurred by a creditor for express or priority delivery of home loan documents to the borrower if such delivery is requested by the borrower.

(b) This subsection applies to a home loan, or the refinancing or

consolidation of a home loan, that:

(1) is closed after June 30, 2009; and

(2) has an interest rate that is subject to change at one (1) or more times during the term of the home loan.

A creditor in a transaction to which this subsection applies may not contract for and may not charge the borrower a prepayment fee or penalty.

(c) This subsection applies to a home loan with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than five (5) business days (excluding legal public holidays, Saturdays, and Sundays) after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days (excluding legal public holidays, Saturdays, and Sundays) after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. The thirty (30) day period described in this subsection may be extended for not more than fifteen (15) business days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the thirty (30) day period, the creditor, the servicer, or the creditor's agent notifies the debtor of the extension and the reason the extension is needed. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a home loan is sold for an amount that is less than the amount of the borrower's outstanding obligation on the home loan. A creditor, a servicer, or a creditor's agent that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

As added by P.L.73-2004, SEC.33. Amended by P.L.145-2008, SEC.29; P.L.52-2009, SEC.6; P.L.89-2011, SEC.27; P.L.27-2012, SEC.32.

IC 24-9-3-7

Mortgage transactions and real estate transactions; prohibited acts; land contracts; written notice of encumbrances

Sec. 7. (a) As used in this section, "mortgage transaction" includes the following:

(1) A home loan subject to this article.

(2) To the extent allowed under federal law, a loan described in IC 24-9-1-1 that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) on real estate in Indiana on which there is located or will be located a structure or structures:

(A) designed primarily for occupancy of one (1) to four (4) families; and

(B) that is or will be occupied by a borrower as the borrower's principal dwelling.

(3) A first lien mortgage transaction (as defined in IC 24-4.4-1-301) subject to IC 24-4.4.

(4) A consumer credit sale subject to IC 24-4.5-2 in which a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a lien is created or retained against land:

(A) that is located in Indiana; and

(B) upon which there is constructed or intended to be constructed a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(5) A consumer loan subject to IC 24-4.5-3 in which a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a lien is created or retained against land:

(A) that is located in Indiana; and

(B) upon which there is constructed or intended to be constructed a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(6) A loan in which a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a lien is created or retained against land:

(A) that is located in Indiana;

(B) upon which there is constructed or intended to be constructed a dwelling that is not or will not be used by the borrower primarily for personal, family, or household purposes; and

(C) that is classified as residential for property tax purposes.

The term includes a loan that is secured by land in Indiana upon which there is constructed or intended to be constructed a dwelling that is purchased by or through the borrower for investment or other business purposes.

(7) A reverse mortgage transaction that is secured by real estate in Indiana on which there is located a structure that is occupied by a borrower as the borrower's principal dwelling.

(b) As used in this section, "real estate transaction" means the sale or lease of any legal or equitable interest in real estate:

(1) that is located in Indiana;

(2) upon which there is constructed or intended to be constructed a dwelling; and

(3) that is classified as residential for property tax purposes.

(c) A person may not do any of the following:

(1) Divide a home loan transaction into separate parts with the intent of evading a provision of this article.

(2) Structure a home loan transaction as an open-end loan with the intent of evading the provisions of this article if the home

loan would be a high cost home loan if the home loan had been structured as a closed-end loan.

(3) Engage in a deceptive act in connection with a mortgage transaction or a real estate transaction.

(4) Engage in, or solicit to engage in, a real estate transaction or a mortgage transaction without a permit or license required by law.

(5) With respect to a real estate transaction or a mortgage transaction, represent that:

(A) the transaction has:

(i) certain terms or conditions; or

(ii) the sponsorship or approval of a particular person or entity;

that it does not have and that the person knows or reasonably should know it does not have; or

(B) the real estate or property that is the subject of the transaction has any improvements, appurtenances, uses, characteristics, or associated benefits that it does not have and that the person knows or reasonably should know it does not have.

(6) Maintain or offer to maintain an account for the receipt of funds for the payment of real estate taxes and insurance unless the person is any of the following:

(A) Any of the following that is chartered under the laws of a state or the United States:

(i) A bank.

(ii) A savings and loan association.

(iii) A credit union.

(iv) A savings bank.

(B) The creditor in a mortgage transaction.

(C) A mortgage servicer acting on behalf of the creditor in a mortgage transaction.

(D) A closing agent (as defined in IC 27-7-3.7-1).

(7) Fail to provide the notice required under subsection (d), within the time specified in subsection (d), if the person is a seller in a real estate transaction described in subsection (d).

(d) This subsection applies to a real estate transaction that involves a land contract between the seller and the buyer in the transaction. If the real estate that is the subject of the transaction is subject to any encumbrance, including any tax lien, foreclosure action, legal judgment, or other encumbrance affecting the title to the real estate, the seller must provide written notice by certified mail, return receipt requested, of the encumbrance to the buyer:

(1) not later than the time the land contract is executed, if the encumbrance is created before or at the time the land contract is executed; or

(2) not later than ten (10) business days after the encumbrance is created, if the encumbrance is created after the land contract is executed.

As added by P.L.73-2004, SEC.33. Amended by P.L.141-2005,

SEC.5; P.L.52-2009, SEC.7; P.L.105-2009, SEC.8; P.L.114-2010, SEC.18; P.L.89-2011, SEC.28; P.L.27-2012, SEC.33; P.L.13-2013, SEC.67.

IC 24-9-3-8
Intimidation, coercion, and harassment prohibited

Sec. 8. A person seeking to enforce section 7(c)(3), 7(c)(4), or 7(c)(5) of this chapter may not knowingly or intentionally intimidate, coerce, or harass another person.

As added by P.L.73-2004, SEC.33. Amended by P.L.52-2009, SEC.8; P.L.105-2009, SEC.9.

IC 24-9-3-9
Prohibited discrimination

Sec. 9. It is unlawful for a creditor to discriminate against any applicant with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age, if the applicant has the ability to contract.

As added by P.L.73-2004, SEC.33.

IC 24-9-4

Chapter 4. Additional Prohibitions for High Cost Home Loans

IC 24-9-4-0.1

Chapter not applicable to loans made before January 1, 2005

Sec. 0.1. Notwithstanding the addition of IC 24-9-3 and this chapter by P.L.73-2004, a person is not subject to a prohibition or requirement of IC 24-9-3 and this chapter, both as added by P.L.73-2004, with respect to a loan made before January 1, 2005.

As added by P.L.220-2011, SEC.401.

IC 24-9-4-1

Limitations and prohibited practices

Sec. 1. The following additional limitations and prohibited practices apply to a high cost home loan:

(1) A creditor making a high cost home loan may not directly or indirectly finance any points and fees.

(2) This subdivision does not apply to a high cost home loan described in IC 24-9-3-6(b). Prepayment fees or penalties may not be included in the loan documents for a high cost home loan or charged to the borrower if the fees or penalties exceed in total two percent (2%) of the high cost home loan amount prepaid during the first twenty-four (24) months after the high cost home loan closing.

(3) This subdivision does not apply to a high cost home loan described in IC 24-9-3-6(b). A prepayment penalty may not be contracted for after the second year following the high cost home loan closing.

(4) This subdivision does not apply to a high cost home loan described in IC 24-9-3-6(b). A creditor may not include a prepayment penalty fee in a high cost home loan unless the creditor offers the borrower the option of choosing a loan product without a prepayment fee. The terms of the offer must be made in writing and must be initialed by the borrower. The document containing the offer must be clearly labeled in large bold type and must include the following disclosure:

"LOAN PRODUCT CHOICE

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty.".

(5) A creditor shall not sell or otherwise assign a high cost home loan without furnishing the following statement to the purchaser or assignee:

"NOTICE: This is a loan subject to special rules under IC 24-9. Purchasers or assignees may be liable for all claims and defenses with respect to the loan that the borrower could assert against the lender.".

(6) A mortgage or deed of trust that secures a high cost home loan at the time the mortgage or deed of trust is recorded must prominently display the following on the face of the instrument:

"This instrument secures a high cost home loan as defined in IC 24-9-2-8.".

(7) A creditor making a high cost home loan may not finance, directly or indirectly, any life or health insurance.

As added by P.L.73-2004, SEC.33. Amended by P.L.52-2009, SEC.9.

IC 24-9-4-2

Points and fees charged in certain refinance transactions; evasive division of home loans prohibited

Sec. 2. A creditor may not knowingly or intentionally:

(1) refinance a high cost home loan by charging points and fees on the part of the proceeds of the new high cost home loan that is used to refinance the existing high cost loan within four (4) years of the origination of the existing high cost home loan; or

(2) divide a home loan transaction into multiple transactions with the effect of evading this article. Where multiple transactions are involved, the total points and fees charged in all transactions shall be considered when determining whether the protections of this section apply.

As added by P.L.73-2004, SEC.33.

IC 24-9-4-3

Balloon payments

Sec. 3. Notwithstanding IC 24-4.5-3-402, a high cost home loan agreement may not require a scheduled payment that is more than twice as large as the average of earlier scheduled monthly payments under the high cost home loan agreement unless the payment becomes due and payable at least one hundred twenty (120) months after the date of the high cost home loan. This prohibition does not apply if:

(1) the payment schedule is adjusted to account for the seasonal or irregular income of the borrower; or

(2) the loan is a bridge loan connected with or related to the acquisition or construction of a dwelling intended to become the borrower's principal dwelling.

As added by P.L.73-2004, SEC.33.

IC 24-9-4-4

Payment terms; collection of interest due

Sec. 4. (a) Except as provided in subsection (b), a high cost home loan may not include payment terms under which the outstanding principal balance will increase at any time over the course of the high cost home loan because the regular periodic payments do not cover the full amount of interest due.

(b) This section does not apply to a temporary forbearance that is requested by a borrower regarding a high cost home loan.

As added by P.L.73-2004, SEC.33.

IC 24-9-4-5

Acceleration after default

Sec. 5. A high cost home loan may not contain a provision that increases the interest rate after default. However, this section does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the high cost home loan documents if the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.
As added by P.L.73-2004, SEC.33.

IC 24-9-4-6
Consolidated periodic payments paid from loan proceeds

Sec. 6. A high cost home loan may not include terms under which more than two (2) periodic payments required under the high cost home loan are consolidated and paid in advance from the high cost home loan proceeds provided to the borrower.
As added by P.L.73-2004, SEC.33.

IC 24-9-4-7
Counseling agency contact information

Sec. 7. A creditor may not make a high cost home loan without first providing the borrower information to facilitate contact with a nonprofit counseling agency certified by:

(1) the United States Department of Housing and Urban Development; or

(2) the Indiana housing and community development authority under IC 5-20-1-4(g);

at the same time as the good faith estimates are provided to the borrower in accordance with the requirements of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) as amended.
As added by P.L.73-2004, SEC.33. Amended by P.L.1-2006, SEC.415.

IC 24-9-4-8
Repayment ability; commercially reasonable practices to determine debt to income ratio

Sec. 8. (a) A creditor may not make a high cost home loan without regard to repayment ability.

(b) If a creditor presents evidence that the creditor followed commercially reasonable practices in determining the borrower's debt to income ratio, there is a rebuttable presumption that the creditor made the high cost home loan with due regard to repayment ability. For purposes of this section, there is a rebuttable presumption that the borrower's statement of income provided to the creditor is true and complete.

(c) Commercially reasonable practices include the use of:

(1) the debt to income ratio:

(A) listed in 38 CFR 36.4337(c)(1); and

(B) defined in 38 CFR 36.4337(d); and

(2) the residual income guidelines established under:

(A) 38 CFR 36.4337(e); and

(B) United States Department of Veterans Affairs form 26-6393.

As added by P.L.73-2004, SEC.33.

IC 24-9-4-9

Payments to home improvement contractors

Sec. 9. A creditor may not pay a contractor under a home improvement contract from the proceeds of a high cost home loan unless:

(1) the creditor is presented with a signed and dated completion certificate showing that the home improvements have been completed; and

(2) the instrument is payable to the borrower or jointly to the borrower and the contractor or, at the election of the borrower, through a third party escrow agent under a written agreement signed by the borrower, the creditor, and the contractor before the disbursement.

As added by P.L.73-2004, SEC.33.

IC 24-9-4-10

Modification, renewal, extension, amendment, or deferral of loan terms; fees and charges prohibited

Sec. 10. A creditor may not charge a borrower any fees or other charges to modify, renew, extend, or amend a high cost home loan or to defer a payment due under the terms of a high cost home loan.

As added by P.L.73-2004, SEC.33.

IC 24-9-4-11

Notice to borrower

Sec. 11. A creditor may not make a high cost home loan unless the creditor has given the following notice, in writing, to the borrower not later than the time that notice is required under 12 CFR 226.31(c):

"NOTICE TO BORROWER

YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD COMPARE LOAN RATES, COSTS, AND FEES. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED, AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE, COSTS, AND FEES COULD ALSO VARY BASED ON WHICH CREDITOR OR BROKER YOU SELECT.

IF YOU ACCEPT THE TERMS OF THIS LOAN, THE CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU HAVE PAID IF YOU DO NOT MEET YOUR

PAYMENT OBLIGATIONS UNDER THE LOAN.

YOU SHOULD CONSULT AN ATTORNEY AND A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISER REGARDING THE RATE, FEES, AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. A LIST OF QUALIFIED COUNSELORS IS AVAILABLE FROM THE INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY.

YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION. REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL CREDITORS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR CREDITOR ABOUT THESE SERVICES.

ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS.".

As added by P.L.73-2004, SEC.33. Amended by P.L.1-2006, SEC.416.

IC 24-9-4-12

High cost home loan agreements; unconscionable and void provisions

Sec. 12. Without regard to whether a borrower is acting individually or on behalf of others similarly situated, a provision of a high cost home loan agreement that:

(1) requires arbitration of a claim or defense;

(2) allows a party to require a borrower to assert a claim or defense in a forum that is:

(A) less convenient;

(B) more costly; or

(C) more dilatory;

for the resolution of the dispute than an Indiana court in which the borrower may otherwise bring a claim or defense; or

(3) limits in any way any claim or defense the borrower may have;

is unconscionable and void.

As added by P.L.73-2004, SEC.33.

IC 24-9-5

Chapter 5. Claims, Defenses, Remedies

IC 24-9-5-1

Purchaser or assignee subject to affirmative claims and defenses; claims available to borrower

Sec. 1. (a) A person who purchases or is otherwise assigned a high cost home loan is subject to all affirmative claims and any defenses, except for an affirmative claim or defense pursuant to IC 24-9-3-7, with respect to the high cost home loan that the borrower could assert against a creditor or broker of the high cost home loan. However, this section does not apply if the purchaser or assignee demonstrates by a preponderance of the evidence that a reasonable person exercising ordinary due diligence could not determine that the loan was a high cost home loan. A purchaser or an assignee is presumed to have exercised reasonable due diligence if the purchaser or assignee:

(1) has in place at the time of the purchase or assignment of the subject loans, policies that expressly prohibit the purchase or acceptance of the assignment of any high cost home loans;

(2) requires by contract that a seller or an assignor of home loans to the purchaser or assignee represents and warrants to the purchaser or assignee that either:

(A) the seller or assignor will not sell or reassign any high cost home loans to the purchaser or assignee; or

(B) the seller or assignor is a beneficiary of a representation and warranty from a previous seller or assignor to that effect;

(3) exercises reasonable due diligence:

(A) at the time of purchase or assignment of home loans; or

(B) within a reasonable period after the purchase or assignment of home loans;

intended by the purchaser or assignee to prevent the purchaser or assignee from purchasing or taking assignment of any high cost home loans; or

(4) satisfies the requirements of subdivisions (1) and (2) and establishes that a reasonable person exercising ordinary due diligence could not determine that the loan was a high cost home loan based on the:

(A) documentation required by the federal Truth in Lending Act (15 U.S.C. 1601 et seq.); and

(B) itemization of the amount financed and other disbursement disclosures.

(b) A borrower acting only in an individual capacity may assert against the creditor or any subsequent holder or assignee of a high cost home loan:

(1) a violation of IC 24-9-4-2 as a defense, claim, or counterclaim, after:

(A) an action to enjoin foreclosure or to preserve or obtain possession of the dwelling that secures the loan is initiated;

(B) an action to collect on the loan or foreclose on the

collateral securing the loan is initiated; or

(C) the loan is more than sixty (60) days in default;

within three (3) years after the closing of a home loan;

(2) a violation of this article in connection to the high cost home loan as a defense, claim, or counterclaim in an original action within five (5) years after the closing of a high cost home loan; and

(3) any defense, claim, counterclaim, or action to enjoin foreclosure or preserve or obtain possession of the home that secures the loan, including a violation of this article after:

(A) an action to collect on the loan or foreclose on the collateral securing the loan is initiated;

(B) the debt arising from the loan is accelerated; or

(C) the loan is more than sixty (60) days in default;

at any time during the term of a high cost home loan.

(c) In an action, a claim, or a counterclaim brought under subsection (b), the borrower may recover only amounts required to reduce or extinguish the borrower's liability under a home loan plus amounts required to recover costs, including reasonable attorney's fees.

(d) The provisions of this section are effective notwithstanding any other provision of law. This section shall not be construed to limit the substantive rights, remedies, or procedural rights available to a borrower against any creditor, assignee, or holder under any other law. The rights conferred on borrowers by subsections (a) and (b) are independent of each other and do not limit each other.

As added by P.L.73-2004, SEC.33. Amended by P.L.141-2005, SEC.6.

IC 24-9-5-2

Acceleration; reinstatement of high cost home loan after cure of default

Sec. 2. (a) If a creditor asserts that grounds for acceleration under the terms of a high cost home loan exist and requires the payment in full of all sums secured by the security instrument, the borrower or a person authorized to act on the borrower's behalf at any time before the title is transferred by means of foreclosure, judicial proceeding and sale, or otherwise may cure the default and reinstate the high cost home loan by tendering the amount or performance as specified in the security instrument.

(b) If the borrower cures the default on a high cost home loan, the original loan terms shall be reinstated, and any acceleration of any obligation under the security instrument or note arising from the default is nullified as of the date of the cure.

As added by P.L.73-2004, SEC.33.

IC 24-9-5-3

Foreclosure proceedings

Sec. 3. (a) A creditor making a high cost home loan that has the right to foreclose must use the judicial foreclosure procedures of the

state in which the property securing the high cost home loan is located. The borrower has the right to assert in the proceeding the nonexistence of a default and any other claim or defense to acceleration and foreclosure, including any claim or defense based on any violations of this article.

(b) This section is not intended and shall not be construed to allow any claim or defense otherwise barred by any statute of limitation or repose.

As added by P.L.73-2004, SEC.33.

IC 24-9-5-4

Liability for violation; exceptions; damages; equitable relief; recoupment; action by homeowner protection unit for deceptive act; statute of limitations; priority of damages over civil penalties

Sec. 4. (a) This section does not apply to a violation of IC 24-9-3-7(c)(4), IC 24-9-3-7(c)(5), or IC 24-9-3-7(c)(6). A person who violates this article is liable to a person who is a party to the home loan transaction, mortgage transaction (as defined in IC 24-9-3-7(a)), or real estate transaction (as defined in IC 24-9-3-7(b)), as appropriate, that gave rise to the violation for the following:

(1) Actual damages, including consequential damages. A person is not required to demonstrate reliance in order to receive actual damages.

(2) Statutory damages equal to two (2) times the finance charges agreed to in a home loan agreement.

(3) Costs and reasonable attorney's fees.

(b) A person may be granted injunctive, declaratory, and other equitable relief as the court determines appropriate in an action to enforce compliance with this chapter.

(c) The right of rescission granted under 15 U.S.C. 1601 et seq. for a violation of the federal Truth in Lending Act (15 U.S.C. 1601 et seq.) is available to a person acting only in an individual capacity by way of recoupment as a defense against a party foreclosing on a home loan at any time during the term of the loan. Any recoupment claim asserted under this provision is limited to the amount required to reduce or extinguish the person's liability under the home loan plus amounts required to recover costs, including reasonable attorney's fees. This article shall not be construed to limit the recoupment rights available to a person under any other law.

(d) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a person. Except as provided in subsection (e), a person is not required to exhaust any administrative remedies under this article or under any other applicable law.

(e) Before bringing an action regarding an alleged deceptive act under this chapter, a person must:

(1) notify the homeowner protection unit established by IC 4-6-12-2 of the alleged violation giving rise to the action; and

(2) allow the homeowner protection unit at least ninety (90) days to institute appropriate administrative and civil action to redress a violation.

(f) An action under this chapter must be brought within five (5) years after the date that the person knew, or by the exercise of reasonable diligence should have known, of the violation of this article.

(g) An award of damages under subsection (a) has priority over a civil penalty imposed under this article.

As added by P.L.73-2004, SEC.33. Amended by P.L.3-2005, SEC.1; P.L.105-2009, SEC.10; P.L.114-2010, SEC.19.

IC 24-9-5-4.1

General assembly intent relating to certain amendments made to section 4 of this chapter

Sec. 4.1. The general assembly intends the amendment of section 4(c) of this chapter made by P.L.3-2005 to:

(1) be construed together with section 4(c) of this chapter as enacted by P.L.73-2004, SECTION 33; and

(2) apply as if the language of section 4(c) of this chapter, as amended by P.L.3-2005, SECTION 1, had been part of section 4(c) of this chapter as first enacted.

As added by P.L.220-2011, SEC.402.

IC 24-9-5-5

Unintentional or erroneous violations; corrections by creditors

Sec. 5. (a) If the creditor or an assignee establishes by a preponderance of evidence that a violation of this article is unintentional or the result of a bona fide error of law or fact notwithstanding the maintenance of procedures reasonably adopted to avoid any such violation or error, the validity of the transaction is not affected, and no liability is imposed under section 4 of this chapter except in the case of a refusal to make a refund.

(b) Except as provided in subsection (c), a creditor in a high cost home loan who in good faith fails to comply with this article is not considered to have violated this article if the creditor does the following before receiving notice of the failure from the borrower:

(1) Not later than ninety (90) days after the date of the loan closing:

(A) makes appropriate restitution to the borrower of any amounts collected in error; and

(B) takes necessary action to make all appropriate adjustments to the loan to correct the error.

(2) Not later than one hundred twenty (120) days after the date of the loan closing, notifies the borrower of:

(A) the error; and

(B) the amount of the required restitution or adjustment.

(c) Subsection (b) does not apply unless the creditor establishes that the compliance failure was not intentional and resulted from a bona fide error of fact or law, notwithstanding the maintenance of

procedures reasonably adopted to avoid the errors.
As added by P.L.73-2004, SEC.33.

IC 24-9-5-6
Relation to other laws

Sec. 6. The rights conferred by this article are in addition to rights granted under any other law.
As added by P.L.73-2004, SEC.33.

IC 24-9-6

Chapter 6. Reporting Requirements

IC 24-9-6-1

Requirements for servicers of high cost home loans

Sec. 1. (a) A servicer of a high cost home loan shall report at least once each calendar quarter to a nationally recognized consumer credit reporting agency both the favorable and unfavorable payment history information of the borrower on payments due to the creditor on a high cost home loan.

(b) This section does not prohibit a servicer from agreeing with the borrower not to report specified payment history information in the event of a resolved or an unresolved dispute with a borrower and does not apply to high cost home loans held or serviced by a lender for less than ninety (90) days.

As added by P.L.73-2004, SEC.33.

IC 24-9-7

Chapter 7. State Power to Regulate Lending

IC 24-9-7-1

State sole regulator of loans and credit

Sec. 1. The state is the sole regulator of the business of originating, granting, servicing, and collecting loans and other forms of credit in Indiana and the manner in which the business is conducted. This regulation preempts all other regulation of these activities by any political subdivision.

As added by P.L.73-2004, SEC.33.

IC 24-9-7-2

Political subdivisions; prohibited practices

Sec. 2. Political subdivisions may not:

(1) enact, issue, or enforce ordinances, resolutions, regulations, orders, requests for proposals, or requests for bids pertaining to financial or lending activities, including ordinances, resolutions, and rules that disqualify persons from doing business with a municipality and that are based upon lending terms or practices; or

(2) impose reporting requirements or any other obligations upon persons regarding financial services or lending practices or upon subsidiaries or affiliates that:

(A) are subject to the jurisdiction of the department of financial institutions;

(B) are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission, or the United States Department of Housing and Urban Development;

(C) are chartered by the United States Congress to engage in secondary market mortgage transactions;

(D) are created by the Indiana housing and community development authority; or

(E) originate, purchase, sell, assign, securitize, or service property interests or obligations created by financial transactions or loans made, executed, originated, or purchased by persons referred to in clauses (A), (B), (C), or (D).

As added by P.L.73-2004, SEC.33. Amended by P.L.1-2006, SEC.417 and P.L.181-2006, SEC.59; P.L.27-2012, SEC.34.

IC 24-9-8

Chapter 8. Penalties and Enforcement

IC 24-9-8-1

Penalties; exception

Sec. 1. A person who knowingly or intentionally violates this article commits:

(1) a Class A misdemeanor; and

(2) except for a violation of IC 24-9-3-7(c)(4) by a person required to be licensed by the department of financial institutions, an act that is actionable by the attorney general under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

As added by P.L.73-2004, SEC.33. Amended by P.L.105-2009, SEC.11; P.L.114-2010, SEC.20.

IC 24-9-8-2

Homeowner protection unit

Sec. 2. (a) Beginning July 1, 2005, the attorney general and the attorney general's homeowner protection unit established under IC 4-6-12 shall enforce this article. An action may not be brought under this article more than five (5) years after the occurrence of the violation.

(b) The attorney general may refer a matter under section 1 of this chapter to a prosecuting attorney for enforcement.

As added by P.L.73-2004, SEC.33. Amended by P.L.231-2013, SEC.8.

IC 24-9-8-3

Enforcement actions by attorney general; exception; civil penalty for violation of injunction; jurisdiction of court

Sec. 3. (a) This section does not apply to a violation of IC 24-9-3-7(c)(4) by a person required to be licensed by the department of financial institutions. The attorney general may bring an action to enjoin a violation of this article. A court in which the action is brought may:

(1) issue an injunction;

(2) order a person to make restitution;

(3) order a person to reimburse the state for reasonable costs of the attorney general's investigation and prosecution of the violation of this article; and

(4) impose a civil penalty of not more than ten thousand dollars ($10,000) per violation.

(b) A person who violates an injunction under this section is subject to a civil penalty of not more than ten thousand dollars ($10,000) per violation.

(c) The court that issues an injunction retains jurisdiction over a proceeding seeking the imposition of a civil penalty under this section.

As added by P.L.73-2004, SEC.33. Amended by P.L.105-2009,

SEC.12; P.L.114-2010, SEC.21.

IC 24-9-8-4
Complaints

Sec. 4. The attorney general may file complaints with any of the agencies listed in IC 4-6-12-4 to implement this chapter.
As added by P.L.73-2004, SEC.33.

IC 24-9-9
Chapter 9. Fees

IC 24-9-9-1
Mortgage recording fee

Sec. 1. The county recorder shall assess a fee of three dollars ($3) under IC 36-2-7-10(b)(11) for each mortgage recorded. The fee shall be paid to the county treasurer at the end of each calendar month as provided in IC 36-2-7-10(a).

As added by P.L.73-2004, SEC.33.

IC 24-9-9-2
County recorder's record perpetuation fund

Sec. 2. The county auditor shall credit fifty cents ($0.50) of the fee collected under IC 36-2-7-10(b)(11) for each mortgage recorded to the county recorder's records perpetuation fund established under IC 36-2-7-10(d).

As added by P.L.73-2004, SEC.33. Amended by P.L.1-2010, SEC.99.

IC 24-9-9-3
Distributions to auditor of state

Sec. 3. On or before June 20 and December 20 of each year, after completing an audit of the county treasurer's monthly reports required by IC 36-2-10-16, the county auditor shall distribute to the auditor of state two dollars and fifty cents ($2.50) of the mortgage recording fee collected under IC 36-2-7-10(b)(11) for each mortgage recorded by the county recorder. The auditor of state shall deposit the money in the state general fund to be distributed as described in section 4 of this chapter.

As added by P.L.73-2004, SEC.33.

IC 24-9-9-4
Distributions by auditor of state

Sec. 4. On or before June 30 and December 31 of each year the auditor of state shall distribute one dollar and twenty-five cents ($1.25) of the mortgage recording fee to the state general fund and one dollar and twenty-five cents ($1.25) of the mortgage recording fee to the homeowner protection unit account established by IC 4-6-12-9.

As added by P.L.73-2004, SEC.33. Amended by P.L.246-2005, SEC.209.

IC 24-10

ARTICLE 10. CONSUMER PROTECTION ASSISTANCE FUND

IC 24-10-1

Chapter 1. Definitions

IC 24-10-1-1

"Fund"

Sec. 1. As used in this article, "fund" refers to the consumer protection assistance fund established by IC 24-10-2-1.

As added by P.L.121-2011, SEC.2.

IC 24-10-1-2

"Office"

Sec. 2. As used in this article, "office" refers to the office of attorney general created by IC 4-6-1-2.

As added by P.L.121-2011, SEC.2.

IC 24-10-1-3

"Qualifying claim"

Sec. 3. As used in this article, "qualifying claim" means a claim that:

(1) subject to IC 24-10-2-2(b), is filed with the office on a form prescribed by the office;

(2) is based on a court order that:

(A) is issued in a case instituted or maintained by the office in connection with a violation of a statute set forth in IC 24-10-2-1(c); and

(B) awards restitution to one (1) or more qualifying individuals;

(3) identifies each qualifying individual who:

(A) has been awarded restitution in the order described in subdivision (2); and

(B) seeks payment from the fund through the claim submitted;

(4) attests that the party ordered to pay the restitution has not paid the full amount ordered with respect to each qualifying individual identified under subdivision (3); and

(5) seeks payment from the fund of any amount of the restitution:

(A) ordered by the court; and

(B) not paid by the party ordered to pay the restitution;

with respect to each qualifying individual identified under subdivision (3).

As added by P.L.121-2011, SEC.2.

IC 24-10-1-4

"Qualifying individual"

Sec. 4. As used in this article, "qualifying individual" means an

Indiana resident who:

(1) is awarded restitution by a court in a case that:

(A) is instituted or maintained by the office; and

(B) involves a violation by one (1) or more other persons of a statute set forth in IC 24-10-2-1(c); and

(2) assists or otherwise cooperates with the office in the investigation, prosecution, or enforcement of the case.

As added by P.L.121-2011, SEC.2.

IC 24-10-2

Chapter 2. Establishment and Purposes of Fund

IC 24-10-2-1

Consumer protection assistance fund

Sec. 1. (a) The consumer protection assistance fund is established for the purpose of compensating qualifying individuals who submit qualifying claims to the office. The fund shall be administered by the office.

(b) The fund consists of:

(1) appropriations made to the fund by the general assembly;

(2) grants, gifts, and donations intended for deposit in the fund; and

(3) at the discretion of the office, money recovered or received by the office for consumer protection purposes if use of the money is not otherwise restricted.

(c) Money in the fund may be used to make payments to qualifying individuals who file qualifying claims with the office in connection with a case involving a violation by one (1) or more other persons of any of the following statutes, including rules adopted under the authority of the following statutes:

(1) IC 24-4.7 (concerning telephone solicitation of consumers) if the case concerns a violation involving telephone solicitations made in connection with any practice or transaction governed by a statute described in subdivisions (2) through (4).

(2) IC 24-5-15 (concerning credit services organizations).

(3) IC 24-5.5 (concerning mortgage rescue fraud).

(4) IC 24-9 (concerning home loan practices).

(d) The expenses of administering the fund shall be paid from money in the fund.

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(f) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

As added by P.L.121-2011, SEC.2.

IC 24-10-2-2

Payments to qualifying individuals; claims; confidentiality of personal information; amount of payment; other remedies not precluded

Sec. 2. (a) The office may not make a payment to a qualifying individual under section 1(c) of this chapter unless the party ordered to pay restitution to the qualifying individual has not paid the full amount of the restitution ordered by the court in the order described in IC 24-10-1-3(2).

(b) A qualifying individual who seeks payment from the fund of any amount of the restitution:

(1) ordered by the court to be paid to the individual; and

(2) not paid by the party ordered to pay the restitution;

may file a claim with the office on a form prescribed by the office. A claim filed under this section must be received by the office not later than one hundred eighty (180) days after the date of the order described in IC 24-10-1-3(2). The office may grant an extension of time for good cause shown by the individual filing the claim. However, the office may not accept a claim that is received more than two (2) years after the date of the order described in IC 24-10-1-3(2).

(c) The personal information (as defined in IC 4-1-11-3) of an individual who files a claim with the office under subsection (b) is confidential and may not be disclosed or distributed outside the office, except as may be required by law.

(d) Upon receiving a qualifying claim, the office may pay, from money available in the fund, to each qualifying individual identified in the claim under IC 24-10-1-3(3), an amount that:

(1) is determined at the discretion of the office;

(2) may be up to the amount of the restitution awarded to the qualifying individual and not paid by the party ordered to pay the restitution; and

(3) may not exceed three thousand dollars ($3,000).

(e) The limits set forth in subsection (d) do not prohibit a qualifying individual from seeking to recover, in any action or through any other lawful remedy available to the individual, any amount of the restitution that:

(1) is awarded to the qualifying individual in the order described in IC 24-10-1-3(2);

(2) is not paid by the party ordered to pay the restitution; and

(3) exceeds the amount paid to the qualifying individual by the office under subsection (d).

As added by P.L.121-2011, SEC.2.

IC 24-10-2-3

State's liability for award; availability of funds

Sec. 3. The state is not liable for a determination or an award made by the office under this chapter except to the extent that money is available in the fund on the date the award is determined by the office under this chapter.

As added by P.L.121-2011, SEC.2.

IC 24-10-2-4

Authority to adopt rules

Sec. 4. The office may adopt rules under IC 4-22-2 to implement this article.

As added by P.L.121-2011, SEC.2.