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**FISCAL IMPACT STATEMENT**

**LS 7315**

**BILL NUMBER: HB 1229**

**NOTE PREPARED: Mar 9, 2004**

**BILL AMENDED: Mar 4, 2004**

**SUBJECT:** Home Loan Practices.

**FIRST AUTHOR:** Rep. Bardon

**FIRST SPONSOR:** Sen. Bray

**BILL STATUS:** Enrolled

**FUNDS AFFECTED:**  GENERAL  
 DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

*Homeowner Protection Unit-* The bill establishes the Homeowner Protection Unit in the Office of the Attorney General. The bill provides enforcement procedures for deceptive mortgage acts.

*Mortgage Recording Fee-* The bill establishes a \$3 mortgage recording fee.

*Home Ownership Education-* The bill requires the Department of Commerce to provide home ownership education programs.

*Prohibition of Certain Lending Practices-* The bill provides that certain provisions do not apply to certain financial institutions. The bill prohibits certain lending practices.

*High-Cost Home Loan-* The bill makes changes to the definition of a high-cost home loan.

*Federal Update-* The bill updates references in financial institutions law to conform with federal law. The bill permits a state-chartered financial institution to engage in activities related to a product, a service, or an investment that is available to or offered by national banks domiciled in Indiana.

*Deposit of Public Funds-* The bill removes limitations on the amount of public funds that may be deposited in a credit union. (Currently, deposits of public funds are limited to 10% of total credit union assets.)

*Money Transmitters-* The bill increases the minimum amount of the bond required for a money transmitter from \$100,000 to \$200,000 and the maximum amount from \$200,000 to \$300,000. The bill increases the

insurance coverage required for a money transmitter for criminal or dishonest acts from 50% to 100% of the amount of the money transmitter's security bond or deposit.

*Preemption of State Law-* The bill provides that state law applies to a state-chartered bank, trust company, savings association, savings bank, credit union, corporate fiduciary, or industrial loan and investment company to the same extent it applies to a federally chartered institution of the same type. The bill establishes administrative procedures governing requests for an exemption from state law due to the preemption of state law as it is applied to federally chartered institutions.

*Small Loan Provisions-* The bill makes various changes in the small loan provisions of the Uniform Consumer Credit Code, including: (1) defines a small loan as a loan with a principal amount that is more than \$50 and not more than \$500; (2) prohibits the renewal of a small loan; (3) removes limitations on finance charges; (4) increases delinquency charges; (5) allows a small loan to be secured by a borrower's authorization to debit an account instead of a borrower's check; (6) increases civil penalties and statutory damages from \$1,000 to \$2,000; and (7) prohibits a small loan if the total payable amount of the small loan exceeds 15% of the borrower's monthly gross income. (Current law provides that a small loan is prohibited if it exceeds 20% of the borrower's monthly net income.) The bill repeals provisions that relate to the renewal of a small loan.

*Name of Banks-* The bill permits the Secretary of State to administratively dissolve a business entity whose name contains the term "banc" or "banco" in violation of financial institutions law. (Current law allows the Secretary of State to take this action in the case of an entity whose name contains the term "bank".) The bill permits the use of the word "bank", "banc", or "banco" in the name of a subsidiary of : (1) a bank or trust company; (2) a bank holding company; (3) a savings bank; and (4) a savings association.

*Hazard Insurance-* The bill prohibits a lender from requiring a borrower to obtain hazard insurance in an amount exceeding the replacement value of the improvements on mortgaged property as a condition of receiving or maintaining the mortgage.

*Securities Law Matters-* The bill voids provisions in an agreement to purchase a security that would waive compliance with securities law or a rule or order made under securities law. The bill provides a procedure for an issuer of securities to respond to comments regarding an application for registration made by the Securities Division of the Secretary of State. The bill permits the appointment of a Securities Division attorney to serve as a special deputy prosecutor in actions arising under securities law. The bill prohibits the issuance of an interpretive opinion by the Securities Commissioner concerning an activity that occurred before or is occurring on the date that the opinion is requested. The bill requires that notice and opportunity to be heard must be provided to a person accused of violating securities law, rather than requiring that a hearing occur as provided by current law. The bill prohibits various deceptive practices by a person that supplies information concerning securities. The bill provides that an administrative action under securities law survives the death of a person who might have been a respondent.

*Loan Brokers-* The bill makes changes to definitions used in the loan broker statutes. The bill exempts persons engaged in certain federally regulated transactions from the requirements of the loan broker law.

**Effective Date:** Upon passage; January 1, 2004 (retroactive); July 1, 2004; January 1, 2005.

**Explanation of State Expenditures:** *Homeowner Protection Unit-* The bill establishes the Homeowner Protection Unit (HPU) under the Attorney General. The following entities may cooperate with the HPU: Indiana Professional Licensing Agency, Department of Commerce, Department of Financial Institutions,

Department of Insurance, Securities Division of the Secretary of State, the Supreme Court Disciplinary Commission, the Indiana Housing Finance Authority, the Department of State Revenue, the State Police, prosecuting attorneys, and local law enforcement agencies in order to implement the enforcement responsibilities of the bill. The HPU would be required to cooperate with the Department of Commerce for the development and implementation of home ownership education programs.

Under the bill, the HPU would be funded with revenue from a proposed mortgage record fee. A portion of the proposed fee would be deposited into the Homeowner Protection Unit Account (HPUA) of the state General Fund. Money in the HPUA would not revert to the state General Fund until after June 30, 2007. Additionally, money in the HPUA would not be allowed to be spent until an appropriation from the HPUA is made by the General Assembly.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. For the FY 2004-2005 biennium the AG has been authorized 302 full-time, 32 intermittent, and 3 temporary positions. As of December 3, 2003, the AG had 249 full-time, 2 part-time, 1 temporary, and 20 intermittent employees. The AG reverted \$645,443 from its operating account at the end of FY 2003. If revenue from the proposed fee does not fully fund the HPU, the source of funds and resources required to satisfy the provisions of this bill would depend upon legislative and administrative actions.

*Home Ownership Education-* Under the bill, the Home Ownership Education Account (HOEA) within the state General Fund would be established for the support of home ownership education programs established by the bill. The HOEA would be administered by the Department of Commerce. A certain percentage of the proposed recorder's fee would be placed in the HOEA. Use of the HOEA would include the expense to administer the Account. Money in the HOEA would only be allowed to be spent after appropriation by the General Assembly.

*High-Cost Home Loan-* Under the bill, a high-cost home loan would be defined as a home loan that has total points and fees that exceed the following: 5% of a loan with a principal of at least \$40,000 or 6% of a loan with a principal less than \$40,000.

The Department of Financial Institutions would be required to adopt rules to implement changes in the dollar amounts of a home loan principal, as described above, with regard to high-cost home loan points and fees. Changes to loan principal amounts would be determined by the procedure under the general provisions of the state uniform consumer credit code. The Department would be required to issue an emergency rule to announce the changes by April 30 of each year in which dollar amounts change. Under current law, the Department already issues emergency rules to announce other dollar amount changes for other credit transactions. The Department should be able to implement this provision within existing resources.

*Name of Banks-* Under the bill, the Secretary of State would be required to take action to dissolve a business entity for use of the terms *banc* or *banco*. Given that non-authorized business entities may not use the terms *banc* or *banco* under current financial institutions law, the fiscal impact to state expenditures under the provision should be minimal.

*Preemption of State Law-* Under the bill, the Department of Financial Institutions could experience additional administrative time to analyze and conduct hearings regarding state-chartered entities (as listed above) that seek exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 due to preemption of federal law.

The Department's current resources should be sufficient to carry out this provision.

*Deposit of Public Funds-* The bill would increase the percentage of public funds received from state government that a credit union may have on deposit from 10% of the credit union's assets to 20% of the credit union's assets (less the public amount received.)

*Small Loan Provisions-* Under the bill, the Department of Financial Institutions (DFI) may require additional expenditures to oversee and react to potential fraud on the part of payday lenders with respect to securing a small loan through the authorization of the debit account of a borrower.

Under current law (P.L. 38-2002), the Department provides written notification of standards for renewing a small loan. The Department would have to revise their notification procedures to account for debit-secured small loans and include the new range of what constitutes a small loan. Under the bill, the range amount of small loans would be revised to not less than \$50 to not more than \$500. (Current law defines a small loan as a payday loan of not less than \$50 and not greater than \$401.)

Additionally, current law (IC 24-4.5-5-202(9)) allows the Department the option to act on behalf of a debtor, in case of a fraudulent loan secured by check. The Department may enforce the debtor's rights against a creditor who is licensed or registered with the Department. Under the bill, the Department would have this option at their disposal with respect to fraudulent loans secured with a debit account.

Under the bill, the Department would be required to monitor the effectiveness of private consumer reporting services that provide compliance information with regard to an individual applying for a small loan.

The bill would allow the Department the specific ability to determine if an Internet entity is advancing "cash rebates" to individuals that are customers of the entity, that do not represent a discount or an adjustment to the price of otherwise purchased products from the entity.

The Department's current resources should be sufficient to incorporate the above changes.

*Criminal Penalties for Fraud:* Under current law, penalties under IC 35-43-5 are instituted for forgery, fraud, and other deceptions with regard to small loans paid by a check. The bill would add small loans that are made under authorization to debit a borrower's account to this penalty provision. It is possible that widening the scope of what is covered under current fraud criminal penalties could result in more individuals charged with fraud.

A Class C felony is punishable by a prison term ranging from two to eight years depending upon mitigating and aggravating circumstances. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class C felony offenders is approximately two years. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months.

*Securities Law Matters- Securities Division Attorney* - This bill would permit the prosecuting attorney to appoint a Securities Division attorney to serve as a special deputy prosecutor in actions arising under securities law. The Secretary of State had one attorney vacancy as of January 2004. If an additional PAT I is required, the cost would be \$55,300 in FY 2005 and \$55,580 in FY 2006. The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources

not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. The agency reverted approximately \$32,500 in FY 2003. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

*Notice & Opportunity for Hearing* - Currently, a hearing must be held before the Commissioner may impose a civil penalty upon a person who has violated securities regulation law. This provision would allow the imposition of a penalty if the opportunity for a hearing has been offered. A notice of such a hearing must also be issued by the Commissioner. This provision should have a minimal fiscal impact. Expenditures could be reduced if fewer hearings are held, however, additional expenditures may be required to issue notices.

*Background:* Under current law (P.L. 277-2001), the Secretary of State is required to hold a proceeding against business entities illegally using the term *bank*. Current law also requires the Department of Financial Institutions to make the determination if a business entity has violated the general provisions for banks and trust companies including IC 28-1-20-4. Under IC 28-1-20-4, a person, firm, limited liability company, or corporation other than a bank or trust company, bank holding company, or a corporate fiduciary may not use the terms *bank*, *banc*, or *banco* within the entity's name or title. Violators of this section are fined a penalty of \$500 per day over the duration of the violation.

There have been a handful of actions that the Department of Financial Institutions has taken against entities illegally using the term *bank* since P.L. 277-2001 was enacted. The Secretary of State reports that they process an average of 1,200 administrative dissolutions per month for all reasons. The vast majority of dissolutions are for nonpayment of business entity filing reports. There were no known occurrences of a dissolution for the illegal use of the name *bank* in CY 2003.

The Department is currently pursuing 10 injunctions against certain Internet entities to cease and desist from advancing "cash rebates (see *Small Loan Provisions*.)

**Explanation of State Revenues:** *Mortgage Recording Fee*- The bill establishes a fee of \$3 for recording a mortgage. County recorders would retain \$0.50 of the \$3 fee. The remaining \$2.50 would be distributed to the Auditor of State. The Auditor would distribute \$1.25 of every \$2.50 to the Home Ownership Education Account. The remaining \$1.25 would be distributed to the Homeowner Protection Unit Account.

According to the Department of Local Government Finance, approximately 200,000 parcels of land are sold or conveyed each year. The U.S. Bureau of Census reports that 21.8 M primary mortgages were originated in the U.S. from 1995-1999. Approximately 2.2% of these, or an average of 96,000 mortgages per year (1995-1999), are attributed to Indiana. If the Census Bureau data were applied to the above DLGF estimate, a little less than 50% of all parcels of land sold or conveyed per year in Indiana would have a mortgage. Of the total number of regular and home-equity mortgages reported by the Census Bureau, approximately 23% were second and third mortgages. Using this percentage with the above Census data, the \$3 fee is estimated to generate about \$59,000 for the recorder, approximately \$147,500 to the proposed Home Ownership Education Account, and approximately \$147,500 for the proposed Homeowner Protection Unit Account per fiscal year. The effective date of the bill for this provision is January 1, 2005. Therefore, in FY 2005, the estimated amounts to the recorders, HOEA, and HPUA would be half that of a full year of revenue.

Note: These estimates include second and third mortgages. As of the preparation date of this analysis, data on the number of commercial mortgages made in a year was not readily available. Therefore, the revenue estimate may be conservative.

*Civil Penalty:* The AG would be allowed to bring an action to enjoin a person from committing deceptive lending acts under the bill. The court would have the option to assess violators a civil penalty of not more than \$10,000 per violation. If the court decided to issue an injunction instead of a monetary penalty, and that injunction was violated, the violator would be required to pay a civil penalty not exceeding \$10,000.

*Criminal Penalty:* Under the bill, a person that knowingly or intentionally was to violate the provisions of the bill regarding home loan practices would commit a Class A misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

In addition, persons that knowingly or intentionally violate the provisions of the bill would commit an act that is actionable by the AG and would be subject to the penalties for deceptive acts. Current law includes civil penalties up to \$500 per deceptive act and up to \$15,000 per violation of an injunction issued against a person committing a deceptive act.

Beginning in FY 2006, the Attorney General would have the power to enforce the bill for any violation that would occur within five years of the making of a home loan.

*Names of Banks-* The bill would amend IC 28-1-20-4. The bill's provision would widen the scope of entities that would be able to use the terms *banc* or *banco* to include a subsidiary of either a bank/trust company or a bank holding company, or a subsidiary of either a savings bank or savings association. Potentially, this provision could reduce the number of penalties placed against violators. The impact of this provision to state revenue should be minimal.

*Money Transmitters-* Under the bill, money transmitters would be required to post a security device of a minimum amount of \$200,000 and a maximum amount of \$300,000. Additionally, insurance policies of money transmitters for criminal or dishonest acts would equal 100% of the required security device, a minimum of \$200,000. (Under current law, insurance policy amounts must equal 50% of the required security device.) Money transmitters, under current law, must present a security device with an application for a license with the Department.

*Small Loan Provisions-* The bill would allow the expansion of several civil penalties currently imposed by the DFI for small loan fraud, where the loan is secured by means of a borrower's debit account. Depending on the circumstances and current law, existing penalties can range from not more than \$500, not more than \$1,000, to not more than \$15,000.

Additionally, the bill would increase existing statutory civil penalties from \$1,000 to \$2,000 for any violation under IC 24-4.5-7 (small loans chapter of the Uniform Consumer Credit Code).

Payday lenders are considered licensed lenders for purpose of regulation. In FY 2003, the DFI collected \$804,802 in licensed lender fees. In FY 2002, collections amounted to \$475,321. Licensed lender fees are deposited in the Financial Institutions Fund.

*Criminal Penalties:* Under the bill, several criminal violations for fraud involving small loans would apply to debit account-secured loans in addition to check-secured loans under current law. Penalties include: a Class A misdemeanor, and a Class C or D felony depending on the severity of the violation as defined in statute.

If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class C felony and a Class D felony is \$10,000. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

*Fees for Civil Actions:* The bill could increase filings of civil actions with respect to small loans. The filing fee for civil actions is \$100. Of this fee, 70%, or \$70, is deposited in the state General Fund if the case is filed in a trial court. If a case is filed in a city or town court (providing that the court has jurisdiction), the state General Fund receives 55% of the \$100 filing fee.

*Securities Law Matters- Interpretive Opinions:* This provision prohibits a person from requesting an interpretive opinion for an activity that occurred before or on the date the request was made. The Commissioner charges a \$100 fee per opinion. If fewer opinions are requested, the Commissioner may experience a decrease in revenue from this source.

*Administrative Actions:* This provision clarifies that administrative actions made under securities law survive the death of a person who may be a respondent. Such actions may involve civil penalties. If additional administrative actions are finalized due to this provision and civil penalties are involved, potentially there could be an increase in civil penalty revenue. This revenue is deposited in the Securities Division Enforcement Account.

*Background:* In FY 2003, \$14,038 was collected in money transmitter license fees. Money transmitter license fees are deposited into the Financial Institutions Fund. The current license fee is \$200 plus an additional \$5 per agent not to exceed \$1,000. As of January 10, 2004, there were 28 money transmitters licensed to conduct business in Indiana.

The Department currently reports the existence of 44 separate payday lenders with 313 Indiana branches. In 2002, the Department reported 105 payday lenders in existence with approximately 560 branches in operation in Indiana.

**Explanation of Local Expenditures:** *Homeowner Protection Unit-* A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

*Preemption of State Law-* The bill would allow a state-chartered financial institution to appeal decisions made by the Department regarding exemption from Indiana Code provisions that are preempted for federally chartered financial institutions. Appeals would be conducted in the circuit court of the county where the principal office of the requesting institution is located.

*Deposit of Public Funds-* As for state governments listed above, a credit union would be allowed under the bill to hold up to 20% of their total assets as funds received from a county or political subdivision (less the public amount deposited).

**Explanation of Local Revenues:** *Mortgage Recording Fee-* County recorder revenues would increase by \$0.50 per mortgage filing. The \$3 fee is estimated to generate about \$59,000 for the recorders.

*Small Loan Provisions- Criminal Penalty for Fraud:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund

would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

*Fees for Civil Actions:* If a case is filed in a trial court, the county general fund receives 27%, or \$27, of the \$100 filing fee. Also, 3%, or \$3, is deposited in the general fund of the cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a circuit, superior, county, or municipal court located in the county. If the case is filed in a city or town court (providing the court has jurisdiction), the county general fund receives 20% while the city or town general fund receives 25%.

**State Agencies Affected:** Office of the Attorney General; Professional Licensing Agency and appropriate licensing boards; Department of Financial Institutions; Department of Insurance; Office of the Secretary of State, Securities Division; Indiana Supreme Court; Department of State Revenue; Indiana State Police; Department of Correction.

**Local Agencies Affected:** County recorders, trial courts, prosecutors, local law enforcement agencies.

**Information Sources:** Department of Financial Institutions website: [www.in.gov/dfi/members/minutes](http://www.in.gov/dfi/members/minutes); State Budget Agency website: [www.in.gov/sba](http://www.in.gov/sba); State Budget Agency: BUDSTARS system; State of Indiana *HRM Detail Staffing Report, December 3, 2003*; US Bureau of Census: *American Housing Survey For the United States In 1999*; Phil Goddard, Department of Financial Institutions; John Schroeder, Department of Financial Institutions; Department of Financial Institutions website: [www3.dfi.state.in.us/](http://www3.dfi.state.in.us/); Liz Keele, Corporations Division, Secretary of State; *Indiana Handbook of Taxes, Revenues, and Appropriations, FY 2003*.

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