
HOUSE BILL No. 1229

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-6; IC 5-20-1; IC 23-2-5; IC 24-9; IC 34-7-4-2; IC 36-2-7-10.

Synopsis: Home loan practices. Restricts certain lending acts and practices. Establishes the homeowner protection unit in the office of the attorney general. Provides enforcement procedures for deceptive mortgage acts. Establishes a \$3 mortgage recording fee. Requires the Indiana housing finance authority to provide home ownership training programs. Appropriates \$75,000 to the legislative council to contract for a study of predatory lending and the high rate of foreclosure in Indiana. Establishes an interim study committee on mortgage lending policies.

Effective: Upon passage; July 1, 2004.

Bardon

January 20, 2004, read first time and referred to Committee on Judiciary.

C
o
p
y



Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

C
o
p
y

HOUSE BILL No. 1229



A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-6-3-3, AS AMENDED BY P.L.2-2002,
2 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]: Sec. 3. If the attorney general has reasonable cause to
4 believe that a person may be in possession, custody, or control of
5 documentary material, or may have knowledge of a fact that is relevant
6 to an investigation conducted to determine if a person is or has been
7 engaged in a violation of IC 4-6-9, IC 4-6-10, IC 13-14-10,
8 IC 13-14-12, IC 13-24-2, IC 13-30-4, IC 13-30-5, IC 13-30-6,
9 IC 13-30-8, IC 23-7-8, IC 24-1-2, IC 24-5-0.5, IC 24-5-7, IC 24-5-8,
10 **IC 24-9**, IC 25-1-7, IC 32-34-1, or any other statute enforced by the
11 attorney general, only the attorney general may issue in writing, and
12 cause to be served upon the person or the person's representative or
13 agent, an investigative demand that requires that the person served do
14 any combination of the following:
15 (1) Produce the documentary material for inspection and copying
16 or reproduction.
17 (2) Answer under oath and in writing written interrogatories.



1 (3) Appear and testify under oath before the attorney general or
 2 the attorney general's duly authorized representative.
 3 SECTION 2. IC 4-6-12 IS ADDED TO THE INDIANA CODE AS
 4 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 5 1, 2004]:
 6 **Chapter 12. Homeowner Protection Unit**
 7 **Sec. 1. As used in this chapter, "unit" refers to the homeowner**
 8 **protection unit established under this chapter.**
 9 **Sec. 2. The attorney general shall establish a homeowner**
 10 **protection unit to enforce IC 24-9 and to carry out this chapter.**
 11 **Sec. 3. The unit shall do the following:**
 12 (1) Investigate deceptive acts in connection with mortgage
 13 lending.
 14 (2) Investigate violations of IC 24-9.
 15 (3) Institute appropriate administrative and civil actions to
 16 redress:
 17 (A) deceptive acts in connection with mortgage lending;
 18 and
 19 (B) violations of IC 24-5-0.5 and IC 24-9.
 20 (4) Cooperate with federal, state, and local law enforcement
 21 agencies in the investigation of:
 22 (A) deceptive acts in connection with mortgage lending;
 23 (B) criminal violations involving deceptive acts in
 24 connection with mortgage lending; and
 25 (C) violations of IC 24-5-0.5 and IC 24-9.
 26 (5) Adopt rules under IC 4-22-2 to implement this chapter.
 27 **Sec. 4. (a) The following shall cooperate with the unit to**
 28 **implement this chapter:**
 29 (1) The Indiana professional licensing agency and the
 30 appropriate licensing boards with respect to persons licensed
 31 under IC 25.
 32 (2) The department of financial institutions.
 33 (3) The department of insurance with respect to the sale of
 34 insurance in connection with mortgage lending.
 35 (4) The securities division of the office of the secretary of
 36 state.
 37 (5) The supreme court disciplinary commission with respect
 38 to attorney misconduct.
 39 (6) The Indiana housing finance authority.
 40 (7) The department of state revenue.
 41 (8) The state police department.
 42 (9) A prosecuting attorney.

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

(b) Notwithstanding IC 5-14-3, the entities listed in subsection (a) may share information with the unit.

Sec. 5. The attorney general may file complaints with any of the entities listed in section 4 of this chapter to carry out this chapter and IC 24-9.

Sec. 6. The establishment of the unit and the unit's powers does not limit the jurisdiction of an entity described in section 4 of this chapter.

Sec. 7. The attorney general and an investigator of the unit may do any of the following when conducting an investigation under section 3 of this chapter:

- (1) Issue and serve a subpoena for the production of records, including records stored in electronic data processing systems, for inspection by the attorney general or the investigator.
- (2) Issue and serve a subpoena for the appearance of a person to provide testimony under oath.
- (3) Apply to a court with jurisdiction to enforce a subpoena described in subdivision (1) or (2).

Sec. 8. The unit shall cooperate with the Indiana housing finance authority to develop and implement the home ownership training programs established under IC 5-20-1-15.5.

Sec. 9. The attorney general shall make recommendations to the general assembly for appropriate legislation to address:

- (1) deceptive acts in connection with mortgage lending; and
- (2) violations of IC 24-9.

Sec. 10. (a) The homeowner protection unit account within the general fund is established to support the operations of the unit. The account is administered by the attorney general.

- (b) The account consists of fees collected under IC 24-9-8.
- (c) The expenses of administering the account shall be paid from money in the account.
- (d) The treasurer of state shall invest the money in the account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.
- (e) Interest earned on investments under subsection (d) shall be credited to the account when received.
- (f) Money in the account at the end of a state fiscal year does not revert to the state general fund.

(g) There is annually appropriated to the attorney general from the homeowner protection unit account money sufficient for carrying out the purposes of this chapter and IC 24-9.

SECTION 3. IC 5-20-1-4 IS AMENDED TO READ AS FOLLOWS

C
O
P
Y



1 [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) The authority has all of the
 2 powers necessary or convenient to carry out and effectuate the purposes
 3 and provisions of this chapter including the power:
 4 (1) to make or participate in the making of construction loans to
 5 sponsors of multiple family residential housing that is federally
 6 assisted or assisted by a government sponsored enterprise, such
 7 as the Federal National Mortgage Association, the Federal Home
 8 Loan Mortgage Corporation, or the Federal Agricultural Mortgage
 9 Corporation, the Federal Home Loan Bank, and other similar
 10 entities approved by the authority;
 11 (2) to make or participate in the making of mortgage loans to
 12 sponsors of multiple family residential housing that is federally
 13 assisted or assisted by a government sponsored enterprise, such
 14 as the Federal National Mortgage Association, the Federal Home
 15 Loan Mortgage Corporation, or the Federal Agricultural Mortgage
 16 Corporation, the Federal Home Loan Bank, and other similar
 17 entities approved by the authority;
 18 (3) to purchase or participate in the purchase from mortgage
 19 lenders of mortgage loans made to persons of low and moderate
 20 income for residential housing;
 21 (4) to make loans to mortgage lenders for the purpose of
 22 furnishing funds to such mortgage lenders to be used for making
 23 mortgage loans for persons and families of low and moderate
 24 income. However, the obligation to repay loans to mortgage
 25 lenders shall be general obligations of the respective mortgage
 26 lenders and shall bear such date or dates, shall mature at such
 27 time or times, shall be evidenced by such note, bond, or other
 28 certificate of indebtedness, shall be subject to prepayment, and
 29 shall contain such other provisions consistent with the purposes
 30 of this chapter as the authority shall by rule or resolution
 31 determine;
 32 (5) to collect and pay reasonable fees and charges in connection
 33 with making, purchasing, and servicing of its loans, notes, bonds,
 34 commitments, and other evidences of indebtedness;
 35 (6) to acquire real property, or any interest in real property, by
 36 conveyance, including purchase in lieu of foreclosure, or
 37 foreclosure, to own, manage, operate, hold, clear, improve, and
 38 rehabilitate such real property and sell, assign, exchange, transfer,
 39 convey, lease, mortgage, or otherwise dispose of or encumber
 40 such real property where such use of real property is necessary or
 41 appropriate to the purposes of the authority;
 42 (7) to sell, at public or private sale, all or any part of any mortgage

C
O
P
Y



1 or other instrument or document securing a construction loan, a
2 land development loan, a mortgage loan, or a loan of any type
3 permitted by this chapter;
4 (8) to procure insurance against any loss in connection with its
5 operations in such amounts and from such insurers as it may deem
6 necessary or desirable;
7 (9) to consent, subject to the provisions of any contract with
8 noteholders or bondholders which may then exist, whenever it
9 deems it necessary or desirable in the fulfillment of its purposes
10 to the modification of the rate of interest, time of payment of any
11 installment of principal or interest, or any other terms of any
12 mortgage loan, mortgage loan commitment, construction loan,
13 loan to lender, or contract or agreement of any kind to which the
14 authority is a party;
15 (10) to enter into agreements or other transactions with any
16 federal, state, or local governmental agency for the purpose of
17 providing adequate living quarters for such persons and families
18 in cities and counties where a need has been found for such
19 housing;
20 (11) to include in any borrowing such amounts as may be deemed
21 necessary by the authority to pay financing charges, interest on
22 the obligations (for a period not exceeding the period of
23 construction and a reasonable time thereafter or if the housing is
24 completed, two (2) years from the date of issue of the
25 obligations), consultant, advisory, and legal fees and such other
26 expenses as are necessary or incident to such borrowing;
27 (12) to make and publish rules respecting its lending programs
28 and such other rules as are necessary to effectuate the purposes of
29 this chapter;
30 (13) to provide technical and advisory services to sponsors,
31 builders, and developers of residential housing and to residents
32 and potential residents, including housing selection and purchase
33 procedures, family budgeting, property use and maintenance,
34 household management, and utilization of community resources;
35 (14) to promote research and development in scientific methods
36 of constructing low cost residential housing of high durability;
37 (15) to encourage community organizations to participate in
38 residential housing development;
39 (16) to make, execute, and effectuate any and all agreements or
40 other documents with any governmental agency or any person,
41 corporation, association, partnership, limited liability company,
42 or other organization or entity necessary or convenient to

C
O
P
Y



1 accomplish the purposes of this chapter;
 2 (17) to accept gifts, devises, bequests, grants, loans,
 3 appropriations, revenue sharing, other financing and assistance,
 4 and any other aid from any source whatsoever and to agree to, and
 5 to comply with, conditions attached thereto;
 6 (18) to sue and be sued in its own name, plead and be impleaded;
 7 (19) to maintain an office in the city of Indianapolis and at such
 8 other place or places as it may determine;
 9 (20) to adopt an official seal and alter the same at pleasure;
 10 (21) to adopt and from time to time amend and repeal bylaws for
 11 the regulation of its affairs and the conduct of its business and to
 12 prescribe rules and policies in connection with the performance
 13 of its functions and duties;
 14 (22) to employ fiscal consultants, engineers, attorneys, real estate
 15 counselors, appraisers, and such other consultants and employees
 16 as may be required in the judgment of the authority and to fix and
 17 pay their compensation from funds available to the authority
 18 therefor;
 19 (23) to invest any funds held in reserve or in sinking fund
 20 accounts or any money not required for immediate disbursement
 21 in obligations of the state, the United States, or their agencies or
 22 instrumentalities and such other obligors as may be permitted
 23 under the terms of any resolution authorizing the issuance of the
 24 authority's obligations;
 25 (24) to make or participate in the making of construction loans,
 26 mortgage loans, or both, to individuals, partnerships, limited
 27 liability companies, corporations, and organizations for the
 28 construction of residential facilities for the developmentally
 29 disabled or for the mentally ill or for the acquisition or renovation,
 30 or both, of a facility to make it suitable for use as a new
 31 residential facility for the developmentally disabled or for the
 32 mentally ill;
 33 (25) to make or participate in the making of construction and
 34 mortgage loans to individuals, partnerships, corporations, limited
 35 liability companies, and organizations for the construction,
 36 rehabilitation, or acquisition of residential facilities for children;
 37 (26) to purchase or participate in the purchase of mortgage loans
 38 from:
 39 (A) public utilities (as defined in IC 8-1-2-1); or
 40 (B) municipally owned gas utility systems organized under
 41 IC 8-1.5;
 42 if those mortgage loans were made for the purpose of insulating

C
O
P
Y



1 and otherwise weatherizing single family residences in order to
 2 conserve energy used to heat and cool those residences;

3 (27) to provide financial assistance to mutual housing
 4 associations (IC 5-20-3) in the form of grants, loans, or a
 5 combination of grants and loans for the development of housing
 6 for low and moderate income families; ~~and~~

7 (28) to service mortgage loans made or acquired by the authority
 8 and to impose and collect reasonable fees and charges in
 9 connection with such servicing; **and**

10 **(29) to identify, promote, assist, and fund home ownership**
 11 **training programs throughout Indiana, and adopt rules under**
 12 **IC 4-22-2 governing certification procedures and counseling**
 13 **requirements for nonprofit home ownership counselors.**

14 (b) The authority shall structure and administer any program
 15 conducted under subsection (a)(3) or (a)(4) in order to assure that no
 16 mortgage loan shall knowingly be made to a person whose adjusted
 17 family income shall exceed one hundred twenty-five percent (125%)
 18 of the median income for the geographic area within which the person
 19 resides and at least forty percent (40%) of the mortgage loans so
 20 financed shall be for persons whose adjusted family income shall be
 21 below eighty percent (80%) of the median income for such area.

22 (c) In addition to the powers set forth in subsection (a), the authority
 23 may, with the proceeds of bonds and notes sold to retirement plans
 24 covered by IC 5-10-1.7, structure and administer a program of
 25 purchasing or participating in the purchasing from mortgage lenders of
 26 mortgage loans made to qualified members of retirement plans and
 27 other individuals. The authority shall structure and administer any
 28 program conducted under this subsection to assure that:

29 (1) each mortgage loan is made as a first mortgage loan for real
 30 property:

31 (A) that is a single family dwelling, including a condominium
 32 or townhouse, located in Indiana;

33 (B) for a purchase price of not more than ninety-five thousand
 34 dollars (\$95,000);

35 (C) to be used as the purchaser's principal residence; and

36 (D) for which the purchaser has made a down payment in an
 37 amount determined by the authority;

38 (2) no mortgage loan exceeds seventy-five thousand dollars
 39 (\$75,000);

40 (3) any bonds or notes issued which are backed by mortgage loans
 41 purchased by the authority under this subsection shall be offered
 42 for sale to the retirement plans covered by IC 5-10-1.7; and

C
O
P
Y



1 (4) qualified members of a retirement plan shall be given
2 preference with respect to the mortgage loans that in the
3 aggregate do not exceed the amount invested by their retirement
4 plan in bonds and notes issued by the authority that are backed by
5 mortgage loans purchased by the authority under this subsection.

6 (d) As used in this section, "a qualified member of a retirement
7 plan" means an active or retired member:

8 (1) of a retirement plan covered by IC 5-10-1.7 that has invested
9 in bonds and notes issued by the authority that are backed by
10 mortgage loans purchased by the authority under subsection (c);
11 and

12 (2) who for a minimum of two (2) years preceding the member's
13 application for a mortgage loan has:

14 (A) been a full-time state employee, teacher, judge, police
15 officer, or firefighter;

16 (B) been a full-time employee of a political subdivision
17 participating in the public employees' retirement fund;

18 (C) been receiving retirement benefits from the retirement
19 plan; or

20 (D) a combination of employment and receipt of retirement
21 benefits equaling at least two (2) years.

22 (e) Beginning with the 1991 program year, the authority, when
23 directed by the governor, shall administer:

24 (1) the rental rehabilitation program established by the Housing
25 Assistance Act of 1937 (42 U.S.C. 1437o); and

26 (2) federal funds allocated to the rental rehabilitation program
27 under the Housing Assistance Act of 1937 (42 U.S.C. 1437o).

28 (f) The authority may contract with the division of family and
29 children and the department of commerce so that the authority may
30 administer the program and funds described under subsection (e) for
31 program years before 1991.

32 SECTION 4. IC 5-20-1-15.5 IS ADDED TO THE INDIANA CODE
33 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
34 1, 2004]: **Sec. 15.5. (a) The authority shall:**

35 **(1) identify, promote, assist, and fund home ownership**
36 **training programs throughout Indiana; and**

37 **(2) adopt rules under IC 4-22-2 governing certification**
38 **procedures and counseling requirements for nonprofit home**
39 **ownership counselors operating under programs under**
40 **subdivision (1).**

41 **(b) The following shall cooperate with the authority to**
42 **implement this section:**

C
o
p
y



- 1 **(1) The Indiana professional licensing agency and the**
- 2 **appropriate licensing boards with respect to persons licensed**
- 3 **under IC 25.**
- 4 **(2) The department of financial institutions.**
- 5 **(3) The department of insurance with respect to the sale of**
- 6 **insurance in connection with mortgage lending.**
- 7 **(4) The securities division of the office of the secretary of**
- 8 **state.**
- 9 **(5) The attorney general.**
- 10 **(6) The department of state revenue.**
- 11 **(7) The state police department.**

12 SECTION 5. IC 5-20-1-15.6 IS ADDED TO THE INDIANA CODE
 13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 14 1, 2004]: **Sec. 15.6. (a) The home ownership training account within**
 15 **the state general fund is established to support the home ownership**
 16 **training programs established under section 15.5 of this chapter.**
 17 **The account is administered by the authority.**

- 18 **(b) The account consists of fees collected under IC 24-9-8.**
- 19 **(c) The expenses of administering the account shall be paid from**
- 20 **money in the fund.**

21 **(d) The treasurer of state shall invest the money in the account**
 22 **not currently needed to meet the obligations of the account in the**
 23 **same manner as other public money may be invested.**

24 **(e) Interest earned on investments under subsection (d) shall be**
 25 **credited to the account when received.**

26 **(f) Money in the account at the end of a state fiscal year does not**
 27 **revert to the state general fund. However, if the amount of money**
 28 **in the account at the end of a particular state fiscal year exceeds**
 29 **one hundred thousand dollars (\$100,000), the treasurer of state**
 30 **shall transfer the amount that exceeds one hundred thousand**
 31 **dollars (\$100,000) from the account into the state general fund.**

32 **(g) There is annually appropriated to the authority from the**
 33 **home ownership training account an amount sufficient for**
 34 **carrying out the purposes of section 15.5 of this chapter.**

35 SECTION 6. IC 23-2-5-3, AS AMENDED BY P.L.115-2001,
 36 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2004]: **Sec. 3. (a) As used in this chapter, "certificate of**
 38 **registration" means a certificate issued by the commissioner**
 39 **authorizing an individual to engage in origination activities on behalf**
 40 **of a licensee.**

- 41 **(b) As used in this chapter, "creditor" means a person:**
- 42 **(1) that loans funds of the person in connection with a loan; and**

C
O
P
Y



1 (2) to whom the loan is initially payable on the face of the note or
 2 contract evidencing the loan.

3 (c) As used in this chapter, "license" means a license issued by the
 4 commissioner authorizing a person to engage in the loan brokerage
 5 business.

6 (d) As used in this chapter, "licensee" means a person that is issued
 7 a license under this chapter.

8 (e) As used in this chapter, "loan broker" means any person who, in
 9 return for any consideration from any person, promises to procure a
 10 loan for any person or assist any person in procuring a loan from any
 11 third party, or who promises to consider whether or not to make a loan
 12 to any person. "Loan broker" does not include:

13 (1) any bank, savings bank, trust company, savings association,
 14 credit union, or any other financial institution that is:

15 (A) regulated by any agency of the United States or any state;
 16 and

17 (B) regularly actively engaged in the business of making
 18 consumer loans that are not secured by real estate or taking
 19 assignment of consumer sales contracts that are not secured by
 20 real estate;

21 (2) any person authorized to sell and service loans for **the**
 22 **Indiana housing finance authority**, the Federal National
 23 Mortgage Association, or the Federal Home Loan Mortgage
 24 Corporation, issue securities backed by the Government National
 25 Mortgage Association, make loans insured by the United States
 26 Department of Housing and Urban Development, act as a
 27 supervised lender or nonsupervised automatic lender of the
 28 United States Department of Veterans Affairs, or act as a
 29 correspondent of loans insured by the United States Department
 30 of Housing and Urban Development;

31 (3) any insurance company; **or**

32 (4) any person arranging financing for the sale of the person's
 33 product; **or**

34 **(5) any community development corporation (as defined in**
 35 **IC 4-4-28-2).**

36 (f) As used in this chapter, "loan brokerage business" means a
 37 person acting as a loan broker.

38 (g) As used in this chapter, "origination activities" means
 39 establishing the terms or conditions of a loan with a borrower or
 40 prospective borrower.

41 (h) As used in this chapter, "person" means an individual, a
 42 partnership, a trust, a corporation, a limited liability company, a limited

C
O
P
Y



1 liability partnership, a sole proprietorship, a joint venture, a joint stock
2 company, or another group or entity, however organized.

3 (i) As used in this chapter, "registrant" means an individual who is
4 registered to engage in origination activities under this chapter.

5 (j) As used in this chapter, "ultimate equitable owner" means a
6 person who, directly or indirectly, owns or controls any ownership
7 interest in a person, regardless of whether the person owns or controls
8 the ownership interest through one (1) or more other persons or one (1)
9 or more proxies, powers of attorney, or variances.

10 SECTION 7. IC 23-2-5-19, AS AMENDED BY P.L.230-1999,
11 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2004]: Sec. 19. (a) The following persons are exempt from the
13 requirements of sections 4, 5, 6, 9, 10, 17, and 18 of this chapter:

- 14 (1) Any attorney while engaging in the practice of law.
- 15 (2) Any certified public accountant, public accountant, or
16 accountant practitioner holding a certificate or registered under
17 IC 25-2.1 while performing the practice of accountancy (as
18 defined by IC 25-2.1-1-10).
- 19 (3) Any person licensed as a real estate broker or salesperson
20 under IC 25-34.1 to the extent that the person is rendering loan
21 related services in the ordinary course of a transaction in which a
22 license as a real estate broker or salesperson is required.
- 23 (4) Any broker-dealer, agent, or investment advisor registered
24 under IC 23-2-1.
- 25 (5) Any person that:
 - 26 (A) procures;
 - 27 (B) promises to procure; or
 - 28 (C) assists in procuring;
- 29 a loan that is not subject to the Truth in Lending Act (15 U.S.C.
30 1601 through 1667e).
- 31 (6) **Any community development corporation (as defined in**
32 **IC 4-4-28-2).**
- 33 (7) **The Indiana housing finance authority.**
- 34 (8) Any person who is a creditor, or proposed to be a creditor, for
35 any loan.

36 (b) As used in this chapter, "bona fide third party fee" includes fees
37 for the following:

- 38 (1) Credit reports, investigations, and appraisals performed by a
39 person who holds a license or certificate as a real estate appraiser
40 under IC 25-34.1-8.
- 41 (2) If the loan is to be secured by real property, title examinations,
42 an abstract of title, title insurance, a property survey, and similar

C
o
p
y



1 purposes.
2 (3) The services provided by a loan broker in procuring possible
3 business for a lending institution if the fees are paid by the
4 lending institution.

5 (c) As used in this section, "successful procurement of a loan"
6 means that a binding commitment from a creditor to advance money
7 has been received and accepted by the borrower.

8 (d) The burden of proof of any exemption or classification provided
9 in this chapter is on the party claiming the exemption or classification.

10 SECTION 8. IC 24-9 IS ADDED TO THE INDIANA CODE AS A
11 NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
12 2004]:

13 **ARTICLE 9. HOME LOAN PRACTICES**

14 **Chapter 1. Application**

15 **Sec. 1. This article does not apply to a bank, a trust company, a**
16 **savings association, a savings bank, a credit union, or an industrial**
17 **loan and investment company that is chartered under Indiana law**
18 **to the extent federal law precludes or preempts the application of**
19 **the provisions of this article to a federally chartered bank, trust**
20 **company, savings and loan, savings bank, or credit union.**

21 **Sec. 2. The preclusion or preemption under section 1 applies**
22 **only to the same type of state chartered entity as the federally**
23 **chartered entity affected by the federal preclusion or preemption.**

24 **Chapter 2. Definitions**

25 **Sec. 1. The definitions in this chapter apply throughout this**
26 **article.**

27 **Sec. 2. "Benchmark rate" means the interest rate established**
28 **under Section 152 of the Federal Home Ownership and Equity**
29 **Protection Act of 1994 (15 U.S.C. 1602 (aa)) and the regulations**
30 **adopted under that Act by the Federal Reserve Board, including 12**
31 **CFR 226.32 and the Official Staff Commentary to the regulations**
32 **as amended.**

33 **Sec. 3. "Bona fide discount points" means loan discount points**
34 **that:**

- 35 (1) are knowingly paid by the borrower;
- 36 (2) are paid for the express purpose of reducing the interest
- 37 rate applicable to the loan;
- 38 (3) reduce the interest rate from an interest rate that does not
- 39 exceed the benchmark rate; and
- 40 (4) are recouped within the first four (4) years of the
- 41 scheduled loan payments;
- 42 if the reduction in the interest rate that is achieved by the payment

C
o
p
y



1 of the loan discount points reduces the interest charged on the
2 scheduled payments so that the borrower's dollar amount of
3 savings in interest during the first four (4) years of the loan is equal
4 to or greater than the dollar amount of loan discount points paid
5 by the borrower.

6 Sec. 4. "Borrower" means a person obligated to repay a home
7 loan, including a coborrower, cosigner, or guarantor.

8 Sec. 5. "Bridge loan" means temporary or short term financing
9 with a maturity of less than eighteen (18) months that requires
10 payments of interest only until the entire unpaid balance is due and
11 payable.

12 Sec. 6. (a) "Creditor" means:

13 (1) a person:

14 (A) who regularly extends consumer credit that is subject
15 to a finance charge or that is payable by written agreement
16 in more than four (4) installments; and

17 (B) to whom the debt arising from a home loan transaction
18 is initially payable; or

19 (2) a person who brokers a home loan, including a person
20 who:

21 (A) directly or indirectly solicits, processes, places, or
22 negotiates home loans for others;

23 (B) offers to solicit, process, place, or negotiate home loans
24 for others; or

25 (C) closes home loans that may be in the person's own
26 name with funds provided by others and that are
27 thereafter assigned to the person providing funding for the
28 loans.

29 (b) The term does not include:

30 (1) a servicer;

31 (2) a state or local housing finance authority;

32 (3) any other state or local governmental or
33 quasi-governmental entity; or

34 (4) an attorney providing legal services in association with the
35 closing of a home loan.

36 Sec. 7. "Deceptive act" means an act or a practice as part of a
37 consumer credit mortgage transaction involving real property
38 located in Indiana in which a creditor, a mortgage broker, or a real
39 estate appraiser who assists in or is a part of the consumer credit
40 mortgage transaction knowingly or intentionally:

41 (1) makes a material misrepresentation to a borrower;

42 (2) conceals or obscures material information from the

C
O
P
Y



1 borrower regarding the terms or conditions of the
 2 transaction;
 3 (3) consummates the consumer credit mortgage transaction
 4 with the knowledge that the borrower will be unable to
 5 successfully fulfill the terms or conditions of the mortgage
 6 loan based on the borrower's finances at the time of the
 7 consummation; or
 8 (4) includes terms or conditions in the mortgage loan that
 9 substantially increase the likelihood of default.

10 Sec. 8. "Flipping" means the refinancing of an existing home
 11 loan, resulting in a new home loan that does not have a reasonable
 12 tangible net benefit to the borrower considering all the
 13 circumstances, including the terms of both the new and refinanced
 14 home loans, the cost of the new home loan, and the borrower's
 15 circumstances.

16 Sec. 9. "High cost home loan" means a home loan with:
 17 (1) a trigger rate that exceeds the benchmark rate; or
 18 (2) total points and fees that exceed five percent (5%) of the
 19 loan principal.

20 Sec. 10. "Home loan" means a loan, other than a reverse
 21 mortgage transaction, that is secured by a:
 22 (1) mortgage or deed of trust on real estate in Indiana on
 23 which there is located or will be located a structure or
 24 structures:
 25 (A) designed primarily for occupancy of one (1) to four (4)
 26 families; and
 27 (B) that is or will be occupied by a borrower as the
 28 borrower's principal dwelling; or
 29 (2) security interest on a manufactured home that is or will be
 30 occupied by a borrower as the borrower's principal dwelling.

31 Sec. 11. (a) "Manufactured home" means a structure that is:
 32 (1) transportable in one (1) or more sections that are greater
 33 than or equal to:
 34 (A) eight (8) body feet in width; or
 35 (B) forty (40) body feet in length;
 36 (2) built on a permanent chassis; and
 37 (3) designed to be used as a dwelling:
 38 (A) with a permanent foundation when erected on land
 39 secured in conjunction with the real property on which the
 40 manufactured home is located;
 41 (B) that is connected to utilities; and
 42 (C) that contains plumbing, heating, and electrical systems.

C
O
P
Y



- 1 **(b) The term includes a structure:**
- 2 **(1) that meets all requirements of subsection (a)(1); and**
- 3 **(2) with respect to which the manufacturer:**
- 4 **(A) voluntarily files a certification required by the United**
- 5 **States Department of Housing and Urban Development;**
- 6 **and**
- 7 **(B) complies with the standards established under the**
- 8 **federal National Manufactured Housing Construction and**
- 9 **Safety Standards Act (42 U.S.C. 5401 et seq.).**
- 10 **(c) The term does not include:**
- 11 **(1) rental property;**
- 12 **(2) second homes; or**
- 13 **(3) manufactured homes if not secured in conjunction with the**
- 14 **real property on which the manufactured home is located.**
- 15 **Sec. 12. "Points and fees" means any of the following:**
- 16 **(1) An amount payable under a point, a discount, or other**
- 17 **system of additional charges that is not a bona fide discount**
- 18 **point.**
- 19 **(2) A service or carrying charge.**
- 20 **(3) A loan fee, finder's fee, or similar charge.**
- 21 **(4) A fee for an investigation report.**
- 22 **(5) A prepayment fee or penalty.**
- 23 **(6) All compensation paid directly or indirectly to a mortgage**
- 24 **broker, including a broker that originates a loan in the**
- 25 **broker's own name.**
- 26 **(7) The following items, if charged in connection with any**
- 27 **extension of credit secured by an interest in real property, if**
- 28 **the creditor receives direct or indirect compensation in**
- 29 **connection with the charge or the charge is paid directly or**
- 30 **indirectly to an affiliate of the creditor:**
- 31 **(A) Fees or premiums for title examination, title insurance,**
- 32 **or similar purposes.**
- 33 **(B) Fees for preparation of loan related documents.**
- 34 **(C) Fees for notarizing deeds and other documents.**
- 35 **(D) Appraisal fees, including fees related to any pest**
- 36 **infestation or flood hazard inspections conducted before**
- 37 **closing.**
- 38 **(E) Credit reports.**
- 39 **Sec. 13. "Rate" means the interest rate charged on a home loan,**
- 40 **based on an annual simple interest yield.**
- 41 **Sec. 14. "Total loan amount" means:**
- 42 **(1) the principal of the home loan minus the points and fees**

C
O
P
Y



1 that are included in the principal amount of the loan; or
2 (2) the total line of credit allowed under the home loan for an
3 open-end loan.

4 Sec. 15. "Trigger rate" means:

5 (1) for fixed rate home loans in which the interest rate will not
6 vary during the term of the loan, the rate as of the date of
7 closing;

8 (2) for home loans in which the interest varies according to an
9 index, the sum of the index rate as of the date of closing plus
10 the maximum margin permitted at any time under the loan
11 agreement; or

12 (3) for all other home loans in which the rate may vary at any
13 time during the term of the loan, the maximum rate that may
14 be charged during the term of the home loan.

15 Chapter 3. Prohibited Lending Practices Generally

16 Sec. 1. (a) A creditor making a home loan may not finance,
17 directly or indirectly, any:

- 18 (1) credit life insurance;
- 19 (2) credit disability insurance;
- 20 (3) credit unemployment insurance;
- 21 (4) credit property insurance;
- 22 (5) other life or health insurance; or
- 23 (6) payments directly or indirectly for any cancellation
24 suspension agreement or contract.

25 (b) Insurance premiums, debt cancellation fees, or suspension
26 fees calculated and paid on a monthly basis are not considered to
27 be financed by the creditor for purposes of this chapter.

28 Sec. 2. A creditor may not engage in the act or practice of
29 flipping a home loan. A creditor is presumed not to be engaged in
30 the act or practice of flipping a home loan if the creditor refinances
31 an existing home loan and:

- 32 (1) no points and fees are payable in connection with the part
33 of the proceeds of the new home loan that is used to refinance
34 the existing home loan; and
- 35 (2) the points and fees payable in connection with the part of
36 the proceeds of the new home loan that exceeds the proceeds
37 described in subdivision (1) are not more than five percent
38 (5%) of the proceeds described in this subdivision.

39 Sec. 3. A creditor may not recommend or encourage default on
40 an existing loan or other debt before and in connection with the
41 closing or planned closing of a home loan that refinances all or part
42 of the existing loan or debt.

C
o
p
y



1 **Sec. 4. (a) Notwithstanding IC 24-4.5-3-203.5, a creditor may**
2 **not charge a late payment fee except as follows:**

3 **(1) A late payment fee may not exceed four percent (4%) of**
4 **the amount of the payment past due.**

5 **(2) A late payment fee may be assessed only for a payment**
6 **past due for at least fifteen (15) days.**

7 **(3) A late payment fee may not be charged more than one (1)**
8 **time with respect to a single late payment. If a late payment**
9 **charge is deducted from a payment made on the loan and the**
10 **deduction causes a subsequent default on a subsequent**
11 **payment, a late payment charge may not be imposed for the**
12 **subsequent default. If a late payment fee has been imposed**
13 **one (1) time with respect to a particular late payment, a late**
14 **payment fee may not be imposed with respect to any future**
15 **payment that would have been timely and sufficient, but for**
16 **the previous default.**

17 **(4) A late payment fee may not be charged unless the creditor**
18 **notifies the borrower not more than forty-five (45) days after**
19 **the date the payment was due that a late payment fee has been**
20 **imposed for a particular late payment. A late payment fee**
21 **may not be collected from the borrower if the borrower**
22 **informs the creditor that nonpayment of an installment is in**
23 **dispute and presents proof of payment not more than**
24 **forty-five (45) days after receipt of the creditor's notice of the**
25 **late fee.**

26 **(b) A creditor shall treat each payment as posted on the same**
27 **date as the payment was received by the creditor, servicer, or**
28 **creditor's agent, or at the address provided to the borrower by the**
29 **creditor, servicer, or creditor's agent for making payments.**

30 **Sec. 5. (a) A home loan agreement may not contain a provision**
31 **that permits the creditor, in the creditor's sole discretion, to**
32 **accelerate the indebtedness.**

33 **(b) This section does not prohibit acceleration of a home loan in**
34 **good faith due to the borrower's failure to abide by the material**
35 **terms of the loan.**

36 **Sec. 6. A creditor may not charge a fee for informing or**
37 **transmitting to a person the balance due to pay off a home loan or**
38 **to provide a written release upon prepayment. A creditor must**
39 **provide a payoff balance not later than ten (10) business days after**
40 **the request is received by the creditor.**

41 **Sec. 7. Without regard to whether a borrower is acting**
42 **individually or on behalf of others similarly situated, a provision**

C
O
P
Y



- 1 of a home loan agreement that:
- 2 (1) requires arbitration of a claim or defense;
- 3 (2) allows a party to require a borrower to assert a claim or
- 4 defense in a forum that is:
- 5 (A) less convenient;
- 6 (B) more costly; or
- 7 (C) more dilatory;
- 8 for the resolution of the dispute than an Indiana court in
- 9 which the borrower may otherwise bring a claim or defense;
- 10 or
- 11 (3) limits in any way any claim or defense the borrower may
- 12 have;

13 is unconscionable and void.

14 **Sec. 8. A creditor may not:**

- 15 (1) divide a loan transaction into separate parts with the
- 16 intent of evading a provision of this article;
- 17 (2) structure a home loan transaction as an open-end loan
- 18 with the intent of evading the provisions of this article if the
- 19 loan would be a high cost home loan if the loan had been
- 20 structured as a closed-end loan;
- 21 (3) engage in a deceptive act when making a home loan; or
- 22 (4) engage in any other subterfuge with the intent of evading
- 23 a provision of this article.

24 **Sec. 9. It is unlawful for a creditor to discriminate against any**
25 **applicant with respect to any aspect of a credit transaction on the**
26 **basis of race, color, religion, national origin, sex, marital status, or**
27 **age, if the applicant has the ability to contract.**

28 **Chapter 4. Additional Prohibitions for High Cost Home Loans**

29 **Sec. 1. The following additional limitations and prohibited**
30 **practices apply to a high cost home loan:**

- 31 (1) A creditor making a high cost home loan may not directly
- 32 or indirectly finance any points and fees.
- 33 (2) Prepayment fees or penalties may not be included in the
- 34 loan documents for a high cost home loan or charged to the
- 35 borrower if the fees or penalties exceed in total two percent
- 36 (2%) of the high cost home loan amount prepaid during the
- 37 first twenty-four (24) months after the high cost home loan
- 38 closing.
- 39 (3) A prepayment penalty may not be contracted for after the
- 40 second year following the high cost home loan closing.
- 41 (4) A creditor may not include a prepayment penalty fee in a
- 42 high cost home loan unless the creditor offers the borrower

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

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."

Sec. 2. 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 obligor's principal dwelling.**

Sec. 3. 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.

Sec. 4. 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.

Sec. 5. 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.

Sec. 6. 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 finance authority under IC 5-20-1-15.5;**

**C
O
P
Y**



1 at the same time as the good faith estimates are provided to the
2 borrower in accordance with the requirements of the federal Real
3 Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) as
4 amended.

5 Sec. 7. (a) A creditor may not make a high cost home loan
6 without regard to repayment ability.

7 (b) If a creditor presents evidence that the creditor followed
8 commercially reasonable practices in determining the borrower's
9 debt to income ratio, there is a rebuttable presumption that the
10 creditor made the high cost home loan with due regard to
11 repayment ability. For purposes of this section, there is a
12 rebuttable presumption that the borrower's statement of income
13 provided to the creditor is true and complete.

14 (c) Commercially reasonable practices include the use of:

- 15 (1) the debt to income ratio:
 - 16 (A) listed in 38 CFR 36.4337(c)(1); and
 - 17 (B) defined in 38 CFR 36.4337(d); and
- 18 (2) the residual income guidelines established under:
 - 19 (A) 38 CFR 36.4337(e); and
 - 20 (B) United States Department of Veterans Affairs form
21 26-6393.

22 Sec. 8. A creditor may not pay a contractor under a home
23 improvement contract from the proceeds of a high cost home loan
24 unless:

- 25 (1) the creditor is presented with a signed and dated
26 completion certificate showing that the home improvements
27 have been completed; and
- 28 (2) the instrument is payable to the borrower or jointly to the
29 borrower and the contractor or, at the election of the
30 borrower, through a third party escrow agent under a written
31 agreement signed by the borrower, the creditor, and the
32 contractor before the disbursement.

33 Sec. 9. A creditor may not charge a borrower any fees or other
34 charges to modify, renew, extend, or amend a high cost home loan
35 or to defer a payment due under the terms of a high cost home
36 loan.

37 Sec. 10. A creditor may not make a high cost home loan unless
38 the creditor has given the following notice, in writing, to the
39 borrower not later than the time that notice is required under 12
40 CFR 226.31(c):

41 "NOTICE TO BORROWER
42 YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE

C
O
P
Y



1 TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD
 2 COMPARE LOAN RATES, COSTS, AND FEES.
 3 MORTGAGE LOAN RATES AND CLOSING COSTS AND
 4 FEES VARY BASED ON MANY FACTORS, INCLUDING
 5 YOUR PARTICULAR CREDIT AND FINANCIAL
 6 CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY,
 7 THE LOAN-TO-VALUE REQUESTED, AND THE TYPE
 8 OF PROPERTY THAT WILL SECURE YOUR LOAN. THE
 9 LOAN RATE, COSTS, AND FEES COULD ALSO VARY
 10 BASED ON WHICH CREDITOR OR BROKER YOU
 11 SELECT.

12 IF YOU ACCEPT THE TERMS OF THIS LOAN, THE
 13 CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR
 14 HOME. YOU COULD LOSE YOUR HOME AND ANY
 15 MONEY YOU HAVE PAID IF YOU DO NOT MEET YOUR
 16 PAYMENT OBLIGATIONS UNDER THE LOAN.

17 YOU SHOULD CONSULT AN ATTORNEY AND A
 18 QUALIFIED INDEPENDENT CREDIT COUNSELOR OR
 19 OTHER EXPERIENCED FINANCIAL ADVISER
 20 REGARDING THE RATE, FEES, AND PROVISIONS OF
 21 THIS MORTGAGE LOAN BEFORE YOU PROCEED. A
 22 LIST OF QUALIFIED COUNSELORS IS AVAILABLE
 23 FROM THE INDIANA HOUSING FINANCE AUTHORITY.
 24 YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN
 25 AGREEMENT MERELY BECAUSE YOU HAVE
 26 RECEIVED THIS DISCLOSURE OR HAVE SIGNED A
 27 LOAN APPLICATION. REMEMBER, PROPERTY TAXES
 28 AND HOMEOWNER'S INSURANCE ARE YOUR
 29 RESPONSIBILITY. NOT ALL CREDITORS PROVIDE
 30 ESCROW SERVICES FOR THESE PAYMENTS. YOU
 31 SHOULD ASK YOUR CREDITOR ABOUT THESE
 32 SERVICES.

33 ALSO, YOUR PAYMENTS ON EXISTING DEBTS
 34 CONTRIBUTE TO YOUR CREDIT RATINGS. YOU
 35 SHOULD NOT ACCEPT ANY ADVICE TO IGNORE
 36 YOUR REGULAR PAYMENTS TO YOUR EXISTING
 37 CREDITORS."

38 **Chapter 5. Claims, Defenses, Remedies**

39 **Sec. 1. (a) A person who purchases or is otherwise assigned a**
 40 **high cost home loan is subject to all affirmative claims and any**
 41 **defenses with respect to the high cost home loan that the borrower**
 42 **could assert against a creditor or broker of the high cost home**

C
o
p
y



1 loan. However, this section does not apply if the purchaser or
2 assignee demonstrates by a preponderance of the evidence that a
3 reasonable person exercising ordinary due diligence could not
4 determine that the loan was a high cost home loan. A purchaser or
5 an assignee is presumed to have exercised reasonable due diligence
6 if the purchaser or assignee:

7 (1) has in place at the time of the purchase or assignment of
8 the subject loans, policies that expressly prohibit the purchase
9 or acceptance of the assignment of any high cost home loans;
10 (2) requires by contract that a seller or an assignor of home
11 loans to the purchaser or assignee represents and warrants to
12 the purchaser or assignee that either:

13 (A) the seller or assignor will not sell or reassign any high
14 cost home loans to the purchaser or assignee; or

15 (B) the seller or assignor is a beneficiary of a
16 representation and warranty from a previous seller or
17 assignor to that effect;

18 (3) exercises reasonable due diligence:

19 (A) at the time of purchase or assignment of home loans;
20 or

21 (B) within a reasonable period after the purchase or
22 assignment of home loans;

23 intended by the purchaser or assignee to prevent the
24 purchaser or assignee from purchasing or taking assignment
25 of any high cost home loans; or

26 (4) satisfies the requirements of subdivisions (1) and (2) and
27 establishes that a reasonable person exercising ordinary due
28 diligence could not determine that the loan was a high cost
29 home loan based on the:

30 (A) documentation required by the federal Truth in
31 Lending Act (15 U.S.C. 1601 et seq.); and

32 (B) itemization of the amount financed and other
33 disbursement disclosures.

34 (b) A borrower acting only in an individual capacity may assert
35 against the creditor or any subsequent holder or assignee of a home
36 loan:

37 (1) a violation of IC 24-9-3-2 as a defense, claim, or
38 counterclaim, after:

39 (A) an action to enjoin foreclosure or to preserve or obtain
40 possession of the dwelling that secures the loan is initiated;

41 (B) an action to collect on the loan or foreclose on the
42 collateral securing the loan is initiated; or

C
o
p
y



1 (C) the loan is more than sixty (60) days in default;
 2 within three (3) years after the closing of a home loan;
 3 (2) a violation of this article in connection to the high cost
 4 home loan as a defense, claim, or counterclaim in an original
 5 action within five (5) years after the closing of a high cost
 6 home loan; and
 7 (3) any defense, claim, counterclaim, or action to enjoin
 8 foreclosure or preserve or obtain possession of the home that
 9 secures the loan, including a violation of this article after:
 10 (A) an action to collect on the loan or foreclose on the
 11 collateral securing the loan is initiated;
 12 (B) the debt arising from the loan is accelerated; or
 13 (C) the loan is more than sixty (60) days in default;
 14 at any time during the term of a high cost home loan.
 15 (c) In an action, a claim, or a counterclaim brought under
 16 subsection (b), the borrower may recover only amounts required
 17 to reduce or extinguish the borrower's liability under a home loan
 18 plus amounts required to recover costs, including reasonable
 19 attorney's fees.
 20 (d) The provisions of this section are effective notwithstanding
 21 any other provision of law. This section shall not be construed to
 22 limit the substantive rights, remedies, or procedural rights
 23 available to a borrower against any creditor, assignee, or holder
 24 under any other law. The rights conferred on borrowers by
 25 subsections (a) and (b) are independent of each other and do not
 26 limit each other.
 27 Sec. 2. (a) If a creditor asserts that grounds for acceleration
 28 under the terms of a high cost home loan exist and requires the
 29 payment in full of all sums secured by the security instrument, the
 30 borrower or a person authorized to act on the borrower's behalf at
 31 any time before the title is transferred by means of foreclosure,
 32 judicial proceeding and sale, or otherwise may cure the default and
 33 reinstate the high cost home loan by tendering the amount or
 34 performance as specified in the security instrument.
 35 (b) If the borrower cures the default on a high cost home loan,
 36 the borrower must be reinstated to the same position as if the
 37 default had not occurred, and any acceleration of any obligation
 38 under the security instrument or note arising from the default is
 39 nullified as of the date of the cure.
 40 Sec. 3. (a) A creditor making a high cost home loan that has the
 41 right to foreclose must use the judicial foreclosure procedures of
 42 the state in which the property securing the high cost home loan is

COPY



1 located. The borrower has the right to assert in the proceeding the
 2 nonexistence of a default and any other claim or defense to
 3 acceleration and foreclosure, including any claim or defense based
 4 on any violations of this article.

5 (b) This section is not intended and shall not be construed to
 6 allow any claim or defense otherwise barred by any statute of
 7 limitation or repose.

8 Sec. 4. (a) A person who violates this article is liable to the
 9 borrower for the following:

10 (1) Actual damages, including consequential damages. The
 11 borrower is not required to demonstrate reliance in order to
 12 receive actual damages.

13 (2) Statutory damages equal to two (2) times the finance
 14 charges agreed to in the home loan agreement.

15 (3) Punitive damages, if the violation was malicious or
 16 reckless.

17 (4) Costs and reasonable attorney's fees.

18 (b) A borrower may be granted injunctive, declaratory, and
 19 other equitable relief as the court determines appropriate in an
 20 action to enforce compliance with this chapter.

21 (c) The right of rescission granted under 15 U.S.C. 1601 et seq.
 22 for a violation of law is available to a borrower acting only in an
 23 individual capacity by way of recoupment as a defense against a
 24 party foreclosing on a home loan at any time during the term of the
 25 loan. Any recoupment claim asserted under this provision is
 26 limited to the amount required to reduce or extinguish the
 27 borrower's liability under the home loan plus amounts required to
 28 recover costs, including reasonable attorney's fees. This article
 29 shall not be construed to limit the recoupment rights available to
 30 a borrower under any other law.

31 (d) The remedies provided in this section are cumulative but are
 32 not intended to be the exclusive remedies available to a consumer.
 33 A consumer is not required to exhaust any administrative remedies
 34 under this article or under any other applicable law.

35 (e) The knowing or intentional violation of this article or a rule
 36 adopted under the authority of this article renders the home loan
 37 agreement void, and the creditor has no right to collect, receive, or
 38 retain any principal, interest, or other charges with respect to the
 39 loan. The borrower may recover any payments made under the
 40 agreement.

41 (f) An award of damages under subsection (a) has priority over
 42 a civil penalty imposed under this article.

C
O
P
Y



1 **Sec. 5. (a) If the creditor or an assignee establishes by a**
2 **preponderance of evidence that a violation of this article is**
3 **unintentional or the result of a bona fide error of law or fact**
4 **notwithstanding the maintenance of procedures reasonably**
5 **adopted to avoid any such violation or error, the validity of the**
6 **transaction is not affected, and no liability is imposed under section**
7 **4 of this chapter except in the case of a refusal to make a refund.**

8 **(b) Except as provided in subsection (c), a creditor in a high cost**
9 **home loan who in good faith fails to comply with this article is not**
10 **considered to have violated this article if the creditor does the**
11 **following before receiving notice of the compliance failure from the**
12 **borrower:**

13 **(1) Not later than thirty (30) days after the date of the loan**
14 **closing, makes:**

15 **(A) appropriate restitution to the borrower of any amounts**
16 **collected in error; and**

17 **(B) all appropriate adjustments to the loan to correct the**
18 **error.**

19 **(2) Not later than sixty (60) days after the date of the loan**
20 **closing, notifies the borrower of:**

21 **(A) the compliance error; and**
22 **(B) the amount of the required restitution or adjustment.**

23 **(c) Subsection (b) does not apply unless the creditor establishes**
24 **that the compliance failure was not intentional and resulted from**
25 **a bona fide error, notwithstanding the maintenance of procedures**
26 **reasonably adopted to avoid the errors. For purposes of this**
27 **subsection, "bona fide errors" include clerical errors, calculation**
28 **errors, computer malfunction and programming errors, and**
29 **printing errors. An error of legal judgment with respect to a**
30 **person's obligations under this article is not a bona fide error for**
31 **purposes of this subsection.**

32 **Sec. 6. The rights conferred by this article are in addition to**
33 **rights granted under any other law.**

34 **Chapter 6. Reporting Requirements**

35 **Sec. 1. (a) A servicer of a high cost home loan shall report at**
36 **least monthly to a nationally recognized consumer credit reporting**
37 **agency both the favorable and unfavorable payment history**
38 **information of the borrower on payments due to the creditor on a**
39 **high cost home loan.**

40 **(b) This section does not prohibit a servicer from agreeing with**
41 **the borrower not to report specified payment history information**
42 **in the event of a resolved or an unresolved dispute with a borrower**

C
O
P
Y



1 and does not apply to high cost home loans held or serviced by a
2 lender for less than ninety (90) days.

3 **Chapter 7. Penalties and Enforcement**

4 **Sec. 1. A person who knowingly or intentionally violates this**
5 **article commits:**

6 (1) a Class A misdemeanor; and

7 (2) an act that is actionable by the attorney general under
8 IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

9 **Sec. 2. (a) The attorney general and the attorney general's**
10 **homeowner protection unit established under IC 4-6-12 shall**
11 **enforce this article for any violation occurring within five (5) years**
12 **after the making of a home loan.**

13 (b) The attorney general may refer a matter under section 1 of
14 this chapter to a prosecuting attorney for enforcement.

15 **Sec. 3. (a) The attorney general may bring an action to enjoin a**
16 **violation of this article. A court in which the action is brought may:**

17 (1) issue an injunction;

18 (2) order a person to make restitution;

19 (3) void or limit the application of obligations that violate this
20 article;

21 (4) order a person to reimburse the state for reasonable costs
22 of the attorney general's investigation and prosecution of the
23 violation of this article; and

24 (5) impose a civil penalty of not more than fifteen thousand
25 dollars (\$15,000) per violation.

26 (b) A person who violates an injunction under this section is
27 subject to a civil penalty of not more that fifteen thousand dollars
28 (\$15,000) per violation.

29 (c) The court that issues an injunction retains jurisdiction over
30 a proceeding seeking the imposition of a civil penalty under this
31 section.

32 **Sec. 4. The attorney general may file complaints with any of the**
33 **agencies listed in IC 4-6-12-4 to implement this chapter.**

34 **Chapter 8. Fees**

35 **Sec. 1. The county recorder shall assess a fee of three dollars**
36 **(\$3) under IC 36-2-7-10(b)(11) for each mortgage recorded. The**
37 **fee shall be paid to the county treasurer at the end of each calendar**
38 **month as provided in IC 36-2-7-10(a).**

39 **Sec. 2. The county treasurer shall credit fifty cents (\$0.50) of the**
40 **fee collected under IC 36-2-7-10(b)(11) for each mortgage recorded**
41 **to the county recorder's records perpetuation fund established**
42 **under IC 36-2-7-10(c).**

C
O
P
Y



1 **Sec. 3. On or before June 20 and December 20 of each year,**
2 **after completing an audit of the county treasurer's monthly reports**
3 **required by IC 36-2-10-16, the county auditor shall distribute to**
4 **the auditor of state two dollars and fifty cents (\$2.50) of the**
5 **mortgage recording fee collected under IC 36-2-7-10(b)(11) for**
6 **each mortgage recorded by the county recorder.**

7 **Sec. 4. The auditor of state shall distribute one dollar and**
8 **twenty-five cents (\$1.25) of the mortgage recording fee to the home**
9 **ownership training account established by IC 5-20-1-15.6. The**
10 **auditor of state shall credit one dollar and twenty-five cents (\$1.25)**
11 **of the mortgage recording fee to the homeowner protection unit**
12 **account established by IC 4-6-12-10.**

13 SECTION 9. IC 34-7-4-2, AS AMENDED BY P.L.2-2002,
14 SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2004]: Sec. 2. Statutes outside IC 34 providing causes of
16 action or procedures include the following:

- 17 (1) IC 4-21.5-5 (Judicial review of administrative agency actions).
- 18 (2) IC 22-3-4 (Worker's compensation administration and
- 19 procedures).
- 20 (3) IC 22-4-17 (Unemployment compensation system, employee's
- 21 claims for benefits).
- 22 (4) IC 22-4-32 (Unemployment compensation system, employer's
- 23 appeal process).
- 24 (5) IC 22-9 (Civil rights actions).
- 25 (6) **IC 24-9 (Home loans).**
- 26 (7) IC 31-14 (Paternity).
- 27 ~~(7)~~ **(8)** IC 31-15 (Dissolution of marriage and legal separation).
- 28 ~~(8)~~ **(9)** IC 31-16 (Support of children and other dependants).
- 29 ~~(9)~~ **(10)** IC 31-17 (Custody and visitation).
- 30 ~~(10)~~ **(11)** IC 31-19 (Adoption).
- 31 ~~(11)~~ **(12)** IC 32-27-2, IC 32-30-1, IC 32-30-2, ~~IC 32-30-2.1,~~
- 32 ~~IC 32-30-2,~~ IC 32-30-4, IC 32-30-9, IC 32-30-10, IC 32-30-12,
- 33 IC 32-30-13, and IC 32-30-14 (Real property).
- 34 ~~(12)~~ **(13)** IC 33-1-3 (Attorney liens).

35 SECTION 10. IC 36-2-7-10, AS AMENDED BY P.L.2-2003,
36 SECTION 101, IS AMENDED TO READ AS FOLLOWS
37 [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) The county recorder shall
38 tax and collect the fees prescribed by this section for recording, filing,
39 copying, and other services the recorder renders, and shall pay them
40 into the county treasury at the end of each calendar month. The fees
41 prescribed and collected under this section supersede all other
42 recording fees required by law to be charged for services rendered by

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

the county recorder.

(b) The county recorder shall charge the following:

(1) Six dollars (\$6) for the first page and two dollars (\$2) for each additional page of any document the recorder records if the pages are not larger than eight and one-half (8 1/2) inches by fourteen (14) inches.

(2) Fifteen dollars (\$15) for the first page and five dollars (\$5) for each additional page of any document the recorder records, if the pages are larger than eight and one-half (8 1/2) inches by fourteen (14) inches.

(3) For attesting to the release, partial release, or assignment of any mortgage, judgment, lien, or oil and gas lease contained on a multiple transaction document, the fee for each transaction after the first is the amount provided in subdivision (1) plus the amount provided in subdivision (4) and one dollar (\$1) for marginal mortgage assignments or marginal mortgage releases.

(4) One dollar (\$1) for each cross-reference of a recorded document.

(5) One dollar (\$1) per page not larger than eight and one-half (8 1/2) inches by fourteen (14) inches for furnishing copies of records produced by a photographic process, and two dollars (\$2) per page that is larger than eight and one-half (8 1/2) inches by fourteen (14) inches.

(6) Five dollars (\$5) for acknowledging or certifying to a document.

(7) Five dollars (\$5) for each deed the recorder records, in addition to other fees for deeds, for the county surveyor's corner perpetuation fund for use as provided in IC 32-19-4-3 or IC 36-2-12-11(e).

(8) A fee in an amount authorized under IC 5-14-3-8 for transmitting a copy of a document by facsimile machine.

(9) A fee in an amount authorized by an ordinance adopted by the county legislative body for duplicating a computer tape, a computer disk, an optical disk, microfilm, or similar media. This fee may not cover making a handwritten copy or a photocopy or using xerography or a duplicating machine.

(10) A supplemental fee of three dollars (\$3) for recording a document that is paid at the time of recording. The fee under this subdivision is in addition to other fees provided by law for recording a document.

(11) Three dollars (\$3) for each mortgage on real estate recorded, in addition to other fees required by this section,

C
o
p
y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

distributed as follows:

(A) Fifty cents (\$0.50) is to be deposited in the recorder's record perpetuation fund.

(B) Two dollars and fifty cents (\$2.50) is to be distributed to the auditor of state on or before June 20 and December 20 of each year as provided in IC 24-9-8-4.

(c) The county treasurer shall establish a recorder's records perpetuation fund. All revenue received under subsection (b)(5), (b)(8), (b)(9), and (b)(10), **and fifty cents (\$0.50) from revenue received under subsection (b)(11)**, shall be deposited in this fund. The county recorder may use any money in this fund without appropriation for the preservation of records and the improvement of record keeping systems and equipment.

(d) As used in this section, "record" or "recording" includes the functions of recording, filing, and filing for record.

(e) The county recorder shall post the fees set forth in subsection (b) in a prominent place within the county recorder's office where the fee schedule will be readily accessible to the public.

(f) The county recorder may not tax or collect any fee for:

- (1) recording an official bond of a public officer, a deputy, an appointee, or an employee; or
- (2) performing any service under any of the following:
 - (A) IC 6-1.1-22-2(c).
 - (B) IC 8-23-7.
 - (C) IC 8-23-23.
 - (D) IC 10-17-2-3.
 - (E) IC 10-17-3-2.
 - (F) IC 12-14-13.
 - (G) IC 12-14-16.

(g) The state and its agencies and instrumentalities are required to pay the recording fees and charges that this section prescribes.

SECTION 11. [EFFECTIVE JULY 1, 2004] (a) Notwithstanding IC 4-6-12-10, as added by this act, there is appropriated to the legislative council seventy-five thousand dollars (\$75,000) for the state fiscal year beginning July 1, 2005, and ending June 30, 2006, from the homeowner protection unit account under IC 4-6-12-10, as added by this act. The legislative council shall use this appropriation to contract with an independent organization to conduct a study of predatory lending and the causes of the high rate of mortgage foreclosure in Indiana during 2001, 2002, 2003, and 2004.

(b) No expenditures from the homeowner protection unit

**C
O
P
Y**



1 account established by IC 4-6-12-10, as added by this act, may be
 2 made by the attorney general before the transfer of the
 3 seventy-five thousand dollars (\$75,000) appropriated by this
 4 SECTION to the legislative council.

5 (c) The results of the study must be reported in an electronic
 6 format under IC 5-14-6 to the legislative council not later than
 7 December 31, 2006.

8 (d) This SECTION expires January 1, 2007.

9 SECTION 12. [EFFECTIVE JULY 1, 2004] (a) As used in this
 10 SECTION, "committee" refers to the interim study committee on
 11 mortgage lending policies established by subsection (b).

12 (b) The interim study committee on mortgage lending policies
 13 is established. The committee shall:

14 (1) study predatory lending practices;

15 (2) study the high rate of mortgage foreclosure in Indiana;
 16 and

17 (3) issue a report to the legislative council in an electronic
 18 format under IC 5-14-6 not later than November 1, 2004,
 19 suggesting the subject matter and parameters for the study to
 20 be conducted by an independent organization selected by the
 21 legislative council under SECTION 11 of this act.

22 (c) The committee shall operate under the policies governing
 23 study committees adopted by the legislative council.

24 (d) This SECTION expires January 1, 2005.

25 SECTION 13. [EFFECTIVE UPON PASSAGE] Beginning
 26 January 1, 2005, the attorney general shall carry out the duties
 27 imposed on the attorney general under IC 4-6-12 and IC 24-9, both
 28 as added by this act.

29 SECTION 14. [EFFECTIVE UPON PASSAGE] (a)
 30 Notwithstanding IC 5-20-1-15.5, as added by this act, the Indiana
 31 housing finance authority shall carry out the duties imposed on it
 32 under IC 5-20-1-15.5, as added by this act, under interim written
 33 guidelines approved by the executive director of the Indiana
 34 housing finance authority.

35 (b) This SECTION expires on the earlier of the following:

36 (1) The date rules are adopted under IC 5-20-1-15.5(a)(2), as
 37 added by this act.

38 (2) January 1, 2005.

39 SECTION 15. [EFFECTIVE UPON PASSAGE] Notwithstanding
 40 IC 24-9, as added by this act, a person may not file a civil action
 41 under IC 24-9, as added by this act, before January 1, 2005.

42 SECTION 16. An emergency is declared for this act.

C
o
p
y

