

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 571, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 24-4.4-2-201, AS ADDED BY P.L.145-2008,
4 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2009]: Sec. 201. (1) A creditor or mortgage servicer shall
6 provide an accurate payoff amount for a first lien mortgage transaction
7 to the debtor not later than ten (10) calendar days after the creditor or
8 mortgage servicer receives the debtor's written request for the accurate
9 payoff amount. A creditor or mortgage servicer who fails to provide an
10 accurate payoff amount is liable for:
11 (a) one hundred dollars (\$100) if an accurate payoff amount is not
12 provided by the creditor or mortgage servicer not later than ten
13 (10) calendar days after the creditor or mortgage servicer receives
14 the debtor's first written request; and
15 (b) the greater of:
16 (i) one hundred dollars (\$100); or
17 (ii) the loan finance charge that accrues on the first lien
18 mortgage transaction from the date the creditor or mortgage
19 servicer receives the first written request until the date on
20 which the accurate payoff amount is provided;
21 if an accurate payoff amount is not provided by the creditor or

1 mortgage servicer not later than ten (10) calendar days after the
 2 creditor or mortgage servicer receives the debtor's second written
 3 request, and the creditor or mortgage servicer fails to comply with
 4 subdivision (a).

5 (2) This subsection applies to a first lien mortgage transaction with
 6 respect to which any installment or minimum payment due is
 7 delinquent for at least sixty (60) days. The creditor, servicer, or the
 8 creditor's agent shall acknowledge a written offer made in connection
 9 with a proposed short sale not later than ten (10) business days after the
 10 date of the offer if the offer complies with the requirements for a
 11 qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The
 12 creditor, servicer, or creditor's agent is required to acknowledge a
 13 written offer made in connection with a proposed short sale from a
 14 third party acting on behalf of the debtor only if the debtor has
 15 provided written authorization for the creditor, servicer, or creditor's
 16 agent to do so. Not later than thirty (30) business days after receipt of
 17 an offer under this subsection, the creditor, servicer, or creditor's agent
 18 shall respond to the offer with an acceptance or a rejection of the offer.
 19 **A creditor, servicer, or creditor's agent accepting a short sale may**
 20 **not seek a deficiency judgment or any other damages from the**
 21 **debtor.** As used in this subsection, "short sale" means a transaction in
 22 which the property that is the subject of a first lien mortgage
 23 transaction is sold for an amount that is less than the amount of the
 24 debtor's outstanding obligation under the first lien mortgage
 25 transaction. A creditor or mortgage servicer that fails to respond to an
 26 offer within the time prescribed by this subsection is liable in
 27 accordance with 12 U.S.C. 2605(f) in any action brought under that
 28 section.

29 SECTION 2. IC 24-4.4-2-404.1 IS ADDED TO THE INDIANA
 30 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2009]: **Sec. 404.1. (1) If the director**
 32 **determines that a director, an officer, or an employee of a creditor**
 33 **has:**

34 **(a) committed a violation of a statute, a rule, a final cease and**
 35 **desist order, any condition imposed in writing by the director**
 36 **in connection with the granting of any application or other**
 37 **request by the creditor, or any written agreement between the**
 38 **creditor and the director;**
 39 **(b) committed fraudulent or unconscionable conduct; or**
 40 **(c) been convicted of, has pleaded guilty or nolo contendere to,**
 41 **or is under indictment for, a felony under the laws of Indiana**
 42 **or any other jurisdiction;**

1 **the director, subject to subsection (2), may issue and serve upon the**
 2 **officer, director, or employee a notice of the director's intent to**
 3 **issue an order removing the person from the person's office or**
 4 **employment, an order prohibiting any participation by the person**
 5 **in the conduct of the affairs of any creditor, or an order both**
 6 **removing the person and prohibiting the person's participation.**

7 **(2) A violation, practice, or breach specified in subsection (1) is**
 8 **subject to the authority of the director under subsection (1) if the**
 9 **director finds any of the following:**

10 **(a) The interests of the creditor's customers could be seriously**
 11 **prejudiced by reason of the violation or practice.**

12 **(b) The violation, practice, or breach involves personal**
 13 **dishonesty on the part of the officer, director, or employee**
 14 **involved.**

15 **(c) The violation, practice, or breach demonstrates a willful or**
 16 **continuing disregard by the officer, director, or employee for**
 17 **state and federal laws and regulations, and for the consumer**
 18 **protections contained in this article.**

19 **(3) A person who:**

20 **(a) is under indictment for;**

21 **(b) has been convicted of; or**

22 **(c) has pleaded guilty or nolo contendere to;**

23 **a felony under the laws of Indiana or any other jurisdiction may**
 24 **not serve as an officer, a director, or an employee of a creditor, or**
 25 **serve in any similar capacity, unless the person obtains the written**
 26 **consent of the director.**

27 **(4) A creditor that willfully permits a person to serve the**
 28 **creditor in violation of subsection (3) is subject to a civil penalty of**
 29 **five hundred dollars (\$500) for each day the violation continues.**

30 **SECTION 3. IC 24-4.4-2-404.2 IS ADDED TO THE INDIANA**
 31 **CODE AS A NEW SECTION TO READ AS FOLLOWS**
 32 **[EFFECTIVE JULY 1, 2009]: Sec. 404.2. (1) A notice issued under**
 33 **this chapter must:**

34 **(a) be in writing;**

35 **(b) contain a statement of the facts constituting the alleged**
 36 **practice, violation, or breach;**

37 **(c) state the facts alleged in support of the violation, practice,**
 38 **or breach;**

39 **(d) state the director's intention to enter an order under**
 40 **section 404.1(1) of this chapter;**

41 **(e) be delivered to the board of directors of the creditor;**

42 **(f) be delivered to the officer, director, or employee**

- 1 **concerned; and**
2 **(g) specify the procedures that must be followed to initiate a**
3 **hearing to contest the facts alleged.**
- 4 **(2) If a hearing is requested not later than ten (10) days after**
5 **service of the written notice, the director or designee of the**
6 **director shall hold a hearing concerning the alleged practice,**
7 **violation, or breach. The hearing shall be held not later than**
8 **forty-five (45) days after receipt of the request. The director or**
9 **designee of the director, based on the evidence presented at the**
10 **hearing, shall enter a final order under section 404.4 of this**
11 **chapter.**
- 12 **(3) If no hearing is requested within the time specified in**
13 **subsection (2), the director may proceed to issue a final order**
14 **described in subsection (2) on the basis of the facts set forth in the**
15 **written notice.**
- 16 **(4) An officer, director, or employee who is removed from a**
17 **position under a removal order that has become final may not**
18 **participate in the conduct of the affairs of any licensee under this**
19 **article without the approval of the director.**
- 20 **(5) The director may, for the protection of the creditor or the**
21 **interests of its customers, suspend from office or prohibit from**
22 **participation in the affairs of the creditor an officer, a director, or**
23 **an employee of a creditor who is the subject of a written notice**
24 **served by the director under subsection (1). A suspension or**
25 **prohibition under this subsection becomes effective upon service of**
26 **the notice. Unless stayed by a court in a proceeding authorized by**
27 **subsection (6), the notice remains in effect pending completion of**
28 **the proceeding under the written notice served under subsection**
29 **(1) and until the effective date of an order entered by the director**
30 **under subsection (2) or (3). Copies of the notice shall also be served**
31 **upon the creditor or affiliate of which the person is an officer, a**
32 **director, or an employee.**
- 33 **(6) Not more than fifteen (15) days after an officer, a director,**
34 **or an employee has been suspended from office or prohibited from**
35 **participation in the conduct of the affairs of the creditor or affiliate**
36 **under subsection (5), the officer, director, or employee may apply**
37 **to a court having jurisdiction for a stay of the suspension or**
38 **prohibition pending completion of the proceedings under**
39 **subsection (2), and the court may stay the suspension or**
40 **prohibition.**
- 41 **(7) The department shall maintain an official record of a**
42 **proceeding under this chapter.**

1 SECTION 4. IC 24-4.4-2-404.3 IS ADDED TO THE INDIANA
2 CODE AS A NEW SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2009]: **Sec. 404.3. If the director enters into**
4 **a consent to a final order under section 404.4 of this chapter with**
5 **a creditor, a director, an officer, or an employee, the director is not**
6 **required to issue and serve a notice of charges upon the creditor,**
7 **director, or officer under section 404.1 of this chapter. A consent**
8 **agreement may be negotiated and entered into before or after the**
9 **issuance of a notice of charges. The director shall provide a copy**
10 **of the consent order to the board of directors of the creditor.**

11 SECTION 5. IC 24-4.4-2-404.4 IS ADDED TO THE INDIANA
12 CODE AS A NEW SECTION TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2009]: **Sec. 404.4. (1) If the director finds**
14 **that the conditions specified in section 404.1 of this chapter have**
15 **been established, the director may issue a final order.**

16 (2) **A final order must include separately stated findings of fact**
17 **and conclusions of law for all aspects of the order.**

18 (3) **In exercising the director's enforcement powers under this**
19 **chapter against an officer, director, or employee, the director may:**

20 (a) **remove the officer, director, or employee from the**
21 **person's office, position, or employment;**

22 (b) **prohibit any participation by the officer, director, or**
23 **employee in the conduct of the affairs of any creditor; or**

24 (c) **take both of the actions set forth in subdivisions (a) and**
25 **(b).**

26 (4) **A final order shall be issued in writing not later than ninety**
27 **(90) days after conclusion of the hearing, unless this period is**
28 **waived or extended with the written consent of all parties or for**
29 **good cause shown.**

30 (5) **If the officer, director, or employee does not appear**
31 **individually or by an authorized representative at the hearing, the**
32 **officer, director, or employee is considered to have consented to the**
33 **issuance of a final order.**

34 (6) **The remedies provided in this chapter are in addition to**
35 **other remedies contained in this article.**

36 SECTION 6. IC 24-4.4-2-404.5 IS ADDED TO THE INDIANA
37 CODE AS A NEW SECTION TO READ AS FOLLOWS
38 [EFFECTIVE JULY 1, 2009]: **Sec. 404.5. (1) A final order issued**
39 **under this chapter is effective at the expiration of ten (10) days**
40 **after service of the order. However, a final order issued upon**
41 **consent under section 404.3 of this chapter is effective at the time**
42 **specified in the order.**

1 **(2) A final order remains effective and enforceable as provided**
 2 **in the order.**

3 **(3) The department or a reviewing court may stay, modify, or**
 4 **vacate a final order.**

5 SECTION 7. IC 24-4.4-2-404.6 IS ADDED TO THE INDIANA
 6 CODE AS A NEW SECTION TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2009]: **Sec. 404.6. (1) A civil penalty imposed**
 8 **on a director or an officer in a final order issued under section**
 9 **404.4 of this chapter may not exceed fifteen thousand dollars**
 10 **(\$15,000) for each practice, violation, or act found to exist in the**
 11 **final order.**

12 **(2) In determining the amount of a civil penalty assessed in a**
 13 **final order issued under section 404.4 of this chapter, the following**
 14 **factors shall be considered:**

15 **(a) The appropriateness of the civil penalty with respect to the**
 16 **financial resources and good faith of the individual charged.**

17 **(b) The gravity of the practice, violation, or act.**

18 **(c) The history of previous practices, violations, or acts.**

19 **(d) The economic benefit derived by the individual from the**
 20 **practice, violation, or act.**

21 **(e) Other factors that justice requires.**

22 **(3) A creditor may not indemnify a director or an officer for a**
 23 **civil penalty imposed in a final order under section 404.4 of this**
 24 **chapter.**

25 **(4) Civil penalties shall be deposited in the financial institutions**
 26 **fund established by IC 28-11-2-9.**

27 SECTION 8. IC 24-4.4-2-404.7 IS ADDED TO THE INDIANA
 28 CODE AS A NEW SECTION TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2009]: **Sec. 404.7. The department may**
 30 **enforce any of the following by applying for appropriate relief to**
 31 **a court having jurisdiction:**

32 **(a) An order issued under this chapter.**

33 **(b) A written agreement entered into by the department and**
 34 **any director, officer, or employee of a creditor.**

35 **(c) Any condition imposed in writing by the department on**
 36 **any director, officer, or employee of a creditor.**

37 SECTION 9. IC 24-4.4-3-104, AS ADDED BY P.L.145-2008,
 38 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2009]: **Sec. 104. (1) In administering this article and in order**
 40 **to determine whether the provisions of this article are being complied**
 41 **with by persons engaging in acts subject to this article, the department**
 42 **may examine the records of persons and may make investigations of**

1 persons as may be necessary to determine compliance. Records subject
2 to examination under this section include the following:

- 3 (a) Training, operating, and policy manuals.
- 4 (b) Minutes of:
 - 5 (i) management meetings; and
 - 6 (ii) other meetings.
- 7 (c) Financial records, credit files, and data bases.
- 8 (d) Other records that the department determines are necessary to
9 perform its investigation or examination.

10 The department may also administer oaths or affirmations, subpoena
11 witnesses, **and** compel the attendance of witnesses, **including officers,**
12 **principals, mortgage loan originators, employees, independent**
13 **contractors, agents, and customers of licensees, and other**
14 **individuals or persons subject to this article. The department may**
15 **also** adduce evidence and require the production of any matter that is
16 relevant to an investigation. The department shall determine the
17 sufficiency of the records maintained and whether the person has made
18 the required information reasonably available. The records concerning
19 any transaction subject to this article shall be retained for two (2) years
20 after the making of the final entry relating to the first lien mortgage
21 transaction, but in the case of a revolving first lien mortgage
22 transaction the two (2) year period is measured from the date of each
23 entry.

24 (2) The department's examination and investigatory authority under
25 this article includes the following:

- 26 (a) The authority to require a creditor to refund overcharges
27 resulting from the creditor's noncompliance with the terms of a
28 first lien mortgage transaction.
- 29 (b) The authority to require a creditor to comply with the penalty
30 provisions set forth in IC 24-4.4-2-201.
- 31 (c) The authority to investigate complaints filed with the
32 department by debtors.

33 (3) The department shall be given free access to the records
34 wherever the records are located. **In making any examination or**
35 **investigation authorized by this article, the director may control**
36 **access to any documents and records of the licensee or person**
37 **under examination or investigation. The director may take**
38 **possession of the documents and records or place a person in**
39 **exclusive charge of the documents and records in the place where**
40 **the documents are usually kept. During the period of control, a**
41 **licensee or person may not remove or attempt to remove any of the**
42 **documents and records except under a court order or with the**

1 **consent of the director. Unless the director has reasonable grounds**
 2 **to believe the documents or records of the licensee or person have**
 3 **been, or are, at risk of being altered or destroyed for purposes of**
 4 **concealing a violation of this article, the licensee or person shall**
 5 **have access to the documents or records as necessary to conduct**
 6 **the licensee's or person's ordinary business affairs.** If the person's
 7 records are located outside Indiana, the records shall be made available
 8 to the department at a convenient location within Indiana, or the person
 9 shall pay the reasonable and necessary expenses for the department or
 10 the department's representative to examine the records where they are
 11 maintained. The department may designate comparable officials of the
 12 state in which the records are located to inspect the records on behalf
 13 of the department.

14 (4) Upon a person's failure without lawful excuse to obey a
 15 subpoena or to give testimony and upon reasonable notice by the
 16 department to all affected persons, the department may apply to any
 17 civil court with jurisdiction for an order compelling compliance.

18 (5) The department shall not make public:

19 (a) the name or identity of a person whose acts or conduct the
 20 department investigates under this section; or

21 (b) the facts discovered in the investigation.

22 However, this subsection does not apply to civil actions or enforcement
 23 proceedings under this article."

24 Page 2, between lines 19 and 20, begin a new paragraph and insert:

25 "SECTION 11. IC 24-4.5-2-209, AS AMENDED BY P.L.145-2008,
 26 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2009]: Sec. 209. ~~Right to Prepay~~ = (1) Subject to the
 28 provisions on rebate upon prepayment (IC 24-4.5-2-210), the buyer
 29 may prepay in full the unpaid balance of a consumer credit sale,
 30 refinancing, or consolidation at any time without penalty.

31 (2) At the time of prepayment of a credit sale not subject to the
 32 provisions of rebate upon prepayment (IC 24-4.5-2-210), the total
 33 credit service charge, including the prepaid credit service charge, may
 34 not exceed the maximum charge allowed under this chapter for the
 35 period the credit sale was in effect.

36 (3) The creditor or mortgage servicer shall provide an accurate
 37 payoff of the consumer credit sale to the debtor within ten (10)
 38 calendar days after the creditor or mortgage servicer receives the
 39 debtor's written request for the accurate consumer credit sale payoff
 40 amount. A creditor or mortgage servicer who fails to provide the
 41 accurate consumer credit sale payoff amount is liable for:

42 (A) one hundred dollars (\$100) if an accurate consumer credit

1 sale payoff amount is not provided by the creditor or mortgage
 2 servicer within ten (10) calendar days after the creditor or
 3 mortgage servicer receives the debtor's first written request;
 4 and

5 (B) the greater of:
 6 (i) one hundred dollars (\$100); or
 7 (ii) the credit service charge that accrues on the sale from
 8 the date the creditor or mortgage servicer receives the first
 9 written request until the date on which the accurate
 10 consumer credit sale payoff amount is provided;
 11 if an accurate consumer credit sale payoff amount is not
 12 provided by the creditor or mortgage servicer within ten (10)
 13 calendar days after the creditor or mortgage servicer receives
 14 the debtor's second written request, and the creditor or
 15 mortgage servicer failed to comply with clause (A).

16 A liability under this subsection is an excess charge under
 17 IC 24-4.5-5-202.

18 (4) As used in this subsection, "mortgage transaction" means a
 19 consumer credit sale in which a mortgage, deed of trust, or a land
 20 contract that constitutes a lien is created or retained against land upon
 21 which there is a dwelling that is or will be used by the debtor primarily
 22 for personal, family, or household purposes. This subsection applies to
 23 a mortgage transaction with respect to which any installment or
 24 minimum payment due is delinquent for at least sixty (60) days. The
 25 creditor, servicer, or the creditor's agent shall acknowledge a written
 26 offer made in connection with a proposed short sale not later than ten
 27 (10) business days after the date of the offer if the offer complies with
 28 the requirements for a qualified written request set forth in 12 U.S.C.
 29 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to
 30 acknowledge a written offer made in connection with a proposed short
 31 sale from a third party acting on behalf of the debtor only if the debtor
 32 has provided written authorization for the creditor, servicer, or
 33 creditor's agent to do so. Not later than thirty (30) business days after
 34 receipt of an offer under this subsection, the creditor, servicer, or
 35 creditor's agent shall respond to the offer with an acceptance or a
 36 rejection of the offer. **A creditor, servicer, or creditor's agent**
 37 **accepting a short sale may not seek a deficiency judgment or any**
 38 **other damages from the debtor.** As used in this subsection, "short
 39 sale" means a transaction in which the property that is the subject of a
 40 mortgage transaction is sold for an amount that is less than the amount
 41 of the debtor's outstanding obligation under the mortgage transaction.
 42 A creditor or mortgage servicer that fails to respond to an offer within

1 the time prescribed by this subsection is liable in accordance with 12
2 U.S.C. 2605(f) in any action brought under that section.

3 SECTION 12. IC 24-4.5-3-105, AS AMENDED BY P.L.90-2008,
4 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2009]: Sec. 105. Unless the loan is made subject to
6 IC 24-4.5-3 by agreement (IC 24-4.5-3-601), and except with respect
7 to disclosure (IC 24-4.5-3-301), debtors' remedies (IC 24-4.5-5-201),
8 providing payoff amounts (IC 24-4.5-3-209), **providing property tax**
9 **information (IC 24-4.5-3-701)**, and powers and functions of the
10 department (IC 24-4.5-6-104), "consumer loan" does not include a ~~loan~~
11 **primarily secured by an interest in land which is a first lien mortgage**
12 **transaction. (as defined in IC 24-4.5-1-301(17))**."

13 Page 5, line 27, delete ", at a location designated by the" and insert
14 ".".

15 Page 5, delete line 28.

16 Page 6, delete line 20.

17 Page 6, line 21, delete "(2)" and insert "**(1)**".

18 Page 6, line 22, delete "(3)" and insert "**(2)**".

19 Page 7, line 42, delete "ten (10)" and insert "**fifteen (15)**".

20 Page 10, line 9, after "officer," insert "**or**".

21 Page 10, line 9, delete ", or an agent".

22 Page 10, delete lines 12 through 34.

23 Page 10, line 42, after "13." delete "A" and insert "**(a) Except as**
24 **provided in subsection (b), a**".

25 Page 11, between lines 3 and 4, begin a new paragraph and insert:

26 "**(b) If a lessee makes a payment that exceeds the sum of the**
27 **scheduled rental payment and any permitted additional charges**
28 **that are due, the lessor may hold the excess funds in a reserve**
29 **account subject to both of the following conditions:**

30 (1) **The balance of the lessee's reserve account may not exceed**
31 **the amount of the next scheduled rental payment.**

32 (2) **If the balance in the lessee's reserve account reaches the**
33 **limit specified in subdivision (1), the lessor shall apply the**
34 **funds to the lessee's next scheduled rental payment.**

35 (c) **This section may not be construed to preclude a lessor from**
36 **accepting and applying multiple rental payments before the rental**
37 **payments' scheduled due dates.**"

38 Page 34, line 21, strike "Indictment for,".

39 Page 34, line 21, delete "conviction" and insert "Conviction".

40 Page 34, line 21, after "conviction of" delete ",".

41 Page 34, line 31, after "any" insert "**contract**".

42 Page 34, line 34, strike "fee,".

- 1 Page 34, line 37, strike "fee,".
- 2 Page 35, line 10, after "Providing a" insert "**contract**".
- 3 Page 35, line 34, after "a" insert "**contract**".
- 4 Page 37, line 14, strike "the state of Indiana,".
- 5 Page 37, line 18, reset in roman "the department".
- 6 Page 37, line 27, strike "of the".
- 7 Page 37, strike lines 28 through 29.
- 8 Page 37, line 30, strike "chapter are under indictment for a felony".
- 9 Page 37, line 31, strike "under the laws of Indiana or any other".
- 10 Page 37, strike line 32.
- 11 Page 37, line 33, strike "(2) Any".
- 12 Page 37, line 41, delete ":".
- 13 Page 37, strike line 42.
- 14 Page 38, line 1, strike "(B)".
- 15 Page 38, line 2, after "felony;" insert "**or**".
- 16 Page 38, strike line 3.
- 17 Page 38, line 18, delete "Before providing debt".
- 18 Page 38, delete lines 19 through 42.
- 19 Page 39, line 1, delete "(b)".
- 20 Page 38, run in line 18 through page 39, line 1.
- 21 Page 39, line 3, delete "financial" and insert "**budget**".
- 22 Page 39, line 15, delete "(c)" and insert "**(b)**".
- 23 Page 39, line 17, after "of the" insert "**budget**".
- 24 Page 39, line 18, delete "(b)" and insert "**(a)**".
- 25 Page 39, line 23, after "person" insert "**where reasonably available**
- 26 **to residents in Indiana,**".
- 27 Page 39, line 23, delete "financial" and insert "**budget**".
- 28 Page 39, line 24, delete "(b);" and insert "**(a);**".
- 29 Page 39, line 35, delete "(d)" and insert "**(c)**".
- 30 Page 39, line 35, delete "(e), (f), and (g)," and insert "**(d), (e), and**
- 31 **(f),**".
- 32 Page 40, delete lines 4 through 5.
- 33 Page 40, line 6, delete "(C)" and insert "**(B)**".
- 34 Page 40, line 9, delete "(D)" and insert "**(C)**".
- 35 Page 40, line 11, delete "(E)" and insert "**(D)**".
- 36 Page 40, line 15, delete "(e)" and insert "**(d)**".
- 37 Page 40, line 18, delete "(d)" and insert "**(c)**".
- 38 Page 40, line 19, delete "14 point bold" and insert "**clear and**
- 39 **conspicuous**".
- 40 Page 40, line 21, before "IMPORTANT" insert """.
- 41 Page 40, delete lines 25 through 26.
- 42 Page 40, line 27, delete "(3)" and insert "**(2)**".

- 1 Page 40, line 30, after "licensee" insert "".
- 2 Page 40, line 31, delete "(f)" and insert "(e)".
- 3 Page 40, line 34, delete "(d)" and insert "(c)".
- 4 Page 40, line 35, delete "14 point bold" and insert "**clear and**
- 5 **conspicuous**".
- 6 Page 40, line 38, delete "(1)".
- 7 Page 40, delete lines 41 through 42.
- 8 Page 41, line 3, delete "(g)" and insert "(f)".
- 9 Page 41, line 5, delete "(d)" and insert "(c)".
- 10 Page 41, line 6, delete "14 point bold" and insert "**clear and**
- 11 **conspicuous**".
- 12 Page 43, line 30, strike "direct deposit." and insert "**automated**
- 13 **clearinghouse withdrawal as authorized by the contract debtor.**".
- 14 Page 43, line 32, after "creditors" insert "**in the debt management**
- 15 **plan**".
- 16 Page 43, line 32, after "the" insert "**cancellation by the**".
- 17 Page 44, line 32, after "plan." insert "**The following must be**
- 18 **included in the budget analysis:**
- 19 (1) **Documentation and verification of all income considered.**
- 20 **All income verification must be dated not more than sixty (60)**
- 21 **days before the completion of the budget analysis.**
- 22 (2) **Monthly living expense figures, which must be reasonable**
- 23 **for the particular family size and part of the state.**
- 24 (3) **Documentation and verification, either by a current credit**
- 25 **bureau report, current debtor account statements, or direct**
- 26 **documentation from the creditor, of monthly debt payments**
- 27 **and balances to be paid outside the plan.**
- 28 (4) **Documentation and verification, either by a current credit**
- 29 **bureau report, current debtor account statements, or direct**
- 30 **documentation from the creditor, of the monthly debt**
- 31 **payments and current balances to be paid through the plan.**
- 32 (5) **The date of the budget analysis and the signature of the**
- 33 **debtor.**".
- 34 Page 44, line 35, delete "twenty-four (24)" and insert "**thirty (30)**".
- 35 Page 44, line 36, after "of the" insert "**contract**".
- 36 Page 44, line 37, after "for the" insert "**contract**".
- 37 Page 44, line 37, after "and the" insert "**contract**".
- 38 Page 44, line 41, after "figures." insert "**A licensee may not**
- 39 **increase the monthly fee percentage under IC 28-1-29-8.3(c)(2)(A)**
- 40 **during the term of the original debt management plan agreement.**".
- 41 Page 45, line 41, delete "Unless fifty-one percent (51%) or more, in
- 42 number".

- 1 Page 45, delete line 42.
- 2 Page 46, delete lines 1 through 3.
- 3 Page 45, run in line 41 through page 46, line 4.
- 4 Page 46, line 8, delete "payment disbursed to creditors;" and insert
- 5 **"amount the contract debtor agrees to pay through the licensee,**
- 6 **divided into equal monthly payments over the term of the**
- 7 **agreement;"**.
- 8 Page 46, line 10, after "The" insert **"monthly service"**.
- 9 Page 46, line 11, after "a month." insert **"The amount of a set up**
- 10 **fee under subsection (c)(1) may not be included in the calculation**
- 11 **of the monthly service fee."**
- 12 Page 47, line 9, delete "14 point bold" and insert **"clear and**
- 13 **conspicuous"**.
- 14 Page 48, delete lines 4 through 42, begin a new paragraph and
- 15 insert:
- 16 "SECTION 56. IC 28-1-29-8.8 IS ADDED TO THE INDIANA
- 17 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 18 [EFFECTIVE JULY 1, 2009]: **Sec. 8.8. (a) If a contract debtor fails**
- 19 **to make a payment to a licensee within sixty (60) days after the**
- 20 **date a payment is due under an agreement, the agreement is**
- 21 **considered canceled by the contract debtor. A contract debtor may**
- 22 **file a letter of continuation of an agreement even if the contract**
- 23 **debtor did not make a payment within sixty (60) days after a**
- 24 **payment was due. All of the following apply to a letter of**
- 25 **continuation of an agreement:**
- 26 (1) A contract debtor may file only one (1) letter of
- 27 continuation with a licensee for any agreement.
- 28 (2) A letter of continuation must contain a detailed
- 29 explanation of the reason or reasons for the missed payment.
- 30 (3) If an agreement for which a letter of continuation that
- 31 meets the requirements of this subsection is filed, the
- 32 agreement remains in effect and subject to cancellation for
- 33 any future failure to make a payment as described in this
- 34 subsection.
- 35 (4) An agreement between a licensee and a contract debtor
- 36 shall clearly provide for one (1) letter of continuation by a
- 37 contract debtor.
- 38 (5) A contract debtor may not file a letter of continuation with
- 39 a licensee at the beginning of an agreement.
- 40 (b) If a licensee or a contract debtor terminates an agreement,
- 41 the licensee shall immediately return to the contract debtor any
- 42 money of the contract debtor held in trust for the benefit of the

1 **contract debtor.**

2 SECTION 57. IC 28-1-29-9, AS AMENDED BY P.L.217-2007,
 3 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2009]: Sec. 9. (a) All funds received by a licensee or the
 5 licensee's agent from and for the purpose of paying bills, invoices, or
 6 accounts of a debtor constitute trust funds owned by and belonging to
 7 the person from whom they were received. All such funds received by
 8 a licensee shall be separated from the funds of the licensee not later
 9 than the end of the same business day following receipt by the licensee.
 10 All such funds shall thereafter be kept separate and apart at all times
 11 from funds belonging to the licensee or any of its officers, employees,
 12 or agents and may be used for no purpose other than paying bills,
 13 invoices, or accounts of said persons. All such trust funds received at
 14 the main or branch offices of a licensee shall be deposited in a bank or
 15 banks in an account or accounts in the name of the licensee designated
 16 "trust account"; or by some other appropriate name indicating that the
 17 funds are not the funds of the licensee or its officers, employees, or
 18 agents, on or before the close of the same banking day following
 19 receipt.

20 (b) Prior to separation and deposit by the licensee, the funds may
 21 only be used by the licensee for the making of change or the cashing of
 22 checks in the normal course of its business. Such funds are not subject
 23 to attachment, levy of execution, or sequestration by order of court
 24 except by an obligor for whom a licensee is acting as an agent in
 25 paying bills, invoices, or accounts.

26 (c) Each licensee shall make remittances within thirty (30) days
 27 after initial receipt of funds, and thereafter remittances shall be made
 28 within fifteen (15) days of receipt, less fees and costs, unless the
 29 reasonable payment of one (1) or more of the debtor's obligations
 30 requires that the funds be held for a longer period so as to accumulate
 31 a sum certain. For the purpose of this section, the cancellation fee set
 32 forth in section 8(g) of this chapter shall not be deemed an obligation
 33 of the debtor. (a) All money paid to a licensee by or on behalf of a
 34 **contract debtor for distribution to creditors under a plan is held in**
 35 **trust. On or before the close of the same banking day following**
 36 **receipt, the licensee shall deposit the money in a trust account**
 37 **established for the benefit of the contract debtor to whom the**
 38 **licensee is furnishing debt management services.**

39 (b) A licensee shall do the following:

- 40 (1) Maintain separate records of account for each individual
 41 to whom the licensee is furnishing debt management services.
 42 (2) Disburse money paid by or on behalf of the contract

- 1 debtor to creditors of the contract debtor as disclosed in the
2 agreement.
- 3 **(3) Make remittances not later than thirty (30) days after**
4 **initial receipt of funds. After the initial receipt of funds,**
5 **remittances shall be made not later than fifteen (15) days after**
6 **receipt of funds, less fees and costs, unless the reasonable**
7 **payment of one (1) or more of the contract debtor's**
8 **obligations requires that the funds be held for a longer period**
9 **to accumulate a sum certain. For the purpose of this section,**
10 **the close-out fee set forth in section 8.3(d) of this chapter shall**
11 **not be considered an obligation of the contract debtor.**
- 12 **(4) Retain in the contract debtor's trust account, for charges,**
13 **an amount less than or equal to the sum of one (1) month's fee**
14 **as permitted by section 8.3(c)(2) of this chapter plus the**
15 **close-out fee as permitted by section 8.3(d) of this chapter,**
16 **unless a greater amount is approved in writing by the**
17 **department.**
- 18 **(5) Promptly:**
- 19 **(A) correct any payments that are not made or that are**
20 **misdirected as a result of an error by the licensee or other**
21 **person in control of the trust account; and**
- 22 **(B) reimburse the contract debtor for any costs or fees**
23 **imposed by a creditor as a result of the failure to pay or**
24 **misdirection.**
- 25 **(c) A licensee may not commingle money in a trust account**
26 **established for the benefit of contract debtors to whom the licensee**
27 **is furnishing debt management services with money of other**
28 **persons.**
- 29 **(d) A trust account must at all times have a cash balance equal**
30 **to the sum of the balances of each contract debtor's account.**
- 31 **(e) If a licensee has established a trust account under subsection**
32 **(a), the licensee shall reconcile the trust account at least every**
33 **thirty (30) days after receipt of the bank statement. The**
34 **reconciliation must compare the cash balance in the trust account**
35 **with the sum of the balances in each contract debtor's account. If**
36 **the licensee or the licensee's designee has more than one (1) trust**
37 **account, each trust account must be individually reconciled.**
- 38 **(f) If a licensee discovers, or has a reasonable suspicion of,**
39 **embezzlement or other unlawful appropriation of money held in**
40 **trust, the licensee shall:**
- 41 **(1) immediately notify the department in writing; and**
42 **(2) unless the department by rule provides otherwise, give**

1 **notice to the department describing the remedial action taken**
 2 **or to be taken not later than five (5) days after the licensee**
 3 **discovers, or has a reasonable suspicion of, the embezzlement**
 4 **or other unlawful appropriation.**

5 **(g) If a contract debtor terminates an agreement or it becomes**
 6 **reasonably apparent to a licensee that a plan has failed, the licensee**
 7 **shall promptly refund to the contract debtor all money paid by or**
 8 **on behalf of the contract debtor that has not been paid to creditors**
 9 **less fees that are payable to the licensee under section 8.3(e) of this**
 10 **chapter.**

11 **(h) Before relocating a trust account from one (1) bank to**
 12 **another, a licensee shall inform the department of the name,**
 13 **business address, and telephone number of the new bank. As soon**
 14 **as practicable, the licensee shall inform the department of the**
 15 **account number of the trust account at the new bank.**

16 ~~(d)~~ **(i)** At least once every three (3) months the licensee shall render
 17 an accounting to the **contract** debtor which must itemize the total
 18 amount received from the **contract** debtor, the total amount paid each
 19 creditor, the amount of charges deducted, the amount of fair share fees
 20 received **or withheld** by the licensee from each of the contract debtor's
 21 creditors, and any amount held in reserve. A licensee shall, in addition
 22 thereto, render such an accounting to a **contract** debtor within seven
 23 (7) days after written demand, but not more than three (3) per six (6)
 24 month period.

25 ~~(e)~~ **(j)** Upon the completion or termination of a contract between a
 26 licensee and a contract debtor, the licensee shall mail to the contract
 27 debtor a statement:

- 28 (1) indicating that the licensee no longer holds funds in trust for
 29 the contract debtor; and
 30 (2) listing the name and address of:
 31 (A) each creditor paid in full; and
 32 (B) any creditors remaining unpaid."

33 Delete pages 49 through 50.

34 Page 51, delete lines 1 through 12.

35 Page 51, line 19, after "a" insert "**contract**".

36 Page 51, line 20, after "from a" insert "**contract**".

37 Page 51, line 22, after "the" insert "**contract**".

38 Page 52, line 5, after "agreements." insert "**It is not a violation of**
 39 **this subsection for a licensee to use the number of successfully**
 40 **completed debt management plans as a criterion for compensation**
 41 **for the licensee's employees."**

42 Page 52, line 6, after "lead a" insert "**contract**".

- 1 Page 52, line 8, after "settlement, the" insert "**contract**".
- 2 Page 52, line 32, after "a" insert "**contract**".
- 3 Page 53, line 28, delete "(a) If:".
- 4 Page 53, delete lines 29 through 42.
- 5 Page 54, line 1, delete "(c)".
- 6 Page 53, run in line 28 through page 54, line 1.
- 7 Page 57, line 4, delete "Indiana," and insert "**Indiana**".
- 8 Page 57, delete line 5.
- 9 Page 83, line 30, after "institutions" insert "**or credit union service**
- 10 **organizations**".
- 11 Page 91, line 36, delete "domestic".
- 12 Page 96, line 19, delete ":".
- 13 Page 96, line 20, strike "(1) is under indictment for a felony".
- 14 Page 96, line 21, strike "under the laws of Indiana or any other".
- 15 Page 96, strike line 22.
- 16 Page 96, line 23, strike "(2)".
- 17 Page 96, line 29, delete ":".
- 18 Page 96, strike line 30.
- 19 Page 96, line 31, strike "(B)".
- 20 Page 96, line 32, after "felony;" insert "**or**".
- 21 Page 96, strike line 33.
- 22 Page 97, line 14, delete ", at a location" and insert ".".
- 23 Page 97, delete line 15.
- 24 Page 97, line 25, delete "." and insert "**as long as the retention**
- 25 **period does not exceed ten (10) days**".
- 26 Page 97, line 40, delete "." and insert "**as long as the retention**
- 27 **period does not exceed ten (10) days**".
- 28 Page 99, line 17, strike "any of the".
- 29 Page 99, strike lines 18 through 20.
- 30 Page 99, line 21, strike "under the laws of".
- 31 Page 99, strike line 22.
- 32 Page 99, line 23, strike "(2)".
- 33 Page 99, line 23, delete "The" and insert "the".
- 34 Page 99, line 32, delete ":".
- 35 Page 99, strike line 33.
- 36 Page 99, line 34, strike "(B)".
- 37 Page 99, line 35, after "felony;" insert "**or**".
- 38 Page 99, strike line 36.
- 39 Page 100, line 5, delete ", at a location" and insert ".".
- 40 Page 100, delete line 6.
- 41 Page 102, line 21, strike "any of the".
- 42 Page 102, strike lines 22 through 23.

- 1 Page 102, line 24, strike "of this chapter, is under indictment for a
- 2 felony".
- 3 Page 102, line 25, strike "under the laws of Indiana or any other".
- 4 Page 102, strike line 26.
- 5 Page 102, line 27, strike "(2)".
- 6 Page 102, line 27, delete "The" and insert "the".
- 7 Page 102, line 36, delete ":".
- 8 Page 102, strike line 37.
- 9 Page 102, line 38, strike "(B)".
- 10 Page 102, line 39, after "felony;" insert "**or**".
- 11 Page 102, strike line 40.
- 12 Page 103, line 9, delete ", at a location" and insert ".".
- 13 Page 103, delete line 10.
- 14 Page 107, line 37, before "IC 28-1-29-7" insert "IC 24-4.4-1-203;
- 15 IC 24-4.4-3-112; IC 24-4.5-1-203; IC 24-4.5-6-114;".
- 16 Renumber all SECTIONS consecutively.
(Reference is to SB 571 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 8, Nays 0.

Senator Paul, Chairperson