



January 21, 2011

HOUSE BILL No. 1180

DIGEST OF HB 1180 (Updated January 19, 2011 2:32 pm - DI 101)

Citations Affected: IC 24-4.4; IC 24-4.5.

Synopsis: Zero interest mortgages by nonprofit entities. Specifies that: (1) the statute concerning first lien mortgage lending; and (2) the uniform consumer credit code; do not apply to a bona fide nonprofit entity that does not operate in a commercial context and that meets other specified criteria. Makes a technical amendment.

Effective: July 1, 2011.

Clere, VanNatter

January 10, 2011, read first time and referred to Committee on Financial Institutions.
January 20, 2011, amended, reported — Do Pass.

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HB 1180—LS 7271/DI 101+



January 21, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1180



A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

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

1 SECTION 1. IC 24-4.4-1-202, AS AMENDED BY P.L.35-2010,
 2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2011]: Sec. 202. (a) **As used in this section, "balloon
 4 payment", with respect to a mortgage transaction, means any
 5 payment that:**
 6 (1) **the creditor requires the debtor to make at any time
 7 during the term of the mortgage;**
 8 (2) **represents the entire amount of the outstanding balance
 9 with respect to the mortgage; and**
 10 (3) **the entire amount of which is due as of a specified date or
 11 at the end of a specified period;**
 12 **if the aggregate amount of the minimum periodic payments
 13 required under the mortgage would not fully amortize the
 14 outstanding balance by the specified date or at the end of the
 15 specified period. The term does not include a payment required by
 16 a creditor under a due-on-sale clause (as defined in 12 U.S.C.
 17 1701j-3(a)) or a payment required by a creditor under a provision**

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1 **in the mortgage that permits the creditor to accelerate the debt**
2 **upon the debtor's default or failure to abide by the material terms**
3 **of the mortgage.**

4 (b) This article does not apply to the following:

5 (1) Extensions of credit to government or governmental agencies
6 or instrumentalities.

7 (2) A first lien mortgage transaction in which the debt is incurred
8 primarily for a purpose other than a personal, family, or
9 household purpose.

10 (3) An extension of credit primarily for a business, a commercial,
11 or an agricultural purpose.

12 (4) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3,
13 IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a first lien mortgage
14 transaction made:

15 (a) in compliance with the requirements of; and

16 (b) by a community development corporation (as defined in
17 IC 4-4-28-2) acting as a subrecipient of funds from;
18 the Indiana housing and community development authority
19 established by IC 5-20-1-3.

20 (5) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3,
21 IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a first lien mortgage
22 transaction made by an entity that exclusively uses funds provided
23 by the United States Department of Housing and Urban
24 Development under Title 1 of the federal Housing and
25 Community Development Act of 1974, Public Law 93-383, as
26 amended (42 U.S.C. 5301 et seq.).

27 (6) An extension of credit originated by:

28 (a) a depository institution;

29 (b) subsidiaries that are:

30 (i) owned and controlled by a depository institution; and

31 (ii) regulated by a federal banking agency; or

32 (c) an institution regulated by the Farm Credit Administration.

33 (7) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3,
34 IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a credit union service
35 organization that is majority owned, directly or indirectly, by one
36 (1) or more credit unions.

37 (8) A first lien mortgage transaction originated by a registered
38 mortgage loan originator, when acting for an entity described in
39 subsection (6). ~~However,~~ A privately insured state chartered
40 credit union shall **also** comply with the system of mortgage loan
41 originator registration developed by the Federal Financial
42 Institutions Examinations Council under Section 1507 of the

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- 1 federal ~~Safe~~ **Secure** and Fair Enforcement for Mortgage
- 2 Licensing Act of 2008 (SAFE).
- 3 (9) An individual who offers or negotiates terms of a mortgage
- 4 transaction with or on behalf of an immediate family member of
- 5 the individual.
- 6 (10) An individual who offers or negotiates terms of a mortgage
- 7 transaction secured by a dwelling that served as the individual's
- 8 residence.
- 9 (11) Unless the attorney is compensated by:
 - 10 (a) a lender;
 - 11 (b) a mortgage broker;
 - 12 (c) another mortgage loan originator; or
 - 13 (d) any agent of the lender, mortgage broker, or other
 - 14 mortgage loan originator described in clauses (a) through (c);
 - 15 a licensed attorney who negotiates the terms of a mortgage
 - 16 transaction on behalf of a client as an ancillary matter to the
 - 17 attorney's representation of the client.
- 18 (12) Agencies, instrumentalities, and government owned
- 19 corporations of the United States, including United States
- 20 government sponsored enterprises.
- 21 **(13) A bona fide nonprofit entity not operating in a**
- 22 **commercial context, as determined by the director, if the**
- 23 **following criteria are satisfied:**
 - 24 **(A) Subject to clause (B), the entity originates only one (1)**
 - 25 **or both of the following types of mortgage transactions:**
 - 26 **(i) Zero (0) interest first lien mortgage transactions.**
 - 27 **(ii) Zero (0) interest subordinate lien mortgage**
 - 28 **transactions.**
 - 29 **(B) The entity does not require, under the terms of the**
 - 30 **mortgage or otherwise, balloon payments with respect to**
 - 31 **the mortgage transactions described in clause (A).**
 - 32 **(C) The entity is exempt from federal income taxation**
 - 33 **under Section 501(c)(3) of the Internal Revenue Code.**
 - 34 **(D) The entity's primary purpose is to serve the public by**
 - 35 **helping low income individuals and families build, repair,**
 - 36 **and purchase housing.**
 - 37 **(E) The entity uses only:**
 - 38 **(i) unpaid volunteers; or**
 - 39 **(ii) employees whose compensation is not based on the**
 - 40 **number or size of any mortgage transactions that the**
 - 41 **employees originate;**
 - 42 **to originate the mortgage transactions described in clause**

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(A).
(F) The entity does not charge loan origination fees in connection with the mortgage transactions described in clause (A).

SECTION 2. IC 24-4.5-1-202, AS AMENDED BY P.L.35-2010, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 202. **(a) As used in this section, "balloon payment", with respect to a mortgage transaction, means any payment that:**

- (1) the creditor requires the debtor to make at any time during the term of the mortgage;**
- (2) represents the entire amount of the outstanding balance with respect to the mortgage; and**
- (3) the entire amount of which is due as of a specified date or at the end of a specified period;**

if the aggregate amount of the minimum periodic payments required under the mortgage would not fully amortize the outstanding balance by the specified date or at the end of the specified period. The term does not include a payment required by a creditor under a due-on-sale clause (as defined in 12 U.S.C. 1701j-3(a)) or a payment required by a creditor under a provision in the mortgage that permits the creditor to accelerate the debt upon the debtor's default or failure to abide by the material terms of the mortgage.

- (b) This article does not apply to the following:**
 - (1) Extensions of credit to government or governmental agencies or instrumentalities.
 - (2) The sale of insurance by an insurer, except as otherwise provided in the chapter on insurance (IC 24-4.5-4).
 - (3) Transactions under public utility, municipal utility, or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.
 - (4) The rates and charges and the disclosure of rates and charges of a licensed pawnbroker established in accordance with a statute or ordinance concerning these matters.
 - (5) A sale of goods, services, or an interest in land in which the goods, services, or interest in land are purchased primarily for a purpose other than a personal, family, or household purpose.
 - (6) A loan in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.

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- 1 (7) An extension of credit primarily for a business, a commercial,
- 2 or an agricultural purpose.
- 3 (8) An installment agreement for the purchase of home fuels in
- 4 which a finance charge is not imposed.
- 5 (9) Loans made, insured, or guaranteed under a program
- 6 authorized by Title IV of the Higher Education Act of 1965 (20
- 7 U.S.C. 1070 et seq.).
- 8 (10) Transactions in securities or commodities accounts in which
- 9 credit is extended by a broker-dealer registered with the Securities
- 10 and Exchange Commission or the Commodity Futures Trading
- 11 Commission.
- 12 (11) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3,
- 13 IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a loan made:
- 14 (A) in compliance with the requirements of; and
- 15 (B) by a community development corporation (as defined in
- 16 IC 4-4-28-2) acting as a subrecipient of funds from;
- 17 the Indiana housing and community development authority
- 18 established by IC 5-20-1-3.
- 19 (12) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3,
- 20 IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a subordinate lien
- 21 mortgage transaction made by an entity that exclusively uses
- 22 funds provided by the United States Department of Housing and
- 23 Urban Development under Title 1 of the Housing and Community
- 24 Development Act of 1974, Public Law 93-383, as amended (42
- 25 U.S.C. 5301 et seq).
- 26 **(13) A bona fide nonprofit entity not operating in a**
- 27 **commercial context, as determined by the director, if the**
- 28 **following criteria are satisfied:**
- 29 **(A) Subject to clause (B), the entity originates only one (1)**
- 30 **or both of the following types of mortgage transactions:**
- 31 **(i) Zero (0) interest first lien mortgage transactions.**
- 32 **(ii) Zero (0) interest subordinate lien mortgage**
- 33 **transactions.**
- 34 **(B) The entity does not require, under the terms of the**
- 35 **mortgage or otherwise, balloon payments with respect to**
- 36 **the mortgage transactions described in clause (A).**
- 37 **(C) The entity is exempt from federal income taxation**
- 38 **under Section 501(c)(3) of the Internal Revenue Code.**
- 39 **(D) The entity's primary purpose is to serve the public by**
- 40 **helping low income individuals and families build, repair,**
- 41 **and purchase housing.**
- 42 **(E) The entity uses only:**

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1 **(i) unpaid volunteers; or**
2 **(ii) employees whose compensation is not based on the**
3 **number or size of any mortgage transactions that the**
4 **employees originate;**
5 **to originate the mortgage transactions described in clause**
6 **(A).**
7 **(F) The entity does not charge loan origination fees in**
8 **connection with the mortgage transactions described in**
9 **clause (A).**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1180, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, delete lines 4 through 42.

Page 3, delete lines 1 through 41, begin a new paragraph and insert:

"(b) This article does not apply to the following:

(1) Extensions of credit to government or governmental agencies or instrumentalities.

(2) A first lien mortgage transaction in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.

(3) An extension of credit primarily for a business, a commercial, or an agricultural purpose.

(4) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a first lien mortgage transaction made:

(a) in compliance with the requirements of; and

(b) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from;

the Indiana housing and community development authority established by IC 5-20-1-3.

(5) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a first lien mortgage transaction made by an entity that exclusively uses funds provided by the United States Department of Housing and Urban Development under Title 1 of the federal Housing and Community Development Act of 1974, Public Law 93-383, as amended (42 U.S.C. 5301 et seq.).

(6) An extension of credit originated by:

(a) a depository institution;

(b) subsidiaries that are:

(i) owned and controlled by a depository institution; and

(ii) regulated by a federal banking agency; or

(c) an institution regulated by the Farm Credit Administration.

(7) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a credit union service organization that is majority owned, directly or indirectly, by one (1) or more credit unions.

(8) A first lien mortgage transaction originated by a registered mortgage loan originator, when acting for an entity described in

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subsection (6). ~~However,~~ A privately insured state chartered credit union shall **also** comply with the system of mortgage loan originator registration developed by the Federal Financial Institutions Examinations Council under Section 1507 of the federal ~~Safe~~ **Secure** and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE).

(9) An individual who offers or negotiates terms of a mortgage transaction with or on behalf of an immediate family member of the individual.

(10) An individual who offers or negotiates terms of a mortgage transaction secured by a dwelling that served as the individual's residence.

(11) Unless the attorney is compensated by:

- (a) a lender;
 - (b) a mortgage broker;
 - (c) another mortgage loan originator; or
 - (d) any agent of the lender, mortgage broker, or other mortgage loan originator described in clauses (a) through (c);
- a licensed attorney who negotiates the terms of a mortgage transaction on behalf of a client as an ancillary matter to the attorney's representation of the client.

(12) Agencies, instrumentalities, and government owned corporations of the United States, including United States government sponsored enterprises."

Page 3, line 42, delete "(12)" and insert "**(13)**".

Page 6, delete lines 5 through 7.

Page 6, line 8, delete "(14)" and insert "**(13)**".

and when so amended that said bill do pass.

(Reference is to HB 1180 as introduced.)

BURTON, Chair

Committee Vote: yeas 10, nays 0.

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