

# SENATE BILL No. 407

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-4.5; IC 24-5-0.5-3.

**Synopsis:** Consumer credit transactions. Amends the Uniform Consumer Credit Code (UCCC) as follows: (1) Specifies that the UCCC applies to any consumer credit transaction entered into by a creditor and a resident of Indiana regardless of whether: (A) the creditor has a physical presence in any state; or (B) the transaction is conducted, in whole or in part, by means of the Internet. (2) Specifies that the licensing requirements under the UCCC apply to any person that regularly engages in making consumer loans in Indiana regardless of whether: (A) the person has a physical presence in any state; or (B) the loan transactions are conducted, in whole or in part, by means of the Internet. (3) Provides that after June 30, 2020, a lender may not contract for or receive the authorized minimum finance charge upon a borrower's prepayment of the second or any subsequent refinancing of a consumer loan made to that borrower by the lender. (4) Provides that after June 30, 2020, a lender may not assess the authorized nonrefundable prepaid finance charge on the second or any subsequent refinancing of a consumer loan made to a borrower by the lender. (5) Provides that a creditor: (A) who is licensed with the department of financial institutions (department) under the UCCC or is required to be licensed with the department; and (B) who violates the UCCC; commits a deceptive act that is actionable by the attorney general or a consumer under the deceptive consumer sales act.

**Effective:** July 1, 2020.

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**Walker**

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January 14, 2020, read first time and referred to Committee on Insurance and Financial Institutions.

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Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

## SENATE BILL No. 407

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 24-4.5-1-201, AS AMENDED BY P.L.216-2013,  
2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2020]: Sec. 201. (1) Except as otherwise provided in this  
4 section, this article applies to sales, leases, and loans made in this state  
5 and to modifications, including refinancings, consolidations, and  
6 deferrals, made in this state, of sales, leases, and loans, wherever made.  
7 For purposes of this article, the following apply:  
8 (a) A sale or modification of a sale agreement is made in this state  
9 if the buyer's agreement or offer to purchase or to modify is  
10 received by the seller or a person acting on behalf of the seller in  
11 this state.  
12 (b) A lease or modification of a lease agreement is made in this  
13 state if the lessee's agreement or offer to lease or to modify is  
14 received by the lessor or a person acting on behalf of the lessor in  
15 this state.  
16 (c) A loan or modification of a loan agreement is made in this  
17 state if a writing signed by the debtor and evidencing the debt is



received by the lender or a person acting on behalf of the lender in this state.

(d) Except as provided in subdivisions (e) and (f), a sale, lease, or loan transaction occurs in Indiana if a consumer who is a resident of Indiana enters into a consumer sale, lease, or loan transaction with a creditor or a person acting on behalf of the creditor in another state and the creditor or the person acting on behalf of the creditor has advertised or solicited sales, leases, or loans in Indiana by any means, including by mail, brochure, telephone, print, radio, television, the Internet, or electronic means.

(e) A sale, lease, or loan transaction does not occur in Indiana if a consumer who is a resident of Indiana enters into a consumer sale, lease, or loan transaction secured by an interest in land located outside Indiana.

(f) A sale, lease, or loan transaction does not occur in Indiana if a consumer who is a resident of Indiana enters into a consumer sale, lease, or loan transaction at a creditor's place of business in another state.

**(g) Except as provided in subdivision (f), a sale, lease, or loan transaction occurs in Indiana if a consumer who is a resident of Indiana enters into a consumer sale, lease, or loan transaction with a creditor regardless of whether:**

**(i) the creditor has a physical presence in any state; or**

**(ii) the transaction is conducted, in whole or in part, by means of the Internet.**

For purposes of subdivisions (a) through (c), an offer is received by a creditor or a person acting on behalf of the creditor in Indiana if the offer is physically delivered, or otherwise transmitted or communicated, to a person who has actual or apparent authority to act for the creditor or the person acting on behalf of the creditor in Indiana, regardless of whether approval, acceptance, or ratification by any other agent or representative of the creditor or the person acting on behalf of the creditor in another state is necessary to give legal consequence to the consumer credit transaction.

(2) IC 24-4.5-5-101 through IC 24-4.5-5-108 apply to actions or other proceedings brought in this state to enforce rights arising from consumer credit sales, consumer leases, or consumer loans, or extortionate extensions of credit, wherever made.

(3) Except as provided in subsection (2), a sale, lease, loan, or modification thereof, made in another state to a person who was not a resident of this state when the sale, lease, loan, or modification was made is valid and enforceable in this state according to its terms to the



1 extent that it is valid and enforceable under the laws of the state  
2 applicable to the transaction.

3 (4) For the purposes of this article, the residence of a buyer, lessee,  
4 or debtor is the address given by the buyer, lessee, or debtor as the  
5 buyer's, lessee's, or debtor's residence in any writing or electronic  
6 communication made by the buyer, lessee, or debtor in connection with  
7 a credit transaction. Until the buyer, lessee, or debtor notifies the  
8 creditor or the person acting on behalf of the creditor of a new or  
9 different address, the given address is presumed to be unchanged.

10 (5) Notwithstanding other provisions of this section:

11 (a) except as provided in subsection (2), this article does not apply  
12 if the buyer, lessee, or debtor is not a resident of this state at the  
13 time of a credit transaction and the parties then agree that the law  
14 of the buyer's, lessee's, or debtor's residence applies; and

15 (b) this article applies if the buyer, lessee, or debtor is a resident  
16 of this state at the time of a credit transaction and the parties then  
17 agree that the law of this state applies.

18 (6) Except as provided in subsection (5), the following agreements  
19 by a buyer, lessee, or debtor are invalid with respect to consumer credit  
20 sales, consumer leases, consumer loans, or modifications thereof, to  
21 which this article applies:

22 (a) An agreement that the law of another state shall apply.

23 (b) An agreement that the buyer, lessee, or debtor consents to the  
24 jurisdiction of another state.

25 (c) An agreement that fixes venue.

26 (7) The following provisions of this article specify the applicable  
27 law governing certain cases:

28 (a) IC 24-4.5-6-102 (applicability of the provisions on powers and  
29 functions of the department).

30 (b) IC 24-4.5-6-201 (applicability of the provisions on notification  
31 and fees).

32 (8) If a creditor or a person acting on behalf of the creditor has  
33 violated the provisions of this article that apply to the authority to make  
34 consumer loans (IC 24-4.5-3-502), the loan is void and the debtor is not  
35 obligated to pay either the principal or loan finance charge, as set forth  
36 in IC 24-4.5-5-202.

37 SECTION 2. IC 24-4.5-3-201, AS AMENDED BY P.L.159-2017,  
38 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
39 JULY 1, 2020]: Sec. 201. Loan Finance Charge for Consumer Loans  
40 other than Supervised Loans — (1) Except as provided in subsections  
41 (6) and (8), with respect to a consumer loan other than a supervised  
42 loan (as defined in section 501 of this chapter), a lender may contract



for a loan finance charge, calculated according to the actuarial method, not exceeding twenty-five percent (25%) per year on the unpaid balances of the principal.

(2) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

(a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment in section 210 of this chapter.

(3) For the purposes of this section, the term of a loan commences with the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth ( $1/30$ ) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. For purposes of computing average daily balances, the creditor may elect to treat all months as consisting of thirty (30) days.

(4) With respect to a consumer loan made pursuant to a revolving loan account:

(a) the loan finance charge shall be deemed not to exceed the maximum annual percentage rate if the loan finance charge contracted for and received does not exceed a charge in each monthly billing cycle which is two and eighty-three thousandths percent (2.083%) of an amount not greater than:

(i) the average daily balance of the debt;

(ii) the unpaid balance of the debt on the same day of the billing cycle; or

(iii) subject to subsection (5), the median amount within a specified range within which the average daily balance or the unpaid balance of the debt, on the same day of the billing cycle, is included; for the purposes of this subparagraph and subparagraph (ii), a variation of not more than four (4) days from month to month is "the same day of the billing cycle";

(b) if the billing cycle is not monthly, the loan finance charge shall be deemed not to exceed the maximum annual percentage rate if the loan finance charge contracted for and received does not exceed a percentage which bears the same relation to one-twelfth ( $1/12$ ) the maximum annual percentage rate as the



number of days in the billing cycle bears to thirty (30); and  
 (c) notwithstanding subsection (1), if there is an unpaid balance on the date as of which the loan finance charge is applied, the lender may contract for and receive a charge not exceeding fifty cents (\$0.50) if the billing cycle is monthly or longer, or the pro rata part of fifty cents (\$0.50) which bears the same relation to fifty cents (\$0.50) as the number of days in the billing cycle bears to thirty (30) if the billing cycle is shorter than monthly, but no charge may be made pursuant to this paragraph if the lender has made an annual charge for the same period as permitted by the provisions on additional charges in section 202(1)(c) of this chapter.

(5) Subject to classifications and differentiations the lender may reasonably establish, the lender may make the same loan finance charge on all amounts financed within a specified range. A loan finance charge does not violate subsection (1) if:

- (a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (1); and
- (b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) With respect to a consumer loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars (\$30). The minimum loan finance charge allowed under this subsection may be imposed only if the lender does not assess a nonrefundable prepaid finance charge under subsection (8) and:

- (a) the debtor prepays in full a consumer loan, refinancing, or consolidation, regardless of whether the loan, refinancing, or consolidation is precomputed;
- (b) the loan, refinancing, or consolidation prepaid by the debtor is subject to a loan finance charge that:
  - (i) is contracted for by the parties; and
  - (ii) does not exceed the rate prescribed in subsection (1); and
- (c) the loan finance charge earned at the time of prepayment is less than the minimum loan finance charge contracted for under this subsection.

**However, after June 30, 2020, a lender may not contract for or receive a minimum finance charge under this subsection with respect to the second or any subsequent refinancing of a consumer loan made to the same borrower.**



(7) The amount of thirty dollars (\$30) in subsection (6) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 1992.

(8) Except as provided in subsection (6), in addition to the loan finance charge provided for in this section and to any other charges and fees permitted by this chapter, a lender may contract for and receive a nonrefundable prepaid finance charge of not more than the following:

(a) In the case of a consumer loan that is secured by an interest in land and that:

(i) is not made under a revolving loan account, two percent (2%) of the loan amount; or

(ii) is made under a revolving loan account, two percent (2%) of the line of credit.

(b) In the case of consumer loan that is not secured by an interest in land, fifty dollars (\$50).

(9) The nonrefundable prepaid finance charge provided for in subsection (8) is not subject to refund or rebate.

(10) Notwithstanding subsections (8) and (9), in the case of a consumer loan that is not secured by an interest in land, if a lender retains any part of a nonrefundable prepaid finance charge charged on a loan that is paid in full by a new loan from the same lender, the following apply:

(a) If the loan is paid in full by the new loan within three (3) months after the date of the prior loan, the lender may not charge a nonrefundable prepaid finance charge on the new loan, or, in the case of a revolving loan, on the increased credit line.

**(b) This subdivision applies with respect to a loan that is paid in full by a new loan from the same lender before July 1, 2020.** The lender may not assess more than two (2) nonrefundable prepaid finance charges in any twelve (12) month period.

**(c) This subdivision applies with respect to a loan that is paid in full by a new loan from the same lender after June 30, 2020. The lender may not assess a nonrefundable prepaid finance charge on any subsequent refinancing of a loan to the same borrower after the first refinancing described in this subsection.**

(11) In the case of a consumer loan that is secured by an interest in land, this section does not prohibit a lender from contracting for and receiving a fee for preparing deeds, mortgages, reconveyances, and similar documents under section 202(1)(d)(ii) of this chapter, in



1 addition to the nonrefundable prepaid finance charge provided for in  
2 subsection (8).

3 SECTION 3. IC 24-4.5-3-502, AS AMENDED BY P.L.176-2019,  
4 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
5 JULY 1, 2020]: Sec. 502. (1) A person that is a:

- 6 (a) depository institution;
- 7 (b) subsidiary that is owned and controlled by a depository  
8 institution and regulated by a federal banking agency; or
- 9 (c) credit union service organization;

10 may engage in Indiana in the making of consumer loans (including  
11 small loans that are subject to IC 24-4.5-7) that are not mortgage  
12 transactions without obtaining a license under this article.

13 (2) A collection agency licensed under IC 25-11-1 may engage in:

- 14 (a) taking assignments of consumer loans (including small loans  
15 that are subject to IC 24-4.5-7) that are not mortgage transactions;
- 16 and
- 17 (b) undertaking the direct collection of payments from or the  
18 enforcement of rights against debtors arising from consumer loans  
19 (including small loans that are subject to IC 24-4.5-7) that are not  
20 mortgage transactions;

21 in Indiana without obtaining a license under this article.

22 (3) A person that does not qualify under subsection (1) or (2) shall  
23 acquire and retain a license under this chapter in order to regularly  
24 engage in Indiana in the following actions with respect to consumer  
25 loans that are not small loans (as defined in IC 24-4.5-7-104) or  
26 mortgage transactions:

- 27 (a) The making of consumer loans.
- 28 (b) Taking assignments of consumer loans.
- 29 (c) Undertaking the direct collection of payments from or the  
30 enforcement of rights against debtors arising from consumer  
31 loans.

32 (4) A separate license under this chapter is required for each legal  
33 entity that engages in Indiana in any activity described in subsection  
34 (3). However, a separate license under this chapter is not required for  
35 each branch of a legal entity licensed under this chapter to perform an  
36 activity described in subsection (3).

37 (5) Except as otherwise provided in subsections (1) and (2), a  
38 separate license under IC 24-4.5-7 is required in order to regularly  
39 engage in Indiana in the following actions with respect to small loans  
40 (as defined in IC 24-4.5-7-104):

- 41 (a) The making of small loans (as defined in IC 24-4.5-7-104).
- 42 (b) Taking assignments of small loans (as defined in





1 IC 24-4.5-7-104).

2 (c) Undertaking the direct collection of payments from or the  
3 enforcement of rights against debtors arising from small loans (as  
4 defined in IC 24-4.5-7-104).

5 A person that seeks licensure under IC 24-4.5-7 in order to regularly  
6 engage in Indiana in the actions set forth in this subsection shall apply  
7 to the department for that license in the form and manner prescribed by  
8 the department, and is subject to the same licensure requirements and  
9 procedures as an applicant for a license to make consumer loans (other  
10 than small loans or mortgage transactions) under this section.

11 **(6) A person that does not qualify for an exemption under**  
12 **subsection (1) or (2) shall acquire and retain a license under this**  
13 **chapter in order to regularly engage in Indiana in any of the**  
14 **actions described in subsection (3) regardless of whether:**

15 **(a) the person has a physical presence in any state; or**

16 **(b) the person conducts any of the actions described in**  
17 **subsection (3), in whole or in part, by means of the Internet.**

18 SECTION 4. IC 24-4.5-3-508, AS AMENDED BY P.L.159-2017,  
19 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
20 JULY 1, 2020]: Sec. 508. Loan Finance Charge for Supervised Loans  
21 – (1) With respect to a supervised loan, including a loan pursuant to a  
22 revolving loan account, a supervised lender may contract for and  
23 receive a loan finance charge not exceeding that permitted by this  
24 section.

25 (2) The loan finance charge, calculated according to the actuarial  
26 method, may not exceed the equivalent of the greater of:

27 (a) the total of:

28 (i) thirty-six percent (36%) per year on that part of the unpaid  
29 balances of the principal which is two thousand dollars  
30 (\$2,000) or less;

31 (ii) twenty-one percent (21%) per year on that part of the  
32 unpaid balances of the principal which is more than two  
33 thousand dollars (\$2,000) but does not exceed four thousand  
34 dollars (\$4,000); and

35 (iii) fifteen percent (15%) per year on that part of the unpaid  
36 balances of the principal which is more than four thousand  
37 dollars (\$4,000); or

38 (b) twenty-five percent (25%) per year on the unpaid balances of  
39 the principal.

40 (3) This section does not limit or restrict the manner of contracting  
41 for the loan finance charge, whether by way of add-on, discount, or  
42 otherwise, so long as the rate of the loan finance charge does not



1 exceed that permitted by this section. If the loan is precomputed:

2 (a) the loan finance charge may be calculated on the assumption  
3 that all scheduled payments will be made when due; and

4 (b) the effect of prepayment is governed by the provisions on  
5 rebate upon prepayment in section 210 of this chapter.

6 (4) The term of a loan for the purposes of this section commences  
7 on the date the loan is made. Differences in the lengths of months are  
8 disregarded, and a day may be counted as one-thirtieth (1/30) of a  
9 month. Subject to classifications and differentiations the lender may  
10 reasonably establish, a part of a month in excess of fifteen (15) days  
11 may be treated as a full month if periods of fifteen (15) days or less are  
12 disregarded and that procedure is not consistently used to obtain a  
13 greater yield than would otherwise be permitted.

14 (5) Subject to classifications and differentiations the lender may  
15 reasonably establish, the lender may make the same loan finance  
16 charge on all principal amounts within a specified range. A loan  
17 finance charge does not violate subsection (2) if:

18 (a) when applied to the median amount within each range, it does  
19 not exceed the maximum permitted in subsection (2); and

20 (b) when applied to the lowest amount within each range, it does  
21 not produce a rate of loan finance charge exceeding the rate  
22 calculated according to paragraph (a) by more than eight percent  
23 (8%) of the rate calculated according to paragraph (a).

24 (6) The amounts of two thousand dollars (\$2,000) and four thousand  
25 dollars (\$4,000) in subsection (2) and thirty dollars (\$30) in subsection  
26 (7) are subject to change pursuant to the provisions on adjustment of  
27 dollar amounts (IC 24-4.5-1-106). However, notwithstanding  
28 IC 24-4.5-1-106(1), for the adjustment of the amount of thirty dollars  
29 (\$30), the Reference Base Index to be used is the Index for October  
30 1992. Notwithstanding IC 24-4.5-1-106(1), for the adjustment of the  
31 amounts of two thousand dollars (\$2,000) and four thousand dollars  
32 (\$4,000), the Reference Base Index to be used is the Index for October  
33 2012.

34 (7) With respect to a supervised loan not made pursuant to a  
35 revolving loan account, the lender may contract for and receive a  
36 minimum loan finance charge of not more than thirty dollars (\$30). The  
37 minimum loan finance charge allowed under this subsection may be  
38 imposed only if the lender does not assess a nonrefundable prepaid  
39 finance charge under subsection (8) and:

40 (a) the debtor prepays in full a consumer loan, refinancing, or  
41 consolidation, regardless of whether the loan, refinancing, or  
42 consolidation is precomputed;



(b) the loan, refinancing, or consolidation prepaid by the debtor is subject to a loan finance charge that:

(i) is contracted for by the parties; and

(ii) does not exceed the rate prescribed in subsection (2); and

(c) the loan finance charge earned at the time of prepayment is less than the minimum loan finance charge contracted for under this subsection.

**However, after June 30, 2020, a lender may not contract for or receive a minimum finance charge under this subsection with respect to the second or any subsequent refinancing of a consumer loan made to the same borrower.**

(8) Except as provided in subsection (7), in addition to the loan finance charge provided for in this section and to any other charges and fees permitted by this chapter, the lender may contract for and receive a nonrefundable prepaid finance charge of not more than fifty dollars (\$50).

(9) The nonrefundable prepaid finance charge provided for in subsection (8) is not subject to refund or rebate.

(10) Notwithstanding subsections (8) and (9), in the case of a supervised loan that is not secured by an interest in land, if a lender retains any part of a nonrefundable prepaid finance charge charged on a loan that is paid in full by a new loan from the same lender, the following apply:

(a) If the loan is paid in full by the new loan within three (3) months after the date of the prior loan, the lender may not charge a nonrefundable prepaid finance charge on the new loan, or, in the case of a revolving loan, on the increased credit line.

**(b) This subdivision applies with respect to a loan that is paid in full by a new loan from the same lender before July 1, 2020.** The lender may not assess more than two (2) nonrefundable prepaid finance charges in any twelve (12) month period.

**(c) This subdivision applies with respect to a loan that is paid in full by a new loan from the same lender after June 30, 2020.** The lender may not assess a nonrefundable prepaid finance charge on any subsequent refinancing of a loan to the same borrower after the first refinancing described in this subsection.

(11) In the case of a supervised loan that is secured by an interest in land, this section does not prohibit a lender from contracting for and receiving a fee for preparing deeds, mortgages, reconveyances, and similar documents under section 202(1)(d)(ii) of this chapter, in addition to the nonrefundable prepaid finance charge provided for in



1 subsection (8).

2 SECTION 5. IC 24-4.5-5-202 IS AMENDED TO READ AS  
 3 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 202. Effect of  
 4 Violations on Rights of Parties — (1) If a creditor has violated the  
 5 provision of this article applying to limitations on the schedule of  
 6 payments or loan term for supervised loans (IC 24-4.5-3-511), the  
 7 debtor is not obligated to pay the loan finance charge and has a right to  
 8 recover from the person violating this article, or from an assignee of  
 9 that person's rights who undertakes direct collection of payments or  
 10 enforcement of rights arising from the debt, a penalty in an amount  
 11 determined by the court not in excess of three (3) times the amount of  
 12 the loan finance charge. No action pursuant to this subsection may be  
 13 brought more than one (1) year after the due date of the last scheduled  
 14 payment of the agreement with respect to which the violation occurred.

15 (2) If a creditor has violated the provisions of this article applying  
 16 to authority to make consumer loans (IC 24-4.5-3-502), the loan is void  
 17 and the debtor is not obligated to pay either the principal or loan  
 18 finance charge. If the debtor has paid any part of the principal or of the  
 19 loan finance charge, the debtor has a right to recover the payment from  
 20 the person violating this article or from an assignee of that person's  
 21 rights who undertakes direct collection of payments or enforcement of  
 22 rights arising from the debt. With respect to violations arising from  
 23 loans made pursuant to revolving loan accounts, no action pursuant to  
 24 this subsection may be brought more than two (2) years after the  
 25 violation occurred. With respect to violations arising from other loans,  
 26 no action pursuant to this subsection may be brought more than one (1)  
 27 year after the due date of the last scheduled payment of the agreement  
 28 pursuant to which the charge was paid.

29 (3) A debtor is not obligated to pay a charge in excess of that  
 30 allowed by this article, and if the debtor has paid an excess charge the  
 31 debtor has a right to a refund. A refund may be made by reducing the  
 32 debtor's obligation by the amount of the excess charge. If the debtor has  
 33 paid an amount in excess of the lawful obligation under the agreement,  
 34 the debtor may recover the excess amount from the person who made  
 35 the excess charge or from an assignee of that person's rights who  
 36 undertakes direct collection of payments from or enforcement of rights  
 37 against debtors arising from the debt.

38 (4) If a debtor is entitled to a refund and a person liable to the debtor  
 39 refuses to make a refund within a reasonable time after demand, the  
 40 debtor may recover from that person a penalty in an amount determined  
 41 by a court not exceeding the greater of either the amount of the credit  
 42 service or loan finance charge, or ten (10) times the amount of the



1 excess charge. If the creditor has made an excess charge in deliberate  
 2 violation of or in reckless disregard for this article, the penalty may be  
 3 recovered even though the creditor has refunded the excess charge. No  
 4 penalty pursuant to this subsection may be recovered if a court has  
 5 ordered a similar penalty assessed against the same person in a civil  
 6 action by the department (IC 24-4.5-6-113). With respect to excess  
 7 charges arising from sales made pursuant to revolving charge accounts  
 8 or from loans made pursuant to revolving loan accounts, no action  
 9 pursuant to this subsection may be brought more than two (2) years  
 10 after the time the excess charge was made. With respect to excess  
 11 charges arising from other consumer credit sales or consumer loans, no  
 12 action pursuant to this subsection may be brought more than one (1)  
 13 year after the due date of the last scheduled payment of the agreement  
 14 pursuant to which the charge was made.

15 (5) Except as otherwise provided, no violation of this article impairs  
 16 rights on a debt.

17 (6) If an employer discharges an employee in violation of the  
 18 provisions prohibiting discharge (IC 24-4.5-5-106), the employee may  
 19 within six (6) months bring a civil action for recovery of wages lost as  
 20 a result of the violation and for an order requiring the reinstatement of  
 21 the employee. Damages recoverable shall not exceed lost wages for six  
 22 (6) weeks.

23 (7) If the creditor establishes by a preponderance of evidence that  
 24 a violation is unintentional or the result of a bona fide error, no liability  
 25 is imposed under subsections (1), (2), and (4) and the validity of the  
 26 transaction is not affected.

27 (8) In any case in which it is found that a creditor has violated this  
 28 article, the court may award reasonable attorney's fees incurred by the  
 29 debtor.

30 (9) The department may act on behalf of a debtor to enforce the  
 31 debtor's rights under this section against a creditor who is licensed or  
 32 registered with the department or is required to be licensed or  
 33 registered with the department.

34 **(10) A creditor:**

35 **(a) who is licensed with the department or is required to be**  
 36 **licensed with the department; and**

37 **(b) who violates this article;**

38 **commits a deceptive act that is actionable by the attorney general**  
 39 **or by a consumer under IC 24-5-0.5-4 and is subject to the**  
 40 **remedies and penalties set forth in IC 24-5-0.5, unless the creditor**  
 41 **establishes by a preponderance of evidence that the violation is**  
 42 **unintentional or the result of a bona fide error.**



1 SECTION 6. IC 24-4.5-7-102, AS AMENDED BY P.L.69-2018,  
 2 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 2020]: Sec. 102. (1) Except as otherwise provided, all  
 4 provisions of this article applying to consumer loans, including  
 5 IC 24-4.5-3-502.2, apply to small loans, as defined in this chapter.

6 (2) Subject to subsection (7), a person may not regularly engage in  
 7 Indiana in any of the following actions unless the department first  
 8 issues to the person a license under this chapter:

9 (a) The making of small loans.

10 (b) Taking assignments of small loans.

11 (c) Undertaking the direct collection of payments from or the  
 12 enforcement of rights against debtors arising from small loans.

13 (3) Subject to subsection (4), a person that seeks licensure under  
 14 this chapter:

15 (a) shall apply to the department for a license in the form and  
 16 manner prescribed by the department; and

17 (b) is subject to the same licensure requirements and procedures  
 18 as an applicant for a license to make consumer loans (other than  
 19 mortgage transactions) under IC 24-4.5-3-502.

20 (4) A person that seeks to make, take assignments of, or undertake  
 21 the direct collection of payments from or the enforcement of rights  
 22 against debtors arising from both:

23 (a) small loans under this chapter; and

24 (b) consumer loans (other than mortgage transactions) that are not  
 25 small loans;

26 must obtain a separate license from the department for each type of  
 27 loan, as described in IC 24-4.5-3-502(5).

28 (5) This chapter applies to:

29 (a) a lender;

30 (b) a bank, savings association, credit union, or other state or  
 31 federally regulated financial institution except those that are  
 32 specifically exempt regarding limitations on interest rates and  
 33 fees; or

34 (c) a person, if the department determines that a transaction is:

35 (i) in substance a disguised loan; or

36 (ii) the application of subterfuge for the purpose of avoiding  
 37 this chapter.

38 (6) A loan that:

39 (a) does not qualify as a small loan under section 104 of this  
 40 chapter;

41 (b) is for a term shorter than that specified in section 401(1) of  
 42 this chapter; or



(c) is made in violation of section 201, 401, 402, 404, or 410 of this chapter;  
is subject to this article. The department may conform the loan finance charge for a loan described in this subsection to the limitations set forth in IC 24-4.5-3-508(2).

(7) Notwithstanding IC 24-4.5-1-301.5, for purposes of subsection (2), a person "regularly engages" in any of the activities described in subsection (2) with respect to a small loan if the person:

(a) performed any of the activities described in subsection (2) with respect to a small loan at least one (1) time in the preceding calendar year; or

(b) performs or will perform any of the activities described in subsection (2) with respect to a small loan at least one (1) time in the current calendar year if the person did not perform any of the activities described in subsection (2) with respect to a small loan at least one (1) time in the preceding calendar year.

**(8) A person may not regularly engage in Indiana in any of the actions described in subsection (2) unless the department first issues to the person a license under this chapter, regardless of whether:**

**(a) the person has a physical presence in any state; or**

**(b) the person conducts any of the actions described in subsection (2), in whole or in part, by means of the Internet.**

SECTION 7. IC 24-5-0.5-3, AS AMENDED BY P.L.211-2019, SECTION 33, AND AS AMENDED BY P.L.242-2019, SECTION 6, AND AS AMENDED BY THE TECHNICAL CORRECTIONS BILL OF THE 2020 GENERAL ASSEMBLY, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:  
Sec. 3. (a) A supplier may not commit an unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction. Such an act, omission, or practice by a supplier is a violation of this chapter whether it occurs before, during, or after the transaction. An act, omission, or practice prohibited by this section includes both implicit and explicit misrepresentations.

(b) Without limiting the scope of subsection (a), the following acts, and the following representations as to the subject matter of a consumer transaction, made orally, in writing, or by electronic communication, by a supplier, are deceptive acts:

(1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have.



- 1 (2) That such subject of a consumer transaction is of a particular
- 2 standard, quality, grade, style, or model, if it is not and if the
- 3 supplier knows or should reasonably know that it is not.
- 4 (3) That such subject of a consumer transaction is new or unused,
- 5 if it is not and if the supplier knows or should reasonably know
- 6 that it is not.
- 7 (4) That such subject of a consumer transaction will be supplied
- 8 to the public in greater quantity than the supplier intends or
- 9 reasonably expects.
- 10 (5) That replacement or repair constituting the subject of a
- 11 consumer transaction is needed, if it is not and if the supplier
- 12 knows or should reasonably know that it is not.
- 13 (6) That a specific price advantage exists as to such subject of a
- 14 consumer transaction, if it does not and if the supplier knows or
- 15 should reasonably know that it does not.
- 16 (7) That the supplier has a sponsorship, approval, or affiliation in
- 17 such consumer transaction the supplier does not have, and which
- 18 the supplier knows or should reasonably know that the supplier
- 19 does not have.
- 20 (8) That such consumer transaction involves or does not involve
- 21 a warranty, a disclaimer of warranties, or other rights, remedies,
- 22 or obligations, if the representation is false and if the supplier
- 23 knows or should reasonably know that the representation is false.
- 24 (9) That the consumer will receive a rebate, discount, or other
- 25 benefit as an inducement for entering into a sale or lease in return
- 26 for giving the supplier the names of prospective consumers or
- 27 otherwise helping the supplier to enter into other consumer
- 28 transactions, if earning the benefit, rebate, or discount is
- 29 contingent upon the occurrence of an event subsequent to the time
- 30 the consumer agrees to the purchase or lease.
- 31 (10) That the supplier is able to deliver or complete the subject of
- 32 the consumer transaction within a stated period of time, when the
- 33 supplier knows or should reasonably know the supplier could not.
- 34 If no time period has been stated by the supplier, there is a
- 35 presumption that the supplier has represented that the supplier
- 36 will deliver or complete the subject of the consumer transaction
- 37 within a reasonable time, according to the course of dealing or the
- 38 usage of the trade.
- 39 (11) That the consumer will be able to purchase the subject of the
- 40 consumer transaction as advertised by the supplier, if the supplier
- 41 does not intend to sell it.
- 42 (12) That the replacement or repair constituting the subject of a





consumer transaction can be made by the supplier for the estimate the supplier gives a customer for the replacement or repair, if the specified work is completed and:

(A) the cost exceeds the estimate by an amount equal to or greater than ten percent (10%) of the estimate;

(B) the supplier did not obtain written permission from the customer to authorize the supplier to complete the work even if the cost would exceed the amounts specified in clause (A);

(C) the total cost for services and parts for a single transaction is more than seven hundred fifty dollars (\$750); and

(D) the supplier knew or reasonably should have known that the cost would exceed the estimate in the amounts specified in clause (A).

(13) That the replacement or repair constituting the subject of a consumer transaction is needed, and that the supplier disposes of the part repaired or replaced earlier than seventy-two (72) hours after both:

(A) the customer has been notified that the work has been completed; and

(B) the part repaired or replaced has been made available for examination upon the request of the customer.

(14) Engaging in the replacement or repair of the subject of a consumer transaction if the consumer has not authorized the replacement or repair, and if the supplier knows or should reasonably know that it is not authorized.

(15) The act of misrepresenting the geographic location of the supplier by listing an alternate business name or an assumed business name (as described in IC 23-0.5-3-4) in a local telephone directory if:

(A) the name misrepresents the supplier's geographic location;

(B) the listing fails to identify the locality and state of the supplier's business;

(C) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the calling area covered by the local telephone directory; and

(D) the supplier's business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory.

(16) The act of listing an alternate business name or assumed business name (as described in IC 23-0.5-3-4) in a directory assistance data base if:



- 1 (A) the name misrepresents the supplier's geographic location;
- 2 (B) calls to the local telephone number are routinely forwarded
- 3 or otherwise transferred to a supplier's business location that
- 4 is outside the local calling area; and
- 5 (C) the supplier's business location is located in a county that
- 6 is not contiguous to a county in the local calling area.
- 7 (17) The violation by a supplier of IC 24-3-4 concerning
- 8 cigarettes for import or export.
- 9 (18) The act of a supplier in knowingly selling or reselling a
- 10 product to a consumer if the product has been recalled, whether
- 11 by the order of a court or a regulatory body, or voluntarily by the
- 12 manufacturer, distributor, or retailer, unless the product has been
- 13 repaired or modified to correct the defect that was the subject of
- 14 the recall.
- 15 (19) The violation by a supplier of 47 U.S.C. 227, including any
- 16 rules or regulations issued under 47 U.S.C. 227.
- 17 (20) The violation by a supplier of the federal Fair Debt
- 18 Collection Practices Act (15 U.S.C. 1692 et seq.), including any
- 19 rules or regulations issued under the federal Fair Debt Collection
- 20 Practices Act (15 U.S.C. 1692 et seq.).
- 21 (21) A violation of IC 24-5-7 (concerning health spa services), as
- 22 set forth in IC 24-5-7-17.
- 23 (22) A violation of IC 24-5-8 (concerning business opportunity
- 24 transactions), as set forth in IC 24-5-8-20.
- 25 (23) A violation of IC 24-5-10 (concerning home consumer
- 26 transactions), as set forth in IC 24-5-10-18.
- 27 (24) A violation of IC 24-5-11 (concerning real property
- 28 improvement contracts), as set forth in IC 24-5-11-14.
- 29 (25) A violation of IC 24-5-12 (concerning telephone
- 30 solicitations), as set forth in IC 24-5-12-23.
- 31 (26) A violation of IC 24-5-13.5 (concerning buyback motor
- 32 vehicles), as set forth in IC 24-5-13.5-14.
- 33 (27) A violation of IC 24-5-14 (concerning automatic
- 34 dialing-announcing devices), as set forth in IC 24-5-14-13.
- 35 (28) A violation of IC 24-5-15 (concerning credit services
- 36 organizations), as set forth in IC 24-5-15-11.
- 37 (29) A violation of IC 24-5-16 (concerning unlawful motor
- 38 vehicle subleasing), as set forth in IC 24-5-16-18.
- 39 (30) A violation of IC 24-5-17 (concerning environmental
- 40 marketing claims), as set forth in IC 24-5-17-14.
- 41 (31) A violation of IC 24-5-19 (concerning deceptive commercial
- 42 solicitation), as set forth in IC 24-5-19-11.



(32) A violation of IC 24-5-21 (concerning prescription drug discount cards), as set forth in IC 24-5-21-7.

(33) A violation of IC 24-5-23.5-7 (concerning real estate appraisals), as set forth in IC 24-5-23.5-9.

(34) A violation of IC 24-5-26 (concerning identity theft), as set forth in IC 24-5-26-3.

(35) A violation of IC 24-5.5 (concerning mortgage rescue fraud), as set forth in IC 24-5.5-6-1.

(36) A violation of IC 24-8 (concerning promotional gifts and contests), as set forth in IC 24-8-6-3.

(37) A violation of IC 21-18.5-6 (concerning representations made by a postsecondary credit bearing proprietary educational institution), as set forth in IC 21-18.5-6-22.5.

*(38) A violation of IC 24-5-15.5 (concerning collection actions of a plaintiff debt buyer), as set forth in IC 24-5-15.5-6.*

~~(38)~~ (39) A violation of IC 24-14 (concerning towing services), as set forth in IC 24-14-10-1.

~~(38)~~ (40) A violation of IC 24-5-14.5 (concerning misleading or inaccurate caller identification information), as set forth in IC 24-5-14.5-12.

**(41) A violation of IC 24-4.5 (concerning consumer credit transactions), as set forth in IC 24-4.5-5-202.**

(c) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such representation thereon or therein, or who authored such materials, and such other suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false.

(d) If a supplier shows by a preponderance of the evidence that an act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, such act shall not be deceptive within the meaning of this chapter.

(e) It shall be a defense to any action brought under this chapter that the representation constituting an alleged deceptive act was one made in good faith by the supplier without knowledge of its falsity and in reliance upon the oral or written representations of the manufacturer, the person from whom the supplier acquired the product, any testing organization, or any other person provided that the source thereof is disclosed to the consumer.

(f) For purposes of subsection (b)(12), a supplier that provides estimates before performing repair or replacement work for a customer



1 shall give the customer a written estimate itemizing as closely as  
2 possible the price for labor and parts necessary for the specific job  
3 before commencing the work.

4 (g) For purposes of subsection (b)(15) and (b)(16), a telephone  
5 company or other provider of a telephone directory or directory  
6 assistance service or its officer or agent is immune from liability for  
7 publishing the listing of an alternate business name or assumed  
8 business name of a supplier in its directory or directory assistance data  
9 base unless the telephone company or other provider of a telephone  
10 directory or directory assistance service is the same person as the  
11 supplier who has committed the deceptive act.

12 (h) For purposes of subsection (b)(18), it is an affirmative defense  
13 to any action brought under this chapter that the product has been  
14 altered by a person other than the defendant to render the product  
15 completely incapable of serving its original purpose.

