



April 12, 2019

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# ENGROSSED HOUSE BILL No. 1136

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DIGEST OF HB 1136 (Updated April 10, 2019 2:46 pm - DI 97)

**Citations Affected:** IC 24-4.5; IC 24-5; noncode.

**Synopsis:** Uniform Consumer Credit Code. Makes the following changes to the Uniform Consumer Credit Code (UCCC): (1) Amends the provisions authorizing specified additional charges for consumer loans to permit a lender to contract for and receive a transaction fee for a revolving loan account that may not exceed the greater of: (A) 2% of the amount of the transaction; or (B) \$10. (Current law authorizes the  
(Continued next page)

**Effective:** Upon passage; July 1, 2019.

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## Burton

(SENATE SPONSOR — ZAY)

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January 7, 2019, read first time and referred to Committee on Financial Institutions.  
January 24, 2019, amended, reported — Do Pass.  
January 28, 2019, read second time, amended, ordered engrossed.  
January 29, 2019, engrossed. Read third time, passed. Yeas 76, nays 21.

SENATE ACTION

February 27, 2019, read first time and referred to Committee on Insurance and Financial Institutions.  
April 11, 2019, amended, reported favorably — Do Pass.

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EH 1136—LS 6450/DI 101



Digest Continued

lender to charge a transaction fee in the lesser of these two amounts.) (2) Replaces the authorized \$5 delinquency charge (subject to indexing by the department of financial institutions) for consumer credit sales and consumer loans with a nonindexed delinquency charge of: (A) \$5, if installments are due every 14 days or less; (B) \$25, if installments are due every 15 days or more; or (C) \$25, in the case of a single installment due at least 30 days after the sale or loan is made. (3) Specifies that a creditor may not charge or collect a delinquency charge on a payment that: (A) is paid within 10 days after its scheduled due date; and (B) is otherwise a full payment of the payment due for the applicable installment period; if the only delinquency with respect to a consumer credit sale or a consumer loan is attributable to a delinquency charge for an earlier installment. Specifies that an initial pleading related to a debt collection action filed by a debt buyer must include certain information. Makes a violation a deceptive act. Urges the legislative council to assign to an interim study committee, for study during the 2019 interim, the topic of revisions to the UCCC. Sets forth issues for consideration by an interim study committee assigned this topic.

**EH 1136—LS 6450/DI 101**



April 12, 2019

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1136

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 24-4.5-2-203.5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 203.5. Delinquency  
3 Charges — (1) With respect to a consumer credit sale, refinancing, or  
4 consolidation, the parties may contract for a delinquency charge of not  
5 more than:  
6 (a) five dollars (\$5) on any installment or minimum payment due  
7 **that is not paid in full within ten (10) days after its scheduled due**  
8 **date, if installments under the consumer credit sale,**  
9 **refinancing, or consolidation are due every fourteen (14) days**  
10 **or less;**  
11 (b) **twenty-five dollars (\$25) on any installment or minimum**  
12 **payment due that is not paid in full within ten (10) days after**  
13 **its scheduled due date, if installments under the consumer**  
14 **credit sale, refinancing, or consolidation are due every fifteen**  
15 **(15) days or more; or**  
16 (c) **twenty-five dollars (\$25) on any installment or minimum**  
17 **payment due that is not paid in full within ten (10) days after**

EH 1136—LS 6450/DI 101



1           **its scheduled due date, in the case of a consumer credit sale,**  
 2           **refinancing, or consolidation that is payable in a single**  
 3           **installment that is due at least thirty (30) days after the**  
 4           **consumer credit sale, refinancing, or consolidation is made.**

5           (2) A delinquency charge under this section may be collected only  
 6           once on an installment however long it remains in default. A  
 7           delinquency charge on consumer credit sales made under a revolving  
 8           charge account may be applied each month that the payment is less  
 9           than the minimum required payment. A delinquency charge may be  
 10          collected any time after it accrues. No delinquency charge may be  
 11          collected if the installment has been deferred and a deferral charge  
 12          (IC 24-4.5-2-204) has been paid or incurred.

13          (3) A delinquency charge may not be collected on an installment or  
 14          payment due that is paid in full within ten (10) days after its scheduled  
 15          due date even though an earlier maturing installment, minimum  
 16          payment, or a delinquency charge on:

17               (a) an earlier installment; or

18               (b) payment due;

19          may not have been paid in full. For purposes of this subsection,  
 20          payments are applied first to current installments or payments due and  
 21          then to delinquent installments or payments due.

22          (3) A creditor may not, directly or indirectly, charge or collect  
 23          a delinquency charge on a payment that:

24               (a) is paid within ten (10) days after its scheduled due date;  
 25               and

26               (b) is otherwise a full payment of the payment due for the  
 27               applicable installment period;

28          **if the only delinquency with respect to the consumer credit sale,**  
 29          **refinancing, or consolidation is attributable to a delinquency**  
 30          **charge assessed on an earlier installment.**

31          (4) If two (2) or more installments, or parts of two (2) or more  
 32          installments, of a precomputed consumer credit sale are in default for  
 33          ten (10) days or more, the creditor may elect to convert the consumer  
 34          credit sale from a precomputed consumer credit sale to a consumer  
 35          credit sale in which the credit service charge is based on unpaid  
 36          balances. A creditor that makes this election shall make a rebate under  
 37          the provisions on rebates upon prepayment under IC 24-4.5-2-210 as  
 38          of the maturity date of the first delinquent installment, and thereafter  
 39          may make a credit service charge as authorized by the provisions on  
 40          credit service charges for consumer credit sales under IC 24-4.5-2-201.  
 41          The amount of the rebate shall not be reduced by the amount of any  
 42          permitted minimum charge under IC 24-4.5-2-210. Any deferral



1 charges made on installments due at or after the maturity date of the  
 2 first delinquent installment shall be rebated, and no further deferral  
 3 charges shall be made.

4 ~~(5)~~ The amount of five dollars (\$5) in subsection (1) is subject to  
 5 change under the section on adjustment of dollar amounts  
 6 ~~(IC 24-4.5-1-106)~~.

7 ~~(6)~~ (5) If the parties provide by contract for a delinquency charge  
 8 that is subject to change, the seller shall disclose in the contract that the  
 9 amount of the delinquency charge is subject to change as allowed by  
 10 IC 24-4.5-1-106.

11 SECTION 2. IC 24-4.5-3-202, AS AMENDED BY P.L.69-2018,  
 12 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 13 JULY 1, 2019]: Sec. 202. (1) In addition to the loan finance charge  
 14 permitted by this chapter, a lender may contract for and receive the  
 15 following additional charges in connection with a consumer loan:

16 (a) Official fees and taxes.

17 (b) Charges for insurance as described in subsection (2).

18 (c) Annual participation fees assessed in connection with a  
 19 revolving loan account. Annual participation fees must:

20 (i) be reasonable in amount;

21 (ii) bear a reasonable relationship to the lender's costs to  
 22 maintain and monitor the loan account; and

23 (iii) not be assessed for the purpose of circumvention or  
 24 evasion of this article, as determined by the department.

25 (d) With respect to a debt secured by an interest in land, the  
 26 following closing costs, if they are bona fide, reasonable in  
 27 amount, and not for the purpose of circumvention or evasion of  
 28 this article:

29 (i) Fees for title examination, abstract of title, title insurance,  
 30 property surveys, or similar purposes.

31 (ii) Fees for preparing deeds, mortgages, and reconveyance,  
 32 settlement, and similar documents.

33 (iii) Notary and credit report fees.

34 (iv) Amounts required to be paid into escrow or trustee  
 35 accounts if the amounts would not otherwise be included in  
 36 the loan finance charge.

37 (v) Appraisal fees.

38 (e) Notwithstanding provisions of the Consumer Credit Protection  
 39 Act (15 U.S.C. 1601 et seq.) concerning disclosure, charges for  
 40 other benefits, including insurance, conferred on the debtor, if the  
 41 benefits are of value to the debtor and if the charges are  
 42 reasonable in relation to the benefits, and are excluded as



1 permissible additional charges from the loan finance charge. With  
 2 respect to any other additional charge not specifically provided  
 3 for in this section to be a permitted charge under this subsection,  
 4 the creditor must submit a written explanation of the charge to the  
 5 department indicating how the charge would be assessed and the  
 6 value or benefit to the debtor. Supporting documents may be  
 7 required by the department. The department shall determine  
 8 whether the charge would be of benefit to the debtor and is  
 9 reasonable in relation to the benefits.

10 (f) A charge not to exceed twenty-five dollars (\$25) for each  
 11 returned payment by a bank or other depository institution of a  
 12 dishonored check, electronic funds transfer, negotiable order of  
 13 withdrawal, or share draft issued by the debtor.

14 (g) With respect to a revolving loan account, a fee not to exceed  
 15 twenty-five dollars (\$25) in each billing cycle during which the  
 16 balance due under the revolving loan account exceeds by more  
 17 than one hundred dollars (\$100) the maximum credit limit for the  
 18 account established by the lender.

19 (h) With respect to a revolving loan account, a transaction fee that  
 20 may not exceed the ~~lesser~~ **greater** of the following:

- 21 (i) Two percent (2%) of the amount of the transaction.
- 22 (ii) Ten dollars (\$10).

23 (i) A charge not to exceed twenty-five dollars (\$25) for a  
 24 skip-a-payment service, subject to the following:

25 (i) At the time of use of the service, the consumer must be  
 26 given written notice of the amount of the charge and must  
 27 acknowledge the amount in writing, including by electronic  
 28 signature.

29 (ii) A charge for a skip-a-payment service may not be assessed  
 30 with respect to a consumer loan subject to the provisions on  
 31 rebate upon prepayment that are set forth in section 210 of this  
 32 chapter.

33 (iii) A charge for a skip-a-payment service may not be  
 34 assessed with respect to any payment for which a delinquency  
 35 charge has been assessed under section 203.5 of this chapter.

36 (j) A charge not to exceed ten dollars (\$10) for an optional  
 37 expedited payment service, subject to the following:

38 (i) The charge may be assessed only upon request by the  
 39 consumer to use the expedited payment service.

40 (ii) The amount of the charge must be disclosed to the  
 41 consumer at the time of the consumer's request to use the  
 42 expedited payment service.



- 1 (iii) The consumer must be informed that the consumer retains
- 2 the option to make a payment by traditional means.
- 3 (iv) The charge may not be established in advance, through
- 4 any agreement with the consumer, as the expected method of
- 5 payment.
- 6 (v) The charge may not be assessed with respect to any
- 7 payment for which a delinquency charge has been assessed
- 8 under section 203.5 of this chapter.
- 9 (k) This subdivision applies to a CPAP transaction offered or
- 10 entered into after June 30, 2016. With respect to a CPAP
- 11 transaction, a CPAP provider may impose the following charges
- 12 and fees:
- 13 (i) A fee calculated at an annual rate that does not exceed
- 14 thirty-six percent (36%) of the funded amount.
- 15 (ii) A servicing charge calculated at an annual rate that does
- 16 not exceed seven percent (7%) of the funded amount.
- 17 (iii) If the funded amount of the CPAP transaction is less than
- 18 five thousand dollars (\$5,000), a one (1) time charge that does
- 19 not exceed two hundred fifty dollars (\$250) for obtaining and
- 20 preparing documents.
- 21 (iv) If the funded amount of the CPAP transaction is at least
- 22 five thousand dollars (\$5,000), a one (1) time charge that does
- 23 not exceed five hundred dollars (\$500) for obtaining and
- 24 preparing documents.
- 25 A CPAP provider may not assess, or collect from the consumer
- 26 claimant, any other fee or charge in connection with a CPAP
- 27 transaction, including any finance charges under section 201 or
- 28 508 of this chapter.
- 29 (l) A charge for a GAP agreement, subject to subsection (3).
- 30 (m) With respect to consumer loans made by a person exempt
- 31 from licensing under IC 24-4.5-3-502(1), a charge for a debt
- 32 cancellation agreement, subject to the following:
- 33 (i) A debt cancellation agreement or debt cancellation
- 34 coverage may not be required by the lender, and that fact must
- 35 be disclosed in writing to the consumer.
- 36 (ii) The charge for the initial term of coverage under the debt
- 37 cancellation agreement must be disclosed in writing to the
- 38 consumer. The charge may be disclosed on a unit-cost basis
- 39 only in the case of revolving loan accounts, closed-end credit
- 40 transactions if the request for coverage is made by mail or
- 41 telephone, and closed-end credit transactions if the debt
- 42 cancellation agreement limits the total amount of indebtedness



- 1 eligible for coverage.
- 2 (iii) If the term of coverage under the debt cancellation
- 3 agreement is less than the term of the consumer loan, the term
- 4 of coverage under the debt cancellation agreement must be
- 5 disclosed in writing to the consumer.
- 6 (iv) The consumer must sign or initial an affirmative written
- 7 request for coverage after receiving all required disclosures.
- 8 (v) If debt cancellation coverage for two (2) or more events is
- 9 provided for in a single charge under a debt cancellation
- 10 agreement, the entire charge may be excluded from the loan
- 11 finance charge and imposed as an additional charge under this
- 12 section if at least one (1) of the events is the loss of life, health,
- 13 or income.
- 14 The additional charges provided for in subdivisions (f) through (k) are
- 15 not subject to refund or rebate.
- 16 (2) An additional charge may be made for insurance in connection
- 17 with the loan, other than insurance protecting the lender against the
- 18 debtor's default or other credit loss:
- 19 (a) with respect to insurance against loss of or damage to property
- 20 or against liability, if the lender furnishes a clear and specific
- 21 statement in writing to the debtor, setting forth the cost of the
- 22 insurance if obtained from or through the lender and stating that
- 23 the debtor may choose the person, subject to the lender's
- 24 reasonable approval, through whom the insurance is to be
- 25 obtained; and
- 26 (b) with respect to consumer credit insurance providing life,
- 27 accident, unemployment or other loss of income, or health
- 28 coverage, if the insurance coverage is not a factor in the approval
- 29 by the lender of the extension of credit and this fact is clearly
- 30 disclosed in writing to the debtor, and if, in order to obtain the
- 31 insurance in connection with the extension of credit, the debtor
- 32 gives specific affirmative written indication of the desire to do so
- 33 after written disclosure of the cost of the insurance.
- 34 (3) An additional charge may be made for a GAP agreement, subject
- 35 to the following:
- 36 (a) A GAP agreement or GAP coverage may not be required by
- 37 the lender, and that fact must be disclosed in writing to the
- 38 consumer.
- 39 (b) The charge for the initial term of coverage under the GAP
- 40 agreement must be disclosed in writing to the consumer. The
- 41 charge may be disclosed on a unit-cost basis only in the case of
- 42 the following transactions:





- 1 (i) Revolving loan accounts.
- 2 (ii) Closed-end credit transactions, if the request for coverage
- 3 is made by mail or telephone.
- 4 (iii) Closed-end credit transactions, if the GAP agreement
- 5 limits the total amount of indebtedness eligible for coverage.
- 6 (c) If the term of coverage under the GAP agreement is less than
- 7 the term of the consumer loan, the term of coverage under the
- 8 GAP agreement must be disclosed in writing to the consumer.
- 9 (d) The consumer must sign or initial an affirmative written
- 10 request for coverage after receiving all required disclosures.
- 11 (e) The GAP agreement must include the following:
- 12 (i) In the case of GAP coverage for a new motor vehicle, the
- 13 manufacturer's suggested retail price (MSRP) for the motor
- 14 vehicle.
- 15 (ii) In the case of GAP coverage for a used motor vehicle, the
- 16 National Automobile Dealers Association (NADA) average
- 17 retail value for the motor vehicle.
- 18 (iii) The name of the financing entity taking assignment of the
- 19 agreement, as applicable.
- 20 (iv) The name and address of the consumer.
- 21 (v) The name of the lender selling the agreement.
- 22 (vi) Information advising the consumer that the consumer may
- 23 be able to obtain similar coverage from the consumer's primary
- 24 insurance carrier.
- 25 (vii) A coverage provision that includes a minimum deductible
- 26 of five hundred dollars (\$500).
- 27 (viii) A provision providing for a minimum thirty (30) day trial
- 28 period.
- 29 (ix) In the case of a consumer loan made with respect to a
- 30 motor vehicle, a provision excluding the sale of GAP coverage
- 31 if the amount financed under the consumer loan (not including
- 32 the cost of the GAP agreement, the cost of any credit
- 33 insurance, and the cost of any warranties or service
- 34 agreements) is less than eighty percent (80%) of the
- 35 manufacturer's suggested retail price (MSRP), in the case of a
- 36 new motor vehicle, or **of** the National Automobile Dealers
- 37 Association (NADA) average retail value, in the case of a used
- 38 motor vehicle.
- 39 (x) In the case of a GAP agreement in which the charge for the
- 40 agreement exceeds four hundred dollars (\$400), specific
- 41 instructions that may be used by the consumer to cancel the
- 42 agreement and obtain a refund of the unearned GAP charge



- 1 before prepayment in full, in accordance with the procedures,  
 2 and subject to the conditions, set forth in subdivision (f).  
 3 (f) If the charge for the GAP agreement exceeds four hundred  
 4 dollars (\$400), the consumer is entitled to cancel the agreement  
 5 and obtain a refund of the unearned GAP charge before  
 6 prepayment in full. Refunds of unearned GAP charges shall be  
 7 made subject to the following conditions:  
 8 (i) A refund of the charge for a GAP agreement must be  
 9 calculated using a method that is no less favorable to the  
 10 consumer than a refund calculated on a pro rata basis.  
 11 (ii) The consumer is entitled to a refund of the unearned GAP  
 12 agreement charge as outlined in the GAP agreement.  
 13 (iii) The seller of the GAP agreement, or the seller's assignee,  
 14 is responsible for making a timely refund to the consumer of  
 15 unearned GAP agreement charges under the terms and  
 16 conditions of the GAP agreement.  
 17 (g) Upon prepayment in full of the consumer loan:  
 18 (i) the GAP coverage is automatically terminated; and  
 19 (ii) the seller of the GAP agreement must issue a refund in  
 20 accordance with subdivision (f).  
 21 (h) A lender that sells GAP agreements must:  
 22 (i) insure its GAP agreement obligations under a contractual  
 23 liability insurance policy issued by an insurer authorized to  
 24 engage in the insurance business in Indiana; and  
 25 (ii) retain appropriate records, as required under this article,  
 26 regarding GAP agreements sold, refunded, and expired.  
 27 (4) As used in this section, "debt cancellation agreement" means an  
 28 agreement that provides coverage for payment or satisfaction of all or  
 29 part of a debt in the event of the loss of life, health, or income. The  
 30 term does not include a GAP agreement.  
 31 (5) As used in this section, "expedited payment service" means a  
 32 service offered to a consumer to ensure that a payment made by the  
 33 consumer with respect to a consumer loan will be reflected as paid and  
 34 posted on an expedited basis.  
 35 (6) As used in this section:  
 36 (a) "guaranteed asset protection agreement";  
 37 (b) "guaranteed auto protection agreement"; or  
 38 (c) "GAP agreement";  
 39 means, with respect to consumer loans involving motor vehicles or  
 40 other titled assets, an agreement in which the lender agrees to cancel  
 41 or waive all or part of the outstanding debt after all property insurance  
 42 benefits have been exhausted after the occurrence of a specified event.



1 (7) As used in this section, "skip-a-payment service" means a  
2 service that:

3 (a) is offered by a lender to a consumer; and

4 (b) permits the consumer to miss or skip a payment due under a  
5 consumer loan without resulting in default.

6 SECTION 3. IC 24-4.5-3-203.5 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 203.5. Delinquency  
8 Charges — (1) With respect to a consumer loan, refinancing, or  
9 consolidation, the parties may contract for a delinquency charge of not  
10 more than:

11 (a) five dollars (\$5) on any installment or minimum payment due  
12 **that is not paid in full within ten (10) days after its scheduled due**  
13 **date, if installments under the consumer loan, refinancing, or**  
14 **consolidation are due every fourteen (14) days or less;**

15 (b) **twenty-five dollars (\$25) on any installment or minimum**  
16 **payment due that is not paid in full within ten (10) days after**  
17 **its scheduled due date, if installments under the consumer**  
18 **loan, refinancing, or consolidation are due every fifteen (15)**  
19 **days or more; or**

20 (c) **twenty-five dollars (\$25) on any installment or minimum**  
21 **payment due that is not paid in full within ten (10) days after**  
22 **its scheduled due date, in the case of a consumer loan,**  
23 **refinancing, or consolidation that is payable in a single**  
24 **installment that is due at least thirty (30) days after the**  
25 **consumer loan, refinancing, or consolidation is made.**

26 (2) A delinquency charge under this section may be collected only  
27 once on an installment however long it remains in default. With regard  
28 to a delinquency charge on consumer loans made under a revolving  
29 loan account, the delinquency charge may be applied each month that  
30 the payment is less than the minimum required payment on the  
31 account. A delinquency charge may be collected any time after it  
32 accrues. A delinquency charge may not be collected if the installment  
33 has been deferred and a deferral charge (IC 24-4.5-3-204) has been  
34 paid or incurred.

35 (3) A delinquency charge may not be collected on an installment or  
36 payment due that is paid in full within ten (10) days after its scheduled  
37 due date even though an earlier maturing installment, minimum  
38 payment, or a delinquency charge on:

39 (a) an earlier installment; or

40 (b) payment due;

41 may not have been paid in full. For purposes of this subsection,  
42 payments are applied first to current installments or payments due and



1 then to delinquent installments or payments due.

2 **(3) A creditor may not, directly or indirectly, charge or collect**  
3 **a delinquency charge on a payment that:**

4 **(a) is paid within ten (10) days after its scheduled due date;**  
5 **and**

6 **(b) is otherwise a full payment of the payment due for the**  
7 **applicable installment period;**

8 **if the only delinquency with respect to the consumer loan,**  
9 **refinancing, or consolidation is attributable to a delinquency**  
10 **charge assessed on an earlier installment.**

11 (4) If two (2) **or more** installments, or parts of two (2) **or more**  
12 installments, of a precomputed loan are in default for ten (10) days or  
13 more, the lender may elect to convert the loan from a precomputed loan  
14 to a loan in which the finance charge is based on unpaid balances. A  
15 lender that makes this election shall make a rebate under the provisions  
16 on rebates upon prepayment (IC 24-4.5-3-210) as of the maturity date  
17 of the first delinquent installment, and thereafter may make a loan  
18 finance charge as authorized by the provisions on loan finance charges  
19 for consumer loans (IC 24-4.5-3-201) or supervised loans  
20 (IC 24-4.5-3-508). The amount of the rebate shall not be reduced by the  
21 amount of any permitted minimum charge (IC 24-4.5-3-210). Any  
22 deferral charges made on installments due at or after the maturity date  
23 of the first delinquent installment shall be rebated, and no further  
24 deferral charges shall be made.

25 ~~(5) The amount of five dollars (\$5) in subsection (1) is subject to~~  
26 ~~change pursuant to the section on adjustment of dollar amounts~~  
27 ~~(IC 24-4.5-1-106).~~

28 ~~(6)~~ **(5)** If the parties provide by contract for a delinquency charge  
29 that is subject to change, the lender shall disclose in the contract that  
30 the amount of the delinquency charge is subject to change as allowed  
31 by IC 24-4.5-1-106.

32 SECTION 4. IC 24-5-0.5-2, AS AMENDED BY P.L.105-2017,  
33 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
34 JULY 1, 2019]: Sec. 2. (a) As used in this chapter:

35 (1) "Consumer transaction" means a sale, lease, assignment,  
36 award by chance, or other disposition of an item of personal  
37 property, real property, a service, or an intangible, except  
38 securities and policies or contracts of insurance issued by  
39 corporations authorized to transact an insurance business under  
40 the laws of the state of Indiana, with or without an extension of  
41 credit, to a person for purposes that are primarily personal,  
42 familial, charitable, agricultural, or household, or a solicitation to



- 1 supply any of these things. However, the term includes the  
 2 following:
- 3 (A) A transfer of structured settlement payment rights under  
 4 IC 34-50-2.
- 5 (B) An unsolicited advertisement sent to a person by telephone  
 6 facsimile machine offering a sale, lease, assignment, award by  
 7 chance, or other disposition of an item of personal property,  
 8 real property, a service, or an intangible.
- 9 (C) The collection of or attempt to collect a debt by a debt  
 10 collector.
- 11 (2) "Person" means an individual, corporation, the state of Indiana  
 12 or its subdivisions or agencies, business trust, estate, trust,  
 13 partnership, association, nonprofit corporation or organization, or  
 14 cooperative or any other legal entity.
- 15 (3) "Supplier" means the following:
- 16 (A) A seller, lessor, assignor, or other person who regularly  
 17 engages in or solicits consumer transactions, including  
 18 soliciting a consumer transaction by using a telephone  
 19 facsimile machine to transmit an unsolicited advertisement.  
 20 The term includes a manufacturer, wholesaler, or retailer,  
 21 whether or not the person deals directly with the consumer.
- 22 (B) A debt collector.
- 23 (4) "Subject of a consumer transaction" means the personal  
 24 property, real property, services, or intangibles offered or  
 25 furnished in a consumer transaction.
- 26 (5) "Cure" as applied to a deceptive act, means either:
- 27 (A) to offer in writing to adjust or modify the consumer  
 28 transaction to which the act relates to conform to the  
 29 reasonable expectations of the consumer generated by such  
 30 deceptive act and to perform such offer if accepted by the  
 31 consumer; or
- 32 (B) to offer in writing to rescind such consumer transaction  
 33 and to perform such offer if accepted by the consumer.
- 34 The term includes an offer in writing of one (1) or more items of  
 35 value, including monetary compensation, that the supplier  
 36 delivers to a consumer or a representative of the consumer if  
 37 accepted by the consumer.
- 38 (6) "Offer to cure" as applied to a deceptive act is a cure that:
- 39 (A) is reasonably calculated to remedy a loss claimed by the  
 40 consumer; and
- 41 (B) includes a minimum additional amount that is the greater  
 42 of:



- 1 (i) ten percent (10%) of the value of the remedy under  
 2 clause (A), but not more than four thousand dollars  
 3 (\$4,000); or  
 4 (ii) five hundred dollars (\$500);  
 5 as compensation for attorney's fees, expenses, and other costs  
 6 that a consumer may incur in relation to the deceptive act.
- 7 (7) "Uncured deceptive act" means a deceptive act:  
 8 (A) with respect to which a consumer who has been damaged  
 9 by such act has given notice to the supplier under section 5(a)  
 10 of this chapter; and  
 11 (B) either:  
 12 (i) no offer to cure has been made to such consumer within  
 13 thirty (30) days after such notice; or  
 14 (ii) the act has not been cured as to such consumer within a  
 15 reasonable time after the consumer's acceptance of the offer  
 16 to cure.
- 17 (8) "Incurable deceptive act" means a deceptive act done by a  
 18 supplier as part of a scheme, artifice, or device with intent to  
 19 defraud or mislead. The term includes a failure of a transferee of  
 20 structured settlement payment rights to timely provide a true and  
 21 complete disclosure statement to a payee as provided under  
 22 IC 34-50-2 in connection with a direct or indirect transfer of  
 23 structured settlement payment rights.
- 24 (9) "Senior consumer" means an individual who is at least sixty  
 25 (60) years of age.
- 26 (10) "Telephone facsimile machine" means equipment that has  
 27 the capacity to transcribe text or images, or both, from:  
 28 (A) paper into an electronic signal and to transmit that signal  
 29 over a regular telephone line; or  
 30 (B) an electronic signal received over a regular telephone line  
 31 onto paper.
- 32 (11) "Unsolicited advertisement" means material advertising the  
 33 commercial availability or quality of:  
 34 (A) property;  
 35 (B) goods; or  
 36 (C) services;  
 37 that is transmitted to a person without the person's prior express  
 38 invitation or permission, in writing or otherwise.
- 39 (12) "Debt" has the meaning set forth in 15 U.S.C. 1692(a)(5).
- 40 (13) "Debt collector" has the meaning set forth in 15 U.S.C.  
 41 1692(a)(6). The term does not include a person admitted to the  
 42 practice of law in Indiana if the person is acting within the course



1 and scope of the person's practice as an attorney. **The term**  
 2 **includes a debt buyer (as defined in IC 24-5-15.5).**  
 3 (b) As used in section 3(b)(15) and 3(b)(16) of this chapter:  
 4 (1) "Directory assistance" means the disclosure of telephone  
 5 number information in connection with an identified telephone  
 6 service subscriber by means of a live operator or automated  
 7 service.  
 8 (2) "Local telephone directory" refers to a telephone classified  
 9 advertising directory or the business section of a telephone  
 10 directory that is distributed by a telephone company or directory  
 11 publisher to subscribers located in the local exchanges contained  
 12 in the directory. The term includes a directory that includes  
 13 listings of more than one (1) telephone company.  
 14 (3) "Local telephone number" refers to a telephone number that  
 15 has the three (3) number prefix used by the provider of telephone  
 16 service for telephones physically located within the area covered  
 17 by the local telephone directory in which the number is listed. The  
 18 term does not include long distance numbers or 800-, 888-, or  
 19 900- exchange numbers listed in a local telephone directory.  
 20 SECTION 5. IC 24-5-0.5-3, AS AMENDED BY P.L.170-2017,  
 21 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 22 JULY 1, 2019]: Sec. 3. (a) A supplier may not commit an unfair,  
 23 abusive, or deceptive act, omission, or practice in connection with a  
 24 consumer transaction. Such an act, omission, or practice by a supplier  
 25 is a violation of this chapter whether it occurs before, during, or after  
 26 the transaction. An act, omission, or practice prohibited by this section  
 27 includes both implicit and explicit misrepresentations.  
 28 (b) Without limiting the scope of subsection (a), the following acts,  
 29 and the following representations as to the subject matter of a  
 30 consumer transaction, made orally, in writing, or by electronic  
 31 communication, by a supplier, are deceptive acts:  
 32 (1) That such subject of a consumer transaction has sponsorship,  
 33 approval, performance, characteristics, accessories, uses, or  
 34 benefits it does not have which the supplier knows or should  
 35 reasonably know it does not have.  
 36 (2) That such subject of a consumer transaction is of a particular  
 37 standard, quality, grade, style, or model, if it is not and if the  
 38 supplier knows or should reasonably know that it is not.  
 39 (3) That such subject of a consumer transaction is new or unused,  
 40 if it is not and if the supplier knows or should reasonably know  
 41 that it is not.  
 42 (4) That such subject of a consumer transaction will be supplied



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





- 1 if the cost would exceed the amounts specified in clause (A);  
 2 (C) the total cost for services and parts for a single transaction  
 3 is more than seven hundred fifty dollars (\$750); and  
 4 (D) the supplier knew or reasonably should have known that  
 5 the cost would exceed the estimate in the amounts specified in  
 6 clause (A).
- 7 (13) That the replacement or repair constituting the subject of a  
 8 consumer transaction is needed, and that the supplier disposes of  
 9 the part repaired or replaced earlier than seventy-two (72) hours  
 10 after both:
- 11 (A) the customer has been notified that the work has been  
 12 completed; and  
 13 (B) the part repaired or replaced has been made available for  
 14 examination upon the request of the customer.
- 15 (14) Engaging in the replacement or repair of the subject of a  
 16 consumer transaction if the consumer has not authorized the  
 17 replacement or repair, and if the supplier knows or should  
 18 reasonably know that it is not authorized.
- 19 (15) The act of misrepresenting the geographic location of the  
 20 supplier by listing an alternate business name or an assumed  
 21 business name (as described in IC 23-0.5-3-4) in a local telephone  
 22 directory if:
- 23 (A) the name misrepresents the supplier's geographic location;  
 24 (B) the listing fails to identify the locality and state of the  
 25 supplier's business;  
 26 (C) calls to the local telephone number are routinely forwarded  
 27 or otherwise transferred to a supplier's business location that  
 28 is outside the calling area covered by the local telephone  
 29 directory; and  
 30 (D) the supplier's business location is located in a county that  
 31 is not contiguous to a county in the calling area covered by the  
 32 local telephone directory.
- 33 (16) The act of listing an alternate business name or assumed  
 34 business name (as described in IC 23-0.5-3-4) in a directory  
 35 assistance data base if:
- 36 (A) the name misrepresents the supplier's geographic location;  
 37 (B) calls to the local telephone number are routinely forwarded  
 38 or otherwise transferred to a supplier's business location that  
 39 is outside the local calling area; and  
 40 (C) the supplier's business location is located in a county that  
 41 is not contiguous to a county in the local calling area.
- 42 (17) The violation by a supplier of IC 24-3-4 concerning



- 1 cigarettes for import or export.
- 2 (18) The act of a supplier in knowingly selling or reselling a
- 3 product to a consumer if the product has been recalled, whether
- 4 by the order of a court or a regulatory body, or voluntarily by the
- 5 manufacturer, distributor, or retailer, unless the product has been
- 6 repaired or modified to correct the defect that was the subject of
- 7 the recall.
- 8 (19) The violation by a supplier of 47 U.S.C. 227, including any
- 9 rules or regulations issued under 47 U.S.C. 227.
- 10 (20) The violation by a supplier of the federal Fair Debt
- 11 Collection Practices Act (15 U.S.C. 1692 et seq.), including any
- 12 rules or regulations issued under the federal Fair Debt Collection
- 13 Practices Act (15 U.S.C. 1692 et seq.).
- 14 (21) A violation of IC 24-5-7 (concerning health spa services), as
- 15 set forth in IC 24-5-7-17.
- 16 (22) A violation of IC 24-5-8 (concerning business opportunity
- 17 transactions), as set forth in IC 24-5-8-20.
- 18 (23) A violation of IC 24-5-10 (concerning home consumer
- 19 transactions), as set forth in IC 24-5-10-18.
- 20 (24) A violation of IC 24-5-11 (concerning real property
- 21 improvement contracts), as set forth in IC 24-5-11-14.
- 22 (25) A violation of IC 24-5-12 (concerning telephone
- 23 solicitations), as set forth in IC 24-5-12-23.
- 24 (26) A violation of IC 24-5-13.5 (concerning buyback motor
- 25 vehicles), as set forth in IC 24-5-13.5-14.
- 26 (27) A violation of IC 24-5-14 (concerning automatic
- 27 dialing-announcing devices), as set forth in IC 24-5-14-13.
- 28 (28) A violation of IC 24-5-15 (concerning credit services
- 29 organizations), as set forth in IC 24-5-15-11.
- 30 (29) A violation of IC 24-5-16 (concerning unlawful motor
- 31 vehicle subleasing), as set forth in IC 24-5-16-18.
- 32 (30) A violation of IC 24-5-17 (concerning environmental
- 33 marketing claims), as set forth in IC 24-5-17-14.
- 34 (31) A violation of IC 24-5-19 (concerning deceptive commercial
- 35 solicitation), as set forth in IC 24-5-19-11.
- 36 (32) A violation of IC 24-5-21 (concerning prescription drug
- 37 discount cards), as set forth in IC 24-5-21-7.
- 38 (33) A violation of IC 24-5-23.5-7 (concerning real estate
- 39 appraisals), as set forth in IC 24-5-23.5-9.
- 40 (34) A violation of IC 24-5-26 (concerning identity theft), as set
- 41 forth in IC 24-5-26-3.
- 42 (35) A violation of IC 24-5.5 (concerning mortgage rescue fraud),



1 as set forth in IC 24-5.5-6-1.

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

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

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

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

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

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

27 (f) For purposes of subsection (b)(12), a supplier that provides  
28 estimates before performing repair or replacement work for a customer  
29 shall give the customer a written estimate itemizing as closely as  
30 possible the price for labor and parts necessary for the specific job  
31 before commencing the work.

32 (g) For purposes of subsection (b)(15) and (b)(16), a telephone  
33 company or other provider of a telephone directory or directory  
34 assistance service or its officer or agent is immune from liability for  
35 publishing the listing of an alternate business name or assumed  
36 business name of a supplier in its directory or directory assistance data  
37 base unless the telephone company or other provider of a telephone  
38 directory or directory assistance service is the same person as the  
39 supplier who has committed the deceptive act.

40 (h) For purposes of subsection (b)(18), it is an affirmative defense  
41 to any action brought under this chapter that the product has been  
42 altered by a person other than the defendant to render the product



1 completely incapable of serving its original purpose.

2 SECTION 6. IC 24-5-15.5 IS ADDED TO THE INDIANA CODE  
3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2019]:

5 **Chapter 15.5. Debt Buyers**

6 **Sec. 1. This chapter applies after December 31, 2019.**

7 **Sec. 2. As used in this chapter, "debt" has the meaning set forth  
8 in 15 U.S.C. 1692(a)(5).**

9 **Sec. 3. (a) As used in this chapter, "debt buyer" means a person  
10 that is regularly engaged in the business of purchasing debt for  
11 collection purposes, regardless of whether the person:**

12 (1) collects the debt;

13 (2) hires another person to collect the debt; or

14 (3) hires an attorney for litigation connected to collection of  
15 the debt.

16 (b) The term does not include a person that acquires a debt  
17 incidental to the purchase of a portfolio that predominantly  
18 consists of debt that has not been charged off.

19 **Sec. 4. As used in this chapter, "person" has the meaning set  
20 forth in IC 24-5-0.5-2.**

21 **Sec. 5. (a) If a debt buyer brings an action on a debt, or an  
22 arbitration proceeding requesting a judgment on a debt, the  
23 plaintiff debt buyer shall attach with the initial pleading the  
24 following:**

25 (1) One (1) of the following:

26 (A) If a signed contract or other writing evidencing the  
27 debtor's agreement to the debt exists, a copy of the  
28 contract or other writing.

29 (B) If a signed contract or other writing evidencing the  
30 debtor's agreement to the debt does not exist, a copy of a  
31 document provided to the debtor while the account was  
32 active.

33 **However, for a revolving credit account, a copy of a charge  
34 off statement or the most recent monthly statement recording  
35 a purchase transaction, a last payment, or a balance transfer  
36 is sufficient to satisfy this requirement.**

37 (2) A chronological list of the:

38 (A) names of all previous owners of the debt and date of  
39 each transfer of ownership of the debt, beginning with the  
40 name of the original charge off creditor; and

41 (B) documentation, or a bill of sale, evidencing the  
42 assignment of the debt to the plaintiff debt buyer.



1 (b) An initial pleading described in subsection (a) is sufficient if  
2 the plaintiff debt buyer complies with subsection (a)(1) and (a)(2).

3 Sec. 6. Failure of a plaintiff debt buyer described in section 5 of  
4 this chapter to comply with section 5(a) of this chapter is a  
5 deceptive act that is actionable by the attorney general under  
6 IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

7 SECTION 7. [EFFECTIVE UPON PASSAGE] (a) As used in this  
8 SECTION, "UCCC" refers to the Uniform Consumer Credit Code  
9 codified at IC 24-4.5.

10 (b) The legislative council is urged to assign to an appropriate  
11 interim study committee the task of studying revisions to the  
12 Uniform Consumer Credit Code. An interim study committee  
13 assigned a study under this SECTION may consider the following:

14 (1) Eliminating indexing provisions for the adjustment of  
15 specified dollar amounts throughout the UCCC.

16 (2) Codifying dollar amounts subject to indexing under the  
17 current statute, including dollar amounts for authorized fees  
18 and charges.

19 (3) Changing the authorized credit service charge for  
20 consumer credit sales and the authorized finance charge for  
21 consumer loans.

22 (4) Eliminating supervised loans.

23 (5) Changing how delinquency charges are assessed.

24 (6) Other changes to the UCCC recommended by lenders,  
25 consumers, the department of financial institutions, and other  
26 stakeholders.

27 (c) This SECTION expires January 1, 2020.

28 SECTION 8. An emergency is declared for this act.



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1136, 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:

Delete the title and insert the following:

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

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 24-4.5-2-202, AS AMENDED BY P.L.69-2018, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 202. (1) In addition to the credit service charge permitted by this chapter, a seller may contract for and receive any of the following additional charges in connection with a consumer credit sale:

- (a) Official fees and taxes.
- (b) Charges for insurance as described in subsection (2).
- (c) Notwithstanding provisions of the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) concerning disclosure, charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, and are excluded as permissible additional charges from the credit service charge. With respect to any additional charge not specifically provided for in this section, to be a permitted charge under this subsection the seller must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit to the consumer. Supporting documents may be required by the department. The department shall determine whether the charge would be of benefit to the consumer and is reasonable in relation to the benefits.
- (d) A charge not to exceed twenty-five dollars (\$25) for each returned payment by a bank or other depository institution of a dishonored check, electronic funds transfer, negotiable order of withdrawal, or share draft issued by the consumer.
- (e) Annual participation fees assessed in connection with a revolving charge account. Annual participation fees must:
  - (i) be reasonable in amount;
  - (ii) bear a reasonable relationship to the seller's costs to maintain and monitor the charge account; and



(iii) not be assessed for the purpose of circumvention or evasion of this article, as determined by the department.

(f) A charge not to exceed twenty-five dollars (\$25) for a skip-a-payment service, subject to the following:

(i) At the time of use of the service, the consumer must be given written notice of the amount of the charge and must acknowledge the amount in writing, including by electronic signature.

(ii) A charge for a skip-a-payment service may not be assessed with respect to a consumer credit sale subject to the provisions on rebate upon prepayment that are set forth in section 210 of this chapter.

(iii) A charge for a skip-a-payment service may not be assessed with respect to any payment for which a delinquency charge has been assessed under section 203.5 of this chapter.

(g) A charge not to exceed ten dollars (\$10) for an optional expedited payment service, subject to the following:

(i) The charge may be assessed only upon request by the consumer to use the expedited payment service.

(ii) The amount of the charge must be disclosed to the consumer at the time of the consumer's request to use the expedited payment service.

(iii) The consumer must be informed that the consumer retains the option to make a payment by traditional means.

(iv) The charge may not be established in advance, through any agreement with the consumer, as the expected method of payment.

(v) The charge may not be assessed with respect to any payment for which a delinquency charge has been assessed under section 203.5 of this chapter.

(h) A charge for a GAP agreement, subject to subsection (4).

**(i) A charge not to exceed ten dollars (\$10) for procuring a credit report.**

(2) An additional charge may be made for insurance written in connection with the sale, other than insurance protecting the seller against the consumer's default or other credit loss:

(a) with respect to insurance against loss of or damage to property, or against liability, if the seller furnishes a clear and specific statement in writing to the consumer, setting forth the cost of the insurance if obtained from or through the seller and stating that the consumer may choose the person, subject to the seller's reasonable approval, through whom the insurance is to be



obtained; and

(b) with respect to consumer credit insurance providing life, accident, unemployment or other loss of income, or health coverage, if the insurance coverage is not a factor in the approval by the seller of the extension of credit and is clearly disclosed in writing to the consumer, and if, in order to obtain the insurance in connection with the extension of credit, the consumer gives specific, affirmative, written indication of the desire to do so after written disclosure of the cost.

(3) With respect to a subordinate lien mortgage transaction, the following closing costs, if the costs are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this article:

- (a) fees for title examination, abstract of title, title insurance, property surveys, or similar purposes;
- (b) fees for preparing deeds, mortgages, and reconveyance, settlement, and similar documents;
- (c) notary and credit report fees;
- (d) amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the credit service charge; and
- (e) appraisal fees.

(4) An additional charge may be made for a GAP agreement, subject to the following:

- (a) A GAP agreement or GAP coverage may not be required by the seller, and that fact must be disclosed in writing to the consumer.
- (b) The charge for the initial term of coverage under the GAP agreement must be disclosed in writing to the consumer. The charge may be disclosed on a unit-cost basis only in the case of the following transactions:
  - (i) Revolving charge accounts.
  - (ii) Closed-end credit transactions, if the request for coverage is made by mail or telephone.
  - (iii) Closed-end credit transactions, if the GAP agreement limits the total amount of indebtedness eligible for coverage.
- (c) If the term of coverage under the GAP agreement is less than the term of the consumer credit sale, the term of coverage under the GAP agreement must be disclosed in writing to the consumer.
- (d) The consumer must sign or initial an affirmative written request for coverage after receiving all required disclosures.
- (e) The GAP agreement must include the following:





- (i) In the case of GAP coverage for a new motor vehicle, the manufacturer's suggested retail price (MSRP) for the motor vehicle.
  - (ii) In the case of GAP coverage for a used motor vehicle, the National Automobile Dealers Association (NADA) average retail value for the motor vehicle.
  - (iii) The name of the financing entity taking assignment of the agreement.
  - (iv) The name and address of the consumer.
  - (v) The name of the creditor selling the agreement.
  - (vi) Information advising the consumer that the consumer may be able to obtain similar coverage from the consumer's primary insurance carrier.
  - (vii) A coverage provision that includes a minimum deductible of five hundred dollars (\$500).
  - (viii) A provision providing for a minimum thirty (30) day free-look period.
  - (ix) In the case of a consumer credit sale involving a motor vehicle, a provision excluding the sale of GAP coverage if the amount financed under the consumer credit sale (not including the cost of the GAP agreement, the cost of any credit insurance, and the cost of any warranties or service agreements) is less than eighty percent (80%) of the manufacturer's suggested retail price (MSRP), in the case of a new motor vehicle, or of the National Automobile Dealers Association (NADA) average retail value, in the case of a used motor vehicle.
  - (x) In the case of a GAP agreement in which the charge for the agreement exceeds four hundred dollars (\$400), specific instructions that may be used by the consumer to cancel the agreement and obtain a refund of the unearned GAP charge before prepayment in full, in accordance with the procedures, and subject to the conditions, set forth in subdivision (f).
- (f) If the charge for the GAP agreement exceeds four hundred dollars (\$400), the consumer is entitled to cancel the agreement and obtain a refund of the unearned GAP charge before prepayment in full. Refunds of unearned GAP charges shall be made subject to the following conditions:
- (i) A refund of the charge for a GAP agreement must be calculated using a method that is no less favorable to the consumer than a refund calculated on a pro rata basis.
  - (ii) The consumer is entitled to a refund of the unearned GAP



agreement charge as outlined in the GAP agreement.

(iii) The seller of the GAP agreement is responsible for making a timely refund to the consumer of unearned GAP agreement charges under the terms and conditions of the GAP agreement.

- (g) Upon prepayment in full of the consumer credit sale:
- (i) the GAP coverage is automatically terminated; and
  - (ii) the seller of the GAP agreement must issue a refund in accordance with subdivision (f).
- (h) A creditor that sells GAP agreements must:
- (i) insure its GAP agreement obligations under a contractual liability insurance policy issued by an insurer authorized to engage in the insurance business in Indiana; and
  - (ii) retain appropriate records, as required under this article, regarding GAP agreements sold, refunded, and expired.

(5) As used in this section, "expedited payment service" means a service offered to a consumer to ensure that a payment made by the consumer with respect to a consumer credit sale will be reflected as paid and posted on an expedited basis.

- (6) As used in this section:
- (a) "guaranteed asset protection agreement";
  - (b) "guaranteed auto protection agreement"; or
  - (c) "GAP agreement";

means, with respect to consumer credit sales involving motor vehicles or other titled assets, an agreement in which the seller agrees to cancel or waive all or part of the outstanding debt after all property insurance benefits have been exhausted after the occurrence of a specified event.

(7) As used in this section, "skip-a-payment service" means a service that:

- (a) is offered by a creditor to a consumer; and
- (b) permits the consumer to miss or skip a payment due under a consumer credit sale without resulting in default.

SECTION 2. IC 24-4.5-2-203.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 203.5. Delinquency Charges — (1) With respect to a consumer credit sale, refinancing, or consolidation, the parties may contract for a delinquency charge of not more than:

- (a) five dollars (\$5) on any installment or minimum payment due **that is not paid in full within ten (10) days after its scheduled due date, if installments under the consumer credit sale, refinancing, or consolidation are due every fourteen (14) days or less;**



**(b) twenty-five dollars (\$25) on any installment or minimum payment due that is not paid in full within ten (10) days after its scheduled due date, if installments under the consumer credit sale, refinancing, or consolidation are due every fifteen (15) days or more; or**

**(c) twenty-five dollars (\$25) on any installment or minimum payment due that is not paid in full within ten (10) days after its scheduled due date, in the case of a consumer credit sale, refinancing, or consolidation that is payable in a single installment that is due at least thirty (30) days after the consumer credit sale, refinancing, or consolidation is made.**

(2) A delinquency charge under this section may be collected only once on an installment however long it remains in default. A delinquency charge on consumer credit sales made under a revolving charge account may be applied each month that the payment is less than the minimum required payment. A delinquency charge may be collected any time after it accrues. No delinquency charge may be collected if the installment has been deferred and a deferral charge (IC 24-4.5-2-204) has been paid or incurred.

(3) A delinquency charge may not be collected on an installment or payment due that is paid in full within ten (10) days after its scheduled due date even though an earlier maturing installment, minimum payment, or a delinquency charge on:

- (a) an earlier installment; or
- (b) payment due;

may not have been paid in full. For purposes of this subsection, payments are applied first to current installments or payments due and then to delinquent installments or payments due.

**(3) A creditor may not, directly or indirectly, charge or collect a delinquency charge on a payment that:**

- (a) is paid within ten (10) days after its scheduled due date;**
- and**
- (b) is otherwise a full payment of the payment due for the applicable installment period;**

**if the only delinquency with respect to the consumer credit sale, refinancing, or consolidation is attributable to a delinquency charge assessed on an earlier installment.**

(4) If two (2) or more installments, or parts of two (2) or more installments, of a precomputed consumer credit sale are in default for ten (10) days or more, the creditor may elect to convert the consumer credit sale from a precomputed consumer credit sale to a consumer credit sale in which the credit service charge is based on unpaid



balances. A creditor that makes this election shall make a rebate under the provisions on rebates upon prepayment under IC 24-4.5-2-210 as of the maturity date of the first delinquent installment, and thereafter may make a credit service charge as authorized by the provisions on credit service charges for consumer credit sales under IC 24-4.5-2-201. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge under IC 24-4.5-2-210. Any deferral charges made on installments due at or after the maturity date of the first delinquent installment shall be rebated, and no further deferral charges shall be made.

~~(5) The amount of five dollars (\$5) in subsection (1) is subject to change under the section on adjustment of dollar amounts (IC 24-4.5-1-106).~~

~~(6) (5) If the parties provide by contract for a delinquency charge that is subject to change, the seller shall disclose in the contract that the amount of the delinquency charge is subject to change as allowed by IC 24-4.5-1-106.~~

SECTION 3. IC 24-4.5-3-202, AS AMENDED BY P.L.69-2018, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 202. (1) In addition to the loan finance charge permitted by this chapter, a lender may contract for and receive the following additional charges in connection with a consumer loan:

- (a) Official fees and taxes.
- (b) Charges for insurance as described in subsection (2).
- (c) Annual participation fees assessed in connection with a revolving loan account. Annual participation fees must:
  - (i) be reasonable in amount;
  - (ii) bear a reasonable relationship to the lender's costs to maintain and monitor the loan account; and
  - (iii) not be assessed for the purpose of circumvention or evasion of this article, as determined by the department.
- (d) With respect to a debt secured by an interest in land, the following closing costs, if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this article:
  - (i) Fees for title examination, abstract of title, title insurance, property surveys, or similar purposes.
  - (ii) Fees for preparing deeds, mortgages, and reconveyance, settlement, and similar documents.
  - (iii) Notary and credit report fees.
  - (iv) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in



the loan finance charge.

(v) Appraisal fees.

(e) Notwithstanding provisions of the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) concerning disclosure, charges for other benefits, including insurance, conferred on the debtor, if the benefits are of value to the debtor and if the charges are reasonable in relation to the benefits, and are excluded as permissible additional charges from the loan finance charge. With respect to any other additional charge not specifically provided for in this section to be a permitted charge under this subsection, the creditor must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit to the debtor. Supporting documents may be required by the department. The department shall determine whether the charge would be of benefit to the debtor and is reasonable in relation to the benefits.

(f) A charge not to exceed twenty-five dollars (\$25) for each returned payment by a bank or other depository institution of a dishonored check, electronic funds transfer, negotiable order of withdrawal, or share draft issued by the debtor.

(g) With respect to a revolving loan account, a fee not to exceed twenty-five dollars (\$25) in each billing cycle during which the balance due under the revolving loan account exceeds by more than one hundred dollars (\$100) the maximum credit limit for the account established by the lender.

(h) With respect to a revolving loan account, a transaction fee that may not exceed the ~~lesser~~ **greater** of the following:

(i) Two percent (2%) of the amount of the transaction.

(ii) Ten dollars (\$10).

(i) A charge not to exceed twenty-five dollars (\$25) for a skip-a-payment service, subject to the following:

(i) At the time of use of the service, the consumer must be given written notice of the amount of the charge and must acknowledge the amount in writing, including by electronic signature.

(ii) A charge for a skip-a-payment service may not be assessed with respect to a consumer loan subject to the provisions on rebate upon prepayment that are set forth in section 210 of this chapter.

(iii) A charge for a skip-a-payment service may not be assessed with respect to any payment for which a delinquency charge has been assessed under section 203.5 of this chapter.



(j) A charge not to exceed ten dollars (\$10) for an optional expedited payment service, subject to the following:

(i) The charge may be assessed only upon request by the consumer to use the expedited payment service.

(ii) The amount of the charge must be disclosed to the consumer at the time of the consumer's request to use the expedited payment service.

(iii) The consumer must be informed that the consumer retains the option to make a payment by traditional means.

(iv) The charge may not be established in advance, through any agreement with the consumer, as the expected method of payment.

(v) The charge may not be assessed with respect to any payment for which a delinquency charge has been assessed under section 203.5 of this chapter.

(k) This subdivision applies to a CPAP transaction offered or entered into after June 30, 2016. With respect to a CPAP transaction, a CPAP provider may impose the following charges and fees:

(i) A fee calculated at an annual rate that does not exceed thirty-six percent (36%) of the funded amount.

(ii) A servicing charge calculated at an annual rate that does not exceed seven percent (7%) of the funded amount.

(iii) If the funded amount of the CPAP transaction is less than five thousand dollars (\$5,000), a one (1) time charge that does not exceed two hundred fifty dollars (\$250) for obtaining and preparing documents.

(iv) If the funded amount of the CPAP transaction is at least five thousand dollars (\$5,000), a one (1) time charge that does not exceed five hundred dollars (\$500) for obtaining and preparing documents.

A CPAP provider may not assess, or collect from the consumer claimant, any other fee or charge in connection with a CPAP transaction, including any finance charges under section 201 or 508 of this chapter.

(l) A charge for a GAP agreement, subject to subsection (3).

(m) With respect to consumer loans made by a person exempt from licensing under IC 24-4.5-3-502(1), a charge for a debt cancellation agreement, subject to the following:

(i) A debt cancellation agreement or debt cancellation coverage may not be required by the lender, and that fact must be disclosed in writing to the consumer.



(ii) The charge for the initial term of coverage under the debt cancellation agreement must be disclosed in writing to the consumer. The charge may be disclosed on a unit-cost basis only in the case of revolving loan accounts, closed-end credit transactions if the request for coverage is made by mail or telephone, and closed-end credit transactions if the debt cancellation agreement limits the total amount of indebtedness eligible for coverage.

(iii) If the term of coverage under the debt cancellation agreement is less than the term of the consumer loan, the term of coverage under the debt cancellation agreement must be disclosed in writing to the consumer.

(iv) The consumer must sign or initial an affirmative written request for coverage after receiving all required disclosures.

(v) If debt cancellation coverage for two (2) or more events is provided for in a single charge under a debt cancellation agreement, the entire charge may be excluded from the loan finance charge and imposed as an additional charge under this section if at least one (1) of the events is the loss of life, health, or income.

**(n) A charge not to exceed ten dollars (\$10) for procuring a credit report.**

The additional charges provided for in subdivisions (f) through (k) **and in subdivision (n)** are not subject to refund or rebate.

(2) An additional charge may be made for insurance in connection with the loan, other than insurance protecting the lender against the debtor's default or other credit loss:

(a) with respect to insurance against loss of or damage to property or against liability, if the lender furnishes a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained from or through the lender and stating that the debtor may choose the person, subject to the lender's reasonable approval, through whom the insurance is to be obtained; and

(b) with respect to consumer credit insurance providing life, accident, unemployment or other loss of income, or health coverage, if the insurance coverage is not a factor in the approval by the lender of the extension of credit and this fact is clearly disclosed in writing to the debtor, and if, in order to obtain the insurance in connection with the extension of credit, the debtor gives specific affirmative written indication of the desire to do so after written disclosure of the cost of the insurance.



(3) An additional charge may be made for a GAP agreement, subject to the following:

(a) A GAP agreement or GAP coverage may not be required by the lender, and that fact must be disclosed in writing to the consumer.

(b) The charge for the initial term of coverage under the GAP agreement must be disclosed in writing to the consumer. The charge may be disclosed on a unit-cost basis only in the case of the following transactions:

(i) Revolving loan accounts.

(ii) Closed-end credit transactions, if the request for coverage is made by mail or telephone.

(iii) Closed-end credit transactions, if the GAP agreement limits the total amount of indebtedness eligible for coverage.

(c) If the term of coverage under the GAP agreement is less than the term of the consumer loan, the term of coverage under the GAP agreement must be disclosed in writing to the consumer.

(d) The consumer must sign or initial an affirmative written request for coverage after receiving all required disclosures.

(e) The GAP agreement must include the following:

(i) In the case of GAP coverage for a new motor vehicle, the manufacturer's suggested retail price (MSRP) for the motor vehicle.

(ii) In the case of GAP coverage for a used motor vehicle, the National Automobile Dealers Association (NADA) average retail value for the motor vehicle.

(iii) The name of the financing entity taking assignment of the agreement, as applicable.

(iv) The name and address of the consumer.

(v) The name of the lender selling the agreement.

(vi) Information advising the consumer that the consumer may be able to obtain similar coverage from the consumer's primary insurance carrier.

(vii) A coverage provision that includes a minimum deductible of five hundred dollars (\$500).

(viii) A provision providing for a minimum thirty (30) day trial period.

(ix) In the case of a consumer loan made with respect to a motor vehicle, a provision excluding the sale of GAP coverage if the amount financed under the consumer loan (not including the cost of the GAP agreement, the cost of any credit insurance, and the cost of any warranties or service





agreements) is less than eighty percent (80%) of the manufacturer's suggested retail price (MSRP), in the case of a new motor vehicle, or **of** the National Automobile Dealers Association (NADA) average retail value, in the case of a used motor vehicle.

(x) In the case of a GAP agreement in which the charge for the agreement exceeds four hundred dollars (\$400), specific instructions that may be used by the consumer to cancel the agreement and obtain a refund of the unearned GAP charge before prepayment in full, in accordance with the procedures, and subject to the conditions, set forth in subdivision (f).

(f) If the charge for the GAP agreement exceeds four hundred dollars (\$400), the consumer is entitled to cancel the agreement and obtain a refund of the unearned GAP charge before prepayment in full. Refunds of unearned GAP charges shall be made subject to the following conditions:

(i) A refund of the charge for a GAP agreement must be calculated using a method that is no less favorable to the consumer than a refund calculated on a pro rata basis.

(ii) The consumer is entitled to a refund of the unearned GAP agreement charge as outlined in the GAP agreement.

(iii) The seller of the GAP agreement, or the seller's assignee, is responsible for making a timely refund to the consumer of unearned GAP agreement charges under the terms and conditions of the GAP agreement.

(g) Upon prepayment in full of the consumer loan:

(i) the GAP coverage is automatically terminated; and

(ii) the seller of the GAP agreement must issue a refund in accordance with subdivision (f).

(h) A lender that sells GAP agreements must:

(i) insure its GAP agreement obligations under a contractual liability insurance policy issued by an insurer authorized to engage in the insurance business in Indiana; and

(ii) retain appropriate records, as required under this article, regarding GAP agreements sold, refunded, and expired.

(4) As used in this section, "debt cancellation agreement" means an agreement that provides coverage for payment or satisfaction of all or part of a debt in the event of the loss of life, health, or income. The term does not include a GAP agreement.

(5) As used in this section, "expedited payment service" means a service offered to a consumer to ensure that a payment made by the consumer with respect to a consumer loan will be reflected as paid and



posted on an expedited basis.

(6) As used in this section:

- (a) "guaranteed asset protection agreement";
- (b) "guaranteed auto protection agreement"; or
- (c) "GAP agreement";

means, with respect to consumer loans involving motor vehicles or other titled assets, an agreement in which the lender agrees to cancel or waive all or part of the outstanding debt after all property insurance benefits have been exhausted after the occurrence of a specified event.

(7) As used in this section, "skip-a-payment service" means a service that:

- (a) is offered by a lender to a consumer; and
- (b) permits the consumer to miss or skip a payment due under a consumer loan without resulting in default.

SECTION 4. IC 24-4.5-3-203.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 203.5. Delinquency Charges — (1) With respect to a consumer loan, refinancing, or consolidation, the parties may contract for a delinquency charge of not more than:

- (a) five dollars (\$5) on any installment or minimum payment due **that is not paid in full within ten (10) days after its scheduled due date, if installments under the consumer loan, refinancing, or consolidation are due every fourteen (14) days or less;**
- (b) **twenty-five dollars (\$25) on any installment or minimum payment due that is not paid in full within ten (10) days after its scheduled due date, if installments under the consumer loan, refinancing, or consolidation are due every fifteen (15) days or more; or**
- (c) **twenty-five dollars (\$25) on any installment or minimum payment due that is not paid in full within ten (10) days after its scheduled due date, in the case of a consumer loan, refinancing, or consolidation that is payable in a single installment that is due at least thirty (30) days after the consumer loan, refinancing, or consolidation is made.**

(2) A delinquency charge under this section may be collected only once on an installment however long it remains in default. With regard to a delinquency charge on consumer loans made under a revolving loan account, the delinquency charge may be applied each month that the payment is less than the minimum required payment on the account. A delinquency charge may be collected any time after it accrues. A delinquency charge may not be collected if the installment has been deferred and a deferral charge (IC 24-4.5-3-204) has been



paid or incurred.

~~(3)~~ A delinquency charge may not be collected on an installment or payment due that is paid in full within ten (10) days after its scheduled due date even though an earlier maturing installment, minimum payment, or a delinquency charge on:

- (a) an earlier installment; or
- (b) payment due;

may not have been paid in full. For purposes of this subsection, payments are applied first to current installments or payments due and then to delinquent installments or payments due.

**(3) A creditor may not, directly or indirectly, charge or collect a delinquency charge on a payment that:**

- (a) is paid within ten (10) days after its scheduled due date; and**
- (b) is otherwise a full payment of the payment due for the applicable installment period;**

**if the only delinquency with respect to the consumer loan, refinancing, or consolidation is attributable to a delinquency charge assessed on an earlier installment.**

(4) If two (2) **or more** installments, or parts of two (2) **or more** installments, of a precomputed loan are in default for ten (10) days or more, the lender may elect to convert the loan from a precomputed loan to a loan in which the finance charge is based on unpaid balances. A lender that makes this election shall make a rebate under the provisions on rebates upon prepayment (IC 24-4.5-3-210) as of the maturity date of the first delinquent installment, and thereafter may make a loan finance charge as authorized by the provisions on loan finance charges for consumer loans (IC 24-4.5-3-201) or supervised loans (IC 24-4.5-3-508). The amount of the rebate shall not be reduced by the amount of any permitted minimum charge (IC 24-4.5-3-210). Any deferral charges made on installments due at or after the maturity date of the first delinquent installment shall be rebated, and no further deferral charges shall be made.

~~(5)~~ The amount of five dollars (\$5) in subsection (1) is subject to change pursuant to the section on adjustment of dollar amounts (IC 24-4.5-1-106).

~~(6)~~ **(5)** If the parties provide by contract for a delinquency charge that is subject to change, the lender shall disclose in the contract that



the amount of the delinquency charge is subject to change as allowed by IC 24-4.5-1-106."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1136 as introduced.)

BURTON

Committee Vote: yeas 11, nays 1.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1136 be amended to read as follows:

Page 1, delete lines 1 through 18.

Delete pages 2 through 5.

Page 6, delete lines 1 through 3.

Page 10, delete lines 34 through 35.

Page 10, line 36, delete "and".

Page 10, line 37, delete "in subdivision (n)".

Renumber all SECTIONS consecutively.

(Reference is to HB 1136 as printed January 25, 2019.)

LEHMAN

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COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1136, 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:

Page 10, between lines 31 and 32, begin a new paragraph and insert:

"SECTION 4. IC 24-5-0.5-2, AS AMENDED BY P.L.105-2017, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) As used in this chapter:

(1) "Consumer transaction" means a sale, lease, assignment,

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award by chance, or other disposition of an item of personal property, real property, a service, or an intangible, except securities and policies or contracts of insurance issued by corporations authorized to transact an insurance business under the laws of the state of Indiana, with or without an extension of credit, to a person for purposes that are primarily personal, familial, charitable, agricultural, or household, or a solicitation to supply any of these things. However, the term includes the following:

- (A) A transfer of structured settlement payment rights under IC 34-50-2.
  - (B) An unsolicited advertisement sent to a person by telephone facsimile machine offering a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible.
  - (C) The collection of or attempt to collect a debt by a debt collector.
- (2) "Person" means an individual, corporation, the state of Indiana or its subdivisions or agencies, business trust, estate, trust, partnership, association, nonprofit corporation or organization, or cooperative or any other legal entity.
- (3) "Supplier" means the following:
- (A) A seller, lessor, assignor, or other person who regularly engages in or solicits consumer transactions, including soliciting a consumer transaction by using a telephone facsimile machine to transmit an unsolicited advertisement. The term includes a manufacturer, wholesaler, or retailer, whether or not the person deals directly with the consumer.
  - (B) A debt collector.
- (4) "Subject of a consumer transaction" means the personal property, real property, services, or intangibles offered or furnished in a consumer transaction.
- (5) "Cure" as applied to a deceptive act, means either:
- (A) to offer in writing to adjust or modify the consumer transaction to which the act relates to conform to the reasonable expectations of the consumer generated by such deceptive act and to perform such offer if accepted by the consumer; or
  - (B) to offer in writing to rescind such consumer transaction and to perform such offer if accepted by the consumer.
- The term includes an offer in writing of one (1) or more items of value, including monetary compensation, that the supplier



delivers to a consumer or a representative of the consumer if accepted by the consumer.

- (6) "Offer to cure" as applied to a deceptive act is a cure that:
- (A) is reasonably calculated to remedy a loss claimed by the consumer; and
  - (B) includes a minimum additional amount that is the greater of:
    - (i) ten percent (10%) of the value of the remedy under clause (A), but not more than four thousand dollars (\$4,000); or
    - (ii) five hundred dollars (\$500);
 as compensation for attorney's fees, expenses, and other costs that a consumer may incur in relation to the deceptive act.
- (7) "Uncured deceptive act" means a deceptive act:
- (A) with respect to which a consumer who has been damaged by such act has given notice to the supplier under section 5(a) of this chapter; and
  - (B) either:
    - (i) no offer to cure has been made to such consumer within thirty (30) days after such notice; or
    - (ii) the act has not been cured as to such consumer within a reasonable time after the consumer's acceptance of the offer to cure.
- (8) "Incurable deceptive act" means a deceptive act done by a supplier as part of a scheme, artifice, or device with intent to defraud or mislead. The term includes a failure of a transferee of structured settlement payment rights to timely provide a true and complete disclosure statement to a payee as provided under IC 34-50-2 in connection with a direct or indirect transfer of structured settlement payment rights.
- (9) "Senior consumer" means an individual who is at least sixty (60) years of age.
- (10) "Telephone facsimile machine" means equipment that has the capacity to transcribe text or images, or both, from:
- (A) paper into an electronic signal and to transmit that signal over a regular telephone line; or
  - (B) an electronic signal received over a regular telephone line onto paper.
- (11) "Unsolicited advertisement" means material advertising the commercial availability or quality of:
- (A) property;
  - (B) goods; or



(C) services;

that is transmitted to a person without the person's prior express invitation or permission, in writing or otherwise.

(12) "Debt" has the meaning set forth in 15 U.S.C. 1692(a)(5).

(13) "Debt collector" has the meaning set forth in 15 U.S.C. 1692(a)(6). The term does not include a person admitted to the practice of law in Indiana if the person is acting within the course and scope of the person's practice as an attorney. **The term includes a debt buyer (as defined in IC 24-5-15.5).**

(b) As used in section 3(b)(15) and 3(b)(16) of this chapter:

(1) "Directory assistance" means the disclosure of telephone number information in connection with an identified telephone service subscriber by means of a live operator or automated service.

(2) "Local telephone directory" refers to a telephone classified advertising directory or the business section of a telephone directory that is distributed by a telephone company or directory publisher to subscribers located in the local exchanges contained in the directory. The term includes a directory that includes listings of more than one (1) telephone company.

(3) "Local telephone number" refers to a telephone number that has the three (3) number prefix used by the provider of telephone service for telephones physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or 800-, 888-, or 900- exchange numbers listed in a local telephone directory.

SECTION 5. IC 24-5-0.5-3, AS AMENDED BY P.L.170-2017, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: 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.

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



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

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

(g) For purposes of subsection (b)(15) and (b)(16), a telephone company or other provider of a telephone directory or directory assistance service or its officer or agent is immune from liability for publishing the listing of an alternate business name or assumed



business name of a supplier in its directory or directory assistance data base unless the telephone company or other provider of a telephone directory or directory assistance service is the same person as the supplier who has committed the deceptive act.

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

SECTION 6. IC 24-5-15.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

**Chapter 15.5. Debt Buyers**

**Sec. 1. This chapter applies after December 31, 2019.**

**Sec. 2. As used in this chapter, "debt" has the meaning set forth in 15 U.S.C. 1692(a)(5).**

**Sec. 3. (a) As used in this chapter, "debt buyer" means a person that is regularly engaged in the business of purchasing debt for collection purposes, regardless of whether the person:**

- (1) collects the debt;**
- (2) hires another person to collect the debt; or**
- (3) hires an attorney for litigation connected to collection of the debt.**

**(b) The term does not include a person that acquires a debt incidental to the purchase of a portfolio that predominantly consists of debt that has not been charged off.**

**Sec. 4. As used in this chapter, "person" has the meaning set forth in IC 24-5-0.5-2.**

**Sec. 5. (a) If a debt buyer brings an action on a debt, or an arbitration proceeding requesting a judgment on a debt, the plaintiff debt buyer shall attach with the initial pleading the following:**

- (1) One (1) of the following:**
  - (A) If a signed contract or other writing evidencing the debtor's agreement to the debt exists, a copy of the contract or other writing.**
  - (B) If a signed contract or other writing evidencing the debtor's agreement to the debt does not exist, a copy of a document provided to the debtor while the account was active.**

**However, for a revolving credit account, a copy of a charge off statement or the most recent monthly statement recording a purchase transaction, a last payment, or a balance transfer**



is sufficient to satisfy this requirement.

(2) A chronological list of the:

(A) names of all previous owners of the debt and date of each transfer of ownership of the debt, beginning with the name of the original charge off creditor; and

(B) documentation, or a bill of sale, evidencing the assignment of the debt to the plaintiff debt buyer.

(b) An initial pleading described in subsection (a) is sufficient if the plaintiff debt buyer complies with subsection (a)(1) and (a)(2).

**Sec. 6. Failure of a plaintiff debt buyer described in section 5 of this chapter to comply with section 5(a) of this chapter is a deceptive act that is actionable by the attorney general under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1136 as reprinted January 29, 2019.)

BASSLER, Chairperson

Committee Vote: Yeas 9, Nays 0.

