



January 24, 2014

HOUSE BILL No. 1205

DIGEST OF HB 1205 (Updated January 22, 2014 1:16 pm - DI 84)

Citations Affected: IC 24-4.5; IC 27-4; IC 27-20.

Synopsis: Civil proceeding advance payment transactions. Defines a "civil proceeding advance payment transaction", or "CPAP transaction", as a nonrecourse transaction in which a person (defined as a "CPAP provider") provides to a consumer claimant in a civil proceeding in Indiana a funded amount, the repayment of which is: (1) required only if the consumer claimant prevails in the civil proceeding; and (2) sourced from the proceeds of the civil proceeding. Requires a CPAP provider to register with the department of insurance before offering or entering into a CPAP transaction in Indiana. Sets forth requirements for a contract (CPAP contract) entered into by a CPAP provider and a consumer claimant, including various disclosure requirements. Sets forth certain requirements and prohibitions with respect to CPAP transactions, including a prohibition on a CPAP provider imposing or collecting a contract amount that: (1) is assignable to the CPAP provider from the proceeds of the consumer claimant's civil proceeding; and (2) exceeds 25% of the amount of funding provided to the consumer claimant under the CPAP contract. Provides that a person that violates these provisions commits an unfair and deceptive act or practice in the business of insurance. Specifies that a CPAP transaction is not a consumer loan or a loan for purposes of the Uniform Consumer Credit Code.

Effective: Upon passage.

Lehman

January 14, 2014, read first time and referred to Committee on Insurance.
January 23, 2014, reported — Do Pass.

HB 1205—LS 7080/DI 101



January 24, 2014

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE BILL No. 1205

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

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

1 SECTION 1. IC 24-4.5-1-202, AS AMENDED BY P.L.27-2012,
2 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 202. (a) As used in this section, "balloon
4 payment", with respect to a mortgage transaction, means any payment
5 that:
6 (1) the creditor requires the debtor to make at any time during the
7 term of the mortgage;
8 (2) represents the entire amount of the outstanding balance with
9 respect to the mortgage; and
10 (3) the entire amount of which is due as of a specified date or at
11 the end of a specified period;
12 if the aggregate amount of the minimum periodic payments required
13 under the mortgage would not fully amortize the outstanding balance
14 by the specified date or at the end of the specified period. The term
15 does not include a payment required by a creditor under a due-on-sale
16 clause (as defined in 12 U.S.C. 1701j-3(a)) or a payment required by

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

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

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

7 (2) The sale of insurance by an insurer, except as otherwise
 8 provided in the chapter on insurance (IC 24-4.5-4).

9 (3) Transactions under public utility, municipal utility, or
 10 common carrier tariffs if a subdivision or agency of this state or
 11 of the United States regulates the charges for the services
 12 involved, the charges for delayed payment, and any discount
 13 allowed for early payment.

14 (4) The rates and charges and the disclosure of rates and charges
 15 of a licensed pawnbroker established in accordance with a statute
 16 or ordinance concerning these matters.

17 (5) A sale of goods, services, or an interest in land in which the
 18 goods, services, or interest in land are purchased primarily for a
 19 purpose other than a personal, family, or household purpose.

20 (6) A loan in which the debt is incurred primarily for a purpose
 21 other than a personal, family, or household purpose.

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

24 (8) An installment agreement for the purchase of home fuels in
 25 which a finance charge is not imposed.

26 (9) Loans made, insured, or guaranteed under a program
 27 authorized by Title IV of the Higher Education Act of 1965 (20
 28 U.S.C. 1070 et seq.).

29 (10) Transactions in securities or commodities accounts in which
 30 credit is extended by a broker-dealer registered with the Securities
 31 and Exchange Commission or the Commodity Futures Trading
 32 Commission.

33 (11) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3,
 34 IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a loan made:

35 (A) in compliance with the requirements of; and

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

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

40 (12) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3,
 41 IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a subordinate lien
 42 mortgage transaction made by an entity that exclusively uses



1 funds provided by the United States Department of Housing and
 2 Urban Development under Title 1 of the Housing and Community
 3 Development Act of 1974, Public Law 93-383, as amended (42
 4 U.S.C. 5301 et seq.).

5 (13) The United States, any state or local government, or any
 6 agency or instrumentality of any governmental entity, including
 7 United States government sponsored enterprises.

8 (14) A bona fide nonprofit organization not operating in a
 9 commercial context, as determined by the director, if the
 10 following criteria are satisfied:

11 (A) Subject to clause (B), the organization originates only one
 12 (1) or both of the following types of mortgage transactions:

13 (i) Zero (0) interest first lien mortgage transactions.

14 (ii) Zero (0) interest subordinate lien mortgage transactions.

15 (B) The organization does not require, under the terms of the
 16 mortgage or otherwise, balloon payments with respect to the
 17 mortgage transactions described in clause (A).

18 (C) The organization is exempt from federal income taxation
 19 under Section 501(c)(3) of the Internal Revenue Code.

20 (D) The organization's primary purpose is to serve the public
 21 by helping low income individuals and families build, repair,
 22 and purchase housing.

23 (E) The organization uses only:

24 (i) unpaid volunteers; or

25 (ii) employees whose compensation is not based on the
 26 number or size of any mortgage transactions that the
 27 employees originate;

28 to originate the mortgage transactions described in clause (A).

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

32 (15) A bona fide nonprofit organization (as defined in section
 33 301.5(45) of this chapter) if the following criteria are satisfied:

34 (a) For each calendar year that the organization seeks the
 35 exemption provided by this subdivision, the organization
 36 certifies, not later than December 31 of the preceding calendar
 37 year and on a form prescribed by the director and accompanied
 38 by such documentation as required by the director, that the
 39 organization is a bona fide nonprofit organization (as defined
 40 in section 301.5(45) of this chapter).

41 (b) The director determines that the organization originates
 42 only mortgage transactions that are favorable to the debtor. For



1 purposes of this clause, a mortgage transaction is favorable to
 2 the debtor if the director determines that the terms of the
 3 mortgage transaction are consistent with terms of mortgage
 4 transactions made in a public or charitable context, rather than
 5 in a commercial context.

6 **(16) A civil proceeding advance payment transaction (as**
 7 **defined in IC 27-20-1-6).**

8 SECTION 2. IC 24-4.5-1-301.5, AS AMENDED BY P.L.216-2013,
 9 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 UPON PASSAGE]: Sec. 301.5. In addition to definitions appearing in
 11 subsequent chapters in this article, the following definitions apply
 12 throughout this article:

13 (1) "Affiliate", with respect to any person subject to this article,
 14 means a person that, directly or indirectly, through one (1) or more
 15 intermediaries:

- 16 (a) controls;
- 17 (b) is controlled by; or
- 18 (c) is under common control with;

19 the person subject to this article.

20 (2) "Agreement" means the bargain of the parties in fact as found in
 21 their language or by implication from other circumstances, including
 22 course of dealing or usage of trade or course of performance.

23 (3) "Agricultural purpose" means a purpose related to the
 24 production, harvest, exhibition, marketing, transportation, processing,
 25 or manufacture of agricultural products by a natural person who
 26 cultivates, plants, propagates, or nurtures the agricultural products.
 27 "Agricultural products" includes agricultural, horticultural, viticultural,
 28 and dairy products, livestock, wildlife, poultry, bees, forest products,
 29 fish and shellfish, and any and all products raised or produced on farms
 30 and any processed or manufactured products thereof.

31 (4) "Average daily balance" means the sum of each of the daily
 32 balances in a billing cycle divided by the number of days in the billing
 33 cycle, and if the billing cycle is a month, the creditor may elect to treat
 34 the number of days in each billing cycle as thirty (30).

35 (5) "Closing costs" with respect to a subordinate lien mortgage
 36 transaction includes:

- 37 (a) fees or premiums for title examination, title insurance, or
- 38 similar purposes, including surveys;
- 39 (b) fees for preparation of a deed, settlement statement, or other
- 40 documents;
- 41 (c) escrows for future payments of taxes and insurance;
- 42 (d) fees for notarizing deeds and other documents;



- 1 (e) appraisal fees; and
 2 (f) fees for credit reports.
- 3 (6) "Conspicuous" refers to a term or clause when it is so written
 4 that a reasonable person against whom it is to operate ought to have
 5 noticed it.
- 6 (7) "Consumer credit" means credit offered or extended to a
 7 consumer primarily for a personal, family, or household purpose.
- 8 (8) "Consumer credit sale" is a sale of goods, services, or an interest
 9 in land in which:
- 10 (a) credit is granted by a person who regularly engages as a seller
 11 in credit transactions of the same kind;
 12 (b) the buyer is a person other than an organization;
 13 (c) the goods, services, or interest in land are purchased primarily
 14 for a personal, family, or household purpose;
 15 (d) either the debt is payable in installments or a credit service
 16 charge is made; and
 17 (e) with respect to a sale of goods or services, either:
 18 (i) the sale amount does not exceed fifty-three thousand
 19 dollars (\$53,000) or another amount as adjusted in
 20 accordance with the annual adjustment of the exempt
 21 threshold amount specified in Regulation Z (12 CFR 226.3
 22 or 12 CFR 1026.3(b), as applicable); or
 23 (ii) the debt is secured by personal property used or expected
 24 to be used as the principal dwelling of the buyer.
- 25 Unless the sale is made subject to this article by agreement
 26 (IC 24-4.5-2-601), "consumer credit sale" does not include a sale
 27 in which the seller allows the buyer to purchase goods or services
 28 pursuant to a lender credit card or similar arrangement or except
 29 as provided with respect to disclosure (IC 24-4.5-2-301), debtors'
 30 remedies (IC 24-4.5-5-201), providing payoff amounts
 31 (IC 24-4.5-2-209), and powers and functions of the department
 32 (IC 24-4.5-6) a sale of an interest in land which is a first lien
 33 mortgage transaction.
- 34 (9) "Consumer loan" means a loan made by a person regularly
 35 engaged in the business of making loans in which:
- 36 (a) the debtor is a person other than an organization;
 37 (b) the debt is primarily for a personal, family, or household
 38 purpose;
 39 (c) either the debt is payable in installments or a loan finance
 40 charge is made; and
 41 (d) either:
 42 (i) the loan amount does not exceed fifty-three thousand



1 dollars (\$53,000) or another amount as adjusted in accordance
 2 with the annual adjustment of the exempt threshold amount
 3 specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b),
 4 as applicable); or
 5 (ii) the debt is secured by an interest in land or by personal
 6 property used or expected to be used as the principal dwelling
 7 of the debtor.

8 **The term does not include a civil proceeding advance payment**
 9 **transaction (as defined in IC 27-20-1-6).** Except as described in
 10 IC 24-4.5-3-105, the term does not include a first lien mortgage
 11 transaction.

12 (10) "Credit" means the right granted by a creditor to a debtor to
 13 defer payment of debt or to incur debt and defer its payment.

14 (11) "Creditor" means a person:

- 15 (a) who regularly engages in the extension of consumer credit that
 16 is subject to a credit service charge or loan finance charge, as
 17 applicable, or is payable by written agreement in more than four
 18 (4) installments (not including a down payment); and
 19 (b) to whom the obligation is initially payable, either on the face of
 20 the note or contract, or by agreement when there is not a note
 21 or contract.

22 **The term does not include a civil proceeding advance payment**
 23 **provider (as defined in IC 27-20-1-5).**

24 (12) "Depository institution" has the meaning set forth in the
 25 Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any
 26 credit union.

27 (13) "Director" means the director of the department of financial
 28 institutions or the director's designee.

29 (14) "Dwelling" means a residential structure that contains one (1)
 30 to four (4) units, regardless of whether the structure is attached to real
 31 property. The term includes an individual:

- 32 (a) condominium unit;
 33 (b) cooperative unit;
 34 (c) mobile home; or
 35 (d) trailer;

36 that is used as a residence.

37 (15) "Earnings" means compensation paid or payable for personal
 38 services, whether denominated as wages, salary, commission, bonus,
 39 or otherwise, and includes periodic payments under a pension or
 40 retirement program.

41 (16) "Employee" means an individual who is paid wages or other
 42 compensation by an employer required under federal income tax law



- 1 to file Form W-2 on behalf of the individual.
- 2 (17) "Federal banking agencies" means the Board of Governors of
3 the Federal Reserve System, the Office of the Comptroller of the
4 Currency, the Office of Thrift Supervision, the National Credit Union
5 Administration, and the Federal Deposit Insurance Corporation.
- 6 (18) "First lien mortgage transaction" means:
7 (a) a consumer loan; or
8 (b) a consumer credit sale;
9 that is or will be used by the debtor primarily for personal, family, or
10 household purposes and that is secured by a mortgage or a land
11 contract (or another consensual security interest equivalent to a
12 mortgage or a land contract) that constitutes a first lien on a dwelling
13 or on residential real estate upon which a dwelling is constructed or
14 intended to be constructed.
- 15 (19) "Immediate family member" means a spouse, child, sibling,
16 parent, grandparent, or grandchild. The term includes stepparents,
17 stepchildren, stepsiblings, and adoptive relationships.
- 18 (20) "Individual" means a natural person.
- 19 (21) "Lender credit card or similar arrangement" means an
20 arrangement or loan agreement, other than a seller credit card, pursuant
21 to which a lender gives a debtor the privilege of using a credit card,
22 letter of credit, or other credit confirmation or identification in
23 transactions out of which debt arises:
24 (a) by the lender's honoring a draft or similar order for the
25 payment of money drawn or accepted by the debtor;
26 (b) by the lender's payment or agreement to pay the debtor's
27 obligations; or
28 (c) by the lender's purchase from the obligee of the debtor's
29 obligations.
- 30 (22) "Licensee" means a person licensed as a creditor under this
31 article.
- 32 (23) "Loan brokerage business" means any activity in which a
33 person, in return for any consideration from any source, procures,
34 attempts to procure, or assists in procuring, a mortgage transaction
35 from a third party or any other person, whether or not the person
36 seeking the mortgage transaction actually obtains the mortgage
37 transaction.
- 38 (24) "Loan processor or underwriter" means an individual who
39 performs clerical or support duties as an employee at the direction of,
40 and subject to the supervision and instruction of, a person licensed or
41 exempt from licensing under this article. For purposes of this
42 subsection, the term "clerical or support duties" may include, after the



1 receipt of an application, the following:

2 (a) The receipt, collection, distribution, and analysis of
3 information common for the processing or underwriting of a
4 mortgage transaction.

5 (b) The communication with a consumer to obtain the information
6 necessary for the processing or underwriting of a loan, to the
7 extent that the communication does not include:

8 (i) offering or negotiating loan rates or terms; or

9 (ii) counseling consumers about mortgage transaction rates or
10 terms.

11 An individual engaging solely in loan processor or underwriter
12 activities shall not represent to the public through advertising or other
13 means of communicating or providing information, including the use
14 of business cards, stationery, brochures, signs, rate lists, or other
15 promotional items, that the individual can or will perform any of the
16 activities of a mortgage loan originator.

17 (25) "Mortgage loan originator" means an individual who, for
18 compensation or gain, or in the expectation of compensation or gain,
19 regularly engages in taking a mortgage transaction application or in
20 offering or negotiating the terms of a mortgage transaction that either
21 is made under this article or under IC 24-4.4 or is made by an employee
22 of a person licensed or exempt from licensing under this article or
23 under IC 24-4.4, while the employee is engaging in the loan brokerage
24 business. The term does not include the following:

25 (a) An individual engaged solely as a loan processor or
26 underwriter as long as the individual works exclusively as an
27 employee of a person licensed or exempt from licensing under
28 this article.

29 (b) Unless the person or entity is compensated by:

30 (i) a creditor;

31 (ii) a loan broker;

32 (iii) another mortgage loan originator; or

33 (iv) any agent of the creditor, loan broker, or other mortgage
34 loan originator described in items (i) through (iii);

35 a person or entity that only performs real estate brokerage
36 activities and is licensed or registered in accordance with
37 applicable state law.

38 (c) A person solely involved in extensions of credit relating to
39 timeshare plans (as defined in 11 U.S.C. 101(53D)).

40 (26) "Mortgage servicer" means the last person to whom a
41 mortgagor or the mortgagor's successor in interest has been instructed
42 by a mortgagee to send payments on a loan secured by a mortgage.



- 1 (27) "Mortgage transaction" means:
 2 (a) a consumer loan; or
 3 (b) a consumer credit sale;
 4 that is or will be used by the debtor primarily for personal, family, or
 5 household purposes and that is secured by a mortgage or a land
 6 contract (or another consensual security interest equivalent to a
 7 mortgage or a land contract) on a dwelling or on residential real estate
 8 upon which a dwelling is constructed or intended to be constructed.
 9 (28) "Nationwide Mortgage Licensing System and Registry", or
 10 "NMLSR", means a mortgage licensing system developed and
 11 maintained by the Conference of State Bank Supervisors and the
 12 American Association of Residential Mortgage Regulators for the
 13 licensing and registration of creditors and mortgage loan originators.
 14 (29) "Nontraditional mortgage product" means any mortgage
 15 product other than a thirty (30) year fixed rate mortgage.
 16 (30) "Official fees" means:
 17 (a) fees and charges prescribed by law which actually are or will
 18 be paid to public officials for determining the existence of or for
 19 perfecting, releasing, or satisfying a security interest related to a
 20 consumer credit sale, consumer lease, or consumer loan; or
 21 (b) premiums payable for insurance in lieu of perfecting a security
 22 interest otherwise required by the creditor in connection with the
 23 sale, lease, or loan, if the premium does not exceed the fees and
 24 charges described in paragraph (a) that would otherwise be
 25 payable.
 26 (31) "Organization" means a corporation, a government or
 27 governmental subdivision, an agency, a trust, an estate, a partnership,
 28 a limited liability company, a cooperative, an association, a joint
 29 venture, an unincorporated organization, or any other entity, however
 30 organized.
 31 (32) "Payable in installments" means that payment is required or
 32 permitted by written agreement to be made in more than four (4)
 33 installments not including a down payment.
 34 (33) "Person" includes an individual or an organization.
 35 (34) "Person related to" with respect to an individual means:
 36 (a) the spouse of the individual;
 37 (b) a brother, brother-in-law, sister, or sister-in-law of the
 38 individual;
 39 (c) an ancestor or lineal descendants of the individual or the
 40 individual's spouse; and
 41 (d) any other relative, by blood or marriage, of the individual or
 42 the individual's spouse who shares the same home with the



- 1 individual.
- 2 (35) "Person related to" with respect to an organization means:
- 3 (a) a person directly or indirectly controlling, controlled by, or
- 4 under common control with the organization;
- 5 (b) a director, an executive officer, or a manager of the
- 6 organization or a person performing similar functions with respect
- 7 to the organization or to a person related to the organization;
- 8 (c) the spouse of a person related to the organization; and
- 9 (d) a relative by blood or marriage of a person related to the
- 10 organization who shares the same home with the person.
- 11 (36) "Presumed" or "presumption" means that the trier of fact must
- 12 find the existence of the fact presumed, unless and until evidence is
- 13 introduced that would support a finding of its nonexistence.
- 14 (37) "Real estate brokerage activity" means any activity that
- 15 involves offering or providing real estate brokerage services to the
- 16 public, including the following:
- 17 (a) Acting as a real estate agent or real estate broker for a buyer,
- 18 seller, lessor, or lessee of real property.
- 19 (b) Bringing together parties interested in the sale, purchase,
- 20 lease, rental, or exchange of real property.
- 21 (c) Negotiating, on behalf of any party, any part of a contract
- 22 relating to the sale, purchase, lease, rental, or exchange of real
- 23 property (other than in connection with providing financing with
- 24 respect to the sale, purchase, lease, rental, or exchange of real
- 25 property).
- 26 (d) Engaging in any activity for which a person is required to be
- 27 registered or licensed as a real estate agent or real estate broker
- 28 under any applicable law.
- 29 (e) Offering to engage in any activity, or act in any capacity,
- 30 described in this subsection.
- 31 (38) "Registered mortgage loan originator" means any individual
- 32 who:
- 33 (a) meets the definition of mortgage loan originator and is an
- 34 employee of:
- 35 (i) a depository institution;
- 36 (ii) a subsidiary that is owned and controlled by a depository
- 37 institution and regulated by a federal banking agency; or
- 38 (iii) an institution regulated by the Farm Credit
- 39 Administration; and
- 40 (b) is registered with, and maintains a unique identifier through,
- 41 the NMLSR.
- 42 (39) "Regularly engaged", with respect to a person who extends



- 1 consumer credit, refers to a person who:
 2 (a) extended consumer credit:
 3 (i) more than twenty-five (25) times; or
 4 (ii) more than five (5) times for a mortgage transaction secured
 5 by a dwelling;
 6 in the preceding calendar year; or
 7 (b) extends or will extend consumer credit:
 8 (i) more than twenty-five (25) times; or
 9 (ii) more than five (5) times for a mortgage transaction secured
 10 by a dwelling;
 11 in the current calendar year, if the person did not meet the
 12 numerical standards described in subdivision (a) in the preceding
 13 calendar year.
 14 (40) "Residential real estate" means any real property that is located
 15 in Indiana and on which there is located or intended to be constructed
 16 a dwelling.
 17 (41) "Seller credit card" means an arrangement that gives to a buyer
 18 or lessee the privilege of using a credit card, letter of credit, or other
 19 credit confirmation or identification for the purpose of purchasing or
 20 leasing goods or services from that person, a person related to that
 21 person, or from that person and any other person. The term includes a
 22 card that is issued by a person, that is in the name of the seller, and that
 23 can be used by the buyer or lessee only for purchases or leases at
 24 locations of the named seller.
 25 (42) "Subordinate lien mortgage transaction" means:
 26 (a) a consumer loan; or
 27 (b) a consumer credit sale;
 28 that is or will be used by the debtor primarily for personal, family, or
 29 household purposes and that is secured by a mortgage or a land
 30 contract (or another consensual security interest equivalent to a
 31 mortgage or a land contract) that constitutes a subordinate lien on a
 32 dwelling or on residential real estate upon which a dwelling is
 33 constructed or intended to be constructed.
 34 (43) "Unique identifier" means a number or other identifier assigned
 35 by protocols established by the NMLSR.
 36 (44) "Land contract" means a contract for the sale of real estate in
 37 which the seller of the real estate retains legal title to the real estate
 38 until the total contract price is paid by the buyer.
 39 (45) "Bona fide nonprofit organization" means an organization that
 40 does the following, as determined by the director under criteria
 41 established by the director:
 42 (a) Maintains tax exempt status under Section 501(c)(3) of the



- 1 Internal Revenue Code.
- 2 (b) Promotes affordable housing or provides home ownership
- 3 education or similar services.
- 4 (c) Conducts the organization's activities in a manner that serves
- 5 public or charitable purposes.
- 6 (d) Receives funding and revenue and charges fees in a manner
- 7 that does not encourage the organization or the organization's
- 8 employees to act other than in the best interests of the
- 9 organization's clients.
- 10 (e) Compensates the organization's employees in a manner that
- 11 does not encourage employees to act other than in the best
- 12 interests of the organization's clients.
- 13 (f) Provides to, or identifies for, debtors mortgage transactions
- 14 with terms that are favorable to the debtor (as described in section
- 15 202(b)(15) of this chapter) and comparable to mortgage
- 16 transactions and housing assistance provided under government
- 17 housing assistance programs.
- 18 (g) Maintains certification by the United States Department of
- 19 Housing and Urban Development or employs counselors who are
- 20 certified by the Indiana housing and community development
- 21 authority.

22 SECTION 3. IC 24-4.5-3-106 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 106. Definition:
 24 "Loan" — (a) "Loan" includes:

- 25 (1) the creation of debt by the lender's payment of or agreement
- 26 to pay money to the debtor or to a third party for the account of
- 27 the debtor;
- 28 (2) the creation of debt by a credit to an account with the lender
- 29 upon which the debtor is entitled to draw immediately;
- 30 (3) the creation of debt pursuant to a lender credit card or similar
- 31 arrangement; and
- 32 (4) the forbearance of debt arising from a loan.

33 (b) **The term does not include a civil proceeding advance**
 34 **payment transaction (as defined in IC 27-20-1-6).**

35 SECTION 4. IC 24-4.5-3-107, AS AMENDED BY P.L.145-2008,
 36 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 UPON PASSAGE]: Sec. 107. Definitions: "Lender"; "Precomputed";
 38 "Principal" — (1) Except as otherwise provided, "lender" means a
 39 person regularly engaged in making consumer loans. The term includes
 40 an assignee of the lender's right to payment but use of the term does not
 41 in itself impose on an assignee any obligation of the lender with respect
 42 to events occurring before the assignment. **The term does not include**



1 **a civil proceeding advance payment provider (as defined in**
2 **IC 27-20-1-5).**

3 (2) A loan, refinancing, or consolidation is "precomputed" if the
4 debt is expressed as a sum comprising the principal and the amount of
5 the loan finance charge computed in advance.

6 (3) "Principal" of a loan means the total of:

7 (a) the net amount paid to, receivable by, or paid or payable for
8 the account of the debtor;

9 (b) the amount of any discount excluded from the loan finance
10 charge (subsection (2) of IC 24-4.5-3-109); and

11 (c) to the extent that payment is deferred:

12 (i) amounts actually paid or to be paid by the lender for
13 registration, certificate of title, or license fees if not included
14 in (a); and

15 (ii) additional charges permitted by this chapter (IC
16 24-4.5-3-202).

17 SECTION 5. IC 27-4-1-4, AS AMENDED BY P.L.278-2013,
18 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 UPON PASSAGE]: Sec. 4. (a) The following are hereby defined as
20 unfair methods of competition and unfair and deceptive acts and
21 practices in the business of insurance:

22 (1) Making, issuing, circulating, or causing to be made, issued, or
23 circulated, any estimate, illustration, circular, or statement:

24 (A) misrepresenting the terms of any policy issued or to be
25 issued or the benefits or advantages promised thereby or the
26 dividends or share of the surplus to be received thereon;

27 (B) making any false or misleading statement as to the
28 dividends or share of surplus previously paid on similar
29 policies;

30 (C) making any misleading representation or any
31 misrepresentation as to the financial condition of any insurer,
32 or as to the legal reserve system upon which any life insurer
33 operates;

34 (D) using any name or title of any policy or class of policies
35 misrepresenting the true nature thereof; or

36 (E) making any misrepresentation to any policyholder insured
37 in any company for the purpose of inducing or tending to
38 induce such policyholder to lapse, forfeit, or surrender the
39 policyholder's insurance.

40 (2) Making, publishing, disseminating, circulating, or placing
41 before the public, or causing, directly or indirectly, to be made,
42 published, disseminated, circulated, or placed before the public,



- 1 in a newspaper, magazine, or other publication, or in the form of
 2 a notice, circular, pamphlet, letter, or poster, or over any radio or
 3 television station, or in any other way, an advertisement,
 4 announcement, or statement containing any assertion,
 5 representation, or statement with respect to any person in the
 6 conduct of the person's insurance business, which is untrue,
 7 deceptive, or misleading.
- 8 (3) Making, publishing, disseminating, or circulating, directly or
 9 indirectly, or aiding, abetting, or encouraging the making,
 10 publishing, disseminating, or circulating of any oral or written
 11 statement or any pamphlet, circular, article, or literature which is
 12 false, or maliciously critical of or derogatory to the financial
 13 condition of an insurer, and which is calculated to injure any
 14 person engaged in the business of insurance.
- 15 (4) Entering into any agreement to commit, or individually or by
 16 a concerted action committing any act of boycott, coercion, or
 17 intimidation resulting or tending to result in unreasonable
 18 restraint of, or a monopoly in, the business of insurance.
- 19 (5) Filing with any supervisory or other public official, or making,
 20 publishing, disseminating, circulating, or delivering to any person,
 21 or placing before the public, or causing directly or indirectly, to
 22 be made, published, disseminated, circulated, delivered to any
 23 person, or placed before the public, any false statement of
 24 financial condition of an insurer with intent to deceive. Making
 25 any false entry in any book, report, or statement of any insurer
 26 with intent to deceive any agent or examiner lawfully appointed
 27 to examine into its condition or into any of its affairs, or any
 28 public official to which such insurer is required by law to report,
 29 or which has authority by law to examine into its condition or into
 30 any of its affairs, or, with like intent, willfully omitting to make a
 31 true entry of any material fact pertaining to the business of such
 32 insurer in any book, report, or statement of such insurer.
- 33 (6) Issuing or delivering or permitting agents, officers, or
 34 employees to issue or deliver, agency company stock or other
 35 capital stock, or benefit certificates or shares in any common law
 36 corporation, or securities or any special or advisory board
 37 contracts or other contracts of any kind promising returns and
 38 profits as an inducement to insurance.
- 39 (7) Making or permitting any of the following:
- 40 (A) Unfair discrimination between individuals of the same
 41 class and equal expectation of life in the rates or assessments
 42 charged for any contract of life insurance or of life annuity or



1 in the dividends or other benefits payable thereon, or in any
 2 other of the terms and conditions of such contract. However,
 3 in determining the class, consideration may be given to the
 4 nature of the risk, plan of insurance, the actual or expected
 5 expense of conducting the business, or any other relevant
 6 factor.

7 (B) Unfair discrimination between individuals of the same
 8 class involving essentially the same hazards in the amount of
 9 premium, policy fees, assessments, or rates charged or made
 10 for any policy or contract of accident or health insurance or in
 11 the benefits payable thereunder, or in any of the terms or
 12 conditions of such contract, or in any other manner whatever.
 13 However, in determining the class, consideration may be given
 14 to the nature of the risk, the plan of insurance, the actual or
 15 expected expense of conducting the business, or any other
 16 relevant factor.

17 (C) Excessive or inadequate charges for premiums, policy
 18 fees, assessments, or rates, or making or permitting any unfair
 19 discrimination between persons of the same class involving
 20 essentially the same hazards, in the amount of premiums,
 21 policy fees, assessments, or rates charged or made for:

22 (i) policies or contracts of reinsurance or joint reinsurance,
 23 or abstract and title insurance;

24 (ii) policies or contracts of insurance against loss or damage
 25 to aircraft, or against liability arising out of the ownership,
 26 maintenance, or use of any aircraft, or of vessels or craft,
 27 their cargoes, marine builders' risks, marine protection and
 28 indemnity, or other risks commonly insured under marine,
 29 as distinguished from inland marine, insurance; or

30 (iii) policies or contracts of any other kind or kinds of
 31 insurance whatsoever.

32 However, nothing contained in clause (C) shall be construed to
 33 apply to any of the kinds of insurance referred to in clauses (A)
 34 and (B) nor to reinsurance in relation to such kinds of insurance.
 35 Nothing in clause (A), (B), or (C) shall be construed as making or
 36 permitting any excessive, inadequate, or unfairly discriminatory
 37 charge or rate or any charge or rate determined by the department
 38 or commissioner to meet the requirements of any other insurance
 39 rate regulatory law of this state.

40 (8) Except as otherwise expressly provided by law, knowingly
 41 permitting or offering to make or making any contract or policy
 42 of insurance of any kind or kinds whatsoever, including but not in



1 limitation, life annuities, or agreement as to such contract or
2 policy other than as plainly expressed in such contract or policy
3 issued thereon, or paying or allowing, or giving or offering to pay,
4 allow, or give, directly or indirectly, as inducement to such
5 insurance, or annuity, any rebate of premiums payable on the
6 contract, or any special favor or advantage in the dividends,
7 savings, or other benefits thereon, or any valuable consideration
8 or inducement whatever not specified in the contract or policy; or
9 giving, or selling, or purchasing or offering to give, sell, or
10 purchase as inducement to such insurance or annuity or in
11 connection therewith, any stocks, bonds, or other securities of any
12 insurance company or other corporation, association, limited
13 liability company, or partnership, or any dividends, savings, or
14 profits accrued thereon, or anything of value whatsoever not
15 specified in the contract. Nothing in this subdivision and
16 subdivision (7) shall be construed as including within the
17 definition of discrimination or rebates any of the following
18 practices:

19 (A) Paying bonuses to policyholders or otherwise abating their
20 premiums in whole or in part out of surplus accumulated from
21 nonparticipating insurance, so long as any such bonuses or
22 abatement of premiums are fair and equitable to policyholders
23 and for the best interests of the company and its policyholders.

24 (B) In the case of life insurance policies issued on the
25 industrial debit plan, making allowance to policyholders who
26 have continuously for a specified period made premium
27 payments directly to an office of the insurer in an amount
28 which fairly represents the saving in collection expense.

29 (C) Readjustment of the rate of premium for a group insurance
30 policy based on the loss or expense experience thereunder, at
31 the end of the first year or of any subsequent year of insurance
32 thereunder, which may be made retroactive only for such
33 policy year.

34 (D) Paying by an insurer or insurance producer thereof duly
35 licensed as such under the laws of this state of money,
36 commission, or brokerage, or giving or allowing by an insurer
37 or such licensed insurance producer thereof anything of value,
38 for or on account of the solicitation or negotiation of policies
39 or other contracts of any kind or kinds, to a broker, an
40 insurance producer, or a solicitor duly licensed under the laws
41 of this state, but such broker, insurance producer, or solicitor
42 receiving such consideration shall not pay, give, or allow



- 1 credit for such consideration as received in whole or in part,
 2 directly or indirectly, to the insured by way of rebate.
- 3 (9) Requiring, as a condition precedent to loaning money upon the
 4 security of a mortgage upon real property, that the owner of the
 5 property to whom the money is to be loaned negotiate any policy
 6 of insurance covering such real property through a particular
 7 insurance producer or broker or brokers. However, this
 8 subdivision shall not prevent the exercise by any lender of the
 9 lender's right to approve or disapprove of the insurance company
 10 selected by the borrower to underwrite the insurance.
- 11 (10) Entering into any contract, combination in the form of a trust
 12 or otherwise, or conspiracy in restraint of commerce in the
 13 business of insurance.
- 14 (11) Monopolizing or attempting to monopolize or combining or
 15 conspiring with any other person or persons to monopolize any
 16 part of commerce in the business of insurance. However,
 17 participation as a member, director, or officer in the activities of
 18 any nonprofit organization of insurance producers or other
 19 workers in the insurance business shall not be interpreted, in
 20 itself, to constitute a combination in restraint of trade or as
 21 combining to create a monopoly as provided in this subdivision
 22 and subdivision (10). The enumeration in this chapter of specific
 23 unfair methods of competition and unfair or deceptive acts and
 24 practices in the business of insurance is not exclusive or
 25 restrictive or intended to limit the powers of the commissioner or
 26 department or of any court of review under section 8 of this
 27 chapter.
- 28 (12) Requiring as a condition precedent to the sale of real or
 29 personal property under any contract of sale, conditional sales
 30 contract, or other similar instrument or upon the security of a
 31 chattel mortgage, that the buyer of such property negotiate any
 32 policy of insurance covering such property through a particular
 33 insurance company, insurance producer, or broker or brokers.
 34 However, this subdivision shall not prevent the exercise by any
 35 seller of such property or the one making a loan thereon of the
 36 right to approve or disapprove of the insurance company selected
 37 by the buyer to underwrite the insurance.
- 38 (13) Issuing, offering, or participating in a plan to issue or offer,
 39 any policy or certificate of insurance of any kind or character as
 40 an inducement to the purchase of any property, real, personal, or
 41 mixed, or services of any kind, where a charge to the insured is
 42 not made for and on account of such policy or certificate of



- 1 insurance. However, this subdivision shall not apply to any of the
 2 following:
- 3 (A) Insurance issued to credit unions or members of credit
 4 unions in connection with the purchase of shares in such credit
 5 unions.
- 6 (B) Insurance employed as a means of guaranteeing the
 7 performance of goods and designed to benefit the purchasers
 8 or users of such goods.
- 9 (C) Title insurance.
- 10 (D) Insurance written in connection with an indebtedness and
 11 intended as a means of repaying such indebtedness in the
 12 event of the death or disability of the insured.
- 13 (E) Insurance provided by or through motorists service clubs
 14 or associations.
- 15 (F) Insurance that is provided to the purchaser or holder of an
 16 air transportation ticket and that:
- 17 (i) insures against death or nonfatal injury that occurs during
 18 the flight to which the ticket relates;
- 19 (ii) insures against personal injury or property damage that
 20 occurs during travel to or from the airport in a common
 21 carrier immediately before or after the flight;
- 22 (iii) insures against baggage loss during the flight to which
 23 the ticket relates; or
- 24 (iv) insures against a flight cancellation to which the ticket
 25 relates.
- 26 (14) Refusing, because of the for-profit status of a hospital or
 27 medical facility, to make payments otherwise required to be made
 28 under a contract or policy of insurance for charges incurred by an
 29 insured in such a for-profit hospital or other for-profit medical
 30 facility licensed by the state department of health.
- 31 (15) Refusing to insure an individual, refusing to continue to issue
 32 insurance to an individual, limiting the amount, extent, or kind of
 33 coverage available to an individual, or charging an individual a
 34 different rate for the same coverage, solely because of that
 35 individual's blindness or partial blindness, except where the
 36 refusal, limitation, or rate differential is based on sound actuarial
 37 principles or is related to actual or reasonably anticipated
 38 experience.
- 39 (16) Committing or performing, with such frequency as to
 40 indicate a general practice, unfair claim settlement practices (as
 41 defined in section 4.5 of this chapter).
- 42 (17) Between policy renewal dates, unilaterally canceling an



- 1 individual's coverage under an individual or group health
 2 insurance policy solely because of the individual's medical or
 3 physical condition.
- 4 (18) Using a policy form or rider that would permit a cancellation
 5 of coverage as described in subdivision (17).
- 6 (19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1
 7 concerning motor vehicle insurance rates.
- 8 (20) Violating IC 27-8-21-2 concerning advertisements referring
 9 to interest rate guarantees.
- 10 (21) Violating IC 27-8-24.3 concerning insurance and health plan
 11 coverage for victims of abuse.
- 12 (22) Violating IC 27-8-26 concerning genetic screening or testing.
- 13 (23) Violating IC 27-1-15.6-3(b) concerning licensure of
 14 insurance producers.
- 15 (24) Violating IC 27-1-38 concerning depository institutions.
- 16 (25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning
 17 the resolution of an appealed grievance decision.
- 18 (26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) (expired
 19 July 1, 2007, and removed) or IC 27-8-5-19.2 (expired July 1,
 20 2007, and repealed).
- 21 (27) Violating IC 27-2-21 concerning use of credit information.
- 22 (28) Violating IC 27-4-9-3 concerning recommendations to
 23 consumers.
- 24 (29) Engaging in dishonest or predatory insurance practices in
 25 marketing or sales of insurance to members of the United States
 26 Armed Forces as:
- 27 (A) described in the federal Military Personnel Financial
 28 Services Protection Act, P.L.109-290; or
- 29 (B) defined in rules adopted under subsection (b).
- 30 (30) Violating IC 27-8-19.8-20.1 concerning stranger originated
 31 life insurance.
- 32 (31) Violating IC 27-2-22 concerning retained asset accounts.
- 33 (32) Violating IC 27-8-5-29 concerning health plans offered
 34 through a health benefit exchange (as defined in IC 27-19-2-8).
- 35 (33) Violating a requirement of the federal Patient Protection and
 36 Affordable Care Act (P.L. 111-148), as amended by the federal
 37 Health Care and Education Reconciliation Act of 2010 (P.L.
 38 111-152), that is enforceable by the state.
- 39 **(34) Violating IC 27-20 concerning civil proceeding advance**
 40 **payment transactions.**
- 41 (b) Except with respect to federal insurance programs under
 42 Subchapter III of Chapter 19 of Title 38 of the United States Code, the



1 commissioner may, consistent with the federal Military Personnel
2 Financial Services Protection Act (P.L.109-290), adopt rules under
3 IC 4-22-2 to:

- 4 (1) define; and
- 5 (2) while the members are on a United States military installation
6 or elsewhere in Indiana, protect members of the United States
7 Armed Forces from;

8 dishonest or predatory insurance practices.

9 SECTION 6. IC 27-20 IS ADDED TO THE INDIANA CODE AS
10 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON
11 PASSAGE]:

12 **ARTICLE 20. CIVIL PROCEEDING ADVANCE PAYMENT**
13 **TRANSACTIONS**

14 **Chapter 1. Application, Construction, and Definitions**

15 **Sec. 1. This article applies to:**

- 16 (1) civil proceeding advance payment transactions; and
- 17 (2) civil proceeding advance payment contracts;

18 offered or entered into after June 30, 2014.

19 **Sec. 2. (a) As used in this article, "charge", with respect to a**
20 **CPAP transaction, means an amount that:**

- 21 (1) is imposed by a CPAP provider and payable or assignable
22 by or on behalf of a consumer claimant; and
- 23 (2) is in addition to the funded amount and the contract
24 amount;

25 regardless of the term used by the CPAP provider in the CPAP
26 contract to identify the amount, or of how the amount is
27 determined or calculated by the CPAP provider.

28 (b) The term includes any:

- 29 (1) administrative, origination, or underwriting fee;
- 30 (2) case review, case servicing, or document management fee;
- 31 or

32 (3) other fee related to services provided or costs incurred by
33 the CPAP provider in connection with the CPAP transaction;
34 imposed by the CPAP provider and payable or assignable by or on
35 behalf of the consumer claimant, regardless of the term used by the
36 CPAP provider in the CPAP contract to identify the amount, or of
37 how the amount is determined or calculated by the CPAP provider.

38 **Sec. 3. (a) As used in this article, "civil proceeding" means:**

- 39 (1) a civil action;
- 40 (2) a mediation, an arbitration, or any other alternative
41 dispute resolution proceeding; or
- 42 (3) an administrative proceeding before:



- 1 (A) an agency or instrumentality of the state; or
 2 (B) a political subdivision, or an agency or instrumentality
 3 of a political subdivision, of the state;
 4 that is filed in, or is under the jurisdiction of, a court with
 5 jurisdiction in Indiana, a tribunal in Indiana, or an agency or
 6 instrumentality described in subdivision (3) in Indiana.
 7 (b) The term includes all proceedings arising out of or relating
 8 to the proceeding described in subsection (a), including any:
 9 (1) proceedings on appeal or remand; and
 10 (2) enforcement, ancillary, or parallel proceedings.
 11 Sec. 4. As used in this article, "civil proceeding advance
 12 payment contract", or "CPAP contract", means a contract for a
 13 CPAP transaction that a CPAP provider enters into, or offers to
 14 enter into, with a consumer claimant.
 15 Sec. 5. (a) As used in this article, "civil proceeding advance
 16 payment provider", or "CPAP provider", means a person that:
 17 (1) enters into, or offers to enter into, a CPAP transaction
 18 with a consumer claimant in connection with a civil
 19 proceeding; and
 20 (2) is registered with, or is required to be registered with, the
 21 department under IC 27-20-2.
 22 (b) The term does not include any of the following:
 23 (1) An immediate family member of a consumer claimant.
 24 (2) A financial institution, a creditor subject to IC 24-4.5, or
 25 any other person:
 26 (A) that provides financing to a CPAP provider; or
 27 (B) to whom a CPAP provider grants a security interest or
 28 assigns any rights or interest in a CPAP transaction.
 29 (3) An attorney, an accountant, a tax consultant, a public or
 30 private benefits planning professional, or a financial
 31 professional who provides services to a consumer claimant in
 32 connection with a civil proceeding.
 33 Sec. 6. (a) As used in this article, "civil proceeding advance
 34 payment transaction", or "CPAP transaction", means a
 35 nonrecourse transaction in which a CPAP provider provides a
 36 funded amount to a consumer claimant to use for any purpose
 37 other than prosecuting the consumer claimant's civil proceeding,
 38 if the repayment of the funded amount is:
 39 (1) required only if the consumer claimant prevails in the civil
 40 proceeding; and
 41 (2) sourced from the proceeds of the civil proceeding, whether
 42 the proceeds result from a judgment, a settlement, or some



1 other resolution.

2 (b) The term includes a transaction:

3 (1) that is structured as a purchase; and

4 (2) in which the CPAP provider purchases from the consumer
5 claimant a contingent right to receive a share of the potential
6 proceeds of the consumer claimant's civil proceeding, whether
7 the proceeds result from a judgment, a settlement, or some
8 other resolution.

9 Sec. 7. As used in this article, "consumer claimant" means an
10 individual:

11 (1) who is or may become a plaintiff, a claimant, or a
12 demandant in a civil proceeding; and

13 (2) who:

14 (A) is offered a CPAP transaction by a CPAP provider; or

15 (B) enters into a CPAP transaction with a CPAP provider;

16 regardless of whether the individual is a resident of Indiana.

17 Sec. 8. (a) As used in this article, "contract amount", with
18 respect to a CPAP transaction, means an amount that is:

19 (1) in addition to the funded amount;

20 (2) payable or assignable to the CPAP provider only if the
21 consumer claimant prevails in the consumer claimant's civil
22 proceeding; and

23 (3) sourced from the proceeds of the civil proceeding, whether
24 the proceeds result from a judgment, a settlement, or some
25 other resolution;

26 regardless of the term used by the CPAP provider in the CPAP
27 contract to identify the amount, or of how the amount is
28 determined or calculated by the CPAP provider.

29 (b) The term does not include charges.

30 Sec. 9. As used in this article, "department" means the
31 department of insurance created by IC 27-1-1-1.

32 Sec. 10. (a) As used in this article, "funded amount", with
33 respect to a CPAP transaction, means the amount of money:

34 (1) that is provided to the consumer claimant by the CPAP
35 provider; and

36 (2) the repayment of which is:

37 (A) required only if the consumer claimant prevails in the
38 consumer claimant's civil proceeding; and

39 (B) sourced from the proceeds of the civil proceeding,
40 whether the proceeds result from a judgment, a settlement,
41 or some other resolution;

42 regardless of the term used by the CPAP provider in the CPAP



1 contract to identify the amount.

2 (b) In the case of a CPAP transaction described in section 6(b)
3 of this chapter, the term means the price:

4 (1) that is paid by the CPAP provider in purchasing from the
5 consumer claimant a contingent right to receive a share of the
6 potential proceeds of the consumer claimant's civil
7 proceeding; and

8 (2) the amount of which must be repaid only:

9 (A) if the consumer claimant prevails in the consumer
10 claimant's civil proceeding; and

11 (B) from the proceeds of the civil proceeding, whether the
12 proceeds result from a judgment, a settlement, or some
13 other resolution;

14 regardless of the term used by the CPAP provider in the CPAP
15 contract to identify the amount.

16 (c) The term does not include:

17 (1) the contract amount; or

18 (2) charges.

19 Sec. 11. As used in this article, "funding date", with respect to
20 a CPAP transaction, means the date on which a CPAP provider
21 transfers the funded amount to the consumer claimant by:

22 (1) personal delivery;

23 (2) wire, Automated Clearing House, or other electronic
24 means; or

25 (3) insured, certified, or registered United States mail.

26 Chapter 2. Registration of CPAP Providers with the
27 Department

28 Sec. 1. Except as provided in section 2(g) of this chapter, after
29 June 30, 2014, a person may not enter into, or offer to enter into,
30 a CPAP transaction with a consumer claimant, or otherwise
31 engage in business as a CPAP provider:

32 (1) except as authorized by this article; and

33 (2) unless the person first receives a certificate of registration
34 from the department under this chapter.

35 Sec. 2. (a) An applicant for a certificate of registration under
36 this chapter shall file an application with the department in the
37 form and manner prescribed by the department. An application
38 form prescribed by the department under this chapter must
39 require the applicant to provide the information that the
40 department determines is necessary to evaluate the character and
41 fitness of the applicant.

42 (b) The department may issue a certificate of registration under



1 this chapter if the department finds that the applicant's business
 2 will be operated honestly and fairly within the purposes of this
 3 article. If the department denies an application under this chapter,
 4 the department shall provide to the applicant a written notice
 5 stating that the application has been denied and setting forth the
 6 reasons for the denial.

7 (c) Upon written request, an applicant for a certificate of
 8 registration under this chapter is entitled to a hearing, in the
 9 manner provided in IC 4-21.5, on the question of the applicant's
 10 qualifications for a certificate of registration under this chapter if
 11 either of the following applies:

12 (1) The department provides to the applicant a written notice
 13 that the applicant's application has been denied, as described
 14 in subsection (b), and the applicant files a request for a
 15 hearing under this subsection not later than fifteen (15) days
 16 after the date of the department's written notice of denial
 17 under subsection (b).

18 (2) The department does not issue a decision on the
 19 applicant's application not later than sixty (60) days after the
 20 date the application is filed, and the applicant files a request
 21 for a hearing under this subsection not later than seventy-five
 22 (75) days after the date the application is filed.

23 (d) A certificate of registration issued by the department under
 24 this chapter must be renewed with the department on the dates and
 25 in the manner and form prescribed by the department, but not less
 26 frequently than every two (2) years.

27 (e) If, at any time, any information contained in:

28 (1) an initial application under subsection (a); or

29 (2) a renewal form or application under subsection (d);

30 is or becomes inaccurate or incomplete in a material respect, the
 31 applicant or registered CPAP provider promptly shall file a
 32 correcting amendment with the department in the form and
 33 manner prescribed by the department.

34 (f) Rules adopted by the department under section 4 of this
 35 chapter may establish procedures for the department to establish,
 36 collect, and change as necessary either of the following to cover the
 37 department's expenses in administering this article:

38 (1) An application fee that an applicant must submit with an
 39 initial application under subsection (a).

40 (2) A renewal fee that a registered CPAP provider must
 41 submit with a renewal form or application under subsection
 42 (d).



1 (g) Notwithstanding subsection (a), a person that:

2 (1) before March 28, 2014, enters into one (1) or more CPAP
3 transactions that are:

4 (A) made with a consumer claimant in connection with a
5 civil proceeding; and

6 (B) outstanding on July 1, 2014; and

7 (2) submits an application for registration under this chapter
8 to the department after June 30, 2014, and before January 1,
9 2015;

10 may enter into, or offer to enter into, a CPAP transaction with a
11 consumer claimant, or otherwise engage in business as a CPAP
12 provider, while the person's application for registration under this
13 chapter is pending with the department. However, if the
14 department denies the person's application under this chapter, the
15 person may not enter into, or offer to enter into, any new CPAP
16 transaction in connection with a civil proceeding until the person
17 receives a certificate of registration from the department under
18 this chapter. A transaction described in subdivision (1) is not
19 subject to this article.

20 Sec. 3. (a) Each application for a certificate of registration
21 under section 2 of this chapter must be accompanied by proof that
22 the applicant has executed a surety bond in accordance with this
23 section.

24 (b) A surety bond issued under this section must:

25 (1) be in a form prescribed by the department;

26 (2) be in effect during the term of the certificate of
27 registration issued under this chapter;

28 (3) be payable to the department for the benefit of:

29 (A) the state; and

30 (B) consumer claimants who enter into a CPAP transaction
31 with the CPAP provider after the CPAP provider is issued
32 a certificate of registration under this chapter;

33 (4) be in an amount determined by the department, but in no
34 case greater than fifty thousand dollars (\$50,000); and

35 (5) have payment conditioned upon the CPAP provider's or
36 any of the CPAP provider's employees' or agents'
37 noncompliance with or violation of this article or other
38 applicable federal or state laws or regulations.

39 (c) Beginning with the first renewal of a certificate of
40 registration under this chapter, for each renewal period that a
41 registered CPAP provider continues to engage in business as a
42 CPAP provider in connection with any civil proceedings, the



1 registered CPAP provider shall file a new or an additional surety
 2 bond in an amount that ensures that the registered CPAP
 3 provider's surety bond under this section is equal to the amount
 4 determined by the department under subsection (b)(4).

5 (d) If the principal amount of a surety bond required under this
 6 section is reduced by payment of a claim or judgment, the
 7 registered CPAP provider for whom the bond is issued shall
 8 immediately notify the department of the reduction and, not later
 9 than thirty (30) days after notice by the department, file a new or
 10 an additional surety bond in an amount set by the department. The
 11 amount of the new or additional bond set by the department must
 12 be at least the amount of the bond before payment of the claim or
 13 judgment.

14 (e) If for any reason a surety terminates a bond issued under
 15 this section, the registered CPAP provider shall immediately notify
 16 the department and file a new surety bond in the amount
 17 determined by the department under subsection (b)(4).

18 (f) Cancellation of a surety bond issued under this section does
 19 not affect any liability incurred or accrued during the period when
 20 the surety bond was in effect.

21 (g) The department may obtain satisfaction from a surety bond
 22 issued under this section if the department incurs expenses, issues
 23 a final order, or recovers a final judgment under this chapter.

24 Sec. 4. (a) The department may adopt rules under IC 4-22-2,
 25 including emergency rules under IC 4-22-2-37.1, to implement this
 26 chapter. Rules or emergency rules adopted by the department
 27 under this section must take effect by a date that will enable a
 28 person to apply to the department for a certificate of registration
 29 under this chapter beginning July 1, 2014.

30 (b) An emergency rule adopted by the department under
 31 IC 4-22-2-37.1 to implement this chapter expires on the date a rule
 32 that supersedes the emergency rule is adopted by the department
 33 under IC 4-22-2-24 through IC 4-22-2-36.

34 Chapter 3. Contract Requirements and Disclosures

35 Sec. 1. (a) Before presenting a CPAP contract to a consumer
 36 claimant for the consumer claimant's signature, a CPAP provider
 37 shall ensure that the CPAP contract:

38 (1) is complete;

39 (2) has been filled in to include all amounts, dates, names,
 40 terms, provisions, and information specific to the CPAP
 41 contract, the CPAP provider, the consumer claimant, and the
 42 consumer claimant's civil proceeding; and



- 1 (3) meets the requirements of this chapter, including the
2 disclosure requirements set forth in section 2 of this chapter.
- 3 (b) Each page of a CPAP contract must include the initials of the
4 consumer claimant.
- 5 (c) If the consumer claimant is represented by an attorney in the
6 civil proceeding on which a CPAP transaction is based, the CPAP
7 contract must contain a written acknowledgment by the attorney
8 that attests to the following:
- 9 (1) That to the best of the attorney's knowledge, all costs and
10 charges relating to the CPAP transaction have been disclosed
11 to the consumer claimant.
- 12 (2) That the attorney is being paid by the consumer claimant
13 on a contingency basis under a written fee agreement.
- 14 (3) That all proceeds of the civil proceeding will be disbursed
15 through:
- 16 (A) a trust account of the attorney; or
17 (B) a settlement fund established to receive the proceeds of
18 the civil proceeding on behalf of the consumer claimant.
- 19 (4) That the attorney is following the instructions of the
20 consumer claimant with respect to the CPAP transaction.
- 21 (5) That the attorney:
- 22 (A) has not received a referral fee or other consideration
23 from the CPAP provider; and
24 (B) agrees not to receive a referral fee or other
25 consideration from the CPAP provider at any time;
26 in connection with the CPAP transaction.
- 27 If the attorney retained by the consumer claimant in the consumer
28 claimant's civil proceeding does not complete the acknowledgment
29 required by this subsection, the CPAP contract, and the CPAP
30 transaction to which it pertains, are void. However, the CPAP
31 contract, and the CPAP transaction to which it pertains, remain
32 valid and enforceable if the consumer claimant or the attorney
33 terminates the representation. If, after the termination, the
34 consumer claimant retains a new attorney in connection with the
35 consumer claimant's civil proceeding, the new attorney must
36 complete an acknowledgment under this subsection for the CPAP
37 contract, and the CPAP transaction to which it pertains, to remain
38 valid and enforceable.
- 39 (d) A CPAP contract shall be executed in duplicate. Upon
40 execution of the CPAP contract, the CPAP provider shall:
- 41 (1) furnish one (1) duplicate original and at least one (1) copy
42 of the CPAP contract to the consumer claimant; and



- 1 (2) retain for the CPAP provider's records one (1) duplicate
2 original and at least one (1) copy of the CPAP contract.
- 3 (e) A CPAP provider may not use any CPAP contract form,
4 other than a standard CPAP contract form prescribed by the
5 department in rules adopted by the department under section 4 of
6 this chapter, in connection with a civil proceeding unless the
7 department first approves the CPAP contract form.
- 8 Sec. 2. (a) A CPAP contract must include the disclosures set
9 forth in this section. The disclosures required by this section:
- 10 (1) constitute material terms of the CPAP contract; and
11 (2) must:
- 12 (A) be set forth in at least 12 point boldface type and
13 comply with any other typeface or stylistic specifications
14 set forth in this section; and
15 (B) be placed clearly and conspicuously within the
16 contract.
- 17 (b) The front page of a CPAP contract must include, under
18 appropriate headings, language specifying the following:
- 19 (1) The funded amount to be paid to the consumer claimant
20 by the CPAP provider.
21 (2) The funding date.
22 (3) An itemization of all charges, whether assessed one (1)
23 time or on a recurring basis, that are payable or assignable by
24 the consumer claimant to the CPAP provider. For each
25 charge listed, the CPAP provider shall identify whether the
26 charge:
- 27 (A) is to be assigned by the consumer claimant to the
28 CPAP provider from the proceeds, if any, of the consumer
29 claimant's civil proceeding; or
30 (B) is otherwise payable by the consumer claimant to the
31 CPAP provider.
- 32 Charges described in clause (A) must be included in the
33 payment schedule described in subdivision (5). For charges
34 described in clause (B), the CPAP provider shall set forth a
35 separate payment schedule identifying the dates and amounts
36 due.
- 37 (4) An identification of the following amounts to be assigned
38 by the consumer claimant to the CPAP provider if the
39 resolution of the consumer claimant's civil proceeding results
40 in proceeds to the consumer claimant:
- 41 (A) The funded amount.
42 (B) The contract amount. In identifying the contract



- 1 amount under this clause, it is sufficient for the CPAP
 2 provider to identify the method, formula, or multiplier by
 3 which the contract amount will be determined as of the
 4 date on which the CPAP provider receives payment from
 5 the proceeds of the consumer claimant's civil proceeding.
 6 (5) For amounts assignable by the consumer claimant to the
 7 CPAP provider from the proceeds of the consumer claimant's
 8 civil proceeding (including the funded amount, the contract
 9 amount, and any applicable charges), a payment schedule that
 10 lists:
 11 (A) the dates; and
 12 (B) the amounts assignable by the consumer claimant to
 13 the CPAP provider as of each date listed (regardless of
 14 whether and when such amounts are actually paid or
 15 assigned, depending on the outcome of the consumer's civil
 16 proceeding and the date on which any proceeds from the
 17 civil proceeding become available for disbursement);
 18 beginning with the date that is one hundred eighty (180) days
 19 after the funding date, continuing every one hundred eighty
 20 (180) days thereafter, and ending with the date the amounts
 21 are actually paid or assigned to the CPAP provider.
 22 (c) A CPAP contract must contain, in text that is surrounded by
 23 a box, a statement setting forth a right of rescission that allows the
 24 consumer claimant to cancel the contract without penalty or
 25 further obligation if the consumer claimant does either of the
 26 following:
 27 (1) Not later than five (5) days after the funding date, returns
 28 to the CPAP provider the full funded amount by hand
 29 delivering the CPAP provider's uncashed check to the CPAP
 30 provider's business location.
 31 (2) Mails, to the address specified in the CPAP contract and
 32 by insured, certified, or registered United States mail:
 33 (A) a notice of cancellation; and
 34 (B) the full funded amount, in the form of:
 35 (i) the CPAP provider's uncashed check;
 36 (ii) a registered or certified check; or
 37 (iii) a money order;
 38 in a mailing that is postmarked not later than five (5) days
 39 after the funding date.
 40 (d) A CPAP contract must contain, in text that is printed in all
 41 capital letters and surrounded by a box, the following statement:
 42 "THE FUNDED AMOUNT [or other term used by the CPAP



1 provider in the CPAP contract], THE CONTRACT
 2 AMOUNT [or other term used by the CPAP provider in the
 3 CPAP contract], AND THE _____ [insert names of any
 4 charges the repayment of which is to be sourced from the
 5 proceeds of the consumer claimant's civil proceeding] ARE
 6 PAYABLE ONLY FROM THE PROCEEDS OF YOUR
 7 CIVIL PROCEEDING, AND ONLY TO THE EXTENT
 8 THAT THERE ARE AVAILABLE PROCEEDS FROM
 9 YOUR CIVIL PROCEEDING. YOU WILL NOT OWE
 10 [insert name of CPAP provider] ANYTHING IF THERE
 11 ARE NO PROCEEDS FROM YOUR CIVIL PROCEEDING,
 12 UNLESS YOU OR YOUR ATTORNEY HAVE VIOLATED
 13 ANY MATERIAL TERM OF THIS CONTRACT OR YOU
 14 HAVE COMMITTED FRAUD AGAINST [insert name of
 15 CPAP provider]."

16 (e) A CPAP contract must contain the following statement
 17 immediately above the signature line for the consumer claimant:

18 "Do not sign this contract before you read it completely or if
 19 it contains any blank spaces. You are entitled to a completely
 20 filled-in copy of the contract. Before you sign this contract,
 21 you should obtain the advice of an attorney. Depending on
 22 your circumstances, you may want to consult an accountant,
 23 a tax consultant, a public or private benefits planning
 24 professional, or a financial professional. By signing this
 25 contract, you acknowledge that if you are represented by an
 26 attorney in your civil proceeding, your attorney has provided
 27 no tax, accounting, public or private benefits planning, or
 28 financial advice concerning this transaction between you and
 29 (insert name of CPAP provider)."

30 Sec. 3. (a) If a CPAP contract is executed before the consumer
 31 claimant files a complaint or similar demand in the consumer
 32 claimant's civil proceeding, the consumer claimant shall:

33 (1) file with the court or other tribunal; and
 34 (2) serve on the opposing party;
 35 a copy of the executed CPAP contract along with the consumer's
 36 filing and service of the complaint or similar demand.

37 (b) If a CPAP contract is executed after the consumer claimant
 38 files a complaint or similar demand in the consumer claimant's
 39 civil proceeding, the consumer claimant shall:

40 (1) file with the court or other tribunal; and
 41 (2) serve on the opposing party;
 42 a copy of the executed CPAP contract not later than ten (10) days



1 after the CPAP contract is executed.

2 Sec. 4. (a) The department may adopt rules under IC 4-22-2,
3 including emergency rules under IC 4-22-2-37.1, to implement this
4 chapter. In adopting rules or emergency rules under this section,
5 the department may prescribe a standard CPAP contract form
6 that complies with this chapter for use by CPAP providers in
7 entering into CPAP transactions with consumer claimants. Rules
8 or emergency rules adopted by the department to prescribe a
9 standard CPAP contract form must take effect by a date that will
10 enable such a form to be available to CPAP providers beginning
11 July 1, 2014.

12 (b) An emergency rule adopted by the department under
13 IC 4-22-2-37.1 to implement this chapter expires on the date a rule
14 that supersedes the emergency rule is adopted by the department
15 under IC 4-22-2-24 through IC 4-22-2-36.

16 Chapter 4. Requirements and Prohibitions

17 Sec. 1. A CPAP provider shall transfer the funded amount to the
18 consumer claimant not later than the funding date, as set forth in
19 the CPAP contract, by one (1) of the following means:

- 20 (1) Personal delivery.
21 (2) Wire, Automated Clearing House, or other electronic
22 means.
23 (3) Insured, certified, or registered United States mail.

24 Sec. 2. Subject to section 3 of this chapter, the contract amount
25 in a CPAP transaction:

- 26 (1) must be calculated as a predetermined amount:
27 (A) according to a method, formula, or multiplier
28 determined by the CPAP provider, as described in
29 IC 27-20-3-2(b)(4)(B); and
30 (B) based on one hundred eighty (180) day intervals
31 measured from the funding date through the date of
32 assignment to the CPAP provider, as described in
33 IC 27-20-3-2(b)(5); and
34 (2) may not be determined as a percentage of the consumer
35 claimant's recovery from the consumer claimant's civil
36 proceeding.

37 Sec. 3. (a) Regardless of the contract amount that results from
38 the calculation described in section 2(1) of this chapter, a CPAP
39 provider may not assess or collect, with respect to any one (1)
40 CPAP transaction, a contract amount that exceeds twenty-five
41 percent (25%) of the funded amount.

42 (b) A CPAP provider may not:



1 (1) structure a CPAP transaction arising from the same civil
2 proceeding:

3 (A) as more than one (1) transaction; or

4 (B) in any other manner; or

5 (2) impose any charges under the CPAP contract, whether
6 assignable from the proceeds of the consumer claimant's civil
7 proceeding or otherwise payable to the CPAP provider, in an
8 amount that grossly exceeds the value of the services provided
9 or costs incurred by the CPAP provider in consideration of
10 the charges;

11 for the purpose of avoiding the prohibition set forth in subsection
12 (a).

13 Sec. 4. (a) Subject to section 5(5) of this chapter, and except as
14 otherwise provided in the CPAP contract and agreed to by the
15 consumer claimant and the consumer claimant's attorney, a
16 contingent right to receive a share of the potential proceeds of a
17 consumer claimant's civil proceeding (whether the proceeds result
18 from a judgment, a settlement, or some other resolution) may be
19 sold, assigned, pledged, or transferred by the consumer claimant.

20 (b) A CPAP provider's right to receive a share of the potential
21 proceeds of a consumer claimant's civil proceeding is subordinate
22 only to any:

23 (1) attorney's lien;

24 (2) medical liens; or

25 (3) statutory liens;

26 related to the consumer claimant's civil proceeding. All other liens
27 take priority according to when they attach or by normal operation
28 of law.

29 Sec. 5. A CPAP provider may not do any of the following:

30 (1) Pay or offer to pay any:

31 (A) attorney or law firm;

32 (B) medical or health care provider;

33 (C) chiropractor; or

34 (D) physical therapist or occupational therapist;

35 or any of their employees, for referring a consumer claimant
36 to the CPAP provider or the CPAP provider's business.

37 (2) Accept any commissions, referral fees, rebates, or other
38 forms of consideration from any:

39 (A) attorney or law firm;

40 (B) medical or health care provider;

41 (C) chiropractor; or

42 (D) physical therapist or occupational therapist;



- 1 or any of their employees, in connection with a CPAP
 2 transaction or a potential CPAP transaction.
- 3 (3) Advertise or communicate in Indiana any materially false
 4 or misleading information concerning the CPAP provider's
 5 products and services, whether such advertisement or
 6 communication is by mail, brochure, telephone, print, radio,
 7 television, the Internet, or electronic means.
- 8 (4) Refer, in connection with a CPAP transaction, a consumer
 9 claimant to any:
- 10 (A) attorney or law firm;
 11 (B) medical or health care provider;
 12 (C) chiropractor; or
 13 (D) physical therapist or occupational therapist;
- 14 or any of their employees. However, if a consumer claimant
 15 who has consulted the CPAP provider or entered into a CPAP
 16 transaction with the CPAP provider needs legal
 17 representation in connection with the consumer complaint's
 18 civil proceeding or the CPAP transaction, the CPAP provider
 19 may refer the consumer claimant to a local or state bar
 20 association's attorney referral service.
- 21 (5) Knowingly enter into a CPAP transaction with a consumer
 22 claimant who has previously entered into a CPAP transaction
 23 with another CPAP provider in connection with the same civil
 24 proceeding, unless the second CPAP provider first pays to, or
 25 purchases from, the original CPAP provider:
- 26 (A) any outstanding amounts (including the funded
 27 amount, the contract amount, and any charges) under the
 28 first CPAP provider's CPAP contract with the consumer
 29 claimant; or
 30 (B) any other amount agreed to by the CPAP providers.
- 31 However, two (2) or more CPAP providers may agree to
 32 contemporaneously enter into CPAP transactions with a
 33 consumer claimant in connection with the same civil
 34 proceeding, if the consumer claimant and the consumer
 35 claimant's attorney consent in writing to the arrangement.
- 36 (6) Make, or receive the right to make, any decisions with
 37 respect to the conduct, settlement, or resolution of a consumer
 38 claimant's civil proceeding. However, a CPAP provider may
 39 request from a consumer claimant or the consumer claimant's
 40 attorney periodic updates or other information concerning the
 41 consumer claimant's civil proceeding, if the nature, timing,
 42 and frequency of the requests:



- 1 (A) are set forth in the CPAP contract; and
 2 (B) are not such as to be harassing to the consumer
 3 claimant or the consumer claimant's attorney.
 4 A CPAP provider's right to request updates or other
 5 information under this subdivision does not limit, waive, or
 6 abrogate the scope or nature of, and is subject to, any
 7 applicable statutory or common law privilege, including the
 8 work product doctrine or the attorney client privilege.
 9 (7) Pay or offer to pay for court costs, filing fees, or attorney's
 10 fees in connection with a consumer claimant's civil proceeding
 11 using funds from the CPAP transaction or any other funds.
 12 Sec. 6. (a) An attorney or a law firm retained by a consumer
 13 claimant in a civil proceeding on which a CPAP transaction is
 14 based may not have a financial interest in the CPAP provider that
 15 enters into the CPAP transaction with the consumer claimant.
 16 (b) An attorney or a law firm that refers a consumer claimant
 17 to the attorney or law firm retained by a consumer claimant in a
 18 civil proceeding on which a CPAP transaction is based may not
 19 have a financial interest in the CPAP provider that enters into the
 20 CPAP transaction with the consumer claimant.
 21 Sec. 7. (a) The department may adopt rules under IC 4-22-2,
 22 including emergency rules under IC 4-22-2-37.1, to implement this
 23 chapter. In adopting rules or emergency rules under this section,
 24 the department may set caps or other limits on the charges that a
 25 CPAP provider may impose for specified services provided, or
 26 costs incurred, by a CPAP provider under a CPAP contract, as
 27 described in section 3(b)(2) of this chapter.
 28 (b) An emergency rule adopted by the department under
 29 IC 4-22-2-37.1 to implement this chapter expires on the date a rule
 30 that supersedes the emergency rule is adopted by the department
 31 under IC 4-22-2-24 through IC 4-22-2-36.
 32 Chapter 5. Violations
 33 Sec. 1. A person that violates this article commits an unfair and
 34 deceptive act or practice in the business of insurance under
 35 IC 27-4-1-4 and is subject to the penalties and procedures set forth
 36 in IC 27-4-1.
 37 SECTION 7. An emergency is declared for this act.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred House Bill 1205, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1205 as introduced.)

Committee Vote: Yeas 10, Nays 2

Representative Lehman

