

HOUSE BILL No. 1340

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-21.5-3; IC 24-4.3; IC 24-4.5-1-202.

Synopsis: Civil proceeding advance payment transactions. Defines a "civil proceeding advance payment transaction", or "CPAP transaction", as a nonrecourse transaction in which a person (CPAP provider) provides to a consumer claimant in a civil proceeding 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 financial institutions (department). Sets forth requirements, including disclosure requirements, for a contract (CPAP contract) entered into by a CPAP provider and a consumer claimant. Sets forth certain requirements and prohibitions with respect to CPAP transactions, including specifications for the CPAP contract amount. Permits the department to take certain actions to: (1) determine compliance with; and (2) pursue remedies for violations of; these provisions. Permits the department to adopt rules to implement these provisions. Specifies that the Uniform Consumer Credit Code does not apply to a CPAP transaction.

Effective: Upon passage.

Lehman, Austin

January 22, 2015, read first time and referred to Committee on Financial Institutions.



First Regular Session of the 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1340



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 4-21.5-3-6, AS AMENDED BY P.L.153-2011,
- 2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 UPON PASSAGE]: Sec. 6. (a) Notice shall be given under this section
- 4 concerning the following:
- 5 (1) A safety order under IC 22-8-1.1.
- 6 (2) Any order that:
- 7 (A) imposes a sanction on a person or terminates a legal right,
- 8 duty, privilege, immunity, or other legal interest of a person;
- 9 (B) is not described in section 4 or 5 of this chapter or
- 10 IC 4-21.5-4; and
- 11 (C) by statute becomes effective without a proceeding under
- 12 this chapter if there is no request for a review of the order
- 13 within a specified period after the order is issued or served.
- 14 (3) A notice of program reimbursement or equivalent
- 15 determination or other notice regarding a hospital's



1 reimbursement issued by the office of Medicaid policy and
 2 planning or by a contractor of the office of Medicaid policy and
 3 planning regarding a hospital's year end cost settlement.

4 (4) A determination of audit findings or an equivalent
 5 determination by the office of Medicaid policy and planning or by
 6 a contractor of the office of Medicaid policy and planning arising
 7 from a Medicaid postpayment or concurrent audit of a hospital's
 8 Medicaid claims.

9 (5) A license revocation **or suspension** under:

10 (A) IC 24-4.4-2;

11 (B) IC 24-4.5-3;

12 (C) IC 28-1-29;

13 (D) IC 28-7-5;

14 (E) IC 28-8-4; or

15 (F) IC 28-8-5.

16 (6) An order issued by the:

17 (A) division of aging or the bureau of aging services; or

18 (B) division of disability and rehabilitative services or the
 19 bureau of developmental disabilities services;

20 against providers regulated by the division of aging or the bureau
 21 of developmental disabilities services and not licensed by the
 22 state department of health under IC 16-27 or IC 16-28.

23 **(7) The denial, suspension, or revocation of a certificate of**
 24 **registration under IC 24-4.3.**

25 (b) When an agency issues an order described by subsection (a), the
 26 agency shall give notice to the following persons:

27 (1) Each person to whom the order is specifically directed.

28 (2) Each person to whom a law requires notice to be given.

29 A person who is entitled to notice under this subsection is not a party
 30 to any proceeding resulting from the grant of a petition for review
 31 under section 7 of this chapter unless the person is designated as a
 32 party in the record of the proceeding.

33 (c) The notice must include the following:

34 (1) A brief description of the order.

35 (2) A brief explanation of the available procedures and the time
 36 limit for seeking administrative review of the order under section
 37 7 of this chapter.

38 (3) Any other information required by law.

39 (d) An order described in subsection (a) is effective fifteen (15) days
 40 after the order is served, unless a statute other than this article specifies
 41 a different date or the agency specifies a later date in its order. This
 42 subsection does not preclude an agency from issuing, under



1 IC 4-21.5-4, an emergency or other temporary order concerning the
2 subject of an order described in subsection (a).

3 (e) If a petition for review of an order described in subsection (a) is
4 filed within the period set by section 7 of this chapter and a petition for
5 stay of effectiveness of the order is filed by a party or another person
6 who has a pending petition for intervention in the proceeding, an
7 administrative law judge shall, as soon as practicable, conduct a
8 preliminary hearing to determine whether the order should be stayed in
9 whole or in part. The burden of proof in the preliminary hearing is on
10 the person seeking the stay. The administrative law judge may stay the
11 order in whole or in part. The order concerning the stay may be issued
12 after an order described in subsection (a) becomes effective. The
13 resulting order concerning the stay shall be served on the parties and
14 any person who has a pending petition for intervention in the
15 proceeding. It must include a statement of the facts and law on which
16 it is based.

17 SECTION 2. IC 4-21.5-3-7, AS AMENDED BY P.L.6-2012,
18 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 UPON PASSAGE]: Sec. 7. (a) To qualify for review of a personnel
20 action to which IC 4-15-2.2 applies, a person must comply with
21 IC 4-15-2.2-42. To qualify for review of any other order described in
22 section 4, 5, or 6 of this chapter, a person must petition for review in a
23 writing that does the following:

24 (1) States facts demonstrating that:

25 (A) the petitioner is a person to whom the order is specifically
26 directed;

27 (B) the petitioner is aggrieved or adversely affected by the
28 order; or

29 (C) the petitioner is entitled to review under any law.

30 (2) Includes, with respect to determinations of notice of program
31 reimbursement and audit findings described in section 6(a)(3) and
32 6(a)(4) of this chapter, a statement of issues that includes:

33 (A) the specific findings, action, or determination of the office
34 of Medicaid policy and planning or of a contractor of the
35 office of Medicaid policy and planning from which the
36 provider is appealing;

37 (B) the reason the provider believes that the finding, action, or
38 determination of the office of Medicaid policy and planning or
39 of a contractor of the office of Medicaid policy and planning
40 was in error; and

41 (C) with respect to each finding, action, or determination of
42 the office of Medicaid policy and planning or of a contractor



- 1 of the office of Medicaid policy and planning, the statutes or
 2 rules that support the provider's contentions of error.
 3 Not more than thirty (30) days after filing a petition for review
 4 under this section, and upon a finding of good cause by the
 5 administrative law judge, a person may amend the statement of
 6 issues contained in a petition for review to add one (1) or more
 7 additional issues.
 8 (3) Is filed:
 9 (A) with respect to an order described in section 4, 5, 6(a)(1),
 10 6(a)(2), ~~or 6(a)(5)~~, **or 6(a)(7)** of this chapter, with the ultimate
 11 authority for the agency issuing the order within fifteen (15)
 12 days after the person is given notice of the order or any longer
 13 period set by statute; or
 14 (B) with respect to a determination described in section 6(a)(3)
 15 or 6(a)(4) of this chapter, with the office of Medicaid policy
 16 and planning not more than one hundred eighty (180) days
 17 after the hospital is provided notice of the determination.
 18 The issuance of an amended notice of program reimbursement by
 19 the office of Medicaid policy and planning does not extend the
 20 time within which a hospital must file a petition for review from
 21 the original notice of program reimbursement under clause (B),
 22 except for matters that are the subject of the amended notice of
 23 program reimbursement.
 24 If the petition for review is denied, the petition shall be treated as a
 25 petition for intervention in any review initiated under subsection (d).
 26 (b) If an agency denies a petition for review under subsection (a)
 27 and the petitioner is not allowed to intervene as a party in a proceeding
 28 resulting from the grant of the petition for review of another person, the
 29 agency shall serve a written notice on the petitioner that includes the
 30 following:
 31 (1) A statement that the petition for review is denied.
 32 (2) A brief explanation of the available procedures and the time
 33 limit for seeking administrative review of the denial under
 34 subsection (c).
 35 (c) An agency shall assign an administrative law judge to conduct
 36 a preliminary hearing on the issue of whether a person is qualified
 37 under subsection (a) to obtain review of an order when a person
 38 requests reconsideration of the denial of review in a writing that:
 39 (1) states facts demonstrating that the person filed a petition for
 40 review of an order described in section 4, 5, or 6 of this chapter;
 41 (2) states facts demonstrating that the person was denied review
 42 without an evidentiary hearing; and



1 (3) is filed with the ultimate authority for the agency denying the
 2 review within fifteen (15) days after the notice required by
 3 subsection (b) was served on the petitioner.

4 Notice of the preliminary hearing shall be given to the parties, each
 5 person who has a pending petition for intervention in the proceeding,
 6 and any other person described by section 5(d) of this chapter. The
 7 resulting order must be served on the persons to whom notice of the
 8 preliminary hearing must be given and include a statement of the facts
 9 and law on which it is based.

10 (d) If a petition for review is granted, the petitioner becomes a party
 11 to the proceeding and the agency shall assign the matter to an
 12 administrative law judge or certify the matter to another agency for the
 13 assignment of an administrative law judge (if a statute transfers
 14 responsibility for a hearing on the matter to another agency). The
 15 agency granting the administrative review or the agency to which the
 16 matter is transferred may conduct informal proceedings to settle the
 17 matter to the extent allowed by law.

18 SECTION 3. IC 24-4.3 IS ADDED TO THE INDIANA CODE AS
 19 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON
 20 PASSAGE]:

21 **ARTICLE 4.3. CIVIL PROCEEDING ADVANCE PAYMENT**
 22 **TRANSACTIONS**

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

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

- 25 (1) civil proceeding advance payment transactions; and
 26 (2) civil proceeding advance payment contracts;

27 offered or entered into after June 30, 2015.

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

- 30 (1) is imposed by a CPAP provider and payable or assignable
 31 by or on behalf of a consumer claimant; and
 32 (2) is in addition to the funded amount and the contract
 33 amount;

34 regardless of the term used by the CPAP provider in the CPAP
 35 contract to identify the amount, or of how the amount is
 36 determined or calculated by the CPAP provider.

37 (b) The term includes any:

- 38 (1) administrative, origination, or underwriting fee;
 39 (2) case review, case servicing, or document management fee;
 40 or
 41 (3) other fee related to services provided or costs incurred by
 42 the CPAP provider in connection with the CPAP transaction;



1 imposed by the CPAP provider and payable or assignable by or on
 2 behalf of the consumer claimant, regardless of the term used by the
 3 CPAP provider in the CPAP contract to identify the amount, or of
 4 how the amount is determined or calculated by the CPAP provider.

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

- 6 (1) a civil action;
 7 (2) a mediation, an arbitration, or any other alternative
 8 dispute resolution proceeding; or
 9 (3) an administrative proceeding before:
 10 (A) an agency or instrumentality of the state; or
 11 (B) a political subdivision, or an agency or instrumentality
 12 of a political subdivision, of the state;

13 that is filed in, or is under the jurisdiction of, a court with
 14 jurisdiction in Indiana, a tribunal in Indiana, or an agency or
 15 instrumentality described in subdivision (3) in Indiana.

16 (b) The term includes all proceedings arising out of or relating
 17 to the proceeding described in subsection (a), including any:

- 18 (1) proceedings on appeal or remand; and
 19 (2) enforcement, ancillary, or parallel proceedings.

20 Sec. 4. As used in this article, "civil proceeding advance
 21 payment contract", or "CPAP contract", means a contract for a
 22 CPAP transaction that a CPAP provider enters into, or offers to
 23 enter into, with a consumer claimant.

24 Sec. 5. (a) As used in this article, "civil proceeding advance
 25 payment provider", or "CPAP provider", means a person that:

- 26 (1) enters into, or offers to enter into, a CPAP transaction
 27 with a consumer claimant in connection with a civil
 28 proceeding; and
 29 (2) is registered with, or is required to be registered with, the
 30 department under IC 24-4.3-2.

31 (b) The term does not include any of the following:

- 32 (1) An immediate family member of a consumer claimant.
 33 (2) A financial institution, a creditor subject to IC 24-4.5, or
 34 any other person:
 35 (A) that provides financing to a CPAP provider; or
 36 (B) to whom a CPAP provider grants a security interest or
 37 assigns any rights or interest in a CPAP transaction.

- 38 (3) An attorney, an accountant, a tax consultant, a public or
 39 private benefits planning professional, or a financial
 40 professional who provides services to a consumer claimant in
 41 connection with a civil proceeding.

42 Sec. 6. (a) As used in this article, "civil proceeding advance



1 payment transaction", or "CPAP transaction", means a
 2 nonrecourse transaction in which a CPAP provider provides a
 3 funded amount to a consumer claimant to use for any purpose
 4 other than prosecuting the consumer claimant's civil proceeding,
 5 if the repayment of the funded amount is:

6 (1) required only if the consumer claimant prevails in the civil
 7 proceeding; and

8 (2) sourced from the proceeds of the civil proceeding, whether
 9 the proceeds result from a judgment, a settlement, or some
 10 other resolution.

11 (b) The term includes a transaction:

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

13 (2) in which the CPAP provider purchases from the consumer
 14 claimant a contingent right to receive a share of the potential
 15 proceeds of the consumer claimant's civil proceeding, whether
 16 the proceeds result from a judgment, a settlement, or some
 17 other resolution.

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

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

22 (2) who:

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

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

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

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

28 (1) in addition to the funded amount;

29 (2) payable or assignable to the CPAP provider only if the
 30 consumer claimant prevails in the consumer claimant's civil
 31 proceeding; and

32 (3) sourced from the proceeds of the civil proceeding, whether
 33 the proceeds result from a judgment, a settlement, or some
 34 other resolution;

35 regardless of the term used by the CPAP provider in the CPAP
 36 contract to identify the amount, or of how the amount is
 37 determined or calculated by the CPAP provider.

38 (b) The term does not include charges.

39 Sec. 9. As used in this article, "department" refers to the
 40 members of the department of financial institutions.

41 Sec. 10. As used in this article, "director" refers to the director
 42 of the department of financial institutions or the director's



- 1 designee.
- 2 **Sec. 11. (a) As used in this article, "funded amount", with**
 3 **respect to a CPAP transaction, means the amount of money:**
 4 **(1) that is provided to the consumer claimant by the CPAP**
 5 **provider; and**
 6 **(2) the repayment of which is:**
 7 **(A) required only if the consumer claimant prevails in the**
 8 **consumer claimant's civil proceeding; and**
 9 **(B) sourced from the proceeds of the civil proceeding,**
 10 **whether the proceeds result from a judgment, a settlement,**
 11 **or some other resolution;**
 12 **regardless of the term used by the CPAP provider in the CPAP**
 13 **contract to identify the amount.**
- 14 **(b) In the case of a CPAP transaction described in section 6(b)**
 15 **of this chapter, the term means the price:**
 16 **(1) that is paid by the CPAP provider in purchasing from the**
 17 **consumer claimant a contingent right to receive a share of the**
 18 **potential proceeds of the consumer claimant's civil**
 19 **proceeding; and**
 20 **(2) the amount of which must be repaid only:**
 21 **(A) if the consumer claimant prevails in the consumer**
 22 **claimant's civil proceeding; and**
 23 **(B) from the proceeds of the civil proceeding, whether the**
 24 **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.**
- 28 **(c) The term does not include:**
 29 **(1) the contract amount; or**
 30 **(2) charges.**
- 31 **Sec. 12. As used in this article, "funding date", with respect to**
 32 **a CPAP transaction, means the date on which a CPAP provider**
 33 **transfers the funded amount to the consumer claimant by:**
 34 **(1) personal delivery;**
 35 **(2) wire, automated clearing house, or other electronic means;**
 36 **or**
 37 **(3) insured, certified, or registered United States mail.**
- 38 **Chapter 2. Registration of CPAP Providers With the**
 39 **Department**
- 40 **Sec. 1. Except as provided in section 2(g) of this chapter, after**
 41 **June 30, 2015, a person may not enter into, or offer to enter into,**
 42 **a CPAP transaction with a consumer claimant, or otherwise**



1 engage in business as a CPAP provider:

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

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

5 Sec. 2. (a) An applicant for a certificate of registration under
6 this chapter shall file an application with the department in the
7 form and manner prescribed by the director. An application form
8 prescribed by the director under this chapter must require the
9 applicant to provide the information that the director determines
10 is necessary to evaluate the character and fitness of the applicant.

11 (b) The department may issue a certificate of registration under
12 this chapter if the department finds that an applicant's business
13 will be operated honestly and fairly within the purposes of this
14 article. If the department denies an application under this chapter,
15 the director shall provide to the applicant a written notice stating
16 that the application has been denied and setting forth the reasons
17 for the denial. In rules adopted under:

18 (1) section 4 of this chapter; or

19 (2) IC 24-4.3-5-5;

20 the department may set forth circumstances under which a
21 certificate issued under this chapter may be revoked or suspended
22 for cause, including the failure of any applicant or certificate
23 holder to pay an application fee or a renewal fee described in
24 subsection (f). A notice of a denial, revocation, or suspension issued
25 by the department under this subsection is effective in accordance
26 with IC 4-21.5-3-6(d).

27 (c) Upon written request, an applicant for a certificate of
28 registration under this chapter is entitled to an administrative
29 review, in the manner provided in IC 4-21.5, of the issue of the
30 applicant's qualifications for a certificate of registration under this
31 chapter if either of the following applies:

32 (1) The director provides to the applicant a written notice that
33 the applicant's application has been denied, as described in
34 subsection (b), and the applicant files a timely request for a
35 review under IC 4-21.5-3-7.

36 (2) The department does not issue a decision on the
37 applicant's application not later than sixty (60) days after the
38 date the application is filed, and the applicant files a request
39 for an administrative review in accordance with the
40 procedures set forth in IC 4-21.5-3-7 not later than
41 seventy-five (75) days after the date the application is filed.

42 (d) A certificate of registration issued by the department under



1 this chapter must be renewed with the department on the dates and
 2 in the manner and form prescribed by the director, but not less
 3 frequently than every two (2) years.

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

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

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

7 is or becomes inaccurate or incomplete in a material respect, the
 8 applicant or registered CPAP provider promptly shall file a
 9 correcting amendment with the department in the form and
 10 manner prescribed by the director.

11 (f) The department may establish, in an amount fixed by the
 12 department under IC 28-11-3-5, either of the following to cover the
 13 department's expenses in administering this article:

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

16 (2) A renewal fee that a registered CPAP provider must
 17 submit with a renewal form or application under subsection
 18 (d).

19 The department may impose a fee under IC 28-11-3-5 for each day
 20 that an application fee or a renewal fee, or any related documents
 21 that are required to be submitted with an initial application or a
 22 renewal application, are delinquent.

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

24 (1) before May 13, 2015, enters into one (1) or more CPAP
 25 transactions that are:

26 (A) made with a consumer claimant in connection with a
 27 civil proceeding; and

28 (B) outstanding on July 1, 2015; and

29 (2) submits an application for registration under this chapter
 30 to the department after June 30, 2015, and before January 1,
 31 2016;

32 may enter into, or offer to enter into, a CPAP transaction with a
 33 consumer claimant, or otherwise engage in business as a CPAP
 34 provider, while the person's application for registration under this
 35 chapter is pending with the department. However, if the
 36 department denies the person's application under this chapter, the
 37 person may not enter into, or offer to enter into, any new CPAP
 38 transaction during the period beginning on the effective date of the
 39 department's denial under subsection (b) and ending on the
 40 effective date of any certificate of registration subsequently issued
 41 to the person by the department under this chapter, subject to the
 42 person's right to a review under subsection (c) and to any right to



1 a stay or an appeal of the denial available under IC 4-21.5. A
 2 CPAP transaction entered into by the person before the effective
 3 date of the department's denial under subsection (b) is not subject
 4 to this article, and a CPAP contract entered into by the person and
 5 a consumer claimant before the effective date of the department's
 6 denial under subsection (b) remains in effect according to its terms,
 7 notwithstanding the division's denial of an application described in
 8 subdivision (2).

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

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

- 14 (1) be in a form prescribed by the director;
 15 (2) be in effect during the term of the certificate of
 16 registration issued under this chapter;
 17 (3) be payable to the department for the benefit of:
 18 (A) the state; and
 19 (B) consumer claimants who enter into a CPAP transaction
 20 with the CPAP provider;
 21 (4) be in an amount determined by the director, but not
 22 greater than fifty thousand dollars (\$50,000); and
 23 (5) have payment conditioned upon the CPAP provider's or
 24 any of the CPAP provider's employees' or agents'
 25 noncompliance with or violation of this article or other
 26 applicable federal or state laws or regulations.

27 (c) Beginning with the first renewal of a certificate of
 28 registration under this chapter, for each renewal period that a
 29 registered CPAP provider continues to engage in business as a
 30 CPAP provider in connection with any civil proceedings, the
 31 registered CPAP provider shall file a new or an additional surety
 32 bond in an amount that ensures that the registered CPAP
 33 provider's surety bond under this section is equal to the amount
 34 determined by the director under subsection (b)(4).

35 (d) If the principal amount of a surety bond required under this
 36 section is reduced by payment of a claim or judgment, the
 37 registered CPAP provider for whom the bond is issued shall
 38 immediately notify the director of the reduction and, not later than
 39 thirty (30) days after notice by the director, file a new or an
 40 additional surety bond in an amount set by the director. The
 41 amount of the new or additional bond set by the director must be
 42 at least the amount of the bond before payment of the claim or



1 judgment.

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

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

9 (g) The director may obtain satisfaction from a surety bond
10 issued under this section if the director incurs expenses, issues a
11 final order, or recovers a final judgment under this chapter.

12 Sec. 4. (a) The department may adopt rules under IC 4-22-2,
13 including emergency rules adopted in the manner provided by
14 IC 4-22-2-37.1, to implement this chapter. Rules or emergency
15 rules adopted by the department under this section must take effect
16 by a date that will enable a person to apply to the department for
17 a certificate of registration under this chapter beginning July 1,
18 2015.

19 (b) Notwithstanding IC 4-22-2-37.1(g), an emergency rule
20 adopted by the department in the manner provided by
21 IC 4-22-2-37.1 to implement this chapter expires on the date a rule
22 that supersedes the emergency rule is adopted by the department
23 under IC 4-22-2-24 through IC 4-22-2-36.

24 Chapter 3. Contract Requirements and Disclosures

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

28 (1) is complete;

29 (2) has been filled in to include all amounts, dates, names,
30 terms, provisions, and information specific to the CPAP
31 contract, the CPAP provider, the consumer claimant, and the
32 consumer claimant's civil proceeding; and

33 (3) meets the requirements of this chapter, including the
34 disclosure requirements set forth in section 2 of this chapter.

35 (b) Each page of a CPAP contract must include the initials of the
36 consumer claimant.

37 (c) If a consumer claimant is represented by an attorney in the
38 civil proceeding on which a CPAP transaction is based, the CPAP
39 contract must contain a written acknowledgment by the attorney
40 that attests to the following:

41 (1) That to the best of the attorney's knowledge, all costs and
42 charges relating to the CPAP transaction have been disclosed



1 to the consumer claimant.

2 (2) That the attorney is being paid by the consumer claimant
3 on a contingency basis under a written fee agreement.

4 (3) That all proceeds of the civil proceeding will be disbursed
5 through:

6 (A) a trust account of the attorney; or

7 (B) a settlement fund established to receive the proceeds of
8 the civil proceeding on behalf of the consumer claimant.

9 (4) That the attorney is following the instructions of the
10 consumer claimant with respect to the CPAP transaction.

11 (5) That the attorney:

12 (A) has not received a referral fee or other consideration
13 from the CPAP provider; and

14 (B) agrees not to receive a referral fee or other
15 consideration from the CPAP provider at any time;

16 in connection with the CPAP transaction.

17 If the attorney retained by the consumer claimant in the consumer
18 claimant's civil proceeding does not complete the acknowledgment
19 required by this subsection, the CPAP contract, and the CPAP
20 transaction to which it pertains, are void. However, the CPAP
21 contract, and the CPAP transaction to which it pertains, remain
22 valid and enforceable if the consumer claimant or the attorney
23 terminates the representation. If, after the termination, the
24 consumer claimant retains a new attorney in connection with the
25 consumer claimant's civil proceeding, the new attorney must
26 complete an acknowledgment under this subsection for the CPAP
27 contract, and the CPAP transaction to which it pertains, to remain
28 valid and enforceable.

29 (d) A CPAP contract shall be executed in duplicate. Upon
30 execution of the CPAP contract, the CPAP provider shall:

31 (1) furnish one (1) duplicate original and at least one (1) copy
32 of the CPAP contract to the consumer claimant; and

33 (2) retain for the CPAP provider's records one (1) duplicate
34 original and at least one (1) copy of the CPAP contract.

35 (e) A CPAP provider may not use any CPAP contract form,
36 other than a standard CPAP contract form prescribed by the
37 department in rules adopted by the department under section 3 of
38 this chapter, in connection with a civil proceeding unless the
39 department first approves the CPAP contract form.

40 Sec. 2. (a) A CPAP contract must include the disclosures set
41 forth in this section. The disclosures required by this section:

42 (1) constitute material terms of the CPAP contract; and



- 1 **(2) must:**
 2 **(A) be set forth in at least 12 point boldface type and**
 3 **comply with any other typeface or stylistic specifications**
 4 **set forth in this section; and**
 5 **(B) be placed clearly and conspicuously within the**
 6 **contract.**
- 7 **(b) The front page of a CPAP contract must include, under**
 8 **appropriate headings, language specifying the following:**
- 9 **(1) The funded amount to be paid to the consumer claimant**
 10 **by the CPAP provider.**
- 11 **(2) The funding date.**
- 12 **(3) An itemization of all charges, whether assessed one (1)**
 13 **time or on a recurring basis, that are payable or assignable by**
 14 **the consumer claimant to the CPAP provider. For each**
 15 **charge listed, the CPAP provider shall identify whether the**
 16 **charge:**
- 17 **(A) is to be assigned by the consumer claimant to the**
 18 **CPAP provider from the proceeds, if any, of the consumer**
 19 **claimant's civil proceeding; or**
- 20 **(B) is otherwise payable by the consumer claimant to the**
 21 **CPAP provider.**
- 22 **Charges described in clause (A) must be included in the**
 23 **payment schedule described in subdivision (5). For charges**
 24 **described in clause (B), the CPAP provider shall set forth a**
 25 **separate payment schedule identifying the dates and amounts**
 26 **due.**
- 27 **(4) An identification of the following amounts to be assigned**
 28 **by the consumer claimant to the CPAP provider if the**
 29 **resolution of the consumer claimant's civil proceeding results**
 30 **in proceeds to the consumer claimant:**
- 31 **(A) The funded amount.**
- 32 **(B) The contract amount. In identifying the contract**
 33 **amount under this clause, it is sufficient for the CPAP**
 34 **provider to identify the method, formula, or multiplier (as**
 35 **required by IC 24-4.3-4-2(1)(A)) by which the contract**
 36 **amount will be determined as of the date on which the**
 37 **CPAP provider receives payment from the proceeds of the**
 38 **consumer claimant's civil proceeding.**
- 39 **(5) For amounts assignable by the consumer claimant to the**
 40 **CPAP provider from the proceeds of the consumer claimant's**
 41 **civil proceeding (including the funded amount, the contract**
 42 **amount, and any applicable charges), a payment schedule that**



- 1 **lists:**
- 2 **(A) the dates; and**
- 3 **(B) the amounts assignable by the consumer claimant to**
- 4 **the CPAP provider as of each date listed (regardless of**
- 5 **whether and when such amounts are actually paid or**
- 6 **assigned, depending on the outcome of the consumer's civil**
- 7 **proceeding and the date on which any proceeds from the**
- 8 **civil proceeding become available for disbursement);**
- 9 **beginning with the date that is one hundred eighty (180) days**
- 10 **after the funding date, continuing every one hundred eighty**
- 11 **(180) days thereafter, and ending with the date the amounts**
- 12 **are actually paid or assigned to the CPAP provider, as**
- 13 **required by IC 24-4.3-4-2(1)(B).**
- 14 **(c) A CPAP contract must contain, in text that is surrounded by**
- 15 **a box, a statement setting forth a right of rescission that allows the**
- 16 **consumer claimant to cancel the contract without penalty or**
- 17 **further obligation if the consumer claimant does either of the**
- 18 **following:**
- 19 **(1) Not later than five (5) days after the funding date, returns**
- 20 **to the CPAP provider the full funded amount by hand**
- 21 **delivering the CPAP provider's uncashed check to the CPAP**
- 22 **provider's business location.**
- 23 **(2) Mails, to the address specified in the CPAP contract and**
- 24 **by insured, certified, or registered United States mail:**
- 25 **(A) a notice of cancellation; and**
- 26 **(B) the full funded amount, in the form of:**
- 27 **(i) the CPAP provider's uncashed check;**
- 28 **(ii) a registered or certified check; or**
- 29 **(iii) a money order;**
- 30 **in a mailing that is postmarked not later than five (5) days**
- 31 **after the funding date.**
- 32 **(d) A CPAP contract must contain, in text that is printed in all**
- 33 **capital letters and surrounded by a box, the following statement:**
- 34 **"THE FUNDED AMOUNT (or other term used by the CPAP**
- 35 **provider in the CPAP contract), THE CONTRACT**
- 36 **AMOUNT (or other term used by the CPAP provider in the**
- 37 **CPAP contract), AND THE _____ (insert names of any**
- 38 **charges the repayment of which is to be sourced from the**
- 39 **proceeds of the consumer claimant's civil proceeding) ARE**
- 40 **PAYABLE ONLY FROM THE PROCEEDS OF YOUR**
- 41 **CIVIL PROCEEDING, AND ONLY TO THE EXTENT**
- 42 **THAT THERE ARE AVAILABLE PROCEEDS FROM**



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

14 **(e) A CPAP contract must contain a statement as to whether**
 15 **and under what circumstances:**

16 **(1) the consumer claimant's rights and obligations under the**
 17 **CPAP contract may be may be sold, assigned, pledged, or**
 18 **transferred by the consumer claimant and, if so, whether and**
 19 **at what point the consumer claimant must obtain the consent**
 20 **of, or provide notice to, the CPAP provider of such sale,**
 21 **assignment, pledge, or transfer; and**

22 **(2) the CPAP provider's rights and obligations under a CPAP**
 23 **contract may be sold, assigned, pledged, or transferred by the**
 24 **CPAP provider and, if so, whether and at what point the**
 25 **CPAP provider must obtain the consent of, or provide notice**
 26 **to, the consumer claimant of such sale, assignment, pledge, or**
 27 **transfer.**

28 **(f) A CPAP contract must contain a statement as to whether,**
 29 **how often, and under what circumstances the CPAP provider may**
 30 **request from the consumer claimant or the consumer claimant's**
 31 **attorney periodic updates or other information concerning the**
 32 **consumer claimant's civil proceeding, including any of the**
 33 **following documents or information that may be sought by the**
 34 **CPAP provider:**

35 **(1) Notice of any receipt by the consumer claimant or the**
 36 **consumer claimant's attorney of proceeds, or written**
 37 **promises to pay proceeds, from the civil proceeding.**

38 **(2) Copies of nonprivileged materials, including pleadings,**
 39 **notices, orders, motions, briefs, or other documents filed in**
 40 **the civil proceeding by any person or party.**

41 **(3) Documents or verbal information concerning**
 42 **nonprivileged matters or developments in connection with the**



1 civil proceeding.

2 (g) A CPAP contract must contain the following statement
3 immediately above the signature line for the consumer claimant:

4 "Do not sign this contract before you read it completely or if
5 it contains any blank spaces. You are entitled to a completely
6 filled in copy of this contract. Before you sign this contract,
7 you should obtain the advice of an attorney. Depending on
8 your circumstances, you may want to consult an accountant,
9 a tax consultant, a public or private benefits planning
10 professional, or a financial professional. By signing this
11 contract, you acknowledge that if you are represented by an
12 attorney in your civil proceeding, your attorney has provided
13 no tax, accounting, public or private benefits planning, or
14 financial advice concerning this transaction between you and
15 (insert name of CPAP provider).".

16 Sec. 3. (a) The department may adopt rules under IC 4-22-2,
17 including emergency rules adopted in the manner provided by
18 IC 4-22-2-37.1, to implement this chapter. In adopting rules or
19 emergency rules under this section, the department may prescribe
20 a standard CPAP contract form that complies with this chapter for
21 use by CPAP providers in entering into CPAP transactions with
22 consumer claimants. Rules or emergency rules adopted by the
23 department to prescribe a standard CPAP contract form must take
24 effect by a date that will enable such a form to be available to
25 CPAP providers beginning July 1, 2015.

26 (b) Notwithstanding IC 4-22-2-37.1(g), an emergency rule
27 adopted by the department in the manner provided by
28 IC 4-22-2-37.1 to implement this chapter expires on the date a rule
29 that supersedes the emergency rule is adopted by the department
30 under IC 4-22-2-24 through IC 4-22-2-36.

31 Chapter 4. Requirements and Prohibitions

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

- 35 (1) Personal delivery.
36 (2) Wire, automated clearing house, or other electronic
37 means.
38 (3) Insured, certified, or registered United States mail.

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

- 41 (1) must be calculated as a predetermined amount:
42 (A) according to a method, formula, or multiplier



- 1 determined by the CPAP provider, as described in
 2 IC 24-4.3-3-2(b)(4)(B); and
 3 (B) based on one hundred eighty (180) day intervals
 4 measured from the funding date through the date of
 5 assignment to the CPAP provider, as described in
 6 IC 24-4.3-3-2(b)(5);
 7 (2) may be based on, or determined as a percentage of, the
 8 funded amount; and
 9 (3) may not be determined as a percentage of the consumer
 10 claimant's recovery from the consumer claimant's civil
 11 proceeding.

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

17 (b) A CPAP provider may not:

- 18 (1) structure a CPAP transaction arising from the same civil
 19 proceeding:
 20 (A) as more than one (1) transaction; or
 21 (B) in any other manner; or
 22 (2) impose any charges under the CPAP contract, whether
 23 assignable from the proceeds of the consumer claimant's civil
 24 proceeding or otherwise payable to the CPAP provider, in an
 25 amount that:
 26 (A) exceeds any amount, percentage, limit, or cap
 27 concerning charges and prescribed by the department in
 28 rules adopted under section 7 of this chapter; or
 29 (B) grossly exceeds the value of the services provided or
 30 costs incurred by the CPAP provider in consideration of
 31 the charges;
 32 for the purpose of avoiding the prohibition set forth in
 33 subsection (a).

34 **Sec. 4. (a)** Subject to IC 24-4.3-3-2(e)(1) and except as otherwise
 35 provided in a CPAP contract and agreed to by a consumer
 36 claimant and the consumer claimant's attorney, a contingent right
 37 to receive a share of the potential proceeds of a consumer
 38 claimant's civil proceeding (whether the proceeds result from a
 39 judgment, a settlement, or some other resolution) may be sold,
 40 assigned, pledged, or transferred by the consumer claimant.

41 (b) Subject to IC 24-4.3-3-2(e)(2) and except as otherwise
 42 provided in a CPAP contract and agreed to by a consumer



1 claimant and the consumer claimant's attorney, a CPAP provider's
 2 rights and obligations under a CPAP contract may be sold,
 3 assigned, pledged, or transferred by the CPAP provider.

4 (c) A CPAP provider's right to receive a share of the potential
 5 proceeds of a consumer claimant's civil proceeding is subordinate
 6 only to any:

- 7 (1) attorney's lien;
- 8 (2) medical liens; or
- 9 (3) statutory liens;

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

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

14 (1) Pay or offer to pay any:

- 15 (A) attorney or law firm;
- 16 (B) medical or health care provider;
- 17 (C) chiropractor; or
- 18 (D) physical therapist or occupational therapist;

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

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

- 23 (A) attorney or law firm;
- 24 (B) medical or health care provider;
- 25 (C) chiropractor; or
- 26 (D) physical therapist or occupational therapist;

27 or any of their employees, in connection with a CPAP
 28 transaction or a potential CPAP transaction.

29 (3) Advertise or communicate in Indiana any materially false
 30 or misleading information concerning the CPAP provider's
 31 products and services, whether such an advertisement or
 32 communication is by mail, brochure, telephone, print, radio,
 33 television, the Internet, or electronic means.

34 (4) Refer, in connection with a CPAP transaction, a consumer
 35 claimant to any:

- 36 (A) attorney or law firm;
- 37 (B) medical or health care provider;
- 38 (C) chiropractor; or
- 39 (D) physical therapist or occupational therapist;

40 or any of their employees. However, if a consumer claimant
 41 who has consulted the CPAP provider or entered into a CPAP
 42 transaction with the CPAP provider needs legal



1 representation in connection with the consumer claimant's
 2 civil proceeding or the CPAP transaction, the CPAP provider
 3 may refer the consumer claimant to a local or state bar
 4 association's attorney referral service.

5 (5) Knowingly enter into a CPAP transaction with a consumer
 6 claimant who has previously entered into a CPAP transaction
 7 with another CPAP provider in connection with the same civil
 8 proceeding, unless the second CPAP provider first pays to, or
 9 purchases from, the original CPAP provider:

10 (A) any outstanding amounts (including the funded
 11 amount, the contract amount, and any charges) under the
 12 first CPAP provider's CPAP contract with the consumer
 13 claimant; or

14 (B) any other amount agreed to by the CPAP providers;
 15 except as otherwise prohibited in the CPAP contract between
 16 the original CPAP provider and the consumer claimant.
 17 However, two (2) or more CPAP providers may agree to
 18 contemporaneously enter into CPAP transactions with a
 19 consumer claimant in connection with the same civil
 20 proceeding, if the consumer claimant and the consumer
 21 claimant's attorney consent in writing to the arrangement.

22 (6) Make, or receive the right to make, any decisions with
 23 respect to the conduct, settlement, or resolution of a consumer
 24 claimant's civil proceeding. However, a CPAP provider may
 25 request from a consumer claimant or the consumer claimant's
 26 attorney periodic updates or other information concerning the
 27 consumer claimant's civil proceeding, if the nature, timing,
 28 and frequency of the requests:

29 (A) are set forth in the CPAP contract, as required by
 30 IC 24-4.3-3-2(f); and

31 (B) are not such as to be harassing to the consumer
 32 claimant or the consumer claimant's attorney.

33 A CPAP provider's right to request updates or other
 34 information under this subdivision does not limit, waive, or
 35 abrogate the scope or nature of, and is subject to, any
 36 applicable statutory or common law privilege, including the
 37 work product doctrine or the attorney client privilege.

38 (7) Pay or offer to pay for court costs, filing fees, or attorney's
 39 fees in connection with a consumer claimant's civil proceeding
 40 using funds from the CPAP transaction or any other funds.

41 Sec. 6. (a) An attorney or a law firm retained by a consumer
 42 claimant in a civil proceeding on which a CPAP transaction is



1 based may not have a financial interest in the CPAP provider that
2 enters into the CPAP transaction with the consumer claimant.

3 (b) An attorney or a law firm that refers a consumer claimant
4 to the attorney or law firm retained by a consumer claimant in a
5 civil proceeding on which a CPAP transaction is based may not
6 have a financial interest in the CPAP provider that enters into the
7 CPAP transaction with the consumer claimant.

8 Sec. 7. (a) The department may adopt rules under IC 4-22-2,
9 including emergency rules adopted in the manner provided by
10 IC 4-22-2-37.1, to implement this chapter. In adopting rules or
11 emergency rules under this section, the department may set caps
12 or other limits on the charges that a CPAP provider may impose
13 for specified services provided, or costs incurred, by a CPAP
14 provider under a CPAP contract, as described in section 3(b)(2) of
15 this chapter.

16 (b) Notwithstanding IC 4-22-2-37.1(g), an emergency rule
17 adopted by the department in the manner provided by
18 IC 4-22-2-37.1 to implement this chapter expires on the date a rule
19 that supersedes the emergency rule is adopted by the department
20 under IC 4-22-2-24 through IC 4-22-2-36.

21 Chapter 5. Violations

22 Sec. 1. For purposes of this chapter, a violation of, or
23 compliance with, this article includes a violation of, or compliance
24 with:

- 25 (1) the provisions set forth in this article;
26 (2) rules adopted by the department under this article;
27 (3) any policy, guidance document, or order adopted or issued
28 by the department in connection with this article; or
29 (4) any other state or federal law, regulation, or rule
30 applicable to CPAP transactions or CPAP providers.

31 Sec. 2. (a) The department may examine the books, accounts,
32 and records of a CPAP provider and may make investigations to
33 determine compliance with this article.

34 (b) A CPAP provider shall pay all reasonably incurred costs of
35 an examination under this section in accordance with the fee
36 schedule adopted under IC 28-11-3-5. A fee established by the
37 department under IC 28-11-3-5 may be charged for each day a fee
38 under this section is delinquent.

39 (c) To discover violations of this article or to secure information
40 necessary for the enforcement of this article, the department may
41 investigate any:

- 42 (1) CPAP provider that holds a registration certificate under



1 **this article; or**

2 **(2) person that the department suspects to be operating as a**
 3 **CPAP provider in Indiana:**

4 **(A) without a certificate of registration; or**

5 **(B) otherwise in violation of this article.**

6 **The department has all investigatory and enforcement authority**
 7 **under this chapter that the department has under IC 28-11 with**
 8 **respect to financial institutions. If the department conducts an**
 9 **investigation under this section, the registered CPAP provider or**
 10 **other person investigated shall pay all reasonably incurred costs of**
 11 **the investigation in accordance with the fee schedule adopted**
 12 **under IC 28-11-3-5.**

13 **(d) If a CPAP provider contracts with an outside vendor to**
 14 **provide a service that would otherwise be undertaken internally by**
 15 **the CPAP provider and be subject to the department's routine**
 16 **examination procedures, the person that provides the service to the**
 17 **CPAP provider shall, at the request of the director, submit to an**
 18 **examination by the department. If the director determines that an**
 19 **examination under this subsection is necessary or desirable, the**
 20 **examination may be made at the expense of the person to be**
 21 **examined. If the person to be examined under this subsection**
 22 **refuses to permit the examination to be made, the director may**
 23 **order any CPAP provider that receives services from the person**
 24 **refusing the examination to:**

25 **(1) discontinue receiving one (1) or more services from the**
 26 **person; or**

27 **(2) otherwise cease conducting business with the person.**

28 **Sec. 3. (a) If the department determines that a reasonable belief**
 29 **exists that a person is operating without a valid certificate of**
 30 **registration or in violation of this article, the department may**
 31 **investigate the person.**

32 **(b) If a person knowingly acts as a CPAP provider without a**
 33 **certificate of registration required by IC 24-4.3-2, any resulting**
 34 **CPAP contract or CPAP transaction entered into by the CPAP**
 35 **provider and a consumer claimant is void and the consumer**
 36 **claimant is not required to pay to the CPAP provider any amounts**
 37 **in connection with the CPAP contract or CPAP transaction,**
 38 **including the funded amount, the contract amount, or any charges.**
 39 **If the consumer claimant has paid to the CPAP provider any**
 40 **amounts in connection with the CPAP contract or CPAP**
 41 **transaction, the consumer claimant, or the department on behalf**
 42 **of the consumer claimant, is entitled to recover the amounts from**



1 the CPAP provider.

2 **Sec. 4. (a) If the department determines, after notice and an**
 3 **opportunity to be heard, that a person has violated this article, the**
 4 **department may, in addition to or instead of all other remedies**
 5 **available under this article, impose upon the person a civil penalty**
 6 **not greater than ten thousand dollars (\$10,000) for each violation.**

7 **(b) In addition to or instead of imposing a civil penalty under**
 8 **subsection (a), the department may bring a civil action against a**
 9 **person for violating this article.**

10 **(c) In an action brought under subsection (b), if the court finds**
 11 **that the defendant is guilty of violating this article, the court may**
 12 **assess a civil penalty not to exceed five thousand dollars (\$5,000)**
 13 **for each violation.**

14 **(d) Civil penalties collected under this section shall be deposited**
 15 **into the financial institutions fund established by IC 28-11-2-9.**

16 **Sec. 5. (a) The department may adopt rules under IC 4-22-2,**
 17 **including emergency rules adopted in the manner provided by**
 18 **IC 4-22-2-37.1, to implement this chapter.**

19 **(b) Notwithstanding IC 4-22-2-37.1(g), an emergency rule**
 20 **adopted by the department in the manner provided by**
 21 **IC 4-22-2-37.1 to implement this chapter expires on the date a rule**
 22 **that supersedes the emergency rule is adopted by the department**
 23 **under IC 4-22-2-24 through IC 4-22-2-36.**

24 SECTION 4. IC 24-4.5-1-202, AS AMENDED BY P.L.27-2012,
 25 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 UPON PASSAGE]: Sec. 202. (a) As used in this section, "balloon
 27 payment", with respect to a mortgage transaction, means any payment
 28 that:

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

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



- 1 (b) This article does not apply to the following:
- 2 (1) Extensions of credit to government or governmental agencies
- 3 or instrumentalities.
- 4 (2) The sale of insurance by an insurer, except as otherwise
- 5 provided in the chapter on insurance (IC 24-4.5-4).
- 6 (3) Transactions under public utility, municipal utility, or
- 7 common carrier tariffs if a subdivision or agency of this state or
- 8 of the United States regulates the charges for the services
- 9 involved, the charges for delayed payment, and any discount
- 10 allowed for early payment.
- 11 (4) The rates and charges and the disclosure of rates and charges
- 12 of a licensed pawnbroker established in accordance with a statute
- 13 or ordinance concerning these matters.
- 14 (5) A sale of goods, services, or an interest in land in which the
- 15 goods, services, or interest in land are purchased primarily for a
- 16 purpose other than a personal, family, or household purpose.
- 17 (6) A loan in which the debt is incurred primarily for a purpose
- 18 other than a personal, family, or household purpose.
- 19 (7) An extension of credit primarily for a business, a commercial,
- 20 or an agricultural purpose.
- 21 (8) An installment agreement for the purchase of home fuels in
- 22 which a finance charge is not imposed.
- 23 (9) Loans made, insured, or guaranteed under a program
- 24 authorized by Title IV of the Higher Education Act of 1965 (20
- 25 U.S.C. 1070 et seq.).
- 26 (10) Transactions in securities or commodities accounts in which
- 27 credit is extended by a broker-dealer registered with the Securities
- 28 and Exchange Commission or the Commodity Futures Trading
- 29 Commission.
- 30 (11) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3,
- 31 IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a loan made:
- 32 (A) in compliance with the requirements of; and
- 33 (B) by a community development corporation (as defined in
- 34 IC 4-4-28-2) acting as a subrecipient of funds from;
- 35 the Indiana housing and community development authority
- 36 established by IC 5-20-1-3.
- 37 (12) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3,
- 38 IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a subordinate lien
- 39 mortgage transaction made by an entity that exclusively uses
- 40 funds provided by the United States Department of Housing and
- 41 Urban Development under Title 1 of the Housing and Community
- 42 Development Act of 1974, Public Law 93-383, as amended (42



- 1 U.S.C. 5301 et seq.).
 2 (13) The United States, any state or local government, or any
 3 agency or instrumentality of any governmental entity, including
 4 United States government sponsored enterprises.
 5 (14) A bona fide nonprofit organization not operating in a
 6 commercial context, as determined by the director, if the
 7 following criteria are satisfied:
 8 (A) Subject to clause (B), the organization originates only one
 9 (1) or both of the following types of mortgage transactions:
 10 (i) Zero (0) interest first lien mortgage transactions.
 11 (ii) Zero (0) interest subordinate lien mortgage transactions.
 12 (B) The organization does not require, under the terms of the
 13 mortgage or otherwise, balloon payments with respect to the
 14 mortgage transactions described in clause (A).
 15 (C) The organization is exempt from federal income taxation
 16 under Section 501(c)(3) of the Internal Revenue Code.
 17 (D) The organization's primary purpose is to serve the public
 18 by helping low income individuals and families build, repair,
 19 and purchase housing.
 20 (E) The organization uses only:
 21 (i) unpaid volunteers; or
 22 (ii) employees whose compensation is not based on the
 23 number or size of any mortgage transactions that the
 24 employees originate;
 25 to originate the mortgage transactions described in clause (A).
 26 (F) The organization does not charge loan origination fees in
 27 connection with the mortgage transactions described in clause
 28 (A).
 29 (15) A bona fide nonprofit organization (as defined in section
 30 301.5(45) of this chapter) if the following criteria are satisfied:
 31 (a) For each calendar year that the organization seeks the
 32 exemption provided by this subdivision, the organization
 33 certifies, not later than December 31 of the preceding calendar
 34 year and on a form prescribed by the director and accompanied
 35 by such documentation as required by the director, that the
 36 organization is a bona fide nonprofit organization (as defined
 37 in section 301.5(45) of this chapter).
 38 (b) The director determines that the organization originates
 39 only mortgage transactions that are favorable to the debtor. For
 40 purposes of this clause, a mortgage transaction is favorable to
 41 the debtor if the director determines that the terms of the
 42 mortgage transaction are consistent with terms of mortgage



1 transactions made in a public or charitable context, rather than
2 in a commercial context.

3 **(16) A civil proceeding advance payment transaction (as**
4 **defined in IC 24-4.3-1-6).**

5 SECTION 5. An emergency is declared for this act.

