

SENATE BILL No. 26

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.5-7; IC 24-5-15.

Synopsis: Small loan finance charges. Changes the current incremental finance charge limits that apply to a small loan to a maximum annual rate. Prohibits making, or taking other actions with respect to, a small loan with a greater rate or amount of interest, or other fees and charges, than allowed under the statute governing small loans. Prohibits a credit services organization from providing certain functions with respect to a small loan and makes a violation a deceptive act.

Effective: July 1, 2020.

Walker

January 6, 2020, read first time and referred to Committee on Insurance and Financial Institutions.



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

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

SENATE BILL No. 26

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

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

1 SECTION 1. IC 24-4.5-7-201, AS AMENDED BY P.L.217-2007,
2 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]: Sec. 201. ~~(1) Finance charges on the first two hundred~~
4 ~~fifty dollars (\$250) of a small loan are limited to fifteen percent (15%)~~
5 ~~of the principal:~~
6 ~~(2) Finance charges on the amount of a small loan greater than two~~
7 ~~hundred fifty dollars (\$250) and less than or equal to four hundred~~
8 ~~dollars (\$400) are limited to thirteen percent (13%) of the amount over~~
9 ~~two hundred fifty dollars (\$250) and less than or equal to four hundred~~
10 ~~dollars (\$400):~~
11 ~~(3) Finance charges on the amount of the small loan greater than~~
12 ~~four hundred dollars (\$400) and less than or equal to five hundred fifty~~
13 ~~dollars (\$550) are limited to ten percent (10%) of the amount over four~~
14 ~~hundred dollars (\$400) and less than or equal to five hundred fifty~~
15 ~~dollars (\$550):~~
16 ~~(4) The amount of five hundred fifty dollars (\$550) in subsection (3)~~
17 ~~is subject to change under the provisions on adjustment of dollar~~



1 amounts (IC 24-4.5-1-106). However, notwithstanding
 2 IC 24-4.5-1-106(1), the Reference Base Index to be used under this
 3 subsection is the Index for October 2006.

4 **(1) For purposes of this section, "finance charges" includes all**
 5 **charges for an ancillary product or service and any other charge**
 6 **or fee incident to making or collecting a small loan.**

7 **(2) For purposes of this section, "charge or fee incident to**
 8 **making or collecting a small loan" does not include a permissible**
 9 **fee described in section 406(2)(b) through 406(2)(d) of this chapter**
 10 **incurred upon default by a debtor.**

11 **(3) Finance charges on a small loan may not exceed an annual**
 12 **rate of thirty-six percent (36%) of the principal.**

13 SECTION 2. IC 24-4.5-7-410, AS AMENDED BY P.L.90-2008,
 14 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2020]: Sec. 410. A lender making small loans, or an assignee
 16 of a small loan, shall not commit nor cause to be committed any of the
 17 following acts:

18 (a) Threatening to use or using the criminal process in any state
 19 to collect on a small loan.

20 (b) Threatening to take action against a borrower that is
 21 prohibited by this chapter.

22 (c) Making a misleading or deceptive statement regarding a small
 23 loan or a consequence of taking a small loan.

24 (d) Contracting for or collecting attorney's fees on small loans
 25 made under this chapter.

26 (e) Altering the date or any other information on a check or an
 27 authorization to debit the borrower's account held as security.

28 (f) Using a device or agreement that ~~the department determines~~
 29 would have the effect of charging or collecting more fees,
 30 charges, or interest than allowed by this chapter, including, but
 31 not limited to:

32 (i) entering a different type of transaction with the borrower;

33 (ii) entering into a sales/leaseback arrangement;

34 (iii) catalog sales;

35 (iv) entering into transactions in which a customer receives a
 36 purported cash rebate that is advanced by someone offering
 37 Internet content services, or some other product or service,
 38 when the cash rebate does not represent a discount or an

39 adjustment of the purchase price for the product or service; or
 40 (v) entering any other transaction with the borrower that is
 41 designed to evade the applicability of this chapter.

42 (g) Engaging in unfair, deceptive, or fraudulent practices in the



- 1 making or collecting of a small loan.
 2 (h) Charging to cash a check representing the proceeds of a small
 3 loan.
 4 (i) Except as otherwise provided in this chapter:
 5 (i) accepting the proceeds of a new small loan as payment of
 6 an existing small loan provided by the same lender; or
 7 (ii) renewing, refinancing, or consolidating a small loan with
 8 the proceeds of another small loan made by the same lender.
 9 (j) Including any of the following provisions in a loan document:
 10 (i) A hold harmless clause.
 11 (ii) A confession of judgment clause.
 12 (iii) A mandatory arbitration clause, unless the terms and
 13 conditions of the arbitration have been approved by the
 14 director of the department.
 15 (iv) An assignment of or order for payment of wages or other
 16 compensation for services.
 17 (v) A provision in which the borrower agrees not to assert a
 18 claim or defense arising out of contract.
 19 (vi) A waiver of any provision of this chapter.
 20 (k) Selling insurance of any kind in connection with the making
 21 or collecting of a small loan.
 22 (l) Entering into a renewal with a borrower.
 23 **(m) Making, offering, arranging, or guaranteeing (or assisting**
 24 **in making, offering, arranging, or guaranteeing) a small loan:**
 25 **(i) with a greater rate or amount of interest, consideration,**
 26 **fees, or charges than permitted by this chapter; and**
 27 **(ii) by any method, including mail, telephone, Internet, or**
 28 **electronic means;**
 29 **regardless of whether the lender or assignee has a physical**
 30 **location in Indiana.**
 31 SECTION 3. IC 24-5-15-5, AS AMENDED BY P.L.171-2006,
 32 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2020]: Sec. 5. The following are deceptive acts:
 34 (1) To charge or receive money or other valuable consideration
 35 before the complete performance of services that a credit services
 36 organization has agreed to perform for or on behalf of a
 37 consumer, unless the credit services organization has under
 38 section 8 of this chapter:
 39 (A) obtained a surety bond issued by a surety company
 40 admitted to do business in Indiana; or
 41 (B) established an irrevocable letter of credit.
 42 (2) To charge or receive money or other valuable consideration to



1 refer a buyer to a retail seller that will or may extend credit to the
 2 buyer if the extension of credit is made upon substantially the
 3 same terms as those available to the general public.

4 (3) To make or to advise a buyer to make a statement with respect
 5 to the buyer's creditworthiness, credit standing, or credit capacity
 6 that is:

7 (A) false or misleading; or

8 (B) that should be known by the exercise of reasonable care to
 9 be false or misleading;

10 to a consumer reporting agency or to a person that has extended
 11 credit to the buyer or to whom the buyer is applying for an
 12 extension of credit.

13 (4) To make or use a false or misleading representation in an offer
 14 to sell or a sale of the services of a credit services organization,
 15 including:

16 (A) guaranteeing to "erase bad credit" or using words to that
 17 effect unless the representation clearly discloses that this can
 18 be done only if a person's credit history is inaccurate or
 19 obsolete;

20 (B) guaranteeing an extension of credit regardless of the
 21 buyer's previous credit history unless the representation clearly
 22 discloses the eligibility requirements for obtaining the
 23 extension of credit; or

24 (C) requiring a buyer to waive a right protected by a state or
 25 federal law.

26 (5) To take a power of attorney from a buyer for any purpose
 27 other than inspecting documents as provided by law.

28 **(6) To make, offer, arrange, broker, or guarantee (or to assist**
 29 **in making, offering, arranging, brokering, or guaranteeing)**
 30 **any extension of credit that constitutes a small loan under**
 31 **IC 24-4.5-7, in violation of section 8.1 of this chapter.**

32 SECTION 4. IC 24-5-15-8.1 IS ADDED TO THE INDIANA CODE
 33 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 34 1, 2020]: **Sec. 8.1. A credit services organization may not make,**
 35 **offer, arrange, broker, or guarantee (or assist in making, offering,**
 36 **arranging, brokering, or guaranteeing) any extension of credit that**
 37 **constitutes a small loan under IC 24-4.5-7 regardless of:**

38 **(1) the method by which the credit services organization**
 39 **makes, offers, arranges, brokers, or guarantees the extension**
 40 **of credit, including whether by mail, telephone, Internet, or**
 41 **electronic means; and**

42 **(2) whether the credit services organization has a physical**



1 **location in Indiana.**

