

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 346

---

AN ACT to amend the Indiana Code concerning financial institutions.

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

SECTION 1. IC 24-4.4-1-102, AS AMENDED BY P.L.129-2020, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 102. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

- (a) to permit and encourage the development of fair and economically sound first lien mortgage lending practices; and
- (b) to conform the regulation of first lien mortgage lending practices to applicable state and federal laws, rules, regulations, policies, and guidance.

(3) A reference to a requirement imposed by this article includes reference to a related rule of the department adopted under this article.

(4) A reference to a federal law in this article is a reference to the law as in effect December 31, ~~2019~~: **2020**.

SECTION 2. IC 24-4.5-1-102, AS AMENDED BY P.L.129-2020, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 102. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

- (a) to simplify, clarify, and modernize the law governing retail installment sales, consumer credit, small loans, and usury;

SEA 346



(b) to provide rate ceilings to assure an adequate supply of credit to consumers;

(c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;

(d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;

(e) to permit and encourage the development of fair and economically sound consumer credit practices;

(f) to conform the regulation of consumer credit transactions to the policies of the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) and to applicable state and federal laws, rules, regulations, policies, and guidance; and

(g) to make uniform the law, including administrative rules among the various jurisdictions.

(3) A reference to a requirement imposed by this article includes reference to a related rule or guidance of the department adopted pursuant to this article.

(4) A reference to a federal law in this article is a reference to the law as in effect December 31, ~~2019~~: **2020**.

(5) This article applies to a transaction if the director determines that the transaction:

(a) is in substance a disguised consumer credit transaction; or

(b) involves the application of subterfuge for the purpose of avoiding this article.

A determination by the director under this subsection must be in writing and shall be delivered to all parties to the transaction. IC 4-21.5-3 applies to a determination made under this subsection.

(6) The authority of this article remains in effect, whether a licensee, an individual, or a person subject to this article acts or claims to act under any licensing or registration law of this state, or claims to act without such authority.

(7) A violation of a state or federal law, regulation, or rule applicable to consumer credit transactions is a violation of this article.

(8) The department may enforce penalty provisions set forth in 15 U.S.C. 1640 for violations of disclosure requirements applicable to mortgage transactions.

SECTION 3. IC 28-7-1-17, AS AMENDED BY P.L.129-2020, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 17. (a) Every loan application shall be submitted

SEA 346



on a form approved by the credit union. Loans may be disbursed upon written approval by a majority of the credit committee or a loan officer. If the credit committee or loan officer fails to approve an application for a loan, the applicant may appeal to the board of directors, if such appeal is authorized by the bylaws.

(b) Loans to members may be made only under the following terms and conditions:

(1) All loans shall be evidenced by notes signed by the borrowing member.

(2) Except as otherwise provided in this section, the terms of any loan to a member with a maturity of more than six (6) months shall provide for principal and interest payments that will amortize the obligation in full within the terms of the loan contract. If the income of the borrowing member is seasonal, the terms of the loan contract may provide for seasonal amortization.

(3) Loans may be made upon the security of improved or unimproved real estate. Except as otherwise specified in this section, such loans must be secured by a first lien upon real estate prior to all other liens, except for taxes and assessments not delinquent, and may be made with repayment terms other than as provided in subdivision (2). The credit union loan folder for all real estate mortgage loans shall include the following:

(A) The loan application.

(B) The mortgage instrument.

(C) The note.

(D) The disclosure statement.

(E) The documentation of property insurance.

(F) For the real estate for which the loan is made:

(i) a written appraisal; or

(ii) a written estimate of market value;

consistent with the appraisal standards and transaction value limitations set forth in the appraisal regulations of the National Credit Union Administration (12 CFR 722).

(4) Loans made upon security of real estate are subject to the following restrictions:

(A) Real estate loans in which no principal amortization is required shall provide for the payment of interest at least annually and shall mature within five (5) years of the date of the loan unless extended and shall not exceed fifty percent (50%) of the fair cash value of the real estate used as security.

(B) Real estate loans on improved real estate, except for variable rate mortgage loans and rollover mortgage loans



provided for in subdivision (5); shall require substantially equal payments at successive intervals of not more than one (1) year; shall mature within thirty (30) years; and shall not exceed one hundred percent (100%) of the fair cash value of the real estate used as security:

(C) Loans primarily secured by a mortgage which constitutes a second lien on improved real estate may be made only if the aggregate amount of all loans on the real estate does not exceed one hundred percent (100%) of the fair cash value of the real estate after such loan is made. Repayment terms shall be in accordance with subdivision (2):

(D) Real estate loans may be made for the construction of improvements to real property. Funds borrowed may be advanced as work on the improvements progresses:

Repayment terms must comply with subdivision (2):

(5) (4) Subject to the limitations of subdivision (3), variable rate mortgage loans and rollover mortgage loans may be made under the same limitations and rights provided state chartered savings associations under IC 28-1-21.5 (before its repeal) or IC 28-15 or federal credit unions.

(6) (5) As used in this subdivision, "originating lender" means the participating lender with which the member contracts. A credit union may participate with other state and federal depository financial institutions (as defined in IC 28-1-1-6) or credit union service organizations in making loans to credit union members and may sell a participating interest in any of its loans under written participation loan policies established by the board of directors. However, the credit union may not sell more than ninety percent (90%) of the principal of participating loans outstanding at the time of sale. A participating credit union that is not the originating lender may participate only in loans made to the credit union's own members or to members of another participating state or federal credit union. A master participation agreement must be properly executed. The agreement must include provisions for identifying, either through documents incorporated by reference or directly in the agreement, the participation loan or loans before the sale of the loans.

(7) (6) As an alternative to making any loan authorized by and under the conditions set forth in subdivisions (1) through (6); (5), a credit union may make any of the following:

(A) Any loan that may be made by a federal credit union. However, IC 24-4.5 applies to any loan that is:



- (i) made under this clause; and
- (ii) within the scope of IC 24-4.5.

Any provision of federal law that is in conflict with IC 24-4.5 does not apply to a loan made under this clause.

(B) Subject to subdivision (3), any alternative mortgage loan (as defined in IC 28-15-11-2) that may be made by a savings association (as defined in IC 28-15-1-11) under IC 28-15-11. A loan made under this clause by a credit union is subject to the same terms, conditions, exceptions, and limitations that apply to an alternative mortgage loan made by a savings association under IC 28-15-11.

~~(8)~~ (7) A credit union may make a loan under either:

- (A) subdivisions (2) through ~~(6)~~; (5); or
- (B) subdivision ~~(7)~~; (6);

but not both. A credit union shall make an initial determination as to whether to make a loan under subdivisions (2) through ~~(6)~~ (5) or under subdivision ~~(7)~~; (6). If the credit union determines that a loan or category of loans is to be made under subdivision ~~(7)~~; (6), the written loan policies of the credit union must include that determination. A credit union may not combine the terms and conditions that apply to a loan made under subdivisions (2) through ~~(6)~~ (5) with the terms and conditions that apply to a loan made under subdivision ~~(7)~~ (6) to make a loan not expressly described and authorized either under subdivisions (2) through ~~(6)~~ (5) or under subdivision ~~(7)~~; (6).

(c) Nothing in this section prevents any credit union from taking an indemnifying or second mortgage on real estate as additional security.

SECTION 4. IC 28-8-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2. As used in this chapter, "check" or "checks" includes a check, draft, ~~money order~~, or ~~personal~~ money order.

SECTION 5. IC 28-10-1-1, AS AMENDED BY P.L.129-2020, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 1. A reference to a federal law or federal regulation in this title is a reference to the law or regulation as in effect December 31, ~~2019~~; 2020.



---

President of the Senate

---

President Pro Tempore

---

Speaker of the House of Representatives

---

Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

SEA 346

