



February 10, 2015

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## SENATE BILL No. 373

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DIGEST OF SB 373 (Updated February 9, 2015 12:02 pm - DI 106)

**Citations Affected:** IC 4-5; IC 24-4.5; IC 24-11.

**Synopsis:** Funding of lawsuits. Establishes a procedure by which a company may provide funding to the plaintiff in an action in exchange for the contingent right to receive a part of the potential proceeds of the action. Requires a company that offers funding to plaintiffs to register with the secretary of state.

**Effective:** July 1, 2015.

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### Head

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January 12, 2015, read first time and referred to Committee on Judiciary.  
January 12, 2015, reassigned to Committee on Civil Law.  
February 9, 2015, amended, reported favorably — Do Pass.

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SB 373—LS 7353/DI 106





February 10, 2015

First Regular Session 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.

## SENATE BILL No. 373

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

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

1 SECTION 1. IC 4-5-1-11, AS AMENDED BY P.L.92-2013,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2015]: Sec. 11. The secretary of state may adopt and enforce  
4 rules under IC 4-22-2 that are necessary to carry out IC 9-32 **and**  
5 **IC 24-11.**

6 SECTION 2. IC 24-4.5-1-202, AS AMENDED BY P.L.27-2012,  
7 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 JULY 1, 2015]: Sec. 202. (a) As used in this section, "balloon  
9 payment", with respect to a mortgage transaction, means any payment  
10 that:

- 11 (1) the creditor requires the debtor to make at any time during the  
12 term of the mortgage;  
13 (2) represents the entire amount of the outstanding balance with  
14 respect to the mortgage; and  
15 (3) the entire amount of which is due as of a specified date or at  
16 the end of a specified period;

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

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

10 (1) Extensions of credit to government or governmental agencies  
11 or instrumentalities.

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

14 (3) Transactions under public utility, municipal utility, or  
15 common carrier tariffs if a subdivision or agency of this state or  
16 of the United States regulates the charges for the services  
17 involved, the charges for delayed payment, and any discount  
18 allowed for early payment.

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

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

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

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

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

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

34 (10) Transactions in securities or commodities accounts in which  
35 credit is extended by a broker-dealer registered with the Securities  
36 and Exchange Commission or the Commodity Futures Trading  
37 Commission.

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

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

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



- 1 the Indiana housing and community development authority  
 2 established by IC 5-20-1-3.
- 3 (12) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3,  
 4 IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a subordinate lien  
 5 mortgage transaction made by an entity that exclusively uses  
 6 funds provided by the United States Department of Housing and  
 7 Urban Development under Title 1 of the Housing and Community  
 8 Development Act of 1974, Public Law 93-383, as amended (42  
 9 U.S.C. 5301 et seq.).
- 10 (13) The United States, any state or local government, or any  
 11 agency or instrumentality of any governmental entity, including  
 12 United States government sponsored enterprises.
- 13 (14) A bona fide nonprofit organization not operating in a  
 14 commercial context, as determined by the director, if the  
 15 following criteria are satisfied:
- 16 (A) Subject to clause (B), the organization originates only one
  - 17 (1) or both of the following types of mortgage transactions:
  - 18 (i) Zero (0) interest first lien mortgage transactions.
  - 19 (ii) Zero (0) interest subordinate lien mortgage transactions.
  - 20 (B) The organization does not require, under the terms of the
  - 21 mortgage or otherwise, balloon payments with respect to the
  - 22 mortgage transactions described in clause (A).
  - 23 (C) The organization is exempt from federal income taxation
  - 24 under Section 501(c)(3) of the Internal Revenue Code.
  - 25 (D) The organization's primary purpose is to serve the public
  - 26 by helping low income individuals and families build, repair,
  - 27 and purchase housing.
  - 28 (E) The organization uses only:
  - 29 (i) unpaid volunteers; or
  - 30 (ii) employees whose compensation is not based on the
  - 31 number or size of any mortgage transactions that the
  - 32 employees originate;
  - 33 to originate the mortgage transactions described in clause (A).
  - 34 (F) The organization does not charge loan origination fees in
  - 35 connection with the mortgage transactions described in clause
  - 36 (A).
- 37 (15) A bona fide nonprofit organization (as defined in section  
 38 301.5(45) of this chapter) if the following criteria are satisfied:
- 39 (a) For each calendar year that the organization seeks the
  - 40 exemption provided by this subdivision, the organization
  - 41 certifies, not later than December 31 of the preceding calendar
  - 42 year and on a form prescribed by the director and accompanied



1 by such documentation as required by the director, that the  
 2 organization is a bona fide nonprofit organization (as defined  
 3 in section 301.5(45) of this chapter).

4 (b) The director determines that the organization originates  
 5 only mortgage transactions that are favorable to the debtor. For  
 6 purposes of this clause, a mortgage transaction is favorable to  
 7 the debtor if the director determines that the terms of the  
 8 mortgage transaction are consistent with terms of mortgage  
 9 transactions made in a public or charitable context, rather than  
 10 in a commercial context.

11 **(16) Civil justice funding (as defined in IC 24-11-1-1(3)) or a**  
 12 **civil justice funding company (as defined in IC 24-11-1-1(4)).**

13 SECTION 3. IC 24-11 IS ADDED TO THE INDIANA CODE AS  
 14 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
 15 2015]:

16 **ARTICLE 11. CIVIL JUSTICE FUNDING**

17 **Chapter 1. Definitions**

18 **Sec. 1. The following definitions apply throughout this article:**

19 (1) "Advertise" means publishing or disseminating any  
 20 written, electronic, or printed communication, or any  
 21 communication by means of recorded telephone messages or  
 22 transmitted on radio, television, the Internet, or similar  
 23 communications media, including film strips, motion pictures,  
 24 and videos, published, disseminated, circulated, or placed  
 25 before the public, directly or indirectly, for the purpose of  
 26 inducing a consumer to enter into a civil justice funding.

27 (2) "Charges" means the amount of money to be paid to a  
 28 civil justice funding company by or on behalf of a consumer,  
 29 above the funded amount provided by or on behalf of the  
 30 company to a consumer. The term includes all administrative,  
 31 origination, underwriting, and other fees no matter how  
 32 denominated.

33 (3) "Civil justice funding" means a nonrecourse transaction  
 34 in which a civil justice funding company purchases and a  
 35 consumer assigns to the company a contingent right to receive  
 36 an amount of the potential proceeds of a settlement,  
 37 judgment, award, or verdict obtained in the consumer's legal  
 38 claim.

39 (4) "Civil justice funding company" or "company" means a  
 40 person or entity that enters into a civil justice funding with a  
 41 consumer. This term does not include the following:

42 (A) An immediate family member of the consumer.



- 1 (B) A bank, lender, financing entity, or other special  
 2 purpose entity:  
 3 (i) that provides financing to a civil justice funding  
 4 company; or  
 5 (ii) to which a civil justice funding company grants a  
 6 security interest or transfers any rights or interest in a  
 7 civil justice funding.  
 8 (C) An attorney or accountant who provides services to a  
 9 consumer.  
 10 (5) "Consumer" means a natural person who has a pending  
 11 legal claim and who:  
 12 (A) resides in Indiana; or  
 13 (B) has a legal claim in Indiana.  
 14 (6) "Funded amount" means the amount of money provided  
 15 to, or on behalf of, the consumer in the civil justice funding.  
 16 The term excludes charges.  
 17 (7) "Funding date" means the date on which the funded  
 18 amount is transferred to the consumer by the civil justice  
 19 funding company, by:  
 20 (A) personal delivery, wire, Automated Clearing House  
 21 (ACH), or other electronic means; or  
 22 (B) insured, certified, or registered United States mail.  
 23 (8) "Immediate family member" means a:  
 24 (A) parent;  
 25 (B) sibling;  
 26 (C) child;  
 27 (D) spouse;  
 28 (E) grandparent; or  
 29 (F) grandchild.  
 30 (9) "Legal claim" means a bona fide civil claim or cause of  
 31 action.  
 32 (10) "Resolution date" means the date the amount funded to  
 33 the consumer, plus the agreed upon charges, are delivered to  
 34 the civil justice funding company.  
 35 **Chapter 2. Contract Requirements**  
 36 **Sec. 1. Every civil justice funding shall meet the following**  
 37 **requirements:**  
 38 (1) The contract shall be completely filled in when presented  
 39 to the consumer for signature.  
 40 (2) The contract must contain, in bold and boxed type, a right  
 41 of rescission, allowing the consumer to cancel the contract  
 42 without penalty or further obligation if, not later than five (5)



1           **business days after the funding date, the consumer either:**

2           **(A) returns to the civil justice funding company the full**  
 3           **amount of the disbursed funds by delivering the company's**  
 4           **uncashed check to the company's office in person; or**

5           **(B) mails, by insured, certified, or registered United States**  
 6           **mail, to the address specified in the contract, a notice of**  
 7           **cancellation and includes in the mailing a return of the full**  
 8           **amount of disbursed funds in the form of the company's**  
 9           **uncashed check or a registered or certified check or money**  
 10           **order.**

11           **(3) The contract must contain the initials of the consumer on**  
 12           **each page.**

13           **Sec. 2. The contract shall contain a verified statement by the**  
 14           **attorney retained by the consumer in the legal claim stating all of**  
 15           **the following:**

16           **(1) To the best of the attorney's knowledge, all the costs and**  
 17           **charges relating to the civil justice funding have been**  
 18           **disclosed to the consumer.**

19           **(2) The attorney is being paid on a contingency basis under a**  
 20           **written fee agreement.**

21           **(3) All proceeds of the legal claim will be disbursed via either**  
 22           **the attorney's trust account or a settlement fund established**  
 23           **to receive the proceeds of the legal claim on behalf of the**  
 24           **consumer.**

25           **(4) The attorney is following the written instructions of the**  
 26           **consumer with regard to the civil justice funding.**

27           **(5) The attorney has not received a referral fee or other**  
 28           **consideration from the civil justice funding company in**  
 29           **connection with the civil justice funding, nor will the attorney**  
 30           **receive a referral fee or other consideration in the future.**

31           **Sec. 3. A contract that does not contain the verified statement**  
 32           **described in section 2 of this chapter is void.**

33           **Chapter 3. Civil Justice Funding Company Prohibitions**

34           **Sec. 1. A civil justice funding company may not do any of the**  
 35           **following:**

36           **(1) Pay or offer to pay a commission, referral fee, or other**  
 37           **form of consideration to any attorney, law firm, medical**  
 38           **provider, chiropractor, or physical therapist, or any of their**  
 39           **employees, for referring a consumer to the company.**

40           **(2) Accept a commission, referral fee, rebate, or other form of**  
 41           **consideration from an attorney, law firm, medical provider,**  
 42           **chiropractor, or physical therapist, or any of their employees.**





- 1           **(3) Intentionally advertise materially false or misleading**  
2 **information regarding the civil justice funding company's**  
3 **products or services.**
- 4           **(4) Refer, in furtherance of an initial legal funding, a**  
5 **customer or potential customer to a specific attorney, law**  
6 **firm, medical provider, chiropractor, or physical therapist, or**  
7 **any of their employees. However, if a customer needs legal**  
8 **representation, the company may refer the customer to a local**  
9 **or state bar association referral service.**
- 10           **(5) Fail to promptly supply a copy of the executed contract to**  
11 **the attorney for the consumer.**
- 12           **(6) Knowingly provide funding to a consumer who has**  
13 **previously assigned or sold a part of the consumer's right to**  
14 **proceeds from the consumer's legal claim without first**  
15 **making payment to or purchasing a prior unsatisfied civil**  
16 **justice funding company's entire funded amount and**  
17 **contracted charges, unless a lesser amount is otherwise agreed**  
18 **to in writing by the civil justice funding company. However,**  
19 **multiple companies may agree to provide funding to a**  
20 **consumer simultaneously if the consumer and the consumer's**  
21 **attorney consent to the arrangement in writing.**
- 22           **(7) Receive any right to make any decision with respect to the**  
23 **conduct of the underlying legal claim or any settlement or**  
24 **resolution of the claim, or make any decision with respect to**  
25 **the conduct of the underlying legal claim or any settlement or**  
26 **resolution of the claim. The right to make these decisions**  
27 **remains solely with the consumer and the attorney in the legal**  
28 **claim.**
- 29           **(8) Knowingly pay or offer to pay for court costs, filing fees,**  
30 **or attorney's fees either during or after the resolution of the**  
31 **legal claim, using funds from the civil justice funding**  
32 **transaction.**

#### 33           **Chapter 4. Contracted Amounts**

34           **Sec. 1. A civil justice funding company shall require the**  
35 **contracted amount payable to the company to be set as a**  
36 **predetermined amount based upon intervals of time from the**  
37 **funding date through the resolution date and not be determined as**  
38 **a percentage of the recovery from the legal claim.**

#### 39           **Chapter 5. Disclosures**

40           **Sec. 1. All civil justice funding contracts must contain the**  
41 **disclosures specified in this section, which are material terms of the**  
42 **contract. Unless otherwise specified, the disclosures must be in at**



1 least twelve (12) point bold font and be placed clearly and  
2 conspicuously within the contract. The following disclosures are  
3 required:

4 (1) On the front page, under appropriate headings, language  
5 specifying:

6 (A) the funded amount to be paid to the consumer by the  
7 civil justice funding company;

8 (B) an itemization of one (1) time charges;

9 (C) the total amount to be assigned by the consumer to the  
10 company, including the funded amount and all charges;  
11 and

12 (D) a payment schedule including the funded amount and  
13 all charges, listing all dates and the amount due at the end  
14 of each one hundred eighty (180) day period, from the  
15 funding date until the date on which the maximum amount  
16 due to the company by the consumer occurs.

17 (2) A notice within the body of the contract stating the  
18 following: "Consumer's Right to Cancellation: You may  
19 cancel this contract without penalty or further obligation  
20 within five (5) business days after the funding date if you  
21 either:

22 (A) return to the civil justice funding company the full  
23 amount of the disbursed funds by delivering the company's  
24 uncashed check to the company's office in person; or

25 (B) mail, by insured, certified, or registered United States  
26 mail, to the company at the address specified in the  
27 contract, a notice of cancellation and include in the mailing  
28 a return of the full amount of disbursed funds in the form  
29 of the company's uncashed check or a registered or  
30 certified check or money order."

31 (3) A notice informing the consumer that the civil justice  
32 funding company has no role in deciding whether, when, and  
33 how much the legal claim is settled for. However, the  
34 consumer and consumer's attorney must notify the company  
35 of the outcome of the legal claim by settlement or adjudication  
36 prior to the resolution date. The company may seek updated  
37 information about the status of the legal claim but in no event  
38 may the company interfere with the independent professional  
39 judgment of the attorney in the handling of the legal claim or  
40 any settlement.

41 (4) Within the body of the contract, in all capital letters in at  
42 least a twelve (12) point bold font contained within a box the



1 following: "THE FUNDED AMOUNT AND AGREED UPON  
 2 CHARGES SHALL BE PAID ONLY FROM THE  
 3 PROCEEDS OF YOUR LEGAL CLAIM, AND SHALL BE  
 4 PAID ONLY TO THE EXTENT THAT THERE ARE  
 5 AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM.  
 6 YOU WILL NOT OWE [INSERT NAME OF THE CIVIL  
 7 JUSTICE FUNDING COMPANY] ANYTHING IF THERE  
 8 ARE NO PROCEEDS FROM YOUR LEGAL CLAIM,  
 9 UNLESS YOU OR YOUR ATTORNEY HAVE VIOLATED  
 10 ANY MATERIAL TERM OF THIS CONTRACT OR YOU  
 11 HAVE COMMITTED FRAUD AGAINST THE CIVIL  
 12 JUSTICE FUNDING COMPANY."

13 (5) Located immediately above the place on the contract  
 14 where the consumer's signature is required, in twelve (12)  
 15 point font the following: "Do not sign this contract before you  
 16 read it completely or if the contract contains any blank  
 17 spaces. You are entitled to a completely filled in copy of the  
 18 contract. Before you sign this contract, you should obtain the  
 19 advice of an attorney. Depending on the circumstances, you  
 20 may want to consult a tax, public or private benefits planning,  
 21 or financial professional. You acknowledge that your attorney  
 22 in the legal claim has provided no tax, public or private  
 23 benefit planning, or financial advice regarding this  
 24 transaction."

25 **Chapter 6. Violations**

26 **Sec. 1.** This article does not restrict the exercise of powers or the  
 27 performance of the duties of the attorney general.

28 **Sec. 2.** If a court with jurisdiction determines that a civil justice  
 29 funding company has intentionally violated the provisions of this  
 30 article with regard to a specific civil justice funding, the civil  
 31 justice funding company is only entitled to recover the funded  
 32 amount provided to the consumer in that civil justice funding and  
 33 is not entitled to any additional charges.

34 **Chapter 7. Assignability**

35 **Sec. 1.** A consumer may assign the contingent right to receive an  
 36 amount of the potential proceeds of a legal claim.

37 **Sec. 2.** This article may not be construed to cause any civil  
 38 justice funding transaction that complies with the requirements of  
 39 this article to be considered a loan or to be otherwise subject to any  
 40 other provisions of Indiana law governing loans. Notwithstanding  
 41 any other law, a civil justice funding transaction that complies with  
 42 this article is not subject to any other statutory or regulatory



1 provisions governing loans or investment contracts. To the extent  
 2 that this article conflicts with any other law, this article supersedes  
 3 the other law for the purposes of regulating civil justice fundings.

4 **Sec. 3. Only attorney's liens related to the legal claim, or**  
 5 **Medicare or other statutory liens related to the legal claim, take**  
 6 **priority over a lien of the civil justice funding company. All other**  
 7 **liens take priority by normal operation of law.**

8 **Chapter 8. Attorney Prohibitions**

9 **Sec. 1. An attorney or law firm retained by the consumer in the**  
 10 **legal claim may not have a financial interest in the civil justice**  
 11 **funding company offering civil justice funding to that consumer.**  
 12 **Additionally, any attorney who has referred the consumer to the**  
 13 **consumer's retained attorney may not have a financial interest in**  
 14 **the civil justice funding company offering civil justice funding to**  
 15 **that consumer.**

16 **Chapter 9. Privileged Communication**

17 **Sec. 1. No communication between the consumer's attorney in**  
 18 **the legal claim and the civil justice funding company with respect**  
 19 **to the civil justice funding limits, waives, or abrogates the scope or**  
 20 **nature of any statutory or common law privilege, including the**  
 21 **work product doctrine and the attorney client privilege.**

22 **Chapter 10. Registration**

23 **Sec. 1. A civil justice funding company may not engage in the**  
 24 **business of civil justice funding unless the company has registered**  
 25 **with the secretary of state in accordance with this chapter.**

26 **Sec. 2. A civil justice funding company application and**  
 27 **registration form must be filed in the manner prescribed by the**  
 28 **secretary of state and must contain the information the secretary**  
 29 **of state requires to make an evaluation of the character and fitness**  
 30 **of the applicant company. The initial application must be**  
 31 **accompanied by a five hundred dollar (\$500) fee. A renewal**  
 32 **registration must include a two hundred dollar (\$200) fee. A**  
 33 **registration must be renewed every two (2) years and expires on**  
 34 **September 30.**

35 **Sec. 3. A certificate of registration may not be issued unless the**  
 36 **secretary of state, upon investigation, finds that the character and**  
 37 **fitness of the applicant company, and of the officers and directors**  
 38 **of the company, are sufficient to warrant belief that the business**  
 39 **will be operated honestly and fairly.**

40 **Sec. 4. Every registrant shall also, at the time of filing an**  
 41 **application, file with the secretary of state, if required by the**  
 42 **secretary of state, a bond satisfactory to the secretary of state in an**



1 amount not to exceed fifty thousand dollars (\$50,000). Instead of  
2 the bond, at the option of the registrant, the registrant may post an  
3 irrevocable letter of credit. The terms of the bond must run  
4 concurrently with the period of time during which the registration  
5 will be in effect. The bond must provide that the registrant will  
6 faithfully follow the law.

7 Sec. 5. (a) Upon written request, the applicant is entitled to a  
8 hearing on the question of the applicant's qualifications for a  
9 registration if:

10 (1) the secretary of state has notified the applicant in writing  
11 that the application has been denied; or

12 (2) the secretary of state has not issued a registration within  
13 sixty (60) days after the application for the registration was  
14 filed.

15 (b) A request for a hearing may not be made more than fifteen  
16 (15) days after the secretary of state has mailed a written notice to  
17 the applicant that the application has been denied and described in  
18 substance the secretary of state's findings supporting denial of the  
19 application.

20 Sec. 6. A civil justice funding company that registered with the  
21 secretary of state after January 1, 2015, and before July 1, 2015,  
22 may engage in civil justice funding while the company's  
23 registration is waiting approval by the secretary of state. Any  
24 funding agreement entered into before January 1, 2015, is not  
25 subject to this article.

26 Sec. 7. A civil justice funding company may not use any form of  
27 civil justice funding contract in Indiana unless the contract has  
28 been filed with the secretary of state in accordance with the filing  
29 procedures set forth by the secretary of state.

30 Sec. 8. Fees collected under this chapter shall be deposited in the  
31 electronic and enhanced access fund established by IC 4-5-10-5.

32 Sec. 9. The secretary of state may adopt rules under IC 4-22-2  
33 to implement this article.



Report of the President  
Pro Tempore

Madam President: Pursuant to Senate Rule 68(b), I hereby report that SB 373, currently assigned to the Committee on Judiciary, be reassigned to the Committee on Civil Law.

LONG

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COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred Senate Bill No. 373, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 2. IC 24-4.5-1-202, AS AMENDED BY P.L.27-2012, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 202. (a) As used in this section, "balloon payment", with respect to a mortgage transaction, means any payment that:

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

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

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

- (1) Extensions of credit to government or governmental agencies or instrumentalities.
- (2) The sale of insurance by an insurer, except as otherwise provided in the chapter on insurance (IC 24-4.5-4).
- (3) Transactions under public utility, municipal utility, or

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common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.

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

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

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

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

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

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

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

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

(A) in compliance with the requirements of; and

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

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

(12) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3, IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a subordinate lien mortgage transaction made by an entity that exclusively uses funds provided by the United States Department of Housing and Urban Development under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383, as amended (42 U.S.C. 5301 et seq.).

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

(14) A bona fide nonprofit organization not operating in a commercial context, as determined by the director, if the



following criteria are satisfied:

- (A) Subject to clause (B), the organization originates only one (1) or both of the following types of mortgage transactions:
    - (i) Zero (0) interest first lien mortgage transactions.
    - (ii) Zero (0) interest subordinate lien mortgage transactions.
  - (B) The organization does not require, under the terms of the mortgage or otherwise, balloon payments with respect to the mortgage transactions described in clause (A).
  - (C) The organization is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.
  - (D) The organization's primary purpose is to serve the public by helping low income individuals and families build, repair, and purchase housing.
  - (E) The organization uses only:
    - (i) unpaid volunteers; or
    - (ii) employees whose compensation is not based on the number or size of any mortgage transactions that the employees originate;
 to originate the mortgage transactions described in clause (A).
  - (F) The organization does not charge loan origination fees in connection with the mortgage transactions described in clause (A).
- (15) A bona fide nonprofit organization (as defined in section 301.5(45) of this chapter) if the following criteria are satisfied:
- (a) For each calendar year that the organization seeks the exemption provided by this subdivision, the organization certifies, not later than December 31 of the preceding calendar year and on a form prescribed by the director and accompanied by such documentation as required by the director, that the organization is a bona fide nonprofit organization (as defined in section 301.5(45) of this chapter).
  - (b) The director determines that the organization originates only mortgage transactions that are favorable to the debtor. For purposes of this clause, a mortgage transaction is favorable to the debtor if the director determines that the terms of the mortgage transaction are consistent with terms of mortgage transactions made in a public or charitable context, rather than in a commercial context.
- (16) Civil justice funding (as defined in IC 24-11-1-1(3)) or a civil justice funding company (as defined in IC 24-11-1-1(4))."**





Page 1, delete lines 6 through 16.

Page 2, delete lines 1 through 19.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 373 as introduced.)

ZAKAS, Chairperson

Committee Vote: Yeas 8, Nays 0.

