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2020 GENERAL ASSEMBLY – DFI LEGISLATION OF INTEREST
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The following is a brief summary of legislation adopted by the 2020 Indiana General Assembly which may be of interest to the Department, its constituencies, staff, and members. For additional information regarding any bill of particular interest, the complete list of all legislation enacted or considered in the 2020 General Assembly can be found here.

HEA 1353 Financial institutions and consumer credit (commonly known as the "DFI Omnibus Bill"). The following is a brief summary of HEA 1353, authored by Representative Woody Burton, which was signed by the Governor into Public Law 129 on March 30, 2020. As in years' past, the vast majority of the DFI Omnibus Bill includes: updated references to federal and state laws; streamlining and modernization efforts; and various technical changes and clarifications. The summary below is not all inclusive of the bill's accomplishments, and interested parties are encouraged to review all provisions of the legislation and the newly enacted statutes in greater detail.

While this publication is intended to provide DFI regulated industries, trade associations, attorneys and the public with an overview of recently enacted legislation over which the DFI has regulatory and administrative authority, businesses are encouraged to seek legal counsel with questions regarding how the new laws may impact a particular business model or product.

Section 6 (Delinquency Charges), is retroactive to July 1, 2019; all other provisions become effective July 1, 2020.

Consumer Credit:

- **Conform state law to the federal SAFE Act amendment.** In 2018, the U.S. Congress updated the federal SAFE Act as part of the Economic Growth, Regulatory Relief, and Consumer Protection Act. Part of the Act updated the federal regulations related to state licensing of mortgage loan originators. The updates included a new section of the SAFE Act permitting mortgage loan originators transitioning from a financial institution or who were already licensed elsewhere to have temporary authority to operate as a mortgage loan originator (MLO) while their state licensing application is pending approval. Some minor statutory updates are needed to account for the 2018 federal update, and to conform the agency's rulemaking (750 IAC 9) that went into effect on November 24, 2019, in line with federal law requirements.

    - Applies to: mortgage loan originators; mortgage lenders
    - Statutory references: IC § 24-4.4-1-101(b)(2) (NEW)

- **Delinquency charge technical change.** In 2019, the Legislature amended the delinquency charge statute, which is a part of the Indiana Uniform Consumer Credit Code (IC 24-4.5), by un-indexing the maximum delinquency charge permitted and also reflecting an increased maximum "flat" rate that may be contracted for between a creditor/lender and a consumer. During the course of the legislation, a reference to the indexing remained in a portion of the statute which has resulted in industry confusion. This section provides clarity regarding: 1) what is allowed by law, and what may be contracted for; 2) what was permitted prior to the 2019 legislative changes; and 3) and what practices are now permitted after the 2019 legislative changes.

  This new legislation also provides clarification that a delinquency charge cannot be charged if a skip a pay service or an expedited payment service is charged.

  - Applies to: creditors in consumer credit transactions (IC § 24-4.5-2); licensed lenders (IC § 24-4.5-3)
  - Statutory references: IC § 24-4.5-2-203.5; IC § 24-4.5-3-203.5
  - Note: ***retroactive to July 1, 2019; the retroactive nature of this change does not alter or affect the guidance originally issued by DFI pursuant to Advisory Letter 2019-01 "Delinquency Charges." Businesses are encouraged to re-review this guidance to understand the Department's expectations concerning treatment of delinquency charges.***

- **Clarification of bond tail requirements.** Currently, a number of licensed industries are required to pledge a surety bond to the Department for protection of consumers during the time of licensure as well as a period ranging from 2-5 years after a license is surrendered (commonly called the bond "tail"). The form bond required by our office reflects that the date of maintaining the bond "tail" starts at the time the license is surrendered. However, the current statutory language suggests that the bond "tail" could be interpreted to begin before a license is surrendered, if the entity ceases business prior to that time.

  For purposes of consistency with the language currently contained in the surety bond, as well as increased regulatory certainty, the statutory bond sections should be modified to clarify that the bond tail begins as of the date a license is surrendered or terminated.

  In addition, there have been instances where it is reasonable that an entity may request that the Department waive the bond tail requirement. For example, a mortgage entity demonstrated that although it held an Indiana mortgage lending license for six years, it never consummated any mortgage loans in the state of Indiana, even though it had a license to do so. The legislative changes also includes provisions that permit the Director to waive or shorten the bond tail requirement in the Director's discretion, should the situation warrant a waiver or shortening of the requirement.

  - Applies to: first lien mortgage lenders (IC § 24-4.4); licensed lenders (IC § 24-4.5-3); small loan lenders (IC § 24-4.5-7); CPAP providers (IC § 24-12); debt management companies (IC § 28-1-29); pawnbrokers (IC § 28-7-5); money transmitters (IC § 28-8-4)
  - Statutory references: IC § 24-4.4-2-402.3; IC § 24-4.5-3-503.3; IC § 24-4.5-7-413; IC § 24-12-9-8; IC § 28-1-29-6); IC § 28-7-5-5.5; IC § 28-8-8-4-27
  - Note: In practice, licensed lenders and CPAP providers are not currently required to pledge and/or maintain a surety bond to the Department.

❖ **Expanding post-licensing notification requirements across regulated industries to include licensed check cashers and licensed pawnbrokers.** Currently, all industries regulated by DFI, except for check cashing and pawnbrokers, are required by statute to notify the DFI when four things happen regarding a licensed entity: (1) change in a business name or opening, closing, or relocating a branch; (2) filing for bankruptcy; (3) notification of an enforcement or suspension proceeding in another state; or (4) certain felony convictions of control persons within the company. These notifications assist the DFI in its regulation of the entity and ensure compliance with statutory requirements. Currently these notification requirements are absent from the check cashing and pawnbroker statutes. This proposal adds notification requirements required of other regulated industries to both check cashing and pawnbroker licensing statutes to promote consistency and licensing integrity.

- <u>Applies to</u>: licensed pawnbrokers (IC § 28-7-5); check cashers (IC § 28-8-5)
- <u>Statutory references</u>: IC § 28-7-5-10; IC § 28-8-5-15

❖ **Permit Pawnbrokers to use electronic thumbprints for record keeping purposes.** Current Indiana pawn broking law requires people who pawn items to provide an inked thumbprint. The pawnbroking industry and software capabilities have evolved since the thumbprint requirements were originally enacted and are now capable of accepting and maintaining electronic thumbprints; however, Indiana law does not explicitly permit such a method. This legislative change adds language that permits thumbprints to be taken and maintained electronically so long as the thumbprint is capable of being reproduced.

- <u>Applies to</u>: licensed pawnbrokers (IC § 28-7-5)
- <u>Statutory references</u>: IC § 28-7-5-20

❖ **Modify the definition of stored value card to encompass stored value account in the Money Transmitter Act.** The money transmission market has expanded and now includes additional stored value products. As a result, both federal laws and the majority of other state laws have been updated to accommodate stored value products to include not just use of stored value cards, but to also include general stored value accounts. The current money transmission statutes account for the use of a stored value in the form of a card, but does not explicitly include general use accounts. The Department considers use of stored value accounts to encompass the act of money transmission, and this statutory change supports our current regulatory interpretation and approach. This change encompasses the more modern stored value account method.

- <u>Applies to</u>: licensed money transmitters
- <u>Statutory references</u>: IC § 28-8-4-15; IC § 28-8-4-19.5

<u>Depositories:</u>

❖ **Credit Union Loans to Insiders.** Indiana law and federal law govern how financial institutions may extend loans to officers, directors, and other persons in a position of control and influence, i.e., "insiders." The purpose of these statutes is to prevent insider abuse and to promote institutional safety and soundness. For state chartered banks, Federal Regulation O applies. For state chartered credit unions, Indiana law historically provided broad requirements and a permissive application of Federal Regulation O by the Department in regards to loans to insiders. In practice, the Department has historically applied Federal Regulation O consistently in both state chartered banks and credit unions;

however, the current statutory language has at times caused confusion by state chartered credit unions regarding the regulatory expectation. This legislative change deletes the overly broad statutory language and amends the application of Federal Regulation O from permissive application to a mandatory requirement, as well as incorporating substantial language from Regulation O into applicable state statute.

- Applies to: state chartered credit unions
- Statutory references: IC § 28-7-1-0.5; IC § 28-7-1-9; IC § 28-7-1-17.1 (REPEALED); IC § 28-7-1-17.2 (AMENDED)

- **Conform appraisal standards for state chartered credit unions consistent with federal regulation.** The National Credit Union Administration (NCUA) has regulatory authority over federally insured credit unions, including federally insured state chartered credit unions. The NCUA recently finalized a federal regulation that increases the threshold under which a credit union is required to obtain a formal written appraisal from a licensed appraiser from $250,000 to $400,000. State statute in this area previously made a reference to $250,000 appraisal threshold. This statutory update now mirrors the expectations and requirements in line with NCUA's regulation over appraisal standards. This regulatory change was directed by the U.S. Congress to all federal banking regulatory agencies through the Economic Growth, Regulatory Relief and Consumer Protection Act that was passed in 2018, and is consistent with the final federal regulations pertaining to banks, issued by the Fed, FDIC, and OCC on Oct. 9, 2019 and the final federal regulations pertaining to federally insured credit unions issued by the NCUA on April 16, 2020.

  - Applies to: state chartered credit unions
  - Statutory references: IC § 28-7-1-17(3)

Other Bills of Interest:

- **Uniform Consumer Credit Code (SEA 395).** This bill was the result of the Legislature's 2019 summer study commission on modernization of Indiana's Uniform Consumer Credit Code. The summer study committee made recommendations in its final report, and this bill includes many of the committee's recommendations.

  The legislation resulted in the following statutory changes:

  1. Alters the date from July 1 of even numbered years to January 1 of odd-numbered years as the effective date for which the Department is required to calculate and publish a new indexed adjustment, based on changes in the Consumer Price Index of various dollar amounts set forth in the Uniform Consumer Credit Code.
     - Applies to: entities subject to the Indiana uniform consumer credit code (IC § 24-4.5), including: creditors in consumer credit transactions (IC § 24-4.5-2); licensed lenders (IC § 24-4.5-3); small loan lenders (IC § 24-4.5-7); extenders of high cost home loans (IC § 24-9-2-8)
     - Statutory references: IC § 24-4.5-1-106; IC § 24-4.5-6-107; IC § 24-4.5; IC § 24-9-2-8

2. On and after July 1, 2020, in addition to the credit service or finance charge permitted by Ind. Code §24-4.5-2-201(2), Ind. Code §24-4.5-3-201, or Ind. Code §24-4.5-3-508, and any other authorized charges permitted by law (generally, "permitted additional charges"), an agreement for a closed-end consumer credit sale, a consumer loan, and/or a supervised loan including a revolving loan allows a seller (chapter 2) or lender (chapter 3) to contract for and receive a nonrefundable prepaid finance charge based on a new tiered scale, similar to the current finance charge tiered rate structure as long as the total finance charge remains within the confines of the loansharking cap (72% per year) at the time the credit sale or loan is consummated.

   The new tiered structure permits a Creditor to impose the following prepaid finance charges on an amount financed (under chapter 2) or principal amount (under chapter 3) of a given closed-end consumer credit transaction or consumer loan ***(in all cases, the amount referenced is exclusive of prepaid finance charges)***:

   - $75 maximum for a credit sale/loan amount of $2,000 or less;
   - $150 maximum for a credit sale/loan amount for more than $2,000 and up to $4,000;
   - $200 maximum for a credit sale/loan amount above $4,000.

For non-depository Creditors, the new law also creates a "hard cap" for the nonrefundable fee, in that it now prohibits any additional amount of prepaid finance charges, even if refundable, above the new maximum amounts permitted within the tier.

The new tiered nonrefundable prepaid finance charge will now be permitted for Creditors under chapter 2 of the UCCC (extenders of consumer credit – ie, auto dealers, retailers, etc) as a new charge. For Creditors under chapter 3 of the UCCC (traditional lenders – ie, licensed finance companies, state chartered banks and credit unions), the previously permissible maximum nonrefundable prepaid finance charge of $50 will now increase to the maximum amounts permitted by the tiers.

Depositories are exempt from the "hard cap" and may continue to charge a refundable portion of a prepaid finance charge in an amount above the nonrefundable prepaid finance charge subject to the limitations provided in the new tiers, so long as:

1) the refundable portion of the prepaid finance charge imposed is tested upon prepayment by a consumer for whether or not a refund is due;

2) the total finance charge contracted for at the time the loan is consummated does not exceed the maximum permitted by Ind. Code. §24-4.5-3-508; and

3) the total finance charge remains within the confines of the loansharking cap (72%) at the time the loan is consummated; both the refundable and nonrefundable portions of the prepaid finance charge must be included for testing purposes (*see also the Department's Loansharking Advisory,* Advisory Letter 2017-02).

- Applies to: creditors in consumer credit transactions (IC § 24-4.5-2); licensed lenders (IC § 24-4.5-3)
- Statutory references: IC § 24-4.5-2-201(2); IC § 24-4.5-3-201; IC §24-4.5-3-508
- Note: See also Consumer Credit Advisory Letter 2020-01, "SEA 395 Law Changes", and SEA 395 – Q&A.

3. After July 1, precomputed consumer credit transactions and loans are prohibited. In most instances, should a Creditor enter into a precomputed transaction on or after July 1, 2020, the Department may recast the transaction to conform to the newly permitted limitations under chapters 2 and 3 of the UCCC, as well as require refunds of associated overcharges. As a result of the nature of the prohibition, should a Creditor continue to enter into precomputed transactions on or after July 1, 2020, the imposition of civil penalties within the limitations permitted by law will be considered.

   - Applies to: creditors in consumer credit transactions (IC § 24-4.5-2); licensed lenders (IC § 24-4.5-3)
   - Statutory references: IC § 24-4.5-2-201; IC § 24-4.5-3-201; IC § 24-4.5-2-210; IC § 24-4.5-2-602; IC § 24-4.5-3-210; IC § 24-4.5-3-508
   - Note: See also Consumer Credit Advisory Letter 2020-01, "SEA 395 Law Changes", and SEA 395 – Q&A.

4. Should a Creditor's accrual method be made for the purpose of circumventing the new laws and prohibitions implemented by SEA 395, the Director may, after meeting certain procedural notice requirements, conform the credit service and/or finance charge (as applicable) to the limitations set forth by law, including but not limited to requiring any overcharges be refunded to a consumer. This power will be exercised judiciously and only in circumstances where the Director determines a Creditor's particular method clearly demonstrates an intention to evade the limitations of the law.

   - Applies to: creditors in consumer credit transactions (IC § 24-4.5-2); licensed lenders (IC § 24-4.5-3)
   - Statutory references: IC § 24-4.5-2-201(12); IC § 24-4.5-3-201(11)

5. Makes conforming technical amendments throughout the UCCC to reflect the bill's changes.

   - Applies to: creditors in consumer credit transactions (IC § 24-4.5-2); licensed lenders (IC § 24-4.5-3)
   - Statutory references: IC § 24-4.5-2-201; IC § 24-4.5-2-204; IC § 24-4.5-2-205; IC § 24-4.5-2-207 (REPEALED); IC § 24-4.5-2-208; IC § 24-4.5-2-209; IC § 24-4.5-2-210; IC § 24-4.5-2-602; IC § 24-4.5-3-201; IC § 24-4.5-3-204; IC § 24-4.5-3-205; IC 24-4.5-2-206; IC § 24-4.5-2-209; IC § 24-4.5-3-210; IC § 24-4.5-4-107

6. **6.** Changes from $1.50 to $3.00 the amount of the fee that a lessor in a rental purchase agreement may contract for and receive for accepting rental payments by telephone effective July 1, 2020. Note that the statute otherwise requires that the fee be contracted for; as a result, the lessor may not unilaterally impose the increased amount of the fee on pre-existing rental purchase agreements. New rental purchase agreements made on or after July 1, 2020, in addition to meeting the other statutory requirements, may contract for, and the lessor may receive, a fee for accepting rental payments by phone not to exceed an amount of $3.

   - Applies to: rental purchase registrants
   - Statutory references: IC § 24-7-5-12

7. The Legislative Council was urged to assign an interim study committee on financial institutions and insurance the task of studying the potential effect of breaking up the Uniform Consumer Credit Code codified at IC § 24-4.5. As a result, the Legislative Council did assign in Resolution 20-02 the following to the Interim Study Committee on Insurance and Financial Institutions:

Potential effect of breaking up the Uniform Consumer Credit Code (UCCC) codified at IC 24-4.5 and, whether to create a new chapter in Title 28 (Financial Institutions) of the Indiana Code that would apply existing UCCC provisions to banks and credit unions, while separating the consumer credit provisions governing depository and non-depository institutions within the Indiana Code. (Source: SEA 395-2020; 2019 Final Report of the Interim Study Committee on Financial Institutions and Insurance)

Additional detailed guidance from the Department, specifically regarding the nonrefundable prepaid finance charge changes as they apply to creditors who engage in consumer credit transactions under chapter 2, or consumer loans under chapter 3 of the IUCCC, as well as the prohibition on precomputed transactions and alternative computation methods, can be found at the Consumer Credit Advisory Letter 2020-01, "SEA 395 Law Changes", and SEA 395 – Q&A. Additional Advisories issued by both the Depository Division as well as the Consumer Credit Division can be found on DFI's website, www.in.gov/dfi, "General Information", "Policies and Guidance."

DFI Legislation of Interest and related Legislative Advisories published for 2020 as well as for previous years can be found at the DFI website, "Legal Resources", Legislation and Administrative Rules, and "Case law and Administrative Interpretations."

Should you have any questions regarding the above, please contact the Department at: 317-232-3955.