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**2016 GENERAL ASSEMBLY –
DEPARTMENT OF FINANCIAL INSTITUTIONS
LEGISLATION OF INTEREST-UPDATED**

Prepared by Constance J Gustafson, General Counsel
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The following is legislation adopted by the General Assembly in the 2016 session which we thought would be of interest to the department, its constituencies, staff and members. These are brief summaries and are by no means a comprehensive explanation of the bills. We recommend a complete review of any bill of particular interest. A complete list of all legislation enacted or considered in the 2016 General Assembly can be found at the following link: <http://iga.in.gov/legislative/2016/bills/> or by going to the Indiana General Assembly web site.

HEA 1181 Financial institutions and consumer credit (commonly known as the "DFI Omnibus Bill"). The following is a brief summary of HEA 1181 which was signed by the Governor on March 21, 2016. It contains mostly clarifications and corrections of changes made to the Indiana Financial Institutions Act (the "Act") and the various consumer credit laws in previous years; however there are some significant amendments. Unless otherwise indicated, all provisions become effective July 1, 2016.

The following are significant provisions of HEA 1181:

Consumer Credit:

- **IC 24-4.4-1-301 Definitions in First Lien Mortgage Act; IC 24-4.5-1-301.5 definitions in UCCC; IC 24-4.5-2-602 consumer related sales in UCCC; IC 24-4.5-3-602 consumer related loans: Remove specific dollar amounts.**

The specific dollar amounts were removed from the above specified sections so that Indiana law will track federal law, including changes in Regulation Z as they occur.

- **Expand name of NMLS in IC 24-4.4-1-301 (First Lien Mortgage Act); IC 24-4.5-1-301.5 (UCCC), 28-1-29-5.5 (Debt Management Companies), and 28-8-4 (Money Transmitters)**

Since the Nationwide Mortgage Licensing System and Registry (also known as NMLS) has expanded its licensing and registry capabilities to include the licensing and registering of other

financial services, the name of the system now reflects this expanded use under the assumed name of "Nationwide Multistate Licensing System and Registry." We have added language acknowledging this name change and possible future names that could be used for the system.

- **TILA-RESPA Integrated Mortgage Disclosure (“TRID”) 24-4.4-2-201 (FLMA relating to “short sales”), IC 24-4.5-2-209(4); and IC 24-4.5-3-209(4) (relating to “short sales” under the UCCC) and IC 32-29-7-5 (on deficiency judgments) – clarify these four statutes do not protection from liability after foreclosure. Effective on passage.**
 - The language in HB 1181 has been adopted to clarify an issue relating the new TILA-RESPA Integrated Mortgage Disclosure (“TRID”) recently approved by the Consumer Financial Protection Bureau. This form has been revised to provide the consumer a standard mortgage disclosure document.
 - This multi-page form has a check the box provision relating to “Liability After Foreclosure” and inquires if there is any state law that may protect the borrower from liability. If so, there is an inquiry that if borrower refinances or takes on more debt will the borrower lose this protection and have to pay additional debt even after foreclosure.
 - The other box is that state law does not protect you from liability for the unpaid balance.
 - There are four statutes, one in the First Lien Mortgage Act (FLMA) on short sales, two in the UCCC also on short sales, and one in Title 32 on deficiency judgments that could be interpreted to provide the borrower with protection from deficiency judgments even though when they were adopted there was no intention to provide borrowers protection from deficiencies.
 - The language in HB 1181 clarifies that those statutes are not intended to provide the borrower with any protections against deficiency judgments so that the lender may check the “no” box.
 - These provisions are the same that are in SEA 272.
- **Conforming rates to 2013 changes. (1) 24-4.5-2-602 "Consumer related sale"; credit service charge; annual notice to department not required; (2) 24-4.5-2-604 Limitation on default charges in consumer related sales; (3) IC 24-4.5-3-602 "Consumer related loan"; loan finance charge; licensing and annual notice to department not required; (4) 24-4.5-3-604. Limitation on default charges in consumer related loans.**

The General Assembly in 2013 adopted increased rates from a 21% maximum flat rate to a maximum flat rate of 25%. These changes were initiated by the consumer credit industry so the department, which was neutral on the bill, was not involved in drafting the bill. As we do each year, our staff provides a list of items, mostly inconsistencies among various sections, that they discover during the year. This past year, the staff discovered that four sections, IC 24-4.5-2-602; IC 24-4.5-2-604, IC 24-4.5-3-602 and IC 24-4.5-3-604, were, we believe, inadvertently left out of the 2013 bill increasing rates. Even though this was not a department initiative, we find that if there are inconsistencies it is confusing to our constituents as well as our staff. These four sections have since 1971 been consistent with the sections that were changed in 2013. It appeared to us this was a drafting error in 2013.

- **Debt Management Companies - Clarify by rearranging the various subsections of IC 28-1-29-8 relating to debt management agreements.**

No substantive changes. The proposed revisions this year are rearranging the subsections to make them easier to follow.

Depositories (Including Credit Unions)

- **IC 28-1-7-4. Merger and IC 28-1-7-12 Consolidations – banks and other depositories except credit unions – IC 28-7-1-33 Merger of credit unions - Approval by department: clarify consideration of the department.**

The proposed language clarifies that in approving a merger or consolidation the department should consider whether the surviving institution will be operated in a safe, sound and prudent manner since the other institutions do not survive the transaction.

- **IC 28-1-11-3.1(b)(8.1) Relating to banking powers associated with real estate has inconsistent provisions with IC 28-1-11-5 which also deals with banking powers associated with real estate.**

The amendment corrects conflicting provisions relating to banks acquiring and holding real estate. We discovered inconsistencies in the two sections listed above relating to the power to purchase, hold and convey real estate. The comprehensive provisions relating to real estate are all in IC 28-1-11-5. IC 28-1-11-3.1(b)(8.1) has been amended to refer to the provisions of IC 28-1-11-5.

- **IC 28-1-11-5(h) banks and trust companies and IC 28-5-1-11 industrial loan and investment companies - Disposition of closed branches**

Subsection (h) of IC 28-1-11-5 has been amended to specify that if a bank or trust company closes or discontinues an office, branch or facility it must divest itself of such real estate within five (5) years from date of closing. The same provision has been added to IC 28-5-1-11 relating to disposition of real estate for a closed branch of an Industrial Loan and Investment Company.

- **IC 28-1-11-14. Investments in community based economic development - revised to be consistent with Dodd-Frank Wall Street Reform and Consumer Protection Act**

The amendment of IC 28-1-11-14 implements changes authorized by Section 619(d)(1)(E) of Dodd-Frank which expanded community development projects to allow investment in historic revitalization projects which are not always located in low income areas.

- **IC 28-1-13-1.6. Exceptions to limitations on loans and extensions of credit by state chartered banks: revise to be consistent with federal law**

The amendment to IC 28-1-13-1.6, the section of the Act specifying exclusions to the lending limits for state-chartered banks, is intended to be consistent with the exclusions applicable under federal lending limits in 12 CFR 32.3(c). Future changes to federal lending limits will apply to Indiana banks without need to amend IC 28-1-13-1.6.

- **IC 28-5-1-18. Fidelity coverage for officers and employees: make industrial loan and investment companies consistent with IC 28-13-12-5 applicable to banks**

The fidelity coverage must be approved annually by the board of directors of Industrial Loan and Investment Companies.

- **IC 28-13-4-5. Impairment of capital stock or payments greater than remainder of undivided profits on hand prohibited: Allows department to approve dividend under certain circumstances**

IC 28-13-4-5 provides that an institution can never pay a dividend if it has negative undivided profits. The result is that newer institutions which lost money during the last recession may have large negative undivided profit accounts but are otherwise healthy. This rigidity is particularly harmful for Sub S corporations and for banks wanting to raise more capital. The change allows the department discretion in approving dividends even if the bank has negative undivided profits.

- **IC 28-7-1-12. Examinations by department: Clarifies that IC 28-11-3-1 relating to examinations applies to credit unions**

This is not a change in the law; however, there has been uncertainty as to whether IC 28-11-3-1 relating to examinations applies to credit unions. IC 28-10-1-2 provides that the definitions in IC 28-1-1-3, including the definition of "financial institution" (which includes credit unions), applies to the examination provisions found in IC 28-11-3-1 (among other provisions).

Therefore, IC 28-11-3-1 allowing the sharing of examinations under certain circumstances applies to credit unions.

Other Bills of Interest:

H.E.A. 1127, Civil Proceeding Advance Payment (CPAP) Transactions, effective July 1, 2016

After six years of debate in the General Assembly, HEA 1127 relating to Civil Proceeding Advance Payments (a/k/a CPAP Transactions) is becoming law as of July 1, 2016.

- IC 24-4.5-1-301.5 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.
- IC 24-4.5-3-202(1)(i) provides a CPAP provider is permitted to charge for each CPAP transaction:
 - (1) an annual fee not exceeding an annual rate of 36% of the funded amount;
 - (2) an annual servicing charge not exceeding an annual rate of 7% of the funded amount; and
 - (3) a one time document fee not exceeding:
 - (A) \$250 for a CPAP transaction with a funded amount of less than \$5,000; and
 - (B) \$500 for a CPAP transaction with a funded amount of at least \$5,000.

These fees are fully earned when paid and are not subject to refund or rebate. Other than these fees and charges, a CPAP provider may not assess or collect any other fee or charge in connection with a CPAP transaction.
- IC 24-4.5-3-110(3) specifies that a CPAP transaction is not a consumer loan.
- The law requires specific disclosures for a CPAP contract and requires that, if the consumer entering into the CPAP transaction is represented by an attorney, the consumer's attorney must review the CPAP contract.
- Prohibited acts are set forth with respect to CPAP providers and attorneys representing consumer claimants.
- After December 31, 2016, a person may not regularly engage in the business of making CPAP transactions in Indiana unless the person obtains, and maintains on an annual basis, a

consumer loan/CPAP license issued by the Department of Financial Institutions (Department).

- IC 24-4.5-1-301.5 (39) defines "Regularly engaged" for non-mortgage transactions means persons extending or intending to extend consumer credit more than twenty-five (25) times in a calendar year.
- A person extending credit 25 or less times in a calendar year is not required to obtain a CPAP license.
- To ensure licensing by January 1, 2017, the Department recommends complete and accurate applications be submitted no later than October 1, 2016. The Department may adopt rules or policies to implement these provisions; however, no plans are in place to adopt rules. The license application is available at <https://forms.in.gov/Download.aspx?id=4788>.

S.E.A. 221, Securities and Financial Protection, effective July 1, 2016

This bill was supported by Secretary of State Connie Lawson and places the Securities Division of her office in a position to help elderly or disabled individuals at risk of losing valuable resources to unscrupulous persons preying upon their financial resources.

- The new law requires a qualified individual (defined under the law may be an individual associated with a broker-dealer who serves in a supervisory, compliance, or legal capacity as part of the individual's job) who has reason to believe that financial exploitation of a financially endangered adult has occurred, has been attempted, or is being attempted to make a report to adult protective services and the securities commissioner.
- The law allows a qualified individual to refuse a request for disbursement of funds from an account: (1) owned by a financially endangered adult; or (2) of which a financially endangered adult is a beneficiary or beneficial owner; if the qualified individual has reason to believe that the requested disbursement will result in financial exploitation of the financially endangered adult.
- Broker-dealers and qualified individuals are provided with certain immunity from administrative or civil liability in their efforts to help financially endangered adults.
- The Indiana Securities Division can be found at the following link:
<http://www.in.gov/sos/securities/#>.

S.E.A. 242, Loan to Credit Union Officers, effective upon passage. July 1, 2016

This bill relates to the statute authorizing a state chartered credit union to make a loan to an officer of the credit union and makes the lending limit consistent with federal law that applies to loans to officers of a bank. (Current law provides that the total of all such outstanding loans may not exceed \$100,000.)

- This amount will change with amendments to the federal regulations without need to amend this statute.
- The same provision was also included in HB 1181, the Department's omnibus bill.

S.E.A. 300, Appraisal and Real Estate Brokers, effective July 1, 2016

This bill removes the requirement that property sold at sheriff's sale be appraised.

- It also adds to the existing list of acts that are exempt from the statute governing the licensure of real estate brokers the performance of an evaluation of real property by a financial institution in connection with a transaction for which the financial institution would not be required to use the services of a state licensed appraiser under regulations

adopted under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

S.E.A. 371, Probate Matters, effective July 1, 2016

- Provides an individual otherwise qualified for certain property tax deductions for property that the individual occupies as a beneficiary of the trust that owns the property is not required to be considered the owner of the property under the rules of construction for the property tax law for the trust to receive the property tax deduction. Effective upon passage.
- Transfers certain inheritance tax duties from the probate court, county assessor, and county treasurer to the department of state revenue with respect to inheritance tax returns filed after March 31, 2016. Effective upon passage.
- Revises the inheritance tax allocation statute so that the current allocation between the counties and the state is unaffected by the transfer of inheritance tax duties. Effective upon passage.
- Provides that a will contest must be initiated in the same cause of action. Effective July 1, 2016.
- Specifies the priority of a personal representative and stepchildren with respect to the disposition of a decedent's body and funeral arrangements. Effective July 1, 2016.
- Specifies that a court must consider a standby guardian designation when appointing a guardian. Effective July 1, 2016.
- Specifies that for purposes of a guardianship appointment, a person designated a standby guardian is second in priority to a person designated in a durable power of attorney. Effective July 1, 2016.
- Specifies how property passes in a transfer on death transfer if the beneficiary disclaims the property. Effective July 1, 2016.
- Makes technical corrections.

S.E.A. 372, Deficiency Judgments and Foreclosed Property, effective on passage

TILA-RESPA Integrated Mortgage Disclosure (“TRID”) 24-4.4-2-201 (FLMA relating to “short sales”), IC 24-4.5-2-209(4); and IC 24-4.5-3-209(4) (relating to “short sales” under the UCCC) and IC 32-29-7-5 (on deficiency judgments) – clarify these four statutes do not protection from liability after foreclosure.

- The language in SB 372 has been adopted to clarify an issue relating the new TILA-RESPA Integrated Mortgage Disclosure (“TRID”) recently approved by the Consumer Financial Protection Bureau. This form has been revised to provide the consumer a standard mortgage disclosure document.
- This multi-page form has a check the box provision relating to “Liability After Foreclosure” inquires if there is any state law that may protect the borrower from liability. If so, the there is an inquiry that if borrower refinances or takes on more debt will the borrower may lose this protection and have to pay additional debt even after foreclosure.
- The other box is that state law does not protect you from liability for the unpaid balance.
- There are four statutes, one in the First Lien Mortgage Act (FLMA) on short sales, two in the UCCC also on short sales, and one in Title 32 on deficiency judgments that could be interpreted to provide the borrower with protection from deficiency

judgments even though when they were adopted there was no intent to provide borrowers protection from deficiencies.

- The language in SB 372 clarifies that those statutes are not intended to provide the borrower with any protections against deficiency judgments so that the lender may check the “no” box.
- The same provision was also included in HB 1181, the Department’s omnibus bill.

Bills that did not pass but likely will be back:

H.E.A. 1340, Long Term Small Loans

This bill was supported by the Small Loan Industry (i.e. Payday Lenders). At the hearings, the proponents argued that their industry needs this installment loan product because the Consumer Financial Protection Bureau (newly created federal agency) is planning regulations that may put Payday Lenders out-of-business. Various versions of the bill were offered but the following sets out the basic terms the industry was supporting:

- Provides that a lender that is licensed by the department to engage in small loans may enter into a transaction for a long term small loan with a borrower.
- Defines a long term small loan as a loan that:
 - (1) is entered into by a licensed small loan lender and a borrower;
 - (2) has a principal amount of at least \$605 and not more than \$1,000; and
 - (3) is payable in installments over a term of at least 12 months (later changed to six months).
- Provides that with respect to a long term small loan, a lender may contract for and receive a monthly loan finance charge that:
 - (1) does not exceed 20% of the principal at origination; and
 - (2) is earned by the lender on a daily basis using the simple interest method.
- Sets forth certain requirements and prohibitions with respect to long term small loans

Proponent were unable to generate support for a bill with provisions like those set out above so the bill which passed both houses and was signed by the Governor changed substantially and did the following:

- Urges the legislative council to assign to an appropriate study committee during the 2016 legislative interim the topic of granting lenders that are licensed to make small loans under the Indiana Uniform Consumer Credit Code the authority to make long term small installment loans.
- Provides that if the topic is assigned to a study committee, the study committee:
 - (1) may consider specified matters concerning long term small installment loans;
 - (2) may consult with appropriate interested parties; and
 - (3) shall issue a final report to the legislative council not later than November 1, 2016.
- A listing of study committees was released on May 25, 2016 but a study committee concerning long term small installment loans was not included on the list. It is possible that a study committee will be assigned this topic later this summer.