

Dear Governor Holcomb,

HB 1284 is an extensive infringement on the rights of Hoosier consumers that would allow financial institutions to change contract terms without explicit acceptance, or adequate remedies in a wide array of deposit accounts that include Certificates of Deposits (CDs), checking accounts, and retirement accounts. Changes would be authorized that could materially harm consumers such as increased fees and charges, decreased interest rates, and diminished remedies. The bill rewrites basic contract law and overrides three recent Indiana Supreme Court decisions, including *Decker v. Star* (March 21, 2023), *Land v. IU Credit Union* (October 24, 2023), and the rehearing opinion on *Land v. IU Credit Union* authored by Justice Goff on February 1, 2024.

The undersigned organizations and individuals respectfully ask you to protect Hoosier consumers and veto HB 1284.

The Senate passed this bill by a very narrow margin of 28-21 with significant bipartisan opposition on February 20 after passing the House 91-4 on January 30. We believe that not enough lawmakers understand the damage that this bill will do to Hoosier consumers and that a veto is necessary to force reconsideration of needed guardrails that were not applied in a shortened legislative process.

Many significant concerns remain unaddressed in the version of HB 1284 that passed the House and Senate, as follows:

1. ITS BROAD APPLICATION WAS NOT ADEQUATELY CONSIDERED.

HB 1284 applies to the following account types: (1) Share. (2) Share draft. (3) Share certificate. (4) Draft. (5) Certificate of deposit. (6) Savings. (7) Passbook. (8) Checking. (9) Money market. (10) Transaction. (11) Time deposit. (12) Savings deposit. (13) Accounts similar to those listed in subdivisions (1) through (12).

The Indiana Supreme Court decisions related only to checking accounts. The legislative discussion largely ignored the many other kinds of accounts that would be materially affected.

For example, as this bill also applies to accounts such as CDs, a customer's rate of 5% interest for two years could be changed to a shorter term, or lowered to 3% interest through a simple 30 day notice with a "remedy" to close and move that CD account in 30 days.

2. THERE ARE NO LIMITS TO THE TYPES OF CHANGES OR ADDITIONS.

There are no limits to the types of changes or additions allowed by HB 1284. In *Decker v. Star* the Supreme Court addressed contract alterations newly requiring customers to arbitrate all disputes, finding that the contract did not allow the bank to add new terms. The legislature

overrode this determination and expanded the rights of financial institutions to add or change ANY new terms, at any time, regardless of the existing agreement.

The General Assembly also failed to discuss any distinction between innocuous administrative amendments and material alterations that could financially harm customers.

3. THE WRITTEN NOTICE REQUIRED IN HB 1284 IS NEITHER CONSPICUOUS NOR REASONABLE.

In *Decker v. Star*, the change to the agreement was included on p. 13 of a monthly e-statement without clear indication in the email that there was an addition to the terms of the contract. By contrast, in *Land*, the credit union's notice of the amendment was mailed on paper to a customer as part of a two-page statement, the first of which referenced the addendum in bold letters, and the Court held that this was reasonable notice.

Unfortunately, nothing in HB 1284 would either require a notice similar to *Land*, nor disallow a the notice of *Decker* buried on p. 13 of an online statement without conspicuous notice that the statement contained a change to the existing agreement. This is likely to leave most customers largely in the dark about material changes having been made to their accounts.

4. CUSTOMER CONSENT DEEMED THROUGH 30 DAYS OF NOT CLOSING AN ACCOUNT AFTER SENDING OF A WRITTEN NOTICE IS INSUFFICIENT AND HARMFUL

Even assuming that a customer sees the notice changing terms, allowing only 30 days to change a banking account, or a CD account, etc., is not reasonable, and can lead to financial losses by the customer. In *Land*, the Supreme Court held that customer silence did not equal assent to a material change in terms. Contrary to the *Land* decision, HB 1284 would specifically allow customer inaction in 30 days from the sending of notice to always equal consent to changes.

Additionally, the harm to customers having to change accounts within 30 days was not fully considered by the legislature. Federal law allows 6 months for paper checks to be submitted by the recipients for payment. If a customer does not, for example, wish to pay new account fees or accept other conditions, closing an account in 30 days leaves that customer liable for checks that have been submitted to the prior banking account for 5 months after closure and rejected because the account has been closed.

This could be particularly harmful to small business owners having payroll, payment of business costs, invoices for payment, and outstanding checks all tied to that account. The costs and difficulty of closing such an account may force acceptance of detrimental changes.

5. POTENTIAL FOR ABUSE

In Indiana, bank contracts are not held to a standard of “good faith and fair dealing,” while insurance and employment contracts are held to that standard. Changes or additions under HB 1284 could therefore be made that are exclusively to the benefit of the bank.

6. IMPAIRMENT OF EXISTING CONTRACTS

HB 1284 would go into effect in July of 2024 and is intended to apply to existing contracts. Even if these existing accounts specify the way that changes to the account can be made, HB 1284 overrules those terms. As such, it likely violates the contract impairment clause of the United States Constitution. Article I, Section 10 of the U.S. Constitution says that no state shall impair existing obligations under a contract.

Governor Holcomb, we urge you to stand by Hoosier consumers, small businesses, and the Indiana Supreme Court, and to veto this harmful piece of legislation.

Sincerely,

Organizations

Indiana Community Action Poverty Institute

Prosperity Indiana

Brightpoint

Indiana Justice Project

Indianapolis Urban League - Governor Holcomb - I urge you to stand with Hoosier citizens, small businesses, and the Indiana Supreme Court to veto this harmful legislation which will be leveraged by financial institutions take advantage of desperate, struggling and unwitting Hoosier families and businesses. Failure to do so will lead to staggering debt for families and businesses that may require local, State of Indiana and federal assistance for them to overcome.

Indiana Community Action Association, Inc.

Area Five Agency on Aging and Community Services, Inc.

MADVoters Indiana

The Military / Veterans Coalition of Indiana

Indiana Coalition Against Domestic Violence

Safe at Home

Domestic Violence Network

Stepping Stone Shelter

New Directions of Decatur County

Fair Housing Center of Central Indiana

Coburn Place

Indiana Catholic Conference

Greater Indianapolis Multifaith Alliance (GIMA)

Concerned Clergy of Indianapolis

Rush County Victims Assistance Inc.

Civil & Human Rights Department - COA - *Please protect Hoosier from further financial hardship.*

Indiana Disability Rights

JB Real Estate Consultants

Council on Domestic Abuse, Inc.

Black Onyx Management

Hoosier Action

Common Grace Ministries

ECHO Housing & Community Development - *As a permanent supportive housing and community development organization, ECHO invests significant effort in stabilizing and improving marginalized Hoosier's quality of life. Part of that effort is financial literacy and security to help move people from homelessness and poverty to self-sufficiency. Legislation that allows financial institutions to take unfair advantage of those working hard to become more independent is counterproductive.*

Cohen & Malad, LLP - *We implore you to protect Hoosiers and put consumer rights first by vetoing HB 1284.*

Catholic Charities of the diocese of Fort Wayne-South Bend, Inc.

Indiana Coalition for Human Services

Individuals

Chuck LaDow, Cass County

Mark Tarpey, Marion County - *As a former regulator for the state of Indiana, Department of Financial Institutions for over 40 years, I am shocked that this legislation will change existing contracts as well as new contracts at the whim of the financial institutions. The basics of contract law should not be changed by ill advised legislative efforts.*

Johna Lee, Madison County

Brenda Renaldo, Tippecanoe County

Misty Gonzalez, Tippecanoe County

April Richards, Decatur County

Teresa Jarratt, Porter County

Kelly Sanford, St. Joseph County - *What purpose does this serve for your constituents? Life is hard enough without the government stepping in and making it worse.*

Kylie Carrithers, Vigo County

Savannah Archer, Marion County

Nicole Blackburn, Marion County

Wayne Fancher, Bartholomew County

Barbara Wellnitz, Marion County

Bethany Tam, Allen County

Leann Burke, Dubois County

Jayne Smith, Dubois County - *This bill should not be allowed to pass. It seems to target the poor to middle class to allow banks this type of power. This is harmful all around for everyone besides the banks.*

Deborah Fisher, Marion County

Ann Fleck, Noble County - *Allowing financial institutions more power over those less fortunate is despicable. I am appalled that ANYONE thought this was a good idea. Shame on each and every one of you and shame of whomever proposed this disgusting bill.*

Bailey Reeder, Monroe County - *Remember what happens time and time again when banks are given too much power over their customers. There must be strict limits to prevent financial collapse.*

Lauren Murfree, Carroll County - *These exemptions will harm those who need the most support in Indiana, low-income families. Hoosiers are already struggling, and passing this bill will place more families in economically unstable conditions. Please veto this bill and support Hoosier families!*

Bryan Hernandez, Marion County

Jesse Brown, Marion County - *This is a clear attempt to make things easier on those who have (banks) at the expense of those who have not (consumers).*

Pamela Kirk, Vanderburgh County

Priscilla Russell, Marion County

Donnie Harris, Marion County

Jacqueline Simpson, Hamilton County

Dorothy Stein, Marion County

Aida Ramierz, Bartholomew County - *Retroactive application runs contrary to the basic principles of contract law and jurisprudence. It will be impossible to unring this bell. It will have untold unintended consequences and will impact already-struggling Hoosiers.*

Amy Vermillion, Jennings County

Patricia Davis, Madison County

Kimberly Gerhart-Fritz, Marion County

Tricia Massa, Lake County - *This bill will hurt citizens in our state, especially those for whom banking contract terms are already confusing, particularly the elderly, who often own CDs. It is the responsibility of the government to look out for the interests of the public and ensure market forces do not cause undue burdens or usurp the rights of consumers. This bill clearly oversteps the rights of consumers by allowing their financial institutions to change contract terms without explicit acceptance, or adequate remedies.*

Linda Hanson, Delaware County

Linda Gosnell, Marion County - *I recently noticed a very small-print change (one of many actually) on a bank statement, and this particular wording indicated that I had opted out of overdraft protection. The bank rep was happy to opt me back in, but had I not seen this and called, I would not have been protected in the event of a rare overdraft occurrence. No matter what the contract change, be it bank or other institution, a signature from the consumer should be sought, or enough time provided to make preparations for moving to another financial institution. Qui tacet consentire videtur is unacceptable in matters such as these, especially with email/snail mail/other notifications often not being received for one reason or other.*

Betsy Kachmar, Allen County - *This is not a short session issue. Setting national precedent that affects the rights of all Hoosiers requires careful thought & discourse. Veto this bill & make this a conversation that is in next session not a lengthy & expensive legal battle.*

Ginger Kohr, Owen County

Terri Noone, Allen County

David Mikelsons, Marion County

Tallulah Easley, Marion County - *The passing of this bill will harm everyone by supporting the legal victimization of account holders, especially the poor and middle class. Individuals and families will be robbed of their hard-earned money. To even consider this is disgusting.*

Christina Lear, Marion County

Harold Wilburn, Marion County

Pauline Spiegel, Marion County

Mary Tanner, Hamilton County

Donna Schwartz, Hamilton County - *Please give families in Indiana a chance to make better lives for themselves instead of complicating banking issues.*

Tierra Bush, Marion County

Mary Goodwin, Marion County

Jennifer Renner, Allen County

Monica Casanova, Tippecanoe County

Cheryl Koch-Martinez, Hendricks County - *Please do not strip consumers of what little bargaining power we have in our dealings with financial institutions. The effects will be devastating, especially for seniors and more vulnerable populations. I am particularly concerned with the breadth of the law and it's potential retroactive application. I hope you are also and speak for us with your veto. Thank you.*

Amanda Ott, Johnson County

Mary Adkins, Marion County - *This would be a horrible detriment to the rights of consumers.*

Melissa Dauby, Marion County

Haley ONeal, Allen County

Carol McDonald, Boone County

Linda Snow, Hamilton County

John Niederman, Allen County

Ashley Phillips, Morgan County

Kechia Weedman, Boone County

Karen Oost, Perry County - *Mail doesn't always get to your mail box. I had a very important letter. That I didn't receive, and it caused me some financial problems. I've also received other people's mail in my mailbox. We once received a person's unemployment check, which was put back in the mailbox, with a note saying, "DELIVERED TO WRONG ADDRESS", which meant he receive his check late. So sometimes not everything runs perfectly.*

Barbara Russell, Marion County

Tracy Heaton de Martinez, Bartholomew County

Pamela Francis, Dearborn County

Carol Jackson, Delaware County

A. Johnson, Marion County - *Who exactly is this meant to benefit? Why are we pushing forward poorly constructed and poorly written laws that will harm citizens of our state? This seems only to the unreasonable benefit of financial institutions. Financial institutions have absolutely no moral, ethical or sensical reason to be able to alter a contract and expect "tacit agreement" to be legally binding. This is unconscionable, shameful and will ultimately harm the citizens of Indiana.*

Tonya Lynch, Harrison County - *I am going to state the obvious: This bill is ethically and morally wrong. Our government and institutions are on the verge of discovering that the people of this*

nation, world and universe have equal sovereign rights. And as a collective, we are taking back our sovereign rights to live prosperous lives - no longer slaves to these institutions' CEOs and government leaders caught in their web. What an absurd draconian move!

Jennifer Rutkowski-Smith, Allen County

Kelsi Coe, Hendricks County

Marilyn Kuhn, Marion County - *Please protect consumers and especially those on the margins who already have a hard time getting access to equitable and fair financial resources. Why would our congressional leaders think this approach is helpful to their constituents?*

Damika Shanks, Marion County

Carla Kilgore, Allen County - *Some unexpected fees may not cause a big issue for people with extra money, but many people in Indiana need to have all their funds available to pay their bills, so this seems likely to cause major difficulties for those families.*

Bonita Pribush, Johnson County - *Please veto this bill and support the many Hoosier working families, who are struggling to survive.*

Deborah Miller, Marion County

G. Randall Harrison, Madison County - *Being in a situation in which we live pay check to pay check, this Bill will allow banking institutions to inflict extra and unnecessary fees onto our already depleted checking accounts. The government in Indiana is not about promoting the general welfare of its citizens, it is in the business of keeping them in poverty.*

Penny Dyer, Madison County

Lauren Smith, Hamilton County

Sherri Gleeson, Delaware County

Amanda Webb, Madison County - *This is a blatant attack on the consumers of Indiana. With inflation and lack of our state government willing to really look at what a livable wage is, most of us are struggling financially. If signed into law, this would be detrimental to our livelihood.*

Sharon Bryant, Madison County

Mary Kate Dugan, Marion County - *This bill would diminish the meaning of "contract" under Indiana law and unfairly insulate financial institutions from suit. Banks don't deserve special rights allowing them to break the promises they make to clients. Oppose this bill.*

Lynn Toops, Boone County

Emily Kopp, Marion County

Lauren Duckett, Marion County

Amy Ockomon, Madison County

Jodie Bergeron, Marion County

Natalie Lyons, Marion County - *Please protect Indiana citizens by vetoing this anti-consumer bill.*

Myron Taylor, Madison County

Edward Mulligan, Hamilton County - *I think this bill would unnecessarily harm Hoosiers and it should be vetoed!*

Barbara Bates, Hendricks County

Justin Kuhn, Marion County - *This bill is antithetical to basic contract law. Why should we allow banks to unilaterally change the terms of an agreement? Our Supreme Court has made its voice clear and they are the authority on the fair application of the law. The legislature should LISTEN.*

Jen Horsley, Monroe County

Ashleigh Thompson, Hancock County

Jeffrey Hammond, Hamilton County

Erin Haberman, Hendricks County - *As a full time student at Purdue University Lafayette who also works 20+ hours a week, my finances are critical and my free time is limited. It'd be easy to ignore communications that appear to be junk mail and email, which the banks want to use despite the importance of this information. To also only allow 30 days to close and open a new account, then have to transfer all payments/income etc. or be automatically consenting is in my opinion undue and unnecessary. Consumer rights are NOT protected by the passage of HB1284. PLEASE consider all the students like me, and the rest of the individuals in our state this bill will also harm, and VETO!*

Brian Zoeller, Marion County

Melanie Wright, Delaware County

Heidi Davis, Grant County

David Cutshaw, Hamilton County - *Indiana Legislature cares nothing about consumers. Only about protecting banks and their ilk.*

Arend Abel, Marion County

Greg Laker, Boone County - *This bill harms Hoosier consumers. Please veto.*

Stacy Braun, Johnson County

Jodi Bennett, Hamilton County

Jon Knoll, Johnson County

Linda Wethington, Miami County

Andrea Simmons, Boone County - *Please protect the consumer.*

Lynlee Swartz, Marion County

Katherine Segura, Marion County

Susan DeVoe, Marion County

Marlena Boswell, Johnson County

Olivia Reynoso, Johnson County

Linda Snow, Hamilton County

Ashley Hogue, Marion County

Dr. Lionel Thomas Rush, Marion County - *This is antithetical to the basic notion of offer and acceptance in contract law.*

Richard Bray, Hamilton County

Lisa LaFornara, Marion County

Koby Durbin, Vanderburgh County

Conner Dickerson, Marion County - *The proposed legislation seeks to supplant longstanding principles of contract law to exploit Hoosiers. We need to veto this bill for reasons articulated by our Supreme Court.*