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Fred A. Wiecking
Public Counsellor of Indiana

HIGH LIGHTS OF INDIANA ECONOMIC LEGISLATION IN 1935

By FRED A. WIECKING*

It will be a practical impossibility in the time allotted me to discuss all of the legislation enacted at the last session of the General Assembly of Indiana or to go very deeply into any particular act. The session Acts of 1935 consists of 352 chapters covering 1,585 pages. I will not attempt to discuss those dealing with crime and criminal procedure or alcoholic beverages which of course are important and have been or will be discussed, but prefer to speak on the particular statutes of which I have some first hand knowledge, dealing principally with economic questions.

These fall into four general classes:

1. Banking legislation; 2. Insurance legislation; 3. Public Service legislation; 4. Consumer Credit legislation.

The Indiana Financial Institutions Act was enacted in 1933 after two years of careful consideration by a Study Commission appointed for that purpose. Without going into details about the law itself, suffice it to say that it is considered the outstanding piece of banking legislation enacted by any state. At the time of its enactment, banking business was in the most chaotic condition since 1873. Due to conditions outside the state, bank moratoriums were being declared and within ten days thereafter every financial institution in the country was closed by Presidential proclamation. The Indiana Financial Institutions Act became effective in its entirety on July 1st, 1933 and through its provisions it was possible to reorganize and rehabilitate practically all of the banking institutions of the State. However, two years

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work with the act demonstrated that certain changes should be made in methods of operation and procedure with regard to liquidation of banks and accordingly some 57 amendments were necessary to smooth out rough spots in certain sections and to make compliance with the requirements of the F. D. I. C., the F. H. A. and the Federal Home Loan Bank. For the same reason the Mutual Savings Bank Act was also amended to make possible membership in the insurance corporation and the Federal Reserve Bank.

The enactment of insurance legislation by the General Assembly of 1935, assumed the aspects of a major operation. After the adoption of the present constitution in 1852, practically every session of the General Assembly had enacted some sort of insurance legislation, apparently without regard to what had been done before and without any effort to coordinate the various enactments. Some four years ago a committee had been appointed to draw up provisions for a new code for submission to the General Assembly, but on account of lack of funds the work was not completed although considerable work was done upon certain phases of the code. The Insurance Commissioner and his office in their annual report recommended again the compilation and passage of a new code. New codes were proposed in a number of states during the present year, principally in Illinois and Pennsylvania, while New York further strengthened its Code in 1933 and 1935.

The purpose of our own code was to coordinate and strengthen the existing laws, to make the organization of companies conform as far as possible to the general corporation act of 1929 and the banking act of 1933 and to provide for the conservation, rehabilitation and liquidation of insurance companies by the Department of Insurance instead of by the antiquated receivership method. Material for the code was taken from our own acts, from the proposed Pennsylvania Code and from the New York Code, which had been severely tested during the stormy days of rehabilitation in 1933. The Code as introduced contained some 330 typewritten pages including 36 pages in the repeal section alone. After a public hearing in the House a number of amendments were offered and accepted. The same procedure was followed in the Senate and again a number of amendments were offered and accepted. However all of the amendments offered in both houses were only to clarify the language of certain sections and none of them changed the intent of the Act itself or any section. Those of us connected with the administration who had some small part in helping to guide the legislation and assist the legislature from a technical standpoint feel a great deal of pride in our new code and believe it will be of material benefit to all of the insurance companies organized under our laws of the State of Indiana.

The acts affecting the operations of the Public Service Commission or of those services under its supervision touched only two agencies. No changes of any importance were made in the acts directly affecting those organizations usually called "public utilities," that is companies furnishing heat, light, power, transportation or communication to the public, and no changes were made in the powers or duties of the Commission itself or of the Public Counsellor.

The major legislative act in this field was the new motor vehicle transportation act. The General Assembly some years ago decided to regulate the use and operation of trucks and busses as common carriers of persons and property over the highways of the state. Then in 1933 an act regulating contract carriers of property was passed. The latter act seems to me to have been hastily conceived and passed following the decision of the Supreme Court of the United States in the case of *Stephenson v. Binford* in December, 1932. No attempt was made to coordinate it with the Common Carrier Act or even to provide proper methods of administration or enforcement. Accordingly in the seventy-ninth General Assembly the whole matter was again reenacted. Some years of experience indicated certain changes that should be effected with relation to common carriers and certainly coordination of the Contract Carrier Act was indicated. House Bill 418 was finally prepared and introduced after many hours of conference with all the agencies involved and although amended many times was finally enacted into law, substantially as introduced, except that farm products were again exempted and private carriers taken out from under the operation of the Act. While I do not question the Legislature on these two points, knowing that legislation as finally enacted is always a compromise, I still believe that those who use the highways for gain, using public property in the furtherance of their own private business, should be subject to regulation in the public interest.

The second enactment of importance in this field is one which eventually may have a great economic effect. I refer to the Rural Electrification Bill.

An intensive survey of the state showed that there were some 143,497 farm homes to which electric energy was not available, and while our operating companies were willing to cooperate, the cost of constructing 32,960 miles of line at an average cost of approximately nine hundred dollars per mile was practically prohibitive. This act provides a way for the rural population itself to finance construction and operation of such farm lines with Federal Aid and to either produce or purchase electric energy for the members of such rural electric membership corporations. I do not believe at the present time that such energy can be produced or purchased and supplied to rural customers any cheaper than the same service is being performed along the lines of public or municipal utilities now furnishing rural service, but it will make energy available to thousands of farm homes with all the comfort and convenience such service can bring to the rural population of our State.

I now pass to the consideration of a group of five bills which I will consider under the general title of consumer credit legislation.

At the outset it might be well to define what is meant by consumer credit. Credit of this nature is that which is advanced for the purpose of enabling individuals to purchase goods for consumption as contrasted with the older conception of borrowing or credit advancement for the purchase of capital equipment goods which would be used in furthering production. The risks involved in this newer type of credit are greater than those in the advancement of credit for the purpose of future production. This fact is not as yet clearly understood by the public. In fact, the public has always been loath to recognize the necessity of interest in any form. Long ago the lending of money at interest was considered a sin and was prohibited by law. The rise of commerce on a widespread scale in the Middle Ages and the need for fluid capital became so necessary that older laws prohibiting payment of any interest had to be relaxed. New laws that were enacted during that period and down to the present century generally fixed 6 or 8 per cent as a rate for the maximum legal rate of interest regardless of the type of loan. Such a situation did not allow the development of consumer credit agencies to an extent sufficient to supply the need. This condition persisted until the Russell Sage Foundation opened up the whole question of consumer credit and came to the conclusion that money advanced in small amounts to people of small means repayable in installments is necessarily an expensive operation and that small loans are of real benefit to many borrowers, such benefits being withheld from borrowers when undue legal restrictions on the rate forced reputable lenders out of business and prevent necessitous borrowers from obtaining loans under the law. The outcome of the conclusions on the part of the Russell Sage Foundation was the drafting of the first uniform small loan law and the subsequent redrafts of that law with which you are all familiar. As you also know this uniform law or its equivalent has been adopted in many states. In those states where such laws have been adopted, however, they have served to solve only partially the problem of furnishing credit for the consumer at a reasonable rate, yet at a rate sufficient to justify the service being rendered.

During the past 25 years there has been a rapid development of installment buying for the purchasing of consumption goods on credit. The total of such credit transactions has grown until today it is estimated that there is perhaps two billion dollars of debt now outstanding as the result of the sale of consumer goods on an installment or time basis.

About 7 out of every 10 new or used automobiles are purchased on the installment plan, about 9 out of 10 refrigerators and perhaps more than one-half of the major household appliances. We have recently learned that practically everything on an automobile from tires and melodious sounding horns to spark plugs is sold on an installment basis. In fact, during the Legislature we heard of one company that will overhaul the motor of an automobile and allow the owner to pay for it on an installment basis.

To supply the demand for this type of credit that has grown gradually a heterogeneous array of finance agencies frequently referred to by the press as "finance companies" or "automobile finance companies" have sprung up. Finance companies strictly speaking represent only one type of these agencies, but undoubtedly have come to be used as the generic term signifying most of the other agencies in this field because of the fact that they transact the largest volume of the business.

Since its creation July 1st, 1933, the Department of Financial Institutions has received with great regularity complaints against various types of finance agencies in the consumer credit field. These complaints were directed to the Department of Financial Institutions because of the general impression that that Department had the power and authority to regulate every type of finance institution in the State. These complaints, both those directed towards individuals and those directed towards the whole field of credit advancement at a rate greater than 8 per cent, fail to differentiate invariably between the licensed lender and the unlicensed lender. It was found that the public was inclined to dub anyone a "loan shark" who loaned at more than 8 per cent. Unfortunately some finance operators and other unlicensed money lenders have been guilty of practices that made them worthy of the name "loan shark." The complaints revealed that rates of interest ranging well over 100 per cent although not common in the sense that they composed any large part of the total transactions entered into, were frequent enough to place the whole consumer credit lending field in an undesirable light with the public.

The Commission for Financial Institutions, therefore, authorized the Division of Research and Statistics of the Department to make a survey of the entire State to attempt to learn what agencies were engaged in the advancement of credit and the loaning of money that were not already known and subject to some supervision. The results of this survey revealed the amazing fact that there were undoubtedly hundreds of persons or firms engaged in the loaning of money that were under no sort of regulation. It was revealed that while certain of these lending agencies operated in a reasonable fashion, many others charged exorbitant rates of interest, clothed in many forms of procedure which escaped the eye of those least able to bear such extortions. Other serious abuses indicated by the survey included disregard of the rights of the delinquent borrower when his goods were repossessed, disallowance of interest rebate for prepayments, confused and misleading contracts of purchase and sale, etc. Such practices imposed a burden which was intolerable upon those consumers who could least afford to bear it.

Naturally installment buying is the means of purchase resorted to by persons or families who have a limited income from which little savings may be made. According to the 1930 census, there were 846,066 families in Indiana. Based on Federal Income Tax returns and on a house to house study of home ownership in the City of Indianapolis it was estimated that at least 700,000 of these families have an annual income of less than $2400.00, and that 400,000 of these families have an annual income of less than $1000.00. Since the average family in Indiana, based on the 1930 census figures, contained approximately four persons, it is readily apparent that most of the families in the above income group could not purchase outright commodities normally sold on the installment plan, including furniture, stoves, electrical appliances, radios, automobiles and jewelry, out of accumulated savings, but are, by necessity, forced to accept installment credit. Clearly, the buyers of the above class have little bargaining power to combat the practices of finance agencies to which I have referred. The regulation of installment credit by the State offered an intermediate power to assist the buyer in the purchase of his commodities on a reasonable basis and cost for the credit extension involved and immediately affected the general prosperity of all persons and families who constituted the classes above set out.

The results of this survey were presented to the Governor and at his direct request the Department was asked to draft bills to correct the abuses that had been discovered. These bills were drafted and in due course introduced and became House Bills 373, 374, 375, 376, 377 and 378.

House bill 373 was the General Enabling Act and in addition would have controlled banks operating industrial loan departments. The provisions restricting banks was eliminated in the House and eventually the other portions of the Act were combined with House Bill 377. As a consequence House Bill 373 was allowed to die.

House Bill 374 was the Uniform Trust Receipts Act. As far as the consumer is concerned it is the least important of the consumer credit acts. The bill was included with the other consumer credit bills chiefly because it concerned the same institutions as the other consumer credit bills, namely, the automobile dealer and the finance company, and facilitates and makes uniform the practices involved in financing wholesale purchases of cars by automobile dealers.

House Bill 375 as originally introduced was the Uniform Conditional Sales Act. It was considerably modified by the General Assembly, but in the main it prescribes the rights between the buyer and the seller in the case of an installment sale. It is for the benefit of both parties, therefore, because heretofore the relationship of buyer and seller has not been clearly defined.

The Act in its original form was drafted by the Commission on Uniform Laws and is now in effect in many states. It is in no sense of the word an experimental law but one that had been proven workable and desirable by experience.

House Bill 376 is the Industrial Loan and Investment Act and provides for the supervision for the first time of the various Morris Plan Companies and the so-called Industrial Loan Companies.

The provisions of this act may be defined into three general groups. In the first group are general provisions requiring such companies to obtain approval of the Department of Financial Institutions before operating and placing such companies under the supervision of the Department.

The second group of provisions is designed to protect the borrowers. The act requires these companies to compute and to state their rate of interest as a per cent per month on unpaid balance, thereby making their loans comparable to loans made by licensed small loan companies. The borrower is given the right to prepay the loan at any time without interest on future installments. The companies are forbidden to use false or misleading advertising regarding the rate of interest charged.

The third group of provisions is designed to protect investors. These provisions require the company to have at least $50,000.00 capital stock paid in and unimpaired before they can issue certificates of investment. The investments of companies are limited to high grade bonds and to certain approved loans including personal and co-maker loans, mortgage loans, and first mortgage loans not exceeding 60 per cent of the value of the mortgaged property. Total loans to any one person are limited to 10 per cent of paid in capital. Companies are required to maintain a reserve of at least 5 per cent of outstanding certificates. Dividends are limited until such time as the unimpaired surplus equals the total paid in capital stock.

Other provisions of this character further provide for the safety of investments in such companies.

House Bill 378 contained the new Pawn Brokers Code. As you undoubtedly know, pawn brokers had been subject to the provisions of the Uniform Small Loan Act, which was not entirely appropriate or adequate either for the lender or the borrower. Suffice it to say that the provisions of the new act are similar in nature to those of the Ohio act and very similar to those of the uniform act proposed by the Commissioners on Uniform Laws, and is designed to facilitate transactions of this type and protect both the lender and the borrower.

House Bill 377 is the one in which the people generally are most interested. It is the one which was the storm center of the whole program at the time of the last General Assembly. The largest and best organized lobby ever assembled in a State Legislature for the defeat of any single piece of legislation was assembled at Indianapolis, but the bill passed. The act provides for the following:

(1) That every installment seller give the buyer a copy of the written instrument evidencing the sale.

(2) That every installment sale contract recite the agreed cash price, the down payment, the unpaid balance, the amount of the finance charge added and the total time balance.

(3) That the installment seller, or finance company, mail to the buyer within twenty-five days a copy of the insurance policy or a certificate of insurance, and a statement of the cost of the insurance included in the finance charge.

(4) That the buyer have the right to prepay his contract and receive a discount therefore.

(5) That the finance charge contracted for shall not exceed the amount fixed by the Department.

(6) That every person engaged in the business of purchasing retail installment contracts procure a license and become subject to supervision and examination by the Department.

(7) That no manufacturer shall sell goods to any retailer under an understanding that the retailer sell retail installment contracts to a particular licensee.

(8) That the Department have the power to license persons engaged in the business of purchasing retail installment contracts, to examine the affairs of such persons, to require reports therefrom, to prescribe rules and regulations for the conduct of such business, to determine by general order the maximum finance charge which may be included in any retail installment contract and to determine the minimum discount which may be allowed in case of a prepayment.

It will be seen that the act is designed primarily to regulate the finance companies and not the retail seller or dealer. The only important restrictions on the dealer are that he must give a copy of the retail installment contract to the buyer at the time the contract is executed, and that he must not charge a higher finance charge than is allowed by the Department.

Although these restrictions are entirely proper, any disadvantages that might result therefrom would be more than offset by the provisions of the law which give the dealer freedom to sell his paper to whomever he pleases. Without this act every dealer in Indiana would be subject to increasing pressure from the manufacturer of his product to sell his paper to a factory affiliated finance company.

The advantages of this act to the consumer are obvious. In the first place, he will know at the time he enters into a contract exactly how much he is paying for the goods and for the privilege of buying on installments. In the second place, the act will guarantee that the amount of the finance charge will not be in excess of a fair amount as determined by the Department.

This latter act has already been attacked by a Bill in Equity seeking an interlocutory injunction to suspend the operations of the act. However, the books are full of instances in which the police power of the State has been properly called into operation to regulate certain types of businesses that theretofore had been considered purely private. I might cite as examples the grain elevator cases both in Illinois and the Dakotas; the fire insurance premium cases; the insurance agents commission case and last but by no means least the case of *Nebia v. New York* involving the control of the price of milk in New York State. The consumer credit acts were drawn against the background of these decisions to which I referred and I have no doubt as to the final outcome of any litigation involving the right to regulate such agencies. In fact the companies do not object so seriously to the Indiana Laws, but as was stated in argument by one of their counsel they anticipate that similar legislation will be enacted in the other 47 states, some of which might not be as favorable to their operations as the Indiana Laws, and the regulations promulgated thereunder.

Indiana has blazed a trail in the field of economic legislation affecting the people at large in both the 78th and 79th General Assemblies. The eyes of the nation are upon us, upon the Bar, upon the Courts of the State of Indiana to see that such legislation is properly carried out.