



February 24, 2006

**ENGROSSED
HOUSE BILL No. 1339**

DIGEST OF HB 1339 (Updated February 21, 2006 3:37 pm - DI 71)

Citations Affected: IC 25-34.1.

Synopsis: Real estate broker and salesperson licenses. Provides that the fee that the real estate commission is required to establish to fund the investigative fund must be at least ten dollars. (Under current law, the fee may not be more than ten dollars). Requires a licensed salesperson or real estate broker who is convicted of a crime to send a copy of the judgment of conviction to the real estate commission not more than 30 days after the date of the conviction. Provides that: (1) the real estate commission may discipline a licensed salesperson or real estate broker who is convicted of a crime that substantially relates to the practice of real estate; and (2) a certified copy of a judgment of conviction from a court is presumptive evidence of a conviction. Provides that the amount by which the balance in the investigative fund exceeds \$750,000 at the end of the state fiscal year reverts to the state general fund. (Under current law, the amount by which the balance exceeds \$500,000 reverts to the state general fund.) Requires the attorney general and the professional licensing agency to enter into a memorandum of understanding to administer and enforce the law
(Continued next page)

Effective: July 1, 2006.

Harris T, Reske

(SENATE SPONSORS — MERRITT, LANANE)

January 10, 2006, read first time and referred to Committee on Commerce, Economic Development and Small Business.

January 19, 2006, reported — Do Pass.

January 23, 2006, read second time, ordered engrossed.

January 24, 2006, engrossed.

January 26, 2006, read third time, passed. Yeas 56, nays 38.

SENATE ACTION

February 1, 2006, read first time and referred to Committee on Homeland Security, Utilities, and Public Policy.

February 23, 2006, reported favorably — Do Pass.

EH 1339—LS 6996/DI 110+



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concerning the licensing of real estate brokers and salespersons, and provides for the memorandum to be reviewed annually by the real estate commission. Provides that a licensed salesperson or real estate broker who does not have an agency relationship with the individual with whom the licensee is working due to the existence of a written agreement to the contrary has certain duties. Provides that if those duties are performed by another licensed salesperson or real estate broker, the other salesperson or real estate broker does not have an agency relationship with the individual as a result of performing the duties.

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February 24, 2006

Second Regular Session 114th General Assembly (2006)

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 2005 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1339



A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

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

1 SECTION 1. IC 25-34.1-2-6 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. (a) Except as
3 provided in subsection (b), all funds collected under this article shall,
4 at the end of each month, be reported to the auditor of state and
5 deposited with the treasurer of state for deposit in the general fund. All
6 expenses incurred in the administration of this article shall be paid
7 from the general fund.

8 (b) The commission shall establish a fee of not ~~more~~ **less** than ten
9 dollars (\$10) for real estate brokers and salespersons to provide funds
10 for the purpose of administering and enforcing the provisions of this
11 article, including investigating and taking enforcement action against
12 real estate fraud and real estate appraisal fraud. All funds collected
13 under this subsection shall be deposited in the investigative fund
14 established by IC 25-34.1-8-7.5.

15 SECTION 2. IC 25-34.1-3-9 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9. (a) The commission
17 shall establish fees under IC 25-1-8-2 to implement section 8 of this

EH 1339—LS 6996/DI 110+



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chapter.
(b) Notwithstanding IC 25-1-8-2, a fee established under IC 25-1-8-2 to implement section 8 of this chapter may not be less than fifty dollars (\$50).
(c) The commission shall establish fees to provide funding for the investigative fund established by IC 25-34.1-8-7.5. The fees under this subsection may not be ~~more~~ less than ten dollars (\$10).
(d) The board may collect a fee required by federal law and transmit the fees to the federal government as required by federal law.
(e) A fee described in subsection (a) is in addition to any fees required by federal law.

SECTION 3. IC 25-34.1-3-12 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 12. A licensee who is convicted of a crime (as defined in IC 33-23-1-4) shall send a copy of the:**

- (1) complaint or other information that describes the crime;**
 - and**
 - (2) judgment of conviction;**
- to the commission not more than thirty (30) days after the date of the conviction.**

SECTION 4. IC 25-34.1-6-3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 3. A licensee who is convicted of a crime that substantially relates to the practice of real estate may be disciplined under IC 25-1-11. A certified copy of a judgment of a conviction from a court is presumptive evidence of a conviction for purposes of this section.**

SECTION 5. IC 25-34.1-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 6.** The board shall submit recommendations to the commission concerning the following:

- (1) Implementation and operation of the real estate appraiser licensure and certification program under IC 25-34.1-3-8.
- (2) Rules governing real estate appraisers licensed and certified under IC 25-34.1-3-8.
- (3) Establishing a fee in an amount necessary to fund the investigative fund established by section 7.5 of this chapter but not ~~more~~ less than ten dollars (\$10).
- (4) Rules governing the administration of the investigative fund established by section 7.5 of this chapter.

SECTION 6. IC 25-34.1-8-7.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 7.5.** (a) The investigative fund is established to provide funds for administering and

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1 enforcing the provisions of this article, including investigating and
2 taking enforcement action against real estate fraud and real estate
3 appraisal fraud. The fund shall be administered by the attorney general
4 and the professional licensing agency.

5 (b) The expenses of administering the fund shall be paid from the
6 money in the fund. The fund consists of money from a fee imposed
7 upon licensed or certified appraisers and real estate brokers and
8 salespersons under IC 25-34.1-2-6 and IC 25-34.1-3-9.

9 (c) The treasurer of state shall invest the money in the fund not
10 currently needed to meet the obligations of the fund in the same
11 manner as other public money may be invested.

12 (d) **Except as otherwise provided in this subsection,** money in the
13 fund at the end of a state fiscal year does not revert to the state general
14 fund. If the total amount in the investigative fund exceeds ~~five hundred~~
15 ~~thousand dollars (\$500,000)~~ **seven hundred fifty thousand dollars**
16 **(\$750,000)** at the end of a state fiscal year after payment of all claims
17 and expenses, the amount that exceeds ~~five hundred thousand dollars~~
18 ~~(\$500,000)~~ **seven hundred fifty thousand dollars (\$750,000)** reverts
19 to the state general fund.

20 (e) Money in the fund is continually appropriated for use by the
21 attorney general and the ~~professional~~ licensing agency to administer
22 and enforce the provisions of this article and to conduct investigations
23 and take enforcement action against real estate and appraisal fraud
24 under this article. The attorney general **shall receive five dollars (\$5)**
25 **of each fee collected under IC 25-34.1-2-6 and IC 25-34.1-3-9,** and
26 the ~~professional~~ licensing agency shall ~~divide the money in the fund~~
27 ~~equally.~~ **receive any amount that exceeds five dollars (\$5) of each**
28 **fee collected under IC 25-34.1-2-6 and IC 25-34.1-3-9.**

29 SECTION 7. IC 25-34.1-8-7.7 IS ADDED TO THE INDIANA
30 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
31 [EFFECTIVE JULY 1, 2006]: **Sec. 7.7. (a) The attorney general and**
32 **the licensing agency shall enter into a memorandum of**
33 **understanding to administer and enforce this article.**

34 (b) **The attorney general and the licensing agency shall present**
35 **the memorandum of understanding annually to the commission for**
36 **review.**

37 SECTION 8. IC 25-34.1-10-9.5 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 9.5. (a)** A licensee has
39 an agency relationship with, and is representing, the individual with
40 whom the licensee is working unless:

- 41 (1) there is a written agreement to the contrary; or
- 42 (2) the licensee is merely assisting the individual as a customer

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without compensation.

(b) If a licensee, under subsection (a)(1), does not have an agency relationship with the individual with whom the licensee is working due to the existence of a written agreement to the contrary, the licensee must perform at least the following duties under the written agreement:

(1) Be available to receive and timely present offers and counteroffers for the purchase or lease of:

(A) the property of the individual, if the individual is a seller or landlord; or

(B) the property that the individual seeks to purchase or lease, if the individual is a buyer or tenant.

(2) Assist in negotiating, completing real estate forms, communicating, and timely presenting offers, counteroffers, notices, and various addenda relating to the offers and counteroffers until:

(A) a purchase agreement or lease is signed; and

(B) all contingencies are satisfied or waived.

(3) Timely respond to questions relating to offers, counter offers, notices, various addenda, and contingencies from the seller, landlord, buyer, or tenant pertaining to the subject property.

(c) If:

(1) a licensee described in subsection (b) fails to perform the duties set forth in subsection (b); and

(2) another licensee performs those duties on behalf of or at the request of a seller, landlord, buyer, or tenant;

the performance of those duties by the other licensee referred to in subdivision (2) does not constitute an agency relationship.

(d) This section does not prohibit a licensee from performing duties in addition to the duties specified in this section on behalf of or at the request of a seller, landlord, buyer, or tenant in a real estate transaction.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Economic Development and Small Business, to which was referred House Bill 1339, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BORROR, Chair

Committee Vote: yeas 9, nays 0.

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1339 be amended to read as follows:

Page 3, line 32, delete "an interagency cooperation" and insert "**a memorandum of understanding**".

Page 3, line 33, delete "agreement".

Page 3, line 35, delete "interagency cooperation agreement" and insert "**memorandum of understanding**".

Page 3, line 42, delete "." and insert "**without compensation.**".

Page 4, line 20, delete "relating" and insert "**pertaining**".

Page 4, line 20, delete "offer of a" and insert "**subject**".

Page 4, line 27, after "the" insert "**performance of those duties by the**".

Page 4, line 27, delete "have" and insert "**constitute**".

Page 4, line 28, delete "relationship with the seller, landlord, buyer, or tenant as a" and insert "**relationship.**".

Page 4, delete line 29, begin a new paragraph and insert:

"(d) This section does not prohibit a licensee from performing duties in addition to the duties specified in this section on behalf of or at the request of a seller, landlord, buyer, or tenant in a real estate transaction."

(Reference is to HB 1339 as printed January 20, 2006.)

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SENATE MOTION

Madam President: I move that Senator Lanane be added as cosponsor of Engrossed House Bill 1339.

MERRITT

COMMITTEE REPORT

Madam President: The Senate Committee on Homeland Security, Utilities, and Public Policy, to which was referred House Bill No. 1339, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1339 as reprinted January 24, 2006.)

WYSS, Chairperson

Committee Vote: Yeas 8, Nays 0.

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