

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 492 be amended to read as follows:

- 1 Page 3, line 18, delete "IC 32-30-10.5-9(a)," and insert "**IC**
- 2 **32-30-10.5-8(a),"**.
- 3 Page 3, line 42, delete "IC 24-9-3-7(c)(3)" and insert "**IC**
- 4 **24-9-3-7(c)(3),"**.
- 5 Page 4, line 1, delete "and IC 24-9-3-7(c)(4)," and insert "**IC**
- 6 **24-9-3-7(c)(4), and IC 24-9-3-7(c)(5),"**.
- 7 Page 4, delete lines 22 through 42, begin a new paragraph and
- 8 insert:
- 9 "SECTION 6. IC 24-9-3-7, AS AMENDED BY P.L.141-2005,
- 10 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 11 JULY 1, 2009]: Sec. 7. (a) As used in this section, "**mortgage**
- 12 **transaction" includes the following:**
- 13 (1) A home loan subject to this article.
- 14 (2) A loan described in IC 24-9-1-1 that is secured by a
- 15 mortgage or deed of trust on real estate in Indiana on which
- 16 there is located or will be located a structure or structures:
- 17 (A) designed primarily for occupancy of one (1) to four (4)
- 18 families; and
- 19 (B) that is or will be occupied by a borrower as the
- 20 borrower's principal dwelling.
- 21 (3) A first lien mortgage transaction (as defined in
- 22 IC 24-4.4-1-301) subject to IC 24-4.4.
- 23 (4) A consumer credit sale subject to IC 24-4.5-2 in which a
- 24 mortgage, deed of trust, or land contract that constitutes a

- 1           lien is created or retained against land upon which there is a  
2           dwelling that is or will be used by the debtor primarily for  
3           personal, family, or household purposes.
- 4           **(5) A consumer credit loan subject to IC 24-4.5-3 in which a**  
5           **mortgage, deed of trust, or land contract that constitutes a**  
6           **lien is created or retained against land upon which there is a**  
7           **dwelling that is or will be used by the debtor primarily for**  
8           **personal, family, or household purposes.**
- 9           **(6) A loan in which a mortgage, deed of trust, or land contract**  
10          **that constitutes a lien is created or retained against land:**
- 11           **(A) that is located in Indiana;**  
12           **(B) upon which there is a dwelling that is not or will not be**  
13           **used by the borrower primarily for personal, family, or**  
14           **household purposes; and**  
15           **(C) that is classified as residential for property tax**  
16           **purposes.**
- 17          **The term includes a loan that is secured by land in Indiana**  
18          **upon which there is a dwelling that is purchased by or**  
19          **through the borrower for investment or other business**  
20          **purposes.**
- 21          **(7) A reverse mortgage transaction that is secured by real**  
22          **estate in Indiana on which there is located a structure that is**  
23          **occupied by a borrower as the borrower's principal dwelling.**
- 24          **(b) As used in this section, "real estate transaction" means the**  
25          **sale or lease of any legal or equitable interest in real estate:**
- 26           **(1) that is located in Indiana;**  
27           **(2) upon which there is a dwelling; and**  
28           **(3) that is classified as residential for property tax purposes.**
- 29          **(c) A person may not:**
- 30           **(1) divide a loan transaction into separate parts with the intent of**  
31           **evading a provision of this article;**  
32           **(2) structure a home loan transaction as an open-end loan with the**  
33           **intent of evading the provisions of this article if the loan would be**  
34           **a high cost home loan if the home loan had been structured as a**  
35           **closed-end loan; or**  
36           **(3) engage in, a deceptive act in connection with a: (A) home**  
37           **loan; or (B) loan described in IC 24-9-1-1;**
- 38           **(4) solicit to engage in a real estate transaction or a mortgage**  
39           **transaction without a permit or license required by law; or**  
40           **(5) with respect to a real estate transaction or a mortgage**  
41           **transaction, represent that:**
- 42           **(A) the transaction has:**
- 43               **(i) certain terms or conditions; or**  
44               **(ii) the sponsorship or approval of a particular person or**  
45               **entity;**
- 46           **that it does not have and that the person knows or**  
47           **reasonably should know it does not have; or**

1                   **(B) the real estate or property that is the subject of the**  
 2                   **transaction has any improvements, appurtenances, uses,**  
 3                   **characteristics, or associated benefits that it does not have**  
 4                   **and that the person knows or reasonably should know it**  
 5                   **does not have.".**

6                   Delete page 5.

7                   Page 6, delete lines 1 through 5, begin a new paragraph and insert:

8                   "SECTION 7. IC 24-9-5-4, AS AMENDED BY P.L.3-2005,  
 9                   SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 10                  JULY 1, 2009]: Sec. 4. (a) **This section does not apply to a violation**  
 11                  **of IC 24-9-3-7(c)(4) or IC 24-9-3-7(c)(5).** A person who violates this  
 12                  article is liable to a person who is a party to the home loan transaction  
 13                  that gave rise to the violation for the following:

14                  (1) Actual damages, including consequential damages. A person  
 15                  is not required to demonstrate reliance in order to receive actual  
 16                  damages.

17                  (2) Statutory damages equal to two (2) times the finance charges  
 18                  agreed to in the home loan agreement.

19                  (3) Costs and reasonable attorney's fees.

20                  (b) A person may be granted injunctive, declaratory, and other  
 21                  equitable relief as the court determines appropriate in an action to  
 22                  enforce compliance with this chapter.

23                  (c) The right of rescission granted under 15 U.S.C. 1601 et seq. for  
 24                  a violation of the federal Truth in Lending Act (15 U.S.C. 1601 et seq.)  
 25                  is available to a person acting only in an individual capacity by way of  
 26                  recoupment as a defense against a party foreclosing on a home loan at  
 27                  any time during the term of the loan. Any recoupment claim asserted  
 28                  under this provision is limited to the amount required to reduce or  
 29                  extinguish the person's liability under the home loan plus amounts  
 30                  required to recover costs, including reasonable attorney's fees. This  
 31                  article shall not be construed to limit the recoupment rights available  
 32                  to a person under any other law.

33                  (d) The remedies provided in this section are cumulative but are not  
 34                  intended to be the exclusive remedies available to a person. Except as  
 35                  provided in subsection (e), a person is not required to exhaust any  
 36                  administrative remedies under this article or under any other applicable  
 37                  law.

38                  (e) Before bringing an action regarding an alleged deceptive act  
 39                  under this chapter, a person must:

40                  (1) notify the homeowner protection unit established by  
 41                  IC 4-6-12-2 of the alleged violation giving rise to the action; and

42                  (2) allow the homeowner protection unit at least ninety (90) days  
 43                  to institute appropriate administrative and civil action to redress  
 44                  a violation.

45                  (f) An action under this chapter must be brought within five (5)  
 46                  years after the date that the person knew, or by the exercise of

1 reasonable diligence should have known, of the violation of this article.

2 (g) An award of damages under subsection (a) has priority over a  
3 civil penalty imposed under this article.

4 SECTION 8. IC 24-9-8-1 IS AMENDED TO READ AS FOLLOWS  
5 [EFFECTIVE JULY 1, 2009]: Sec. 1. A person who knowingly or  
6 intentionally violates this article commits:

7 (1) a Class A misdemeanor; and

8 (2) **except for a violation of IC 24-9-7-3(c)(4) by a person**  
9 **required to be licensed by the department of financial**  
10 **institutions**, an act that is actionable by the attorney general  
11 under IC 24-5-0.5 and is subject to the penalties listed in  
12 IC 24-5-0.5.

13 SECTION 9. IC 24-9-8-3 IS AMENDED TO READ AS FOLLOWS  
14 [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) **This section does not apply**  
15 **to a violation of IC 24-9-7-3(c)(4) by a person required to be**  
16 **licensed by the department of financial institutions**. The attorney  
17 general may bring an action to enjoin a violation of this article. A court  
18 in which the action is brought may:

19 (1) issue an injunction;

20 (2) order a person to make restitution;

21 (3) order a person to reimburse the state for reasonable costs of  
22 the attorney general's investigation and prosecution of the  
23 violation of this article; and

24 (4) impose a civil penalty of not more than ten thousand dollars  
25 (\$10,000) per violation.

26 (b) A person who violates an injunction under this section is subject  
27 to a civil penalty of not more than ten thousand dollars (\$10,000) per  
28 violation.

29 (c) The court that issues an injunction retains jurisdiction over a  
30 proceeding seeking the imposition of a civil penalty under this  
31 section."

32 Page 10, line 27, after "10." insert "(a)".

33 Page 10, line 30, after "(2)" insert "**except as provided in**  
34 **subsection (b)**".

35 Page 10, between lines 35 and 36, begin a new paragraph and insert:

36 "**(b) The sheriff is not required to record the deed of conveyance**  
37 **for the premises under subsection (a)(2) if the mortgage involved**  
38 **in the foreclosure action resulting in the foreclosure sale under this**  
39 **chapter was insured by the United States Department of Housing**  
40 **and Urban Development.**".

41 Page 11, line 13, delete "IC 32-30-10.5-9(a)" and insert "**IC**  
42 **32-30-10.5-8(a)**".

43 Page 13, delete lines 8 through 10.

44 Page 13, line 11, delete "9." and insert "**8.**".

45 Page 13, line 13, delete "11(g)" and insert "**10(g)**".

46 Page 13, line 33, delete "11(h)" and insert "**10(h)**".

- 1 Page 14, line 20, delete "10." and insert "9."  
 2 Page 14, line 24, delete "9(c)" and insert "8(c)".  
 3 Page 14, line 27, delete "9(c)" and insert "8(c)".  
 4 Page 14, line 28, delete "9(c)" and insert "8(c)".  
 5 Page 14, line 31, delete "9(c)" and insert "8(c)".  
 6 Page 14, line 32, delete "9(c)" and insert "8(c)".  
 7 Page 14, line 37, delete "9(a)" and insert "8(a)".  
 8 Page 14, line 39, delete "11." and insert "10".  
 9 Page 14, line 42, delete "9(c)" and insert "8(c)".  
 10 Page 17, line 5, before "If" insert "**If the settlement conference**  
 11 **held under this section results in an outcome described in**  
 12 **subdivision (2) and the continuing negotiations described in**  
 13 **subdivision (2) are later concluded without the debtor and creditor**  
 14 **being able to agree on the terms of a foreclosure prevention**  
 15 **agreement, the creditor shall file with the court a notice indicating**  
 16 **that a foreclosure prevention agreement was not reached.**".  
 17 Page 17, line 6, after "(1)," insert "**or if continuing negotiations**  
 18 **described in subdivision (2) are later concluded without the debtor**  
 19 **and creditor being able to agree on the terms of a foreclosure**  
 20 **prevention agreement,**".  
 21 Page 17, line 14, delete "9" and insert "8".  
 22 Page 17, line 19, delete "12." and insert "11".  
 23 Page 17, line 27, delete "9(c)" and insert "8(c)".  
 24 Renumber all SECTIONS consecutively.  
 (Reference is to ESB 492 as printed April 10, 2009.)

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Representative Bardon