

# COMMITTEE REPORT

## MADAM PRESIDENT:

**The Senate Committee on Judiciary, to which was referred Senate Bill No. 492, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:**

- 1           Page 1, line 3, delete "IC 24-5.5-3-1," and insert "**IC 24-5.5-3**,"
- 2           Page 2, between lines 26 and 27, begin a new paragraph and insert:
- 3           "SECTION 3. IC 24-5.5-5-7 IS ADDED TO THE INDIANA CODE
- 4           AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
- 5           **1, 2009]: Sec. 7. A foreclosure consultant shall retain all records**
- 6           **and documents related to services performed on behalf of a**
- 7           **homeowner for at least three (3) years after the termination or**
- 8           **conclusion of a contract with the homeowner.**
- 9           SECTION 4. IC 24-9-2-12.5 IS ADDED TO THE INDIANA CODE
- 10          AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
- 11          **1, 2009]: Sec. 12.5. "Real estate transaction" has the meaning set**
- 12          **forth in IC 25-34.1-10-8.**
- 13          SECTION 5. IC 24-9-3-7, AS AMENDED BY P.L.141-2005,
- 14          SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 15          JULY 1, 2009]: Sec. 7. A person may not:
- 16                 (1) divide a loan transaction into separate parts with the intent of
- 17                 evading a provision of this article;
- 18                 (2) structure a home loan transaction as an open-end loan with the
- 19                 intent of evading the provisions of this article if the loan would be
- 20                 a high cost home loan if the home loan had been structured as a

- 1 closed-end loan; or  
 2 ~~(3) engage in a deceptive act in connection with a:~~  
 3 ~~(A) home loan; or~~  
 4 ~~(B) loan described in IC 24-9-1-1.~~  
 5 **(3) engage or solicit to engage in a real estate transaction or**  
 6 **a consumer credit mortgage transaction without a permit or**  
 7 **license required by law; or**  
 8 **(4) represent that a real estate transaction or a consumer**  
 9 **credit mortgage transaction has sponsorship, approval,**  
 10 **performance, characteristics, accessories, uses, or benefits**  
 11 **that:**  
 12 **(A) the real estate transaction or consumer credit**  
 13 **mortgage does not have; and**  
 14 **(B) the person knows or reasonably should know the real**  
 15 **estate transaction or consumer credit mortgage does not**  
 16 **have.**

17 SECTION 6. IC 25-1-11-17 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. A practitioner may  
 19 petition the board to accept the surrender of the practitioner's license  
 20 instead of having a hearing before the board. The practitioner may not  
 21 surrender the practitioner's license without the written approval of the  
 22 board, and the board may impose any conditions appropriate to the  
 23 surrender or reinstatement of a surrendered license. **The board may**  
 24 **not accept the surrender of a practitioner's license if the office of**  
 25 **attorney general:**

- 26 **(1) has filed an administrative complaint concerning the**  
 27 **practitioner's license; and**  
 28 **(2) opposes the surrender of the license.**

29 SECTION 7. IC 25-1-11-18, AS AMENDED BY P.L.194-2005,  
 30 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 31 JULY 1, 2009]: Sec. 18. A practitioner who has been subjected to  
 32 disciplinary sanctions may be required by a board to pay the costs of  
 33 the proceeding. The practitioner's ability to pay shall be considered  
 34 when costs are assessed. If the practitioner fails to pay the costs, a  
 35 suspension may not be imposed solely upon the practitioner's inability  
 36 to pay the amount assessed. These costs are limited to costs for the  
 37 following:

- 38 (1) Court reporters.

- 1 (2) Transcripts.  
 2 (3) Certification of documents.  
 3 (4) Photo duplication.  
 4 (5) Witness attendance and mileage fees.  
 5 (6) Postage.  
 6 (7) Expert witnesses.  
 7 (8) Depositions.  
 8 (9) Notarizations.  
 9 (10) Administrative law judges.  
 10 **(11) Real estate appraisals.**
- 11 SECTION 8. IC 25-34.1-6-2 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A person who:  
 13 (1) performs the acts of a salesperson without a salesperson  
 14 license;  
 15 (2) performs the acts of a broker without a broker license; or  
 16 (3) conducts, or solicits or accepts enrollment of students for, a  
 17 course as prescribed in IC 25-34.1-3 without course approval;  
 18 commits a Class A infraction. Upon conviction for an offense under  
 19 this section, the court shall add to any fine imposed, the amount of any  
 20 fee or other compensation earned in the commission of the offense.  
 21 Each transaction constitutes a separate offense.
- 22 (b) In all actions for the collection of a fee or other compensation for  
 23 performing acts regulated by this article, it must be alleged and proved  
 24 that, at the time the cause of action arose, the party seeking relief was  
 25 not in violation of this section.
- 26 (c) The commission may issue a cease and desist order to prevent  
 27 violations of this section.
- 28 (1) If the commission determines that a person is violating this  
 29 section, or is believed to be violating this section, the commission  
 30 may issue an order to that person setting forth the time and place  
 31 for a hearing at which the affected person may appear and show  
 32 cause as to why the challenged activities are not in violation of  
 33 this section.
- 34 (2) After an opportunity for hearing, if the commission determines  
 35 that the person is violating this section, the commission shall  
 36 issue a cease and desist order which shall describe the person and  
 37 activities which are the subject of the order.
- 38 (3) A cease and desist order issued under this section is

1 enforceable in the circuit courts of this state.

2 (d) The attorney general, the commission, or the prosecuting  
3 attorney of any county in which a violation occurs may maintain an  
4 action in the name of the state to enjoin a person from violating this  
5 section.

6 (e) In charging any person in a complaint for an injunction or in  
7 affidavit, information, or indictment with the violation of the provisions  
8 of this section, it is sufficient, without averring any further or more  
9 particular facts, to charge that the person upon a certain day and in a  
10 certain county either acted as a real estate broker or salesperson not  
11 having a license or conducted, or solicited or accepted enrollment of  
12 students for, a broker or salesperson course without course approval.

13 **(f) A licensee who violates IC 24-5-15 or IC 24-5.5 may be**  
14 **disciplined under IC 25-1-11 and this section.**

15 ~~(f)~~ (g) Each enforcement procedure established in this section is  
16 supplemental to other enforcement procedures established in this  
17 section."

18 Page 5, line 22, delete "will" and insert "**may**".

19 Page 5, delete lines 25 through 39.

20 Page 5, line 40, delete "(7)" and insert "**(3)**".

21 Page 5, line 40, delete "necessary and".

22 Page 6, delete lines 2 through 14.

23 Page 6, line 34, delete ":".

24 Page 6, delete lines 35 through 39.

25 Page 6, line 40, delete "(B)".

26 Page 6, run in lines 34 through 40.

27 Page 6, line 41, delete "(i)" begin a new line double block indented  
28 and insert:

29 **"(A)"**.

30 Page 7, line 1, delete "(ii)" begin a new line double block indented  
31 and insert:

32 **"(B)"**.

33 Page 7, line 2, delete "(iii)" begin a new line double block indented  
34 and insert:

35 **"(C)"**.

36 Page 7, line 4, delete "(iv)" begin a new line double block indented  
37 and insert:

38 **"(D)"**.

- 1 Page 7, line 5, delete "(v)" begin a new line double block indented  
2 and insert:  
3 **"(E)"**.
- 4 Page 7, line 6, delete "(vi)" begin a new line double block indented  
5 and insert:  
6 **"(F)"**.
- 7 Page 7, line 8, delete "(vii)" begin a new line double block indented  
8 and insert:  
9 **"(G)"**.
- 10 Page 7, delete lines 20 through 22.
- 11 Page 7, line 23, delete "Sec. 9." and insert **"Sec. 8."**
- 12 Page 7, line 26, delete "written" and insert **"presuit"**.
- 13 Page 7, line 26, delete "does the following:" and insert **"informs the  
14 debtor that the creditor intends to initiate a foreclosure and that  
15 the debtor may obtain assistance from a foreclosure counselor and  
16 that provides information on how to contact a housing counselor."**
- 17 Page 7, delete lines 27 through 42.
- 18 Page 8, delete lines 1 through 30.
- 19 Page 8, delete lines 36 through 42, begin a new paragraph and  
20 insert:  
21 **"(c) If a creditor files an action to foreclose a mortgage, the  
22 creditor shall include with the complaint served on the debtor a  
23 notice of right to participate in a settlement conference. The notice  
24 must inform the debtor that the debtor may schedule a settlement  
25 conference by notifying the court of the debtor's intent to  
26 participate in a settlement conference not later than thirty (30)  
27 days after the complaint is served."**
- 28 Page 9, delete lines 1 through 39.
- 29 Page 9, line 40, delete "Sec. 10." and insert **"Sec. 9."**
- 30 Page 9, line 40, delete "creditor may not proceed" and insert **"court  
31 may not issue a judgment of foreclosure under IC 32-30-10 on a  
32 mortgage subject to this chapter"**.
- 33 Page 9, delete line 41.
- 34 Page 9, line 42, delete "by filing a complaint in a court having  
35 jurisdiction".
- 36 Page 10, line 3, delete "9(a)" and insert **"8(c)"**.
- 37 Page 10, line 5, delete "creditor" and insert **"court"**.
- 38 Page 10, line 6, delete "9(a)(4)" and insert **"(8)(c)"**.

- 1 Page 10, line 7, after "a" insert "**settlement**".
- 2 Page 10, line 7, delete "offered by the debtor".
- 3 Page 10, line 8, delete "9(a)(2)" and insert "**(8)(c)**".
- 4 Page 10, line 9, delete "creditor" and insert "**court**".
- 5 Page 10, line 10, delete "9(a)(4)" and insert "**(8)(c)**".
- 6 Page 10, line 10, after "a" insert " **settlement**".
- 7 Page 10, line 11, delete "offered by the debtor".
- 8 Page 10, line 11, delete "9(a)(2)" and insert "**(8)(c)**".
- 9 Page 10, line 12, delete "such" and insert "**the**".
- 10 Page 10, delete lines 15 through 16.
- 11 Page 10, line 17, delete "subsection (a)," and insert
- 12 "**IC 32-30-10-3**".
- 13 Page 10, line 19, delete "9(a)" and insert "**(8)(a)**".
- 14 Page 10, line 21, delete "under subsection (a)".
- 15 Page 10, line 22, delete ":".
- 16 Page 10, line 23, delete "(1)".
- 17 Page 10, line 23, delete "in the" and insert "**if**".
- 18 Page 10, run in lines 22 through 23.
- 19 Page 10, line 24, delete "case of a complaint filed under".
- 20 Page 10, line 24, delete "(a)(2)(A); or" and insert "**(a)(2)(A)**
- 21 **applies.**".
- 22 Page 10, delete lines 25 through 26.
- 23 Page 10, line 28, delete "(c)(1)" and insert "**(c)**".
- 24 Page 10, line 32, delete "9(a)" and insert "**8(c)**".
- 25 Page 10, line 42, delete "9(a)" and insert "**8(c)**".
- 26 Page 11, line 6, delete "such" and insert "**the**".
- 27 Page 11, delete lines 10 through 42.
- 28 Page 12, delete lines 1 through 6, begin a new paragraph, and insert:
- 29 "**Sec. 10. (a) Unless a settlement conference is not required**
- 30 **under this chapter, the court shall issue a notice of a settlement**
- 31 **conference. The court's notice of a settlement conference must do**
- 32 **the following:**".
- 33 Page 12, line 16, delete "and for any other mortgage" and insert ".".
- 34 Page 12, delete lines 17 through 18.
- 35 Page 12, line 33, delete "The transaction".
- 36 Page 12, delete lines 34 through 42.
- 37 Page 13, delete lines 1 through 4.
- 38 Page 13, line 7, after "or" insert "**assisted by**".

- 1 Page 13, delete lines 29 through 42.
- 2 Page 14, delete lines 1 through 6.
- 3 Page 14, line 7, delete "(e)" and insert "**(b)**".
- 4 Page 14, line 10, delete "(f)" and insert "**(c)**".
- 5 Page 14, line 11, delete "(c)(6)" and insert "**(a)(6)**".
- 6 Page 14, line 13, delete "(g)" and insert "**(d)**".
- 7 Page 14, line 15, delete "(c);" and insert "**(a);**".
- 8 Page 14, delete lines 22 through 28.
- 9 Page 14, line 29, delete "(i)" and insert "**(e)**".
- 10 Page 14, line 35, delete "and the reporting agency, on a".
- 11 Page 14, line 36, delete "form prescribed by the reporting agency,".
- 12 Page 14, delete lines 38 through 42, begin a new paragraph and
- 13 insert:
- 14 **"Sec. 11. (a) This section applies to a mortgage foreclosure**
- 15 **action with respect to which the creditor has filed the complaint in**
- 16 **the proceeding before July 1, 2009, and the court having**
- 17 **jurisdiction over the proceeding has not rendered a judgment of**
- 18 **foreclosure before July 1, 2009.**
- 19 **(b) In a mortgage foreclosure action to which this section**
- 20 **applies, the court having jurisdiction of the action:**
- 21 **(1) shall serve notice of a settlement conference described in**
- 22 **section 10 of this chapter on the parties to the action not later**
- 23 **than August 1, 2009; and**
- 24 **(2) may not proceed to render a judgment of foreclosure in an**
- 25 **action described in subsection (a) unless, upon the conclusion**
- 26 **of a settlement conference described in this section, the parties**
- 27 **are unable to agree on the terms of a foreclosure prevention**
- 28 **agreement.**
- 29 SECTION 8. IC 32-30-12-1 IS AMENDED TO READ AS
- 30 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **Except as provided**
- 31 **in IC 32-30-10.5 for first lien mortgage transactions,** it is not
- 32 necessary in any action upon a mortgage or lien to give time for:
- 33 (1) the payment of money; or

- 1 (2) performing any other act.
- 2 Final judgment may be given in the first instance."
- 3 Delete page 15.
- 4 Renumber all SECTIONS consecutively.  
(Reference is to SB 492 as introduced.)

**and when so amended that said bill do pass.**

Committee Vote: Yeas 8, Nays 2.

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**Bray**

**Chairperson**