



Reprinted
February 25, 2010

ENGROSSED

HOUSE BILL No. 1332

DIGEST OF HB 1332 (Updated February 24, 2010 4:36 pm - DI 101)

Citations Affected: IC 4-2; IC 23-2; IC 23-19; IC 23-20; IC 24-5; IC 24-5.5; IC 24-9; IC 25-34.1; noncode.

Synopsis: Credit services; real estate transactions; securities. Provides that a state officer may not use the state officer's name in a publication or a media broadcast paid for entirely or in part with: (1) money from the securities division enforcement account; or (2) appropriations from the state general fund made for the administration of the uniform securities act. Specifies that a state officer may use the title of the office that the state officer holds in a publication or media broadcast. Allows the securities commissioner (commissioner) to bring a court action to enjoin violations of, and enforce compliance with, the law governing loan brokers. Provides that the court in such an action may, among other actions, order an asset freeze or the appointment of a receiver or conservator to take control of a respondent's property. Provides that the commissioner shall require each applicant for initial registration as an investment adviser representative to submit fingerprints for a national criminal history background check by the Federal Bureau of Investigation. Requires the applicant to pay any fees or costs associated with the fingerprints and background check. Allows the commissioner to award up to 10% of the amount recovered by the securities division as a penalty for a violation of the uniform securities act to any person who provided information leading to the imposition of the penalty.
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Effective: July 1, 2010.

Bardon, Burton

(SENATE SPONSORS — BRAY, LANANE, TAYLOR)

January 13, 2010, read first time and referred to Committee on Financial Institutions.
January 28, 2010, amended, reported — Do Pass.
February 1, 2010, read second time, amended, ordered engrossed.
February 2, 2010, engrossed. Read third time, passed. Yeas 85, nays 2.

SENATE ACTION

February 8, 2010, read first time and referred to Committee on Insurance and Financial Institutions.
February 23, 2010, amended, reported favorably — Do Pass.
February 24, 2010, read second time, amended, ordered engrossed.

EH 1332—LS 6968/DI 101+



Amends the definition of "credit services organization" for purposes of the law governing such entities to include a person that does or offers to do any of the following on behalf of a buyer: (1) Obtain a lower interest rate with respect to a consumer loan or a residential mortgage loan. (2) Provide debt settlement services. Provides that a "credit service organization" does not include: (A) a loan servicer acting on behalf of the holder of a consumer loan or a residential mortgage loan; or (B) a debt management company. Amends the law concerning the disclosures that a credit services organization must provide to a buyer to reflect changes in the federal Fair Credit Reporting Act concerning the circumstances under which a consumer is entitled to a consumer report without charge from a consumer reporting agency. Provides that before a credit services organization may do business in Indiana, it must file a copy of the required surety bond or irrevocable letter of credit with the attorney general. Prohibits a person from maintaining an escrow account used to pay real estate taxes and insurance for residential real estate unless the person is: (1) a specified financial institution; (2) the creditor in a mortgage transaction; (3) a mortgage servicer acting on behalf of the creditor in a mortgage transaction; or (4) a closing agent. Provides that in a real estate transaction involving a land contract between the seller and the buyer, the seller must give to the buyer, at certain specified times, written notice of any encumbrance that affects the title to the real estate. Provides that upon the suspension of a principal broker's license, the real estate commission (commission) shall take custody of each trust account maintained by the principal broker on behalf of others. (Current law requires the commission to take custody of a principal broker's trust accounts upon only the expiration or revocation of the broker's license.) Removes an incorrect cross-reference in the statute concerning real estate brokers and salespersons. Corrects an incorrect cross-reference in the home loan practices act. Provides that a person that knowingly or intentionally violates the statute concerning mortgage rescue fraud commits a Class A misdemeanor. Establishes the securities restitution fund to provide restitution assistance to victims and certain family members of victims for monetary injuries from securities violations. Provides that the fund consists of amounts: (1) from certain funds received for deposit in the securities division enforcement account; and (2) appropriations from the general assembly. Establishes requirements for and limitations on awarding restitution assistance to victims of securities violations. Requires five percent of funds received after June 30, 2010, for deposit in the securities division enforcement account to be deposited into the securities restitution fund. Continually appropriates money from the securities restitution fund to the division for the purposes of: (1) awarding restitution assistance; and (2) paying certain administrative expenses. Transfers \$2,000,000 from the securities division enforcement account to the securities restitution fund on July 1, 2010. Makes it a Class C felony for a person to make or cause to be made: (1) in any document filed with the securities commissioner or securities division; or (2) in any proceeding, investigation, or examination; under the provisions concerning restitution assistance for victims of securities violations any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

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Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

ENGROSSED HOUSE BILL No. 1332

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation and to make an appropriation.

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

- 1 SECTION 1. IC 4-2-6-15 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2010]: **Sec. 15. (a) A state officer may not use the state officer's**
4 **name in a publication or a media broadcast paid for entirely or in**
5 **part with:**
6 (1) **money from the securities division enforcement account**
7 **established under IC 23-19-6-1(f); or**
8 (2) **appropriations from the state general fund made under**
9 **IC 23-19-6-1(f).**
10 (b) **This section does not prohibit a state officer from using the**
11 **title of the office that the state officer holds in a publication or a**
12 **media broadcast described in subsection (a).**
13 SECTION 2. IC 23-2-5-11, AS AMENDED BY P.L.156-2009,
14 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2010]: **Sec. 11. (a) The commissioner may do the following:**
16 (1) **Adopt rules under IC 4-22-2 to implement this chapter.**
17 (2) **Make investigations and examinations:**

EH 1332—LS 6968/DI 101+



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- 1 (A) in connection with any application for licensure under this
- 2 chapter or with any license already granted; or
- 3 (B) whenever it appears to the commissioner, upon the basis
- 4 of a complaint or information, that reasonable grounds exist
- 5 for the belief that an investigation or examination is necessary
- 6 or advisable for the more complete protection of the interests
- 7 of the public.
- 8 (3) Charge as costs of investigation or examination all reasonable
- 9 expenses, including a per diem prorated upon the salary of the
- 10 commissioner or employee and actual traveling and hotel
- 11 expenses. All reasonable expenses are to be paid by the party or
- 12 parties under investigation or examination if the party has violated
- 13 this chapter.
- 14 (4) Issue notices and orders, including cease and desist notices
- 15 and orders, after making an investigation or examination under
- 16 subdivision (2). ~~The commissioner may also bring an action on~~
- 17 ~~behalf of the state to enjoin a person from violating this chapter.~~
- 18 The commissioner shall notify the person that an order or notice
- 19 has been issued, the reasons for it, and that a hearing will be set
- 20 not later than fifteen (15) business days after the commissioner
- 21 receives a written request from the person requesting a hearing if
- 22 the original order issued by the commissioner was a summary
- 23 suspension, summary revocation, or denial of a license and not
- 24 later than forty-five (45) business days after the commissioner
- 25 receives a written request from the person requesting a hearing for
- 26 all other orders.
- 27 (5) Sign all orders, official certifications, documents, or papers
- 28 issued under this chapter or delegate the authority to sign any of
- 29 those items to a deputy.
- 30 (6) Hold and conduct hearings.
- 31 (7) Hear evidence.
- 32 (8) Conduct inquiries with or without hearings.
- 33 (9) Receive reports of investigators or other officers or employees
- 34 of the state of Indiana or of any municipal corporation or
- 35 governmental subdivision within the state.
- 36 (10) Administer oaths, or cause them to be administered.
- 37 (11) Subpoena witnesses, and compel them to attend and testify.
- 38 (12) Compel the production of books, records, and other
- 39 documents.
- 40 (13) Order depositions to be taken of any witness residing within
- 41 or without the state. The depositions shall be taken in the manner
- 42 prescribed by law for depositions in civil actions and made

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returnable to the commissioner.

(14) Order that each witness appearing under the commissioner's order to testify before the commissioner shall receive the fees and mileage allowances provided for witnesses in civil cases.

(15) Provide interpretive opinions or issue determinations that the commissioner will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. The commissioner may adopt rules to establish fees for individuals requesting an interpretive opinion or a determination under this subdivision. A person may not request an interpretive opinion or a determination concerning an activity that:

- (A) occurred before; or
- (B) is occurring on;

the date the opinion or determination is requested.

(16) Subject to subsection (f), designate a multistate automated licensing system and repository, established and operated by a third party, to serve as the sole entity responsible for:

- (A) processing applications for:
 - (i) licenses under this chapter; and
 - (ii) renewals of licenses under this chapter; and
- (B) performing other services that the commissioner determines are necessary for the orderly administration of the division's licensing system.

A multistate automated licensing system and repository described in this subdivision may include the Nationwide Mortgage Licensing System and Registry established by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The commissioner may take any action necessary to allow the division to participate in a multistate automated licensing system and repository.

(b) If a witness, in any hearing, inquiry, or investigation conducted under this chapter, refuses to answer any question or produce any item, the commissioner may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item. If the court determines that the witness, based upon the witness's privilege against self-incrimination, may properly refuse to answer or produce an item, the commissioner may make a written request that the court grant use

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1 immunity to the witness. Upon written request of the commissioner, the
 2 court shall grant use immunity to a witness. The court shall instruct the
 3 witness, by written order or in open court, that:

4 (1) any evidence the witness gives, or evidence derived from that
 5 evidence, may not be used in any criminal proceedings against
 6 that witness, unless the evidence is volunteered by the witness or
 7 is not responsive to a question; and

8 (2) the witness must answer the questions asked and produce the
 9 items requested.

10 A grant of use immunity does not prohibit evidence that the witness
 11 gives in a hearing, investigation, or inquiry from being used in a
 12 prosecution for perjury under IC 35-44-2-1. If a witness refuses to give
 13 the evidence after the witness has been granted use immunity, the court
 14 may find the witness in contempt.

15 (c) In any prosecution, action, suit, or proceeding based upon or
 16 arising out of this chapter, the commissioner may sign a certificate
 17 showing compliance or noncompliance with this chapter by any person.
 18 This shall constitute prima facie evidence of compliance or
 19 noncompliance with this chapter and shall be admissible in evidence
 20 in any action at law or in equity to enforce this chapter.

21 (d) If:

22 (1) a person disobeys any lawful:

23 (A) subpoena issued under this chapter; or

24 (B) order or demand requiring the production of any books,
 25 accounts, papers, records, documents, or other evidence or
 26 information as provided in this chapter; or

27 (2) a witness refuses to:

28 (A) appear when subpoenaed;

29 (B) testify to any matter about which the witness may be
 30 lawfully interrogated; or

31 (C) take or subscribe to any oath required by this chapter;

32 the circuit or superior court of the county in which the hearing, inquiry,
 33 or investigation in question is held, if demand is made or if, upon
 34 written petition, the production is ordered to be made, or the
 35 commissioner or a hearing officer appointed by the commissioner, shall
 36 compel compliance with the lawful requirements of the subpoena,
 37 order, or demand, compel the production of the necessary or required
 38 books, papers, records, documents, and other evidence and information,
 39 and compel any witness to attend in any Indiana county and to testify
 40 to any matter about which the witness may lawfully be interrogated,
 41 and to take or subscribe to any oath required.

42 (e) If a person fails, refuses, or neglects to comply with a court order

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1 under this section, the person shall be punished for contempt of court.

2 (f) The commissioner's authority to designate a multistate automated
3 licensing system and repository under subsection (a)(16) is subject to
4 the following:

5 (1) The commissioner may not require any person that is not
6 required to be licensed under this chapter, or any employee or
7 agent of a person that is not required to be licensed under this
8 chapter, to:

9 (A) submit information to; or

10 (B) participate in;

11 the multistate automated licensing system and repository.

12 (2) The commissioner may require a person required under this
13 chapter to submit information to the multistate automated
14 licensing system and repository to pay a processing fee considered
15 reasonable by the commissioner.

16 SECTION 3. IC 23-2-5-11.5 IS ADDED TO THE INDIANA CODE
17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
18 1, 2010]: **Sec. 11.5. (a) If the commissioner believes that a person
19 has engaged, is engaging, or is about to engage in an act, practice,
20 or course of business constituting a violation of this chapter or a
21 rule adopted or order issued under this chapter or that a person
22 has, is, or is about to engage in an act, practice, or course of
23 business that materially aids a violation of this chapter or a rule
24 adopted or order issued under this chapter, the commissioner may
25 maintain an action in the circuit or superior court in the county
26 where the investigation or inquiry in question is being conducted
27 to enjoin the act, practice, or course of business and to enforce
28 compliance with this chapter or a rule adopted or order issued
29 under this chapter.**

30 (b) In an action under this section and on a proper showing, the
31 court may:

32 (1) issue a permanent or temporary injunction, restraining
33 order, or declaratory judgment;

34 (2) order other appropriate or ancillary relief, which may
35 include:

36 (A) an asset freeze, accounting, writ of attachment, writ of
37 general or specific execution, and appointment of a
38 receiver or conservator;

39 (B) ordering a receiver or conservator appointed under
40 clause (A) to:

41 (i) take charge and control of a respondent's property,
42 including investment accounts and accounts in a

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1 **depository institution, rents, and profits;**
2 **(ii) collect debts; and**
3 **(iii) acquire and dispose of property;**
4 **(C) imposing a civil penalty of up to ten thousand dollars**
5 **(\$10,000) per violation and an order of rescission,**
6 **restitution, or disgorgement directed to a person that has**
7 **engaged in an act, practice, or course of business**
8 **constituting a violation of this chapter or a rule adopted or**
9 **order issued under this chapter; and**
10 **(D) ordering the payment of prejudgment and**
11 **postjudgment interest; or**
12 **(3) order such other relief as the court considers appropriate.**
13 **(c) The commissioner may not be required to post a bond in an**
14 **action or proceeding under this chapter.**
15 **(d) Penalties collected under this section shall be deposited in the**
16 **securities division enforcement account created under**
17 **IC 23-19-6-1(f).**
18 SECTION 4. IC 23-2-5-20, AS AMENDED BY P.L.156-2009,
19 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2010]: Sec. 20. (a) A person shall not, in connection with a
21 contract for the services of a loan broker, either directly or indirectly,
22 do any of the following:
23 (1) Employ any device, scheme, or artifice to defraud.
24 (2) Make any untrue statements of a material fact or omit to state
25 a material fact necessary in order to make the statements made, in
26 the light of circumstances under which they are made, not
27 misleading.
28 (3) Engage in any act, practice, or course of business that operates
29 or would operate as a fraud or deceit upon any person.
30 (4) Collect or solicit any consideration, except a bona fide third
31 party fee, in connection with a **residential mortgage** loan until
32 the loan has been closed.
33 (5) Receive any funds if the person knows that the funds were
34 generated as a result of a fraudulent act.
35 (6) File or cause to be filed with a county recorder any document
36 that the person knows:
37 (A) contains:
38 (i) a misstatement; or
39 (ii) an untrue statement;
40 of a material fact; or
41 (B) omits a statement of a material fact that is necessary to
42 make the statements that are made, in the light of

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circumstances under which they are made, not misleading.
(7) Knowingly release or disclose the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers, unless the personal information is used in an activity authorized by the borrower or prospective borrower under one (1) or more of the following circumstances:

- (A) The personal information is:
 - (i) included on an application form or another form; or
 - (ii) transmitted as part of an application process or an enrollment process.
- (B) The personal information is used to obtain a consumer report (as defined in IC 24-5-24-2) for an applicant for credit.
- (C) The personal information is used to establish, amend, or terminate an account, a contract, or a policy, or to confirm the accuracy of the personal information.

However, personal information allowed to be disclosed under this subdivision may not be printed in whole or in part on a postcard or other mailer that does not require an envelope, or in a manner that makes the personal information visible on an envelope or a mailer without the envelope or mailer being opened.

(8) Engage in any reckless or negligent activity allowing the release or disclosure of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers. An activity described in this subdivision includes an action prohibited by section 18(d) of this chapter.

(9) Knowingly bribe, coerce, or intimidate another person to corrupt or improperly influence the independent judgment of a real estate appraiser with respect to the value of any real estate offered as security for a residential mortgage loan, as prohibited by section 9.1(d) of this chapter.

- (10) Violate any of the following:
 - (A) The federal Truth in Lending Act (15 U.S.C. 1601 et seq.).
 - (B) The federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.
 - (C) The federal Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.).
 - (D) Any other federal law or regulation concerning residential mortgage lending.

(b) A person who commits an act described in subsection (a) is subject to sections 10, 11.5, 14, 15, and 16 of this chapter.

SECTION 5. IC 23-19-4-6, AS ADDED BY P.L.27-2007, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2010]: Sec. 6. (a) A person shall register as a broker-dealer,
2 agent, investment adviser, or investment adviser representative by
3 filing an application and a consent to service of process complying with
4 IC 23-19-6-11, and paying the fee specified in section 10 of this
5 chapter and any reasonable fees charged by the designee of the
6 commissioner for processing the filing. The application must contain:

- 7 (1) the information or record required for the filing of a uniform
8 application; and
- 9 (2) upon request by the commissioner, any other financial or other
10 information or record that the commissioner determines is
11 appropriate.

12 (b) If the information or record contained in an application filed
13 under subsection (a) is or becomes inaccurate or incomplete in a
14 material respect, the registrant shall promptly file a correcting
15 amendment.

16 **(c) At the time of application for an initial registration as an
17 investment adviser representative under this article, the
18 commissioner shall require each applicant to submit fingerprints
19 for a national criminal history background check (as defined in
20 IC 10-13-3-12) by the Federal Bureau of Investigation, for use by
21 the commissioner in determining whether the applicant should be
22 denied registration under this chapter for any reason set forth in
23 section 12(d) of this chapter. The applicant shall pay any fees or
24 costs associated with the fingerprints and background check
25 required under this subsection.**

26 ~~(c)~~ (d) If an order is not in effect and a proceeding is not pending
27 under section 12 of this chapter, registration becomes effective at noon
28 on the forty-fifth day after a completed application is filed, unless the
29 registration is denied. A rule adopted or order issued under this article
30 may set an earlier effective date or may defer the effective date until
31 noon on the forty-fifth day after the filing of any amendment
32 completing the application.

33 ~~(d)~~ (e) A registration is effective until midnight on December 31 of
34 the year for which the application for registration is filed. Unless an
35 order is in effect under section 12 of this chapter, a registration may be
36 automatically renewed each year by filing such records as are required
37 by rule adopted or order issued under this article, by paying the fee
38 specified in section 10 of this chapter, and by paying costs charged by
39 the designee of the commissioner for processing the filings.

40 ~~(e)~~ (f) A rule adopted or order issued under this article may impose
41 other conditions, not inconsistent with the National Securities Markets
42 Improvement Act of 1996. An order issued under this article may

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1 waive, in whole or in part, specific requirements in connection with
2 registration as are in the public interest and for the protection of
3 investors.

4 SECTION 6. IC 23-19-6-1, AS ADDED BY P.L.27-2007,
5 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2010]: Sec. 1. (a) This article shall be administered by a
7 division of the office of the secretary of state. The secretary of state
8 shall appoint a securities commissioner who shall be responsible for the
9 direction and supervision of the division and the administration of this
10 article under the direction and control of the secretary of state. The
11 salary of the securities commissioner shall be paid out of the funds
12 appropriated for the administration of this article. The commissioner
13 shall serve at the will of the secretary of state.

14 (b) The secretary of state:
15 (1) shall employ a chief deputy, attorneys, a senior investigator,
16 a senior accountant, and other deputies, investigators,
17 accountants, clerks, stenographers, and other employees necessary
18 for the administration of this article; and
19 (2) shall fix their compensation with the approval of the budget
20 agency.

21 (c) It is unlawful for the commissioner or an officer, employee, or
22 designee of the commissioner to use for personal benefit or the benefit
23 of others records or other information obtained by or filed with the
24 commissioner that are not public under section 7(b) of this chapter.
25 This article does not authorize the commissioner or an officer,
26 employee, or designee of the commissioner to disclose the record or
27 information, except in accordance with section 2, 7(c), or 8 of this
28 chapter.

29 (d) This article does not create or diminish a privilege or exemption
30 that exists at common law, by statute or rule, or otherwise.

31 (e) **Subject to IC 4-2-6-15**, the commissioner may develop and
32 implement investor education initiatives to inform the public about
33 investing in securities, with particular emphasis on the prevention and
34 detection of securities fraud. In developing and implementing these
35 initiatives, the commissioner may collaborate with public and nonprofit
36 organizations with an interest in investor education. The commissioner
37 may accept a grant or donation from a person that is not affiliated with
38 the securities industry or from a nonprofit organization, regardless of
39 whether the organization is affiliated with the securities industry, to
40 develop and implement investor education initiatives. This subsection
41 does not authorize the commissioner to require participation or
42 monetary contributions of a registrant in an investor education

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program.

(f) Fees and funds of whatever character accruing from the administration of this article shall be accounted for by the secretary of state and shall be deposited with the treasurer of state to be deposited by the treasurer of the state in either the state general fund or the enforcement account referenced below. **Subject to IC 4-2-6-15**, expenses incurred in the administration of this article shall be paid from the state general fund upon appropriation being made for the expenses in the manner provided by law for the making of those appropriations. However, grants and donations **received** under subsection (e), costs of investigations **recovered under section 4(e) of this chapter**, and civil penalties recovered under sections 3(b) and 4(d) of this chapter shall be deposited by the treasurer of state in a separate account to be known as the securities division enforcement account. **Notwithstanding IC 9-23-6-4, IC 23-2-2.5-34, IC 23-2-2.5-43, IC 23-2-5-7, IC 23-19-4-12, IC 25-11-1-15, and this chapter, five percent (5%) of funds received after June 30, 2010, for deposit in the enforcement account shall instead be deposited in the securities restitution fund established under IC 23-20-1-26. Subject to IC 4-2-6-15**, the funds **deposited** in the enforcement account shall be available, with the approval of the budget agency:

- (1) to augment and supplement the funds appropriated for the administration of this article; and
- (2) for grants and awards to nonprofit entities for programs and activities that will further investor education and financial literacy in the state.

The funds in the enforcement account do not revert to the state general fund at the end of any state fiscal year.

(g) In connection with the administration and enforcement of this article, the attorney general shall render all necessary assistance to the commissioner upon the commissioner's request, and to that end, the attorney general shall employ legal and other professional services as are necessary to adequately and fully perform the service under the direction of the commissioner as the demands of the securities division shall require. Expenses incurred by the attorney general for the purposes stated in this subsection shall be chargeable against and paid out of funds appropriated to the attorney general for the administration of the attorney general's office. The attorney general may authorize the commissioner and the commissioner's designee to represent the commissioner and the securities division in any proceeding involving enforcement or defense of this article.

(h) Neither the secretary of state, the commissioner, nor an

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1 employee of the securities division shall be liable in their individual
2 capacity, except to the state, for an act done or omitted in connection
3 with the performance of their respective duties under this article.

4 (i) The commissioner shall take, prescribe, and file the oath of office
5 prescribed by law. The commissioner, chief deputy commissioner, and
6 each attorney or investigator designated by the commissioner are police
7 officers of the state and shall have all the powers and duties of police
8 officers in making arrests for violations of this article, or in serving any
9 process, notice, or order connected with the enforcement of this article
10 by whatever officer, authority, or court issued and shall comprise the
11 enforcement department of the division and are considered a criminal
12 justice agency for purposes of IC 5-2-4 and IC 10-13-3.

13 (j) The provisions of this article delegating and granting power to
14 the secretary of state, the securities division, and the commissioner
15 shall be liberally construed to the end that:

16 (1) the practice or commission of fraud may be prohibited and
17 prevented;

18 (2) disclosure of sufficient and reliable information in order to
19 afford reasonable opportunity for the exercise of independent
20 judgment of the persons involved may be assured; and

21 (3) the qualifications may be prescribed to assure availability of
22 reliable broker-dealers, investment advisers, and agents engaged
23 in and in connection with the issuance, barter, sale, purchase,
24 transfer, or disposition of securities in this state.

25 It is the intent and purpose of this article to delegate and grant to and
26 vest in the secretary of state, the securities division, and the
27 commissioner full and complete power to carry into effect and
28 accomplish the purpose of this article and to charge them with full and
29 complete responsibility for its effective administration.

30 (k) Copies of any statement and documents filed in the office of the
31 secretary of state and of any records of the secretary of state certified
32 by the commissioner shall be admissible in any prosecution, action,
33 suit, or proceeding based upon, arising out of, or under this article to
34 the same effect as the original of such statement, document, or record
35 would be if actually produced.

36 (l) IC 4-21.5 is not applicable to any of the proceedings under this
37 article.

38 SECTION 7. IC 23-19-6-12 IS ADDED TO THE INDIANA CODE
39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
40 1, 2010]: **Sec. 12. The commissioner may award, from any amount
41 imposed as a penalty under this article and recovered by the
42 securities division, a percentage, not to exceed ten percent (10%)**

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1 and as considered appropriate by the commissioner, of the amount
2 recovered, to any person who provided information leading to the
3 imposition of the penalty. Any determination under this section,
4 including whether to make a payment, to whom to make a
5 payment, or in what amount to make a payment, is in the sole
6 discretion of the commissioner. However, a payment may not be
7 made under this section to an employee of the securities division.
8 A determination under this section is final and is not subject to
9 judicial review.

10 SECTION 8. IC 23-20 IS ADDED TO THE INDIANA CODE AS
11 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
12 2010]:

13 **ARTICLE 20. VICTIMS OF SECURITIES VIOLATIONS**

14 **Chapter 1. Restitution for Victims of Securities Violations**

15 **Sec. 1. (a) As used in this chapter, "claimant" means a victim**
16 **filing an application for restitution assistance under this chapter.**

17 **(b) The term includes:**

- 18 **(1) a named party in an award;**
- 19 **(2) the executor of a named party in an award; or**
- 20 **(3) the heirs and assigns of a named party in an award.**

21 **Sec. 2. As used in this chapter, "division" refers to the securities**
22 **division of the office of the secretary of state.**

23 **Sec. 3. As used in this chapter, "fund" refers to the securities**
24 **restitution fund established by section 26 of this chapter.**

25 **Sec. 4. As used in this chapter, "out-of-pocket loss" means an**
26 **amount equal to the amount of restitution ordered under any of the**
27 **following:**

- 28 **(1) A final court order.**
- 29 **(2) A final administrative order.**

30 **Sec. 5. As used in this chapter, "person" includes a sole**
31 **proprietorship, a partnership, a corporation, an association, a**
32 **fiduciary, or an individual.**

33 **Sec. 6. As used in this chapter, "securities violation" means a**
34 **violation of the following:**

- 35 **(1) The Securities Act of 1933, as amended, and any**
36 **regulations related to that act.**
- 37 **(2) The Securities Exchange Act of 1934, as amended, and any**
38 **regulations related to that act.**
- 39 **(3) The Investment Company Act of 1940, as amended, and**
40 **any regulations related to that act.**
- 41 **(4) The Investment Advisers Act of 1940, as amended, and any**
42 **regulations related to that act.**

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1 (5) The Indiana uniform securities act and any rules related
2 to that act.
3 (6) Other state securities acts and any rules or regulations
4 related to those acts.
5 Sec. 7. As used in this chapter, "victim" means an individual
6 who suffers monetary injury as a result of a securities violation.
7 Sec. 8. The division shall do the following:
8 (1) Prescribe forms for processing applications for restitution
9 assistance.
10 (2) Determine whether a claim for restitution assistance filed
11 under this chapter should be awarded.
12 Sec. 9. The division shall require a claimant to produce a copy
13 of:
14 (1) a court order; or
15 (2) an administrative order;
16 that demonstrates that restitution has been awarded to the
17 claimant as described in section 17 of this chapter.
18 Sec. 10. A claimant's personal information (as defined in
19 IC 9-14-3.5-5) is confidential.
20 Sec. 11. Except as otherwise provided in this chapter, the
21 following persons are eligible for restitution assistance under this
22 chapter:
23 (1) A resident of Indiana who is a victim of a securities
24 violation committed:
25 (A) in Indiana; or
26 (B) in a jurisdiction other than Indiana, including a foreign
27 country, if the jurisdiction in which the securities violation
28 occurred does not offer assistance to a victim of a securities
29 violation that is substantially similar to the assistance
30 offered under this chapter.
31 (2) A nonresident of Indiana who is a victim of a securities
32 violation committed in Indiana.
33 (3) A surviving spouse or dependent child of a victim
34 described in subdivision (1) or (2).
35 (4) Any other person legally dependent for principal support
36 upon a victim described in subdivision (1) or (2).
37 Sec. 12. (a) A person eligible for restitution assistance under
38 section 11 of this chapter may file an application for restitution
39 assistance with the division.
40 (b) The application must be received by the division not more
41 than one hundred eighty (180) days after the date of the order
42 described in section 17 of this chapter. The division may grant an

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1 extension of time for good cause shown by the claimant. However,
2 the division may not accept an application that is received more
3 than two (2) years after the date of the order described in section
4 17 of this chapter.

5 (c) The application must be filed in the office of the division in
6 person, through the division's web site, or by first class or certified
7 mail. If requested, the division shall assist a victim in preparing the
8 application.

9 (d) The division shall accept all applications filed in compliance
10 with this chapter. Upon receipt of a complete application, the
11 division shall promptly begin the processing of an application.

12 Sec. 13. (a) The division shall review all applications to ensure
13 that the applications are complete.

14 (b) If an application is not complete, the application shall be
15 returned to the applicant with a brief statement of the additional
16 information required.

17 (c) The applicant may, not more than thirty (30) days after
18 receipt of the request for additional information, either supply the
19 information or appeal to the securities commissioner.

20 (d) The decision of the securities commissioner is final.

21 (e) The division shall deny the application if:

- 22 (1) the applicant does not furnish additional information; or
- 23 (2) additional time is not granted by the securities
24 commissioner for good cause.

25 Sec. 14. (a) Subject to subsection (b), the division may not award
26 restitution assistance if the victim:

- 27 (1) sustained the monetary injury as a result of:
 - 28 (A) participating or assisting in; or
 - 29 (B) attempting to commit or committing;
30 a securities violation; or
- 31 (2) profited or would have profited from the securities
32 violation.

33 (b) If the victim is a dependent child or dependent parent of the
34 person who commits a securities violation, restitution assistance
35 may be awarded where justice requires.

36 Sec. 15. The division may not award restitution assistance under
37 this chapter to more than one (1) claimant per victim.

38 Sec. 16. (a) As used in this section, "net worth" means the excess
39 of total assets over total liabilities.

40 (b) The division may not award restitution assistance to a
41 claimant eligible under section 11 of this chapter if the victim or
42 claimant had a net worth of greater than five hundred thousand

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1 dollars (\$500,000) at the time of suffering monetary injury from a
2 securities violation.

3 **Sec. 17. (a) The division may not award restitution assistance**
4 **under this chapter unless the securities violation was adjudicated**
5 **in a state or federal court or a regulatory agency administrative**
6 **proceeding.**

7 **(b) The division may not award restitution assistance under this**
8 **chapter unless:**

- 9 **(1) a final order has been entered ordering restitution to the**
10 **victim in a proceeding described in subsection (a); and**
- 11 **(2) the party ordered to pay restitution has not paid the full**
12 **amount.**

13 **Sec. 18. The division shall deny an award of restitution**
14 **assistance under this chapter if a court or administrative order**
15 **does not contain an award of restitution to the victim.**

16 **Sec. 19. (a) The division may not award restitution assistance**
17 **under this chapter to a claimant whose award of restitution under**
18 **a court or administrative order is overturned on appeal.**

19 **(b) If:**

- 20 **(1) a claimant is awarded restitution assistance under this**
21 **chapter; and**
- 22 **(2) after receiving an award of restitution assistance under**
23 **this chapter, the claimant's award of restitution under a court**
24 **or administrative order is overturned on appeal;**

25 **the claimant shall forfeit the restitution assistance received under**
26 **this chapter.**

27 **Sec. 20. (a) The state is subrogated to the rights of the victim**
28 **awarded restitution to the extent of the award.**

29 **(b) The subrogation rights are against the person who**
30 **committed the securities violation or a person liable for the**
31 **pecuniary loss.**

32 **Sec. 21. (a) In addition to the subrogation rights under section**
33 **20 of this chapter, the state is entitled to a lien in the amount of the**
34 **award on a recovery made by or on behalf of the victim.**

35 **(b) The state may:**

- 36 **(1) recover the amount under subsection (a) in a separate**
37 **action; or**
- 38 **(2) intervene in an action brought by or on behalf of the**
39 **victim.**

40 **(c) If a claimant brings an action, the claimant may deduct from**
41 **the money owed to the state under the lien the state's pro rata**
42 **share of the reasonable expenses for the court suit, including**

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1 attorney's fees. The amount the claimant deducts under this
2 subsection for the state's pro rata share of the expenses may not be
3 more than fifteen percent (15%) of the money owed under the lien.

4 Sec. 22. If:

- 5 (1) an award is made under this chapter; and
- 6 (2) a claimant receives a sum required to be deducted under
7 section 21(a) of this chapter;

8 the claimant shall refund to the state the amount of overpayment.

9 Sec. 23. (a) In determining the amount of restitution assistance
10 to award under this chapter, the division shall determine whether
11 a victim contributed to the infliction of the victim's monetary
12 injury.

13 (b) If the division finds that the victim contributed to the
14 infliction of the victim's monetary injury, the division may deny an
15 award of restitution assistance.

16 Sec. 24. An award to a claimant under this chapter may not
17 exceed the lesser of the following:

- 18 (1) Fifteen thousand dollars (\$15,000).
- 19 (2) Twenty-five percent (25%) of the amount of out-of-pocket
20 loss.

21 Sec. 25. An award made by the division to a claimant is not
22 subject to execution, attachment, garnishment, or other process.

23 Sec. 26. (a) The securities restitution fund is established.

24 (b) The fund consists of amounts:

- 25 (1) from funds received for deposit in the securities division
26 enforcement account as provided in IC 23-19-6-1(f); and
- 27 (2) appropriated from the general assembly.

28 Sec. 27. The money in the fund is continually appropriated to
29 the division for purposes of:

- 30 (1) awarding restitution assistance under this chapter; and
- 31 (2) paying expenses incurred in administering this chapter.

32 Sec. 28. Money in the fund and income derived from money in
33 the fund do not revert to the state general fund at the end of a state
34 fiscal year.

35 Sec. 29. (a) If the fund would be reduced below two hundred
36 fifty thousand dollars (\$250,000) by payment in full of all awards
37 that become final in a month, the division shall suspend payment
38 of the claims that become final during the month and the following
39 two (2) months.

40 (b) At the end of the suspension period, the division shall pay the
41 suspended claims. If the fund would be exhausted by payment in
42 full of the suspended claims, the amount paid to each claimant shall

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be prorated.

Sec. 30. The state is not liable for a written determination made by the division under this chapter except to the extent that money is available in the fund on the date the award is computed by the division under this chapter.

Sec. 31. (a) A claimant convicted of forgery, fraud, or deception in connection with a claim under this chapter forfeits an award paid to the claimant under this chapter.

(b) The division may file a civil action to recover funds against a claimant described in subsection (a).

Sec. 32. A person commits a Class C felony if the person knowingly makes or causes to be made:

- (1) in any document filed with or sent to the securities commissioner or the division; or**
 - (2) in any proceeding, investigation, or examination;**
- under this chapter any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.**

Sec. 33. The division may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 9. IC 24-5-15-2, AS AMENDED BY P.L.171-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. (a) As used in this chapter, "credit services organization" means a person that, with respect to the extension of credit by another person, sells, provides, performs, or represents that the person can or will sell, provide, or perform, in return for the payment of money or other valuable consideration, any of the following services:

- (1) Improving a buyer's credit record, credit history, or credit rating.**
 - (2) Obtaining an extension of credit for a buyer.**
 - (3) Obtaining a delay or forbearance of a buyer's obligation under a mortgage.**
 - (4) Obtaining a lower interest rate for:**
 - (A) a consumer loan; or**
 - (B) a residential mortgage loan;****to which the buyer is a debtor or a prospective debtor.**
 - (5) Providing debt settlement services on behalf of a buyer.**
 - ~~**(6) Providing advice or assistance to a buyer concerning the services described in subdivision subdivisions (1) (2); or (3) through (5).**~~
- (b) The term "credit services organization" does not include any of**

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1 the following:

2 (1) A person authorized to make loans or extensions of credit
3 under state or federal laws that is subject to regulation and
4 supervision under state or federal laws, or a lender approved by
5 the United States Secretary of Housing and Urban Development
6 for participation in a mortgage insurance program under the
7 federal National Housing Act (12 U.S.C. 1701 et seq.).

8 (2) A bank or savings association or a subsidiary of a bank or
9 savings association that has deposits or accounts that are eligible
10 for insurance by the Federal Deposit Insurance Corporation.

11 (3) A credit union doing business in Indiana.

12 (4) A nonprofit organization exempt from taxation under Section
13 501(c)(3) of the Internal Revenue Code.

14 (5) A person licensed as a real estate broker under IC 25-34.1 if
15 the person is acting within the course and scope of the person's
16 license.

17 (6) A person admitted to the practice of law in Indiana if the
18 person is acting within the course and scope of the person's
19 practice as an attorney.

20 (7) A broker-dealer registered with the Securities and Exchange
21 Commission or the Commodity Futures Trading Commission if
22 the broker-dealer is acting within the course and scope of the
23 broker-dealer's regulation.

24 (8) A consumer reporting agency (as defined in the Federal Fair
25 Credit Reporting Act (15 U.S.C. 1681 et seq.)).

26 **(9) A loan servicer acting on behalf of the holder of:**

27 **(A) a consumer loan; or**

28 **(B) a residential mortgage loan.**

29 **(10) A debt management company (as defined in**
30 **IC 28-1-29-1(2)).**

31 SECTION 10. IC 24-5-15-2.5 IS ADDED TO THE INDIANA
32 CODE AS A NEW SECTION TO READ AS FOLLOWS
33 [EFFECTIVE JULY 1, 2010]: **Sec. 2.5. As used in this chapter, "debt**
34 **settlement services" means any of the following services that a**
35 **person performs, offers to perform, or represents, either directly**
36 **or by implication, that the person will perform with respect to a**
37 **debt between a buyer and one (1) or more unsecured creditors or**
38 **debt collectors:**

39 **(1) A renegotiation of the debt.**

40 **(2) A settlement of the debt.**

41 **(3) An alteration of the terms of payment or other terms of**
42 **the debt, including a reduction in the balance, interest rate, or**

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fees owed by the buyer to the creditor or debt collector.

SECTION 11. IC 24-5-15-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 6. Before executing a contract or agreement with a buyer or receiving money or other valuable consideration, a credit services organization must provide the buyer with a written statement that contains the following:

(1) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of the services.

(2) A statement explaining the buyer's right to proceed against the bond or surety account required under section 8 of this chapter.

(3) The name and address of the:

(A) surety company that issued a bond; or

(B) depository and the trustee of a surety account and the account number of the surety account;

required under section 8 of this chapter.

(4) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency as provided under the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(5) A statement that the buyer's file is available for review:

(A) at no charge ~~on request made to the consumer reporting agency within thirty (30) days after the date of receipt of a notice that credit has been denied;~~ **at the times and under the circumstances set forth in 15 U.S.C. 1681j;** and

(B) for a minimal charge at any other time **as provided by 15 U.S.C. 1681j(f).**

(6) A complete and accurate statement of the buyer's right to dispute the completeness or accuracy of an item contained in a file on the buyer maintained by a consumer reporting agency.

(7) A statement that accurate information cannot be permanently removed from the files of a consumer reporting agency.

(8) A complete and accurate statement indicating when consumer information becomes obsolete and when consumer reporting agencies are prevented from issuing reports containing obsolete information.

(9) A complete and accurate statement of the availability of nonprofit credit counseling services.

SECTION 12. IC 24-5-15-8, AS AMENDED BY P.L.171-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. (a) Before doing business in Indiana, a credit services organization must:

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- 1 **(1)** obtain a surety bond in the amount of twenty-five thousand
- 2 dollars (\$25,000), issued by a surety company authorized to do
- 3 business in Indiana in favor of the state for the benefit of a person
- 4 that is damaged by a violation of this chapter; **and**
- 5 **(2) file a copy of the surety bond obtained under subdivision**
- 6 **(1) with the attorney general.**

7 (b) The attorney general may waive the bonding requirement under
 8 subsection (a) and, instead of the bond, accept an irrevocable letter of
 9 credit for an equivalent amount issued in favor of the state for the
 10 benefit of a person that is damaged by a violation of this chapter. **A**
 11 **credit services organization that obtains an irrevocable letter of**
 12 **credit under this subsection must file a copy of the irrevocable**
 13 **letter of credit with the attorney general before doing business in**
 14 **Indiana.**

15 SECTION 13. IC 24-5.5-6-1, AS ADDED BY P.L.209-2007,
 16 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2010]: Sec. 1. A person who **knowingly or intentionally**
 18 violates this article commits:

- 19 **(1) a Class A misdemeanor; and**
- 20 **(2) a deceptive act that is actionable by the attorney general under**
 21 IC 24-5-0.5-4 and is subject to the penalties and remedies
 22 available to the attorney general under IC 24-5-0.5.

23 SECTION 14. IC 24-9-3-7, AS AMENDED BY P.L.105-2009,
 24 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2010]: Sec. 7. (a) As used in this section, "mortgage
 26 transaction" includes the following:

- 27 (1) A home loan subject to this article.
- 28 (2) **To the extent allowed under federal law**, a loan described
 29 in IC 24-9-1-1 that is secured by a mortgage or deed of trust on
 30 real estate in Indiana on which there is located or will be located
 31 a structure or structures:
 - 32 (A) designed primarily for occupancy of one (1) to four (4)
 - 33 families; and
 - 34 (B) that is or will be occupied by a borrower as the borrower's
 - 35 principal dwelling.
- 36 (3) A first lien mortgage transaction (as defined in
 37 IC 24-4.4-1-301) subject to IC 24-4.4.
- 38 (4) A consumer credit sale subject to IC 24-4.5-2 in which a
 39 mortgage, deed of trust, or land contract that constitutes a lien is
 40 created or retained against land:
 - 41 **(A) that is located in Indiana; and**
 - 42 **(B) upon which there is a dwelling that is or will be used by**

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

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1 (i) certain terms or conditions; or
 2 (ii) the sponsorship or approval of a particular person or
 3 entity;
 4 that it does not have and that the person knows or reasonably
 5 should know it does not have; or
 6 (B) the real estate or property that is the subject of the
 7 transaction has any improvements, appurtenances, uses,
 8 characteristics, or associated benefits that it does not have and
 9 that the person knows or reasonably should know it does not
 10 have.
 11 **(6) Maintain or offer to maintain an account for the receipt of**
 12 **funds for the payment of real estate taxes and insurance**
 13 **unless the person is any of the following:**
 14 **(A) Any of the following that is chartered under the laws of**
 15 **a state or the United States:**
 16 **(i) A bank.**
 17 **(ii) A savings and loan association.**
 18 **(iii) A credit union.**
 19 **(iv) A savings bank.**
 20 **(B) The creditor in a mortgage transaction.**
 21 **(C) A mortgage servicer acting on behalf of the creditor in**
 22 **a mortgage transaction.**
 23 **(D) A closing agent (as defined in IC 27-7-3.7-1).**
 24 **(7) Fail to provide the notice required under subsection (d),**
 25 **within the time specified in subsection (d), if the person is a**
 26 **seller in a real estate transaction described in subsection (d).**
 27 **(d) This subsection applies to a real estate transaction that**
 28 **involves a land contract between the seller and the buyer in the**
 29 **transaction. If the real estate that is the subject of the transaction**
 30 **is subject to any encumbrance, including any tax lien, foreclosure**
 31 **action, legal judgment, or other encumbrance affecting the title to**
 32 **the real estate, the seller must provide written notice by certified**
 33 **mail, return receipt requested, of the encumbrance to the buyer:**
 34 **(1) not later than the time the land contract is executed, if the**
 35 **encumbrance is created before or at the time the land**
 36 **contract is executed; or**
 37 **(2) not later than ten (10) business days after the**
 38 **encumbrance is created, if the encumbrance is created after**
 39 **the land contract is executed.**
 40 SECTION 15. IC 24-9-5-4, AS AMENDED BY P.L.105-2009,
 41 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2010]: Sec. 4. (a) This section does not apply to a violation of

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1 IC 24-9-3-7(c)(4), ~~or~~ IC 24-9-3-7(c)(5), **or IC 24-9-3-7(c)(6)**. A person
 2 who violates this article is liable to a person who is a party to the home
 3 loan transaction, **mortgage transaction (as defined in**
 4 **IC 24-9-3-7(a))**, **or real estate transaction (as defined in**
 5 **IC 24-9-3-7(b))**, **as appropriate**, that gave rise to the violation for the
 6 following:

7 (1) Actual damages, including consequential damages. A person
 8 is not required to demonstrate reliance in order to receive actual
 9 damages.

10 (2) Statutory damages equal to two (2) times the finance charges
 11 agreed to in ~~the~~ a home loan agreement.

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

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

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

26 (d) The remedies provided in this section are cumulative but are not
 27 intended to be the exclusive remedies available to a person. Except as
 28 provided in subsection (e), a person is not required to exhaust any
 29 administrative remedies under this article or under any other applicable
 30 law.

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

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

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

38 (f) An action under this chapter must be brought within five (5)
 39 years after the date that the person knew, or by the exercise of
 40 reasonable diligence should have known, of the violation of this article.

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

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1 SECTION 16. IC 24-9-8-1, AS AMENDED BY P.L.105-2009,
2 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2010]: Sec. 1. A person who knowingly or intentionally
4 violates this article commits:

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

10 SECTION 17. IC 24-9-8-3, AS AMENDED BY P.L.105-2009,
11 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2010]: Sec. 3. (a) This section does not apply to a violation of
13 ~~IC 24-9-7-3(c)(4)~~ **IC 24-9-3-7(c)(4)** by a person required to be licensed
14 by the department of financial institutions. The attorney general may
15 bring an action to enjoin a violation of this article. A court in which the
16 action is brought may:

- 17 (1) issue an injunction;
- 18 (2) order a person to make restitution;
- 19 (3) order a person to reimburse the state for reasonable costs of
20 the attorney general's investigation and prosecution of the
21 violation of this article; and
- 22 (4) impose a civil penalty of not more than ten thousand dollars
23 (\$10,000) per violation.

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

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

29 SECTION 18. IC 25-34.1-4-5 IS AMENDED TO READ AS
30 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) Each principal
31 broker:

- 32 (1) shall keep in one (1) or more trust accounts (interest or
33 noninterest bearing) all funds belonging to others that come into
34 the possession of the principal broker or of any associated
35 salesperson or broker-salesperson; and
- 36 (2) shall clearly identify any account containing those funds as a
37 trust account. The trust accounts shall contain all earnest money
38 deposits, funds held for closing escrows, sale proceeds not yet
39 disbursed, and all other funds belonging to others.

40 (b) The principal broker shall not use any trust account for the
41 deposit of any personal funds or other business funds and shall keep a
42 detailed record of the funds and any interest accrued in each trust

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1 account that identifies the amount of funds held for each beneficiary.
2 Any interest earned shall be held for the beneficiary.

3 (c) Upon the death or termination of a principal broker or the
4 expiration, ~~or~~ revocation, **or suspension** of the principal broker's
5 license, the commission shall take custody of each trust account and
6 may appoint a successor trustee to protect and distribute the proceeds
7 of that account.

8 SECTION 19. IC 25-34.1-6-2.5, AS ADDED BY P.L.105-2009,
9 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2010]: Sec. 2.5. (a) A violation of:

11 (1) IC 24-5-15; or
12 (2) IC 24-5.5;
13 by a person licensed or required to be licensed under this article is a
14 violation of this article.

15 (b) A person who commits a violation described in subsection (a)
16 commits a Class A infraction and is subject to:

17 (1) the enforcement procedures described in section 2 of this
18 chapter; and
19 (2) any sanction that may be imposed by the commission under
20 IC 25-1-11-12. ~~for an act described in IC 25-1-11-11.~~

21 SECTION 20. [EFFECTIVE JULY 1, 2010] **(a) Two million**
22 **dollars (\$2,000,000) shall be transferred from the securities**
23 **division enforcement account established under IC 23-19-6-1 to the**
24 **securities restitution fund established by IC 23-20-1-26, as added**
25 **by this act, on July 1, 2010.**

26 **(b) This SECTION expires July 2, 2010.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1332, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, between lines 30 and 31, begin a new line block indented and insert:

"(9) A loan servicer acting on behalf of the holder of:

(A) a consumer loan; or

(B) a residential mortgage loan.

(10) A debt management company (as defined in IC 28-1-29-1(2)).

SECTION 2. IC 24-5-15-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 2.5. As used in this chapter, "debt settlement services" means any of the following services that a person performs, offers to perform, or represents, either directly or by implication, that the person will perform with respect to a debt between a buyer and one (1) or more unsecured creditors or debt collectors:**

(1) A renegotiation of the debt.

(2) A settlement of the debt.

(3) An alteration of the terms of payment or other terms of the debt, including a reduction in the balance, interest rate, or fees owed by the buyer to the creditor or debt collector."

Page 4, between lines 1 and 2, begin a new paragraph and insert:

"SECTION 5. IC 24-5.5-6-1, AS ADDED BY P.L.209-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 1. A person who knowingly or intentionally violates this article commits:**

(1) a Class A misdemeanor; and

(2) a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4 and is subject to the penalties and remedies available to the attorney general under IC 24-5-0.5."

Page 5, line 33, delete "from a closing agent in an escrow transaction (as" and insert "**for the payment of real estate taxes and insurance unless the person is any of the following:**

(A) Any of the following that is chartered under the laws of a state or the United States:

(i) A bank.

(ii) A savings and loan association.

(iii) A credit union.

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(iv) A savings bank.

(B) The creditor in a mortgage transaction.

(C) A mortgage servicer acting on behalf of the creditor in a mortgage transaction."

Page 5, delete lines 34 through 42.

Page 6, delete lines 1 through 3.

Page 6, line 4, delete "(8)" and insert "(7)".

Page 6, line 23, delete "IC 24-9-3-7(c)(6), or" and insert "**or IC 24-9-3-7(c)(6).**".

Page 6, line 24, delete "IC 24-9-3-7(c)(7)".

Page 6, line 25, after "transaction" insert "**, mortgage transaction (as defined in IC 24-9-3-7(a)), or real estate transaction (as defined in IC 24-9-3-7(b)), as appropriate,**".

Page 6, line 31, strike "the" and insert "a".

Page 7, between lines 20 and 21, begin a new paragraph and insert:
"SECTION 8. IC 24-9-8-1, AS AMENDED BY P.L.105-2009, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. A person who knowingly or intentionally violates this article commits:

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

SECTION 9. IC 24-9-8-3, AS AMENDED BY P.L.105-2009, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) This section does not apply to a violation of ~~IC 24-9-7-3(c)(4)~~ **IC 24-9-3-7(c)(4)** by a person required to be licensed by the department of financial institutions. The attorney general may bring an action to enjoin a violation of this article. A court in which the action is brought may:

- (1) issue an injunction;
- (2) order a person to make restitution;
- (3) order a person to reimburse the state for reasonable costs of the attorney general's investigation and prosecution of the violation of this article; and
- (4) impose a civil penalty of not more than ten thousand dollars (\$10,000) per violation.

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

(c) The court that issues an injunction retains jurisdiction over a

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proceeding seeking the imposition of a civil penalty under this section."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1332 as introduced.)

RIECKEN, Chair

Committee Vote: yeas 9, nays 0.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1332 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 4-2-6-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 15. (a) A state officer may not use the state officer's name in a publication or a media broadcast paid for entirely or in part with:

- (1) money from the securities division enforcement account established under IC 23-19-6-1(f); or
- (2) appropriations from the state general fund made under IC 23-19-6-1(f).

(b) This section does not prohibit a state officer from using the title of the office that the state officer holds in a publication or a media broadcast described in subsection (a).

SECTION 2. IC 23-2-5-11, AS AMENDED BY P.L.156-2009, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 11. (a) The commissioner may do the following:

- (1) Adopt rules under IC 4-22-2 to implement this chapter.
- (2) Make investigations and examinations:
 - (A) in connection with any application for licensure under this chapter or with any license already granted; or
 - (B) whenever it appears to the commissioner, upon the basis of a complaint or information, that reasonable grounds exist for the belief that an investigation or examination is necessary or advisable for the more complete protection of the interests of the public.
- (3) Charge as costs of investigation or examination all reasonable

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expenses, including a per diem prorated upon the salary of the commissioner or employee and actual traveling and hotel expenses. All reasonable expenses are to be paid by the party or parties under investigation or examination if the party has violated this chapter.

(4) Issue notices and orders, including cease and desist notices and orders, after making an investigation or examination under subdivision (2). ~~The commissioner may also bring an action on behalf of the state to enjoin a person from violating this chapter.~~ The commissioner shall notify the person that an order or notice has been issued, the reasons for it, and that a hearing will be set not later than fifteen (15) business days after the commissioner receives a written request from the person requesting a hearing if the original order issued by the commissioner was a summary suspension, summary revocation, or denial of a license and not later than forty-five (45) business days after the commissioner receives a written request from the person requesting a hearing for all other orders.

(5) Sign all orders, official certifications, documents, or papers issued under this chapter or delegate the authority to sign any of those items to a deputy.

(6) Hold and conduct hearings.

(7) Hear evidence.

(8) Conduct inquiries with or without hearings.

(9) Receive reports of investigators or other officers or employees of the state of Indiana or of any municipal corporation or governmental subdivision within the state.

(10) Administer oaths, or cause them to be administered.

(11) Subpoena witnesses, and compel them to attend and testify.

(12) Compel the production of books, records, and other documents.

(13) Order depositions to be taken of any witness residing within or without the state. The depositions shall be taken in the manner prescribed by law for depositions in civil actions and made returnable to the commissioner.

(14) Order that each witness appearing under the commissioner's order to testify before the commissioner shall receive the fees and mileage allowances provided for witnesses in civil cases.

(15) Provide interpretive opinions or issue determinations that the commissioner will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is

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consistent with this chapter. The commissioner may adopt rules to establish fees for individuals requesting an interpretive opinion or a determination under this subdivision. A person may not request an interpretive opinion or a determination concerning an activity that:

(A) occurred before; or

(B) is occurring on;

the date the opinion or determination is requested.

(16) Subject to subsection (f), designate a multistate automated licensing system and repository, established and operated by a third party, to serve as the sole entity responsible for:

(A) processing applications for:

(i) licenses under this chapter; and

(ii) renewals of licenses under this chapter; and

(B) performing other services that the commissioner determines are necessary for the orderly administration of the division's licensing system.

A multistate automated licensing system and repository described in this subdivision may include the Nationwide Mortgage Licensing System and Registry established by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The commissioner may take any action necessary to allow the division to participate in a multistate automated licensing system and repository.

(b) If a witness, in any hearing, inquiry, or investigation conducted under this chapter, refuses to answer any question or produce any item, the commissioner may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item. If the court determines that the witness, based upon the witness's privilege against self-incrimination, may properly refuse to answer or produce an item, the commissioner may make a written request that the court grant use immunity to the witness. Upon written request of the commissioner, the court shall grant use immunity to a witness. The court shall instruct the witness, by written order or in open court, that:

(1) any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against that witness, unless the evidence is volunteered by the witness or is not responsive to a question; and

(2) the witness must answer the questions asked and produce the

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items requested.

A grant of use immunity does not prohibit evidence that the witness gives in a hearing, investigation, or inquiry from being used in a prosecution for perjury under IC 35-44-2-1. If a witness refuses to give the evidence after the witness has been granted use immunity, the court may find the witness in contempt.

(c) In any prosecution, action, suit, or proceeding based upon or arising out of this chapter, the commissioner may sign a certificate showing compliance or noncompliance with this chapter by any person. This shall constitute prima facie evidence of compliance or noncompliance with this chapter and shall be admissible in evidence in any action at law or in equity to enforce this chapter.

(d) If:

(1) a person disobeys any lawful:

(A) subpoena issued under this chapter; or

(B) order or demand requiring the production of any books, accounts, papers, records, documents, or other evidence or information as provided in this chapter; or

(2) a witness refuses to:

(A) appear when subpoenaed;

(B) testify to any matter about which the witness may be lawfully interrogated; or

(C) take or subscribe to any oath required by this chapter;

the circuit or superior court of the county in which the hearing, inquiry, or investigation in question is held, if demand is made or if, upon written petition, the production is ordered to be made, or the commissioner or a hearing officer appointed by the commissioner, shall compel compliance with the lawful requirements of the subpoena, order, or demand, compel the production of the necessary or required books, papers, records, documents, and other evidence and information, and compel any witness to attend in any Indiana county and to testify to any matter about which the witness may lawfully be interrogated, and to take or subscribe to any oath required.

(e) If a person fails, refuses, or neglects to comply with a court order under this section, the person shall be punished for contempt of court.

(f) The commissioner's authority to designate a multistate automated licensing system and repository under subsection (a)(16) is subject to the following:

(1) The commissioner may not require any person that is not required to be licensed under this chapter, or any employee or agent of a person that is not required to be licensed under this chapter, to:

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(A) submit information to; or

(B) participate in;

the multistate automated licensing system and repository.

(2) The commissioner may require a person required under this chapter to submit information to the multistate automated licensing system and repository to pay a processing fee considered reasonable by the commissioner.

SECTION 3. IC 23-2-5-11.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 11.5. (a) If the commissioner believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the commissioner may maintain an action in the circuit or superior court in the county where the investigation or inquiry in question is being conducted to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.**

(b) In an action under this section and on a proper showing, the court may:

(1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) order other appropriate or ancillary relief, which may include:

(A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator;

(B) ordering a receiver or conservator appointed under clause (A) to:

(i) take charge and control of a respondent's property, including investment accounts and accounts in a depository institution, rents, and profits;

(ii) collect debts; and

(iii) acquire and dispose of property;

(C) imposing a civil penalty of up to ten thousand dollars (\$10,000) per violation and an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or

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order issued under this chapter; and

(D) ordering the payment of prejudgment and postjudgment interest; or

(3) order such other relief as the court considers appropriate.

(c) The commissioner may not be required to post a bond in an action or proceeding under this chapter.

(d) Penalties collected under this section shall be deposited in the securities division enforcement account created under IC 23-19-6-1(f).

SECTION 4. IC 23-2-5-20, AS AMENDED BY P.L.156-2009, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 20. (a) A person shall not, in connection with a contract for the services of a loan broker, either directly or indirectly, do any of the following:

- (1) Employ any device, scheme, or artifice to defraud.
- (2) Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading.
- (3) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.
- (4) Collect or solicit any consideration, except a bona fide third party fee, in connection with a **residential mortgage** loan until the loan has been closed.
- (5) Receive any funds if the person knows that the funds were generated as a result of a fraudulent act.
- (6) File or cause to be filed with a county recorder any document that the person knows:
 - (A) contains:
 - (i) a misstatement; or
 - (ii) an untrue statement; or
 of a material fact; or
 - (B) omits a statement of a material fact that is necessary to make the statements that are made, in the light of circumstances under which they are made, not misleading.
- (7) Knowingly release or disclose the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers, unless the personal information is used in an activity authorized by the borrower or prospective borrower under one (1) or more of the following circumstances:
 - (A) The personal information is:
 - (i) included on an application form or another form; or

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(ii) transmitted as part of an application process or an enrollment process.

(B) The personal information is used to obtain a consumer report (as defined in IC 24-5-24-2) for an applicant for credit.

(C) The personal information is used to establish, amend, or terminate an account, a contract, or a policy, or to confirm the accuracy of the personal information.

However, personal information allowed to be disclosed under this subdivision may not be printed in whole or in part on a postcard or other mailer that does not require an envelope, or in a manner that makes the personal information visible on an envelope or a mailer without the envelope or mailer being opened.

(8) Engage in any reckless or negligent activity allowing the release or disclosure of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers. An activity described in this subdivision includes an action prohibited by section 18(d) of this chapter.

(9) Knowingly bribe, coerce, or intimidate another person to corrupt or improperly influence the independent judgment of a real estate appraiser with respect to the value of any real estate offered as security for a residential mortgage loan, as prohibited by section 9.1(d) of this chapter.

(10) Violate any of the following:

(A) The federal Truth in Lending Act (15 U.S.C. 1601 et seq.).

(B) The federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

(C) The federal Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.).

(D) Any other federal law or regulation concerning residential mortgage lending.

(b) A person who commits an act described in subsection (a) is subject to sections 10, **11.5**, 14, 15, and 16 of this chapter.

SECTION 5. IC 23-19-4-6, AS ADDED BY P.L.27-2007, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 6. (a) A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with IC 23-19-6-11, and paying the fee specified in section 10 of this chapter and any reasonable fees charged by the designee of the commissioner for processing the filing. The application must contain:

(1) the information or record required for the filing of a uniform application; and

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(2) upon request by the commissioner, any other financial or other information or record that the commissioner determines is appropriate.

(b) If the information or record contained in an application filed under subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) At the time of application for an initial registration as an investment adviser representative under this article, the commissioner shall require each applicant to submit fingerprints for a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for use by the commissioner in determining whether the applicant should be denied registration under this chapter for any reason set forth in section 12(d) of this chapter. The applicant shall pay any fees or costs associated with the fingerprints and background check required under this subsection.

~~(c)~~ (d) If an order is not in effect and a proceeding is not pending under section 12 of this chapter, registration becomes effective at noon on the forty-fifth day after a completed application is filed, unless the registration is denied. A rule adopted or order issued under this article may set an earlier effective date or may defer the effective date until noon on the forty-fifth day after the filing of any amendment completing the application.

~~(d)~~ (e) A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under section 12 of this chapter, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this article, by paying the fee specified in section 10 of this chapter, and by paying costs charged by the designee of the commissioner for processing the filings.

~~(e)~~ (f) A rule adopted or order issued under this article may impose other conditions, not inconsistent with the National Securities Markets Improvement Act of 1996. An order issued under this article may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

SECTION 6. IC 23-19-6-1, AS ADDED BY P.L.27-2007, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) This article shall be administered by a division of the office of the secretary of state. The secretary of state shall appoint a securities commissioner who shall be responsible for

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the direction and supervision of the division and the administration of this article under the direction and control of the secretary of state. The salary of the securities commissioner shall be paid out of the funds appropriated for the administration of this article. The commissioner shall serve at the will of the secretary of state.

(b) The secretary of state:

- (1) shall employ a chief deputy, attorneys, a senior investigator, a senior accountant, and other deputies, investigators, accountants, clerks, stenographers, and other employees necessary for the administration of this article; and
- (2) shall fix their compensation with the approval of the budget agency.

(c) It is unlawful for the commissioner or an officer, employee, or designee of the commissioner to use for personal benefit or the benefit of others records or other information obtained by or filed with the commissioner that are not public under section 7(b) of this chapter. This article does not authorize the commissioner or an officer, employee, or designee of the commissioner to disclose the record or information, except in accordance with section 2, 7(c), or 8 of this chapter.

(d) This article does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(e) **Subject to IC 4-2-6-15**, the commissioner may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the commissioner may collaborate with public and nonprofit organizations with an interest in investor education. The commissioner may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the commissioner to require participation or monetary contributions of a registrant in an investor education program.

(f) Fees and funds of whatever character accruing from the administration of this article shall be accounted for by the secretary of state and shall be deposited with the treasurer of state to be deposited by the treasurer of the state in either the state general fund or the enforcement account referenced below. **Subject to IC 4-2-6-15**, expenses incurred in the administration of this article shall be paid from the state general fund upon appropriation being made for the

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expenses in the manner provided by law for the making of those appropriations. However, grants and donations **received** under subsection (e), costs of investigations **recovered under section 4(e) of this chapter**, and civil penalties recovered under sections 3(b) and 4(d) of this chapter shall be deposited by the treasurer of state in a separate account to be known as the securities division enforcement account. **Subject to IC 4-2-6-15**, the funds in the enforcement account shall be available, with the approval of the budget agency:

- (1) to augment and supplement the funds appropriated for the administration of this article; and
- (2) for grants and awards to nonprofit entities for programs and activities that will further investor education and financial literacy in the state.

The funds in the enforcement account do not revert to the state general fund at the end of any state fiscal year.

(g) In connection with the administration and enforcement of this article, the attorney general shall render all necessary assistance to the commissioner upon the commissioner's request, and to that end, the attorney general shall employ legal and other professional services as are necessary to adequately and fully perform the service under the direction of the commissioner as the demands of the securities division shall require. Expenses incurred by the attorney general for the purposes stated in this subsection shall be chargeable against and paid out of funds appropriated to the attorney general for the administration of the attorney general's office. The attorney general may authorize the commissioner and the commissioner's designee to represent the commissioner and the securities division in any proceeding involving enforcement or defense of this article.

(h) Neither the secretary of state, the commissioner, nor an employee of the securities division shall be liable in their individual capacity, except to the state, for an act done or omitted in connection with the performance of their respective duties under this article.

(i) The commissioner shall take, prescribe, and file the oath of office prescribed by law. The commissioner, chief deputy commissioner, and each attorney or investigator designated by the commissioner are police officers of the state and shall have all the powers and duties of police officers in making arrests for violations of this article, or in serving any process, notice, or order connected with the enforcement of this article by whatever officer, authority, or court issued and shall comprise the enforcement department of the division and are considered a criminal justice agency for purposes of IC 5-2-4 and IC 10-13-3.

(j) The provisions of this article delegating and granting power to

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the secretary of state, the securities division, and the commissioner shall be liberally construed to the end that:

- (1) the practice or commission of fraud may be prohibited and prevented;
- (2) disclosure of sufficient and reliable information in order to afford reasonable opportunity for the exercise of independent judgment of the persons involved may be assured; and
- (3) the qualifications may be prescribed to assure availability of reliable broker-dealers, investment advisers, and agents engaged in and in connection with the issuance, barter, sale, purchase, transfer, or disposition of securities in this state.

It is the intent and purpose of this article to delegate and grant to and vest in the secretary of state, the securities division, and the commissioner full and complete power to carry into effect and accomplish the purpose of this article and to charge them with full and complete responsibility for its effective administration.

(k) Copies of any statement and documents filed in the office of the secretary of state and of any records of the secretary of state certified by the commissioner shall be admissible in any prosecution, action, suit, or proceeding based upon, arising out of, or under this article to the same effect as the original of such statement, document, or record would be if actually produced.

(l) IC 4-21.5 is not applicable to any of the proceedings under this article.

SECTION 7. IC 23-19-6-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 12. The commissioner may award, from any amount imposed as a penalty under this article and recovered by the securities division, a percentage, not to exceed ten percent (10%) and as considered appropriate by the commissioner, of the amount recovered, to any person who provided information leading to the imposition of the penalty. Any determination under this section, including whether to make a payment, to whom to make a payment, or in what amount to make a payment, is in the sole discretion of the commissioner. However, a payment may not be made under this section to an employee of the securities division. A determination under this section is final and is not subject to judicial review."

Renumber all SECTIONS consecutively.

(Reference is to HB 1332 as printed January 29, 2010.)

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COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1332, 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:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation and to make an appropriation.

Page 10, line 14, after "account." insert **"Notwithstanding IC 9-23-6-4, IC 23-2-2.5-34, IC 23-2-2.5-43, IC 23-2-5-7, IC 23-19-4-12, IC 25-11-1-15, and this chapter, five percent (5%) of funds received after June 30, 2010, for deposit in the enforcement account shall instead be deposited in the securities restitution fund established under IC 23-20-1-26."**

Page 10, line 15, after "funds" insert **"deposited"**.

Page 12, between lines 4 and 5, begin a new paragraph and insert:

"SECTION 8. IC 23-20 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]:

ARTICLE 20. VICTIMS OF SECURITIES VIOLATIONS

Chapter 1. Restitution for Victims of Securities Violations

Sec. 1. (a) As used in this chapter, "claimant" means a victim filing an application for restitution assistance under this chapter.

(b) The term includes:

- (1) a named party in an award;**
- (2) the executor of a named party in an award; or**
- (3) the heirs and assigns of a named party in an award.**

Sec. 2. As used in this chapter, "division" refers to the securities division of the office of the secretary of state.

Sec. 3. As used in this chapter, "fund" refers to the securities restitution fund established by section 26 of this chapter.

Sec. 4. As used in this chapter, "out-of-pocket loss" means an amount equal to the amount of restitution ordered under any of the following:

- (1) A final court order.**
- (2) A final administrative order.**

Sec. 5. As used in this chapter, "person" includes a sole proprietorship, a partnership, a corporation, an association, a fiduciary, or an individual.

Sec. 6. As used in this chapter, "securities violation" means a violation of the following:

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- (1) The Securities Act of 1933, as amended, and any regulations related to that act.
- (2) The Securities Exchange Act of 1934, as amended, and any regulations related to that act.
- (3) The Investment Company Act of 1940, as amended, and any regulations related to that act.
- (4) The Investment Advisers Act of 1940, as amended, and any regulations related to that act.
- (5) The Indiana uniform securities act and any rules related to that act.
- (6) Other state securities acts and any rules or regulations related to those acts.

Sec. 7. As used in this chapter, "victim" means an individual who suffers monetary injury as a result of a securities violation.

Sec. 8. The division shall do the following:

- (1) Prescribe forms for processing applications for restitution assistance.
- (2) Determine whether a claim for restitution assistance filed under this chapter should be awarded.

Sec. 9. The division shall require a claimant to produce a copy of:

- (1) a court order; or
- (2) an administrative order;

that demonstrates that restitution has been awarded to the claimant as described in section 17 of this chapter.

Sec. 10. A claimant's personal information (as defined in IC 9-14-3.5-5) is confidential.

Sec. 11. Except as otherwise provided in this chapter, the following persons are eligible for restitution assistance under this chapter:

- (1) A resident of Indiana who is a victim of a securities violation committed:
 - (A) in Indiana; or
 - (B) in a jurisdiction other than Indiana, including a foreign country, if the jurisdiction in which the securities violation occurred does not offer assistance to a victim of a securities violation that is substantially similar to the assistance offered under this chapter.
- (2) A nonresident of Indiana who is a victim of a securities violation committed in Indiana.
- (3) A surviving spouse or dependent child of a victim described in subdivision (1) or (2).

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(4) Any other person legally dependent for principal support upon a victim described in subdivision (1) or (2).

Sec. 12. (a) A person eligible for restitution assistance under section 11 of this chapter may file an application for restitution assistance with the division.

(b) The application must be received by the division not more than one hundred eighty (180) days after the date of the order described in section 17 of this chapter. The division may grant an extension of time for good cause shown by the claimant. However, the division may not accept an application that is received more than two (2) years after the date of the order described in section 17 of this chapter.

(c) The application must be filed in the office of the division in person, through the division's web site, or by first class or certified mail. If requested, the division shall assist a victim in preparing the application.

(d) The division shall accept all applications filed in compliance with this chapter. Upon receipt of a complete application, the division shall promptly begin the processing of an application.

Sec. 13. (a) The division shall review all applications to ensure that the applications are complete.

(b) If an application is not complete, the application shall be returned to the applicant with a brief statement of the additional information required.

(c) The applicant may, not more than thirty (30) days after receipt of the request for additional information, either supply the information or appeal to the securities commissioner.

(d) The decision of the securities commissioner is final.

(e) The division shall deny the application if:

- (1) the applicant does not furnish additional information; or**
- (2) additional time is not granted by the securities commissioner for good cause.**

Sec. 14. (a) Subject to subsection (b), the division may not award restitution assistance if the victim:

(1) sustained the monetary injury as a result of:

(A) participating or assisting in; or

(B) attempting to commit or committing;

a securities violation; or

(2) profited or would have profited from the securities violation.

(b) If the victim is a dependent child or dependent parent of the person who commits a securities violation, restitution assistance

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may be awarded where justice requires.

Sec. 15. The division may not award restitution assistance under this chapter to more than one (1) claimant per victim.

Sec. 16. (a) As used in this section, "net worth" means the excess of total assets over total liabilities.

(b) The division may not award restitution assistance to a claimant eligible under section 11 of this chapter if the victim or claimant had a net worth of greater than five hundred thousand dollars (\$500,000) at the time of suffering monetary injury from a securities violation.

Sec. 17. (a) The division may not award restitution assistance under this chapter unless the securities violation was adjudicated in a state or federal court or a regulatory agency administrative proceeding.

(b) The division may not award restitution assistance under this chapter unless:

- (1)** a final order has been entered ordering restitution to the victim in a proceeding described in subsection (a); and
- (2)** the party ordered to pay restitution has not paid the full amount.

Sec. 18. The division shall deny an award of restitution assistance under this chapter if a court or administrative order does not contain an award of restitution to the victim.

Sec. 19. (a) The division may not award restitution assistance under this chapter to a claimant whose award of restitution under a court or administrative order is overturned on appeal.

(b) If:

- (1)** a claimant is awarded restitution assistance under this chapter; and
- (2)** after receiving an award of restitution assistance under this chapter, the claimant's award of restitution under a court or administrative order is overturned on appeal;

the claimant shall forfeit the restitution assistance received under this chapter.

Sec. 20. (a) The state is subrogated to the rights of the victim awarded restitution to the extent of the award.

(b) The subrogation rights are against the person who committed the securities violation or a person liable for the pecuniary loss.

Sec. 21. (a) In addition to the subrogation rights under section 20 of this chapter, the state is entitled to a lien in the amount of the award on a recovery made by or on behalf of the victim.

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(b) The state may:

- (1) recover the amount under subsection (a) in a separate action; or**
- (2) intervene in an action brought by or on behalf of the victim.**

(c) If a claimant brings an action, the claimant may deduct from the money owed to the state under the lien the state's pro rata share of the reasonable expenses for the court suit, including attorney's fees. The amount the claimant deducts under this subsection for the state's pro rata share of the expenses may not be more than fifteen percent (15%) of the money owed under the lien.

Sec. 22. If:

- (1) an award is made under this chapter; and**
- (2) a claimant receives a sum required to be deducted under section 21(a) of this chapter;**

the claimant shall refund to the state the amount of overpayment.

Sec. 23. (a) In determining the amount of restitution assistance to award under this chapter, the division shall determine whether a victim contributed to the infliction of the victim's monetary injury.

(b) If the division finds that the victim contributed to the infliction of the victim's monetary injury, the division may deny an award of restitution assistance.

Sec. 24. An award to a claimant under this chapter may not exceed the lesser of the following:

- (1) Fifteen thousand dollars (\$15,000).**
- (2) Twenty-five percent (25%) of the amount of out-of-pocket loss.**

Sec. 25. An award made by the division to a claimant is not subject to execution, attachment, garnishment, or other process.

Sec. 26. (a) The securities restitution fund is established.

(b) The fund consists of amounts:

- (1) from funds received for deposit in the securities division enforcement account as provided in IC 23-19-6-1(f); and**
- (2) appropriated from the general assembly.**

Sec. 27. The money in the fund is continually appropriated to the division for purposes of:

- (1) awarding restitution assistance under this chapter; and**
- (2) paying expenses incurred in administering this chapter.**

Sec. 28. Money in the fund and income derived from money in the fund do not revert to the state general fund at the end of a state fiscal year.

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Sec. 29. (a) If the fund would be reduced below two hundred fifty thousand dollars (\$250,000) by payment in full of all awards that become final in a month, the division shall suspend payment of the claims that become final during the month and the following two (2) months.

(b) At the end of the suspension period, the division shall pay the suspended claims. If the fund would be exhausted by payment in full of the suspended claims, the amount paid to each claimant shall be prorated.

Sec. 30. The state is not liable for a written determination made by the division under this chapter except to the extent that money is available in the fund on the date the award is computed by the division under this chapter.

Sec. 31. (a) A claimant convicted of forgery, fraud, or deception in connection with a claim under this chapter forfeits an award paid to the claimant under this chapter.

(b) The division may file a civil action to recover funds against a claimant described in subsection (a).

Sec. 32. A person commits a Class C felony if the person knowingly makes or causes to be made:

- (1) in any document filed with or sent to the securities commissioner or the division; or**
 - (2) in any proceeding, investigation, or examination;**
- under this chapter any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.**

Sec. 33. The division may adopt rules under IC 4-22-2 to implement this chapter."

Page 17, line 15, after "notice" insert "**by certified mail, return receipt requested,**".

Page 20, delete lines 4 through 42, begin a new paragraph and insert:

"SECTION 20. IC 27-7-3.7-1.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1.3. As used in this chapter, "collected funds" means funds that are finally settled and deposited in, and irrevocably credited to, a closing agent's escrow account.

SECTION 21. IC 27-7-3.7-4, AS ADDED BY P.L.92-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. As used in this chapter, "good funds" means funds in any of the following forms:

- (1) United States currency.**

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(2) ~~Wire funds~~ Any of the following that are unconditionally held by and irrevocably credited to the escrow account of the closing agent:

- (A) Wire funds.
- (B) Electronic funds transfers.

(3) Certified or cashier's checks that are drawn on an existing account at a:

- (A) bank;
- (B) savings and loan association;
- (C) credit union; or
- (D) savings bank;

chartered under the laws of a state or the United States.

(4) Internal transfers that:

- (A) are credited to the escrow account of the closing agent; and
- (B) are initiated and funded by a:
 - (i) bank;
 - (ii) savings and loan association;
 - (iii) credit union; or
 - (iv) savings bank;

chartered under the laws of a state or the United States.

~~(4)~~ (5) A check drawn on the trust account of a real estate broker licensed under IC 25-34.1, if the closing agent has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the account on which the check is drawn at the time of disbursement of funds from the closing agent's escrow account.

~~(5)~~ (6) A personal check not to exceed five hundred dollars (\$500) per closing.

~~(6)~~ (7) A check issued by the state, the United States, or a political subdivision of the state or the United States.

~~(7)~~ (8) A check drawn on the escrow account of another closing agent, if the closing agent in the escrow transaction has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the account upon which the check is drawn at the time of disbursement of funds from the escrow account of the closing agent in the escrow transaction.

~~(8)~~ (9) A check issued by a farm credit service authorized under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

SECTION 22. IC 27-7-3.7-7, AS ADDED BY P.L.92-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. A closing agent may not make disbursements

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from an escrow account in connection with a real estate transaction unless any funds that ~~(1)~~ are received from any single party to the real estate transaction and ~~(2)~~ **that** in the aggregate are at least ten thousand dollars (\$10,000) are:

- (1) wired funds that are unconditionally held by and irrevocably credited to the escrow account of the closing agent;
- (2) **good funds described in section 4(2), 4(4), 4(7), or 4(9) of this chapter; or**
- (3) **collected funds.**

SECTION 23. IC 27-7-3.7-8, AS ADDED BY P.L.92-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. A closing agent may not make disbursements from an escrow account in connection with a real estate transaction unless any funds that:

- (1) are received from any single party to the real estate transaction; and
- (2) in the aggregate are less than ten thousand dollars (\$10,000); are good funds **or collected funds.**

SECTION 24. [EFFECTIVE JULY 1, 2010] (a) **Two million dollars (\$2,000,000) shall be transferred from the securities division enforcement account established under IC 23-19-6-1 to the securities restitution fund established by IC 23-20-1-26, as added by this act, on July 1, 2010.**

(b) **This SECTION expires July 2, 2010."**

Delete page 21.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1332 as reprinted February 2, 2010.)

PAUL, Chairperson

Committee Vote: Yeas 9, Nays 0.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1332 be amended to read as follows:

Page 22, between lines 22 and 23, begin a new line double block indented and insert:

"(D) A closing agent (as defined in IC 27-7-3.7-1)."

Page 25, delete lines 20 through 42.

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Delete page 26.

Page 27, delete lines 1 through 5.

Renumber all SECTIONS consecutively.

(Reference is to EHB 1332 as printed February 23, 2010.)

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