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FISCAL IMPACT STATEMENT

LS 6968

BILL NUMBER: HB 1332

NOTE PREPARED: Mar 1, 2010

BILL AMENDED: Feb 24, 2010

SUBJECT: Credit Services; Real Estate Transactions; Securities.

FIRST AUTHOR: Rep. Bardon

FIRST SPONSOR: Sen. Bray

BILL STATUS: As Passed Senate

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- (1) 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: (a) money from the Securities Division Enforcement Account; or (b) appropriations from the state General Fund made for the administration of the Uniform Securities Act.
- (2) Specifies that a state officer may use the title of the office that the state officer holds in a publication or media broadcast.
- (3) Allows the Securities Commissioner (Commissioner) to bring a court action to enjoin violations of, and enforce compliance with, the law governing loan brokers.
- (4) 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.
- (5) 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.
- (6) Requires the applicant to pay any fees or costs associated with the fingerprints and background check.
- (7) 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.
- (8) 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: (a) obtain a lower interest rate with respect to a consumer loan or a residential mortgage loan or (b) provide debt settlement services.

- (9) 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.
- (10) 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.
- (11) 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.
- (12) Prohibits a person from maintaining an escrow account used to pay real estate taxes and insurance for residential real estate unless the person is: (a) a specified financial institution; (b) the creditor in a mortgage transaction; (c) a mortgage servicer acting on behalf of the creditor in a mortgage transaction; or (d) a closing agent.
- (13) 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.
- (14) 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.)
- (15) Removes an incorrect cross-reference in the statute concerning real estate brokers and salespersons.
- (16) Corrects an incorrect cross-reference in the Home Loan Practices Act.
- (17) Provides that a person that knowingly or intentionally violates the statute concerning mortgage rescue fraud commits a Class A misdemeanor.
- (18) Establishes the Securities Restitution Fund to provide restitution assistance to victims and certain family members of victims for monetary injuries from securities violations.
- (19) Provides that the Fund consists of amounts: (a) from certain funds received for deposit in the Securities Division Enforcement Account; and (b) appropriations from the General Assembly.
- (20) Establishes requirements for and limitations on awarding restitution assistance to victims of securities violations.
- (21) 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.
- (22) Continually appropriates money from the Securities Restitution Fund to the Division for the purposes of: (a) awarding restitution assistance; and (b) paying certain administrative expenses.
- (23) Transfers \$2,000,000 from the Securities Division Enforcement Account to the Securities Restitution Fund on July 1, 2010.
- (24) Makes it a Class C felony for a person to make or cause to be made: (a) in any document filed with the Securities Commissioner or Securities Division; or (b) 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.

Effective Date: July 1, 2010.

Explanation of State Expenditures: *Summary:* This bill is expected to increase the workload of the Attorney General, Real Estate Commission, Securities Division, and Indiana State Police. Additionally, the bill may increase the expenditures of the Real Estate Commission by an indeterminable amount if there is an increase in the number of trust accounts taken custody by the Commission. The bill may also increase the number of Class C felonies convictions in the state.

Additional Information:

Attorney General: This bill increases the requirements of what a credit services organization must file with the Attorney General in order to do business in the state. The bill also adds provisions to the list of prohibited lending practices. Individuals that are found in violation of these provisions are subject to criminal penalties which the Attorney General must enforce. These provisions will increase the workload of the Attorney General.

Real Estate Commission: The bill also adds that the Indiana Real Estate Commission is to take custody of the trust accounts of principal brokers who have their license suspended. Current law only requires the Commission to take control of trust accounts of principal brokers who (1) pass away, (2) are terminated, (3) have their license revoked, or (4) let their license expire. The Indiana Real Estate Commission consists of 12 lay members and is an executive commission. This bill will increase the workload of the Commission, which may increase the frequency in which the Commission meets. If the Commission meets more frequently as a result of this bill, expenditures for per diem and travel reimbursement may increase. Commission members receive payment from the state General Fund. Increases in expenditures are indeterminable and would depend on the extent to which this bill increases the number of trust accounts the Commission takes into custody.

State Officer's Name Use: Under the bill, a state officer will not be allowed to use his or her name in connection with a broadcast or publication that is paid for in part, or entirely, with funds from the Securities Division Enforcement Account, or appropriations from the General Fund. The bill will still allow a state officer to use these funds to purchase a broadcast or publication. No fiscal impact is expected as a result.

Securities Division: This bill may increase the workload of the Securities Commissioner under the Secretary of State to maintain actions in a circuit or superior court for a violation of IC 23-2-5. Increases in workload will depend on the number of businesses that have previously, are currently, or about to engage in an act, practice, or course of business that is in violation of IC 23-2-5. Court caseload for state circuit and superior courts will also increase to the extent the Securities Commission files actions against violating individuals and businesses.

Additionally, the bill requires the Securities Division to administer a restitution assistance program by prescribing a form for processing applications for restitution assistance, which can be filed in person, through the Securities Division's website, or by mail. The Securities Division will have to process the forms and determine whether a person's claim for restitution assistance should be awarded. The bill creates the Securities Restitution Fund which will fund restitution assistance awards, as well as the Securities Division's expenses in administering this new program.

Indiana State Police (ISP): This bill will also increase the workload of the Indiana State Police to provide additional national criminal history background checks to individuals applying as investment advisors.

Penalty Provision: The bill adds that if an individual knowingly makes a false or misleading statement in a document filed with the Securities Division or in any proceeding, investigation, or examination performed by the Securities Division commits a Class C felony. A Class C felony is punishable by a prison term ranging from 2 to 8 years, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$20,194 in FY 2009. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$4,818 annually, or \$13.20 daily, per prisoner. The average length of stay

in Department of Correction (DOC) facilities for all Class C felony offenders is approximately two years.

Explanation of State Revenues: (Revised) *Summary:* This bill may increase state revenue from collected fines and court fees, as well as revenue from national criminal history background checks. This bill will transfer \$2M from the Securities Division Enforcement Account to the Securities Restitution Fund in FY 2011. Beginning in FY 2011, 5% of funds received for deposit in the Securities Division Enforcement Account will be deposited in the Securities Restitution Fund established by this bill.

Additional Information:

Penalty Provision: This bill adds provisions to the list of prohibited lending practices. Violation of these provisions is punishable as a Class A misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is \$5,000. However, any additional revenue would likely be small.

National Criminal History Background Check: State revenue would increase if there is an increase in national criminal history background checks performed by ISP. For every national criminal history background check requested, \$15 is forwarded to the General Fund. According to the Secretary of State, an average of 621 individuals annually applied to be investment advisors in the state between CY 2006 and CY 2009. It is assumed that by requiring investment advisor applicants to obtain a national criminal history background check, revenue to the General Fund will increase by approximately \$9,300 per year.

Court Action from the Securities Commissioner: This bill (1) specifies judicial remedies available to the court and (2) specifies actions the Securities Commissioner can take regarding loan brokers found in violation of the provisions under IC 23-2-5. A court may order a civil penalty of up to \$10,000 per violation. Revenue collected from this penalty is required to be deposited in the Securities Division Enforcement Account created by IC 23-19-6-1(f). The bill also allows the Commissioner to award up to 10% of any penalties collected from violations to any person who provides information leading to imposition of a penalty. This will increase revenue in the Securities Division Enforcement Account with additional penalties sans any reward amount provided to informants. Increases in revenue are indeterminable and depend on the action of the Commission and final verdict by the court.

Securities Restitution Fund: The bill provides that 5% of funds received beginning in FY 2011 for deposit in the Securities Division Enforcement Account will be deposited in the Securities Restitution Fund. Also, this bill transfers \$2 M from the Securities Division Enforcement Account to the Securities Restitution Fund in FY 2011. Money in the fund does not revert to the state General Fund at the end of a fiscal year.

Background Information - Ending balances and revenues from fees for the Securities Division Enforcement Account for FY 2005 through FY 2009 are provided below.

Fiscal Year	Ending Balance	Revenue
FY 2005	\$7.5 M	\$59,000
FY 2006	\$7.0 M	\$837,000
FY 2007	\$5.3 M	\$524,000
FY 2008	\$4.1 M	\$64,000
FY 2009	\$5.3 M	\$2.5 M

Penalty Provision: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class C felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Penalty Provision:* A Class A misdemeanor is punishable by up to one year in jail. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: Office of the Attorney General; Circuit and Superior Courts; Securities Commission under the Secretary of State; ISP; Secretary of State; DOC.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Matt Light, Office of the Attorney General; ISP; Jeff Bush, Secretary of State, 234-2741; Indiana Sheriffs' Association; DOC; Auditor's Data.

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