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| WITHDRAWN | Noes _____ |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

HOUSE MOTION _____

MR. SPEAKER:

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

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 4-2-6-15 IS ADDED TO THE INDIANA CODE
- 4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 5 1, 2010]: **Sec. 15. (a) A state officer may not use the state officer's**
- 6 **name in a publication or a media broadcast paid for entirely or in**
- 7 **part with:**
- 8 **(1) money from the securities division enforcement account**
- 9 **established under IC 23-19-6-1(f); or**
- 10 **(2) appropriations from the state general fund made under**
- 11 **IC 23-19-6-1(f).**
- 12 **(b) This section does not prohibit a state officer from using the**
- 13 **title of the office that the state officer holds in a publication or a**
- 14 **media broadcast described in subsection (a).**
- 15 SECTION 2. IC 23-2-5-11, AS AMENDED BY P.L.156-2009,
- 16 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 17 JULY 1, 2010]: Sec. 11. (a) The commissioner may do the following:
- 18 (1) Adopt rules under IC 4-22-2 to implement this chapter.
- 19 (2) Make investigations and examinations:
- 20 (A) in connection with any application for licensure under this
- 21 chapter or with any license already granted; or
- 22 (B) whenever it appears to the commissioner, upon the basis
- 23 of a complaint or information, that reasonable grounds exist
- 24 for the belief that an investigation or examination is necessary

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

1 to establish fees for individuals requesting an interpretive opinion
 2 or a determination under this subdivision. A person may not
 3 request an interpretive opinion or a determination concerning an
 4 activity that:

5 (A) occurred before; or

6 (B) is occurring on;

7 the date the opinion or determination is requested.

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

11 (A) processing applications for:

12 (i) licenses under this chapter; and

13 (ii) renewals of licenses under this chapter; and

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

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

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

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

41 (2) the witness must answer the questions asked and produce the
 42 items requested.

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

1 may find the witness in contempt.

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

8 (d) If:

9 (1) a person disobeys any lawful:

10 (A) subpoena issued under this chapter; or

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

14 (2) a witness refuses to:

15 (A) appear when subpoenaed;

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

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

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

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

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

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

38 (A) submit information to; or

39 (B) participate in;

40 the multistate automated licensing system and repository.

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

45 SECTION 3. IC 23-2-5-11.5 IS ADDED TO THE INDIANA CODE
 46 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 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 (1) Employ any device, scheme, or artifice to defraud.
- 2 (2) Make any untrue statements of a material fact or omit to state
- 3 a material fact necessary in order to make the statements made, in
- 4 the light of circumstances under which they are made, not
- 5 misleading.
- 6 (3) Engage in any act, practice, or course of business that operates
- 7 or would operate as a fraud or deceit upon any person.
- 8 (4) Collect or solicit any consideration, except a bona fide third
- 9 party fee, in connection with a **residential mortgage** loan until
- 10 the loan has been closed.
- 11 (5) Receive any funds if the person knows that the funds were
- 12 generated as a result of a fraudulent act.
- 13 (6) File or cause to be filed with a county recorder any document
- 14 that the person knows:
- 15 (A) contains:
- 16 (i) a misstatement; or
- 17 (ii) an untrue statement;
- 18 of a material fact; or
- 19 (B) omits a statement of a material fact that is necessary to
- 20 make the statements that are made, in the light of
- 21 circumstances under which they are made, not misleading.
- 22 (7) Knowingly release or disclose the unencrypted, unredacted
- 23 personal information of one (1) or more borrowers or prospective
- 24 borrowers, unless the personal information is used in an activity
- 25 authorized by the borrower or prospective borrower under one (1)
- 26 or more of the following circumstances:
- 27 (A) The personal information is:
- 28 (i) included on an application form or another form; or
- 29 (ii) transmitted as part of an application process or an
- 30 enrollment process.
- 31 (B) The personal information is used to obtain a consumer
- 32 report (as defined in IC 24-5-24-2) for an applicant for credit.
- 33 (C) The personal information is used to establish, amend, or
- 34 terminate an account, a contract, or a policy, or to confirm the
- 35 accuracy of the personal information.
- 36 However, personal information allowed to be disclosed under this
- 37 subdivision may not be printed in whole or in part on a postcard
- 38 or other mailer that does not require an envelope, or in a manner
- 39 that makes the personal information visible on an envelope or a
- 40 mailer without the envelope or mailer being opened.
- 41 (8) Engage in any reckless or negligent activity allowing the
- 42 release or disclosure of the unencrypted, unredacted personal
- 43 information of one (1) or more borrowers or prospective
- 44 borrowers. An activity described in this subdivision includes an
- 45 action prohibited by section 18(d) of this chapter.
- 46 (9) Knowingly bribe, coerce, or intimidate another person to

1 corrupt or improperly influence the independent judgment of a
 2 real estate appraiser with respect to the value of any real estate
 3 offered as security for a residential mortgage loan, as prohibited
 4 by section 9.1(d) of this chapter.

5 (10) Violate any of the following:

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

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

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

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

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

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

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

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

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

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

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

1 noon on the forty-fifth day after the filing of any amendment
2 completing the application.

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

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

16 SECTION 6. IC 23-19-6-1, AS ADDED BY P.L.27-2007,
17 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2010]: Sec. 1. (a) This article shall be administered by a
19 division of the office of the secretary of state. The secretary of state
20 shall appoint a securities commissioner who shall be responsible for
21 the direction and supervision of the division and the administration of
22 this article under the direction and control of the secretary of state. The
23 salary of the securities commissioner shall be paid out of the funds
24 appropriated for the administration of this article. The commissioner
25 shall serve at the will of the secretary of state.

26 (b) The secretary of state:

27 (1) shall employ a chief deputy, attorneys, a senior investigator,
28 a senior accountant, and other deputies, investigators,
29 accountants, clerks, stenographers, and other employees necessary
30 for the administration of this article; and

31 (2) shall fix their compensation with the approval of the budget
32 agency.

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

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

43 (e) **Subject to IC 4-2-6-15**, the commissioner may develop and
44 implement investor education initiatives to inform the public about
45 investing in securities, with particular emphasis on the prevention and
46 detection of securities fraud. In developing and implementing these

1 initiatives, the commissioner may collaborate with public and nonprofit
 2 organizations with an interest in investor education. The commissioner
 3 may accept a grant or donation from a person that is not affiliated with
 4 the securities industry or from a nonprofit organization, regardless of
 5 whether the organization is affiliated with the securities industry, to
 6 develop and implement investor education initiatives. This subsection
 7 does not authorize the commissioner to require participation or
 8 monetary contributions of a registrant in an investor education
 9 program.

10 (f) Fees and funds of whatever character accruing from the
 11 administration of this article shall be accounted for by the secretary of
 12 state and shall be deposited with the treasurer of state to be deposited
 13 by the treasurer of the state in either the state general fund or the
 14 enforcement account referenced below. **Subject to IC 4-2-6-15,**
 15 expenses incurred in the administration of this article shall be paid
 16 from the state general fund upon appropriation being made for the
 17 expenses in the manner provided by law for the making of those
 18 appropriations. However, grants and donations **received** under
 19 subsection (e), costs of investigations **recovered under section 4(e) of**
 20 **this chapter,** and civil penalties recovered under sections 3(b) and 4(d)
 21 of this chapter shall be deposited by the treasurer of state in a separate
 22 account to be known as the securities division enforcement account.
 23 **Subject to IC 4-2-6-15,** the funds in the enforcement account shall be
 24 available, with the approval of the budget agency:

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

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

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

45 (h) Neither the secretary of state, the commissioner, nor an
 46 employee of the securities division shall be liable in their individual

1 capacity, except to the state, for an act done or omitted in connection
2 with the performance of their respective duties under this article.

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

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

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

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

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

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

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

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

37 SECTION 7. IC 23-19-6-12 IS ADDED TO THE INDIANA CODE
38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
39 1, 2010]: **Sec. 12. The commissioner may award, from any amount
40 imposed as a penalty under this article and recovered by the
41 securities division, a percentage, not to exceed ten percent (10%)
42 and as considered appropriate by the commissioner, of the amount
43 recovered, to any person who provided information leading to the
44 imposition of the penalty. Any determination under this section,
45 including whether to make a payment, to whom to make a
46 payment, or in what amount to make a payment, is in the sole**

1 **discretion of the commissioner. However, a payment may not be**
2 **made under this section to an employee of the securities division.**
3 **A determination under this section is final and is not subject to**
4 **judicial review."**

5 Renumber all SECTIONS consecutively.
(Reference is to HB 1332 as printed January 29, 2010.)

Representative Bardon