



Reprinted
February 2, 2010

HOUSE BILL No. 1332

DIGEST OF HB 1332 (Updated February 1, 2010 5:58 pm - DI 101)

Citations Affected: IC 4-2; IC 23-2; IC 23-19; IC 24-5; IC 24-5.5; IC 24-9; IC 25-34.1; IC 36-2.

Synopsis: Credit services and real estate transactions. 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. Amends the definition of "credit services organization" for purposes of
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Effective: July 1, 2010.

Bardon, Burton

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.

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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 a specified financial institution. Provides an exemption from prohibition against maintaining an escrow account if the person is: (1) the creditor in a mortgage transaction; or (2) a mortgage servicer acting on behalf of the creditor in a mortgage transaction. 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. Allows a county recorder to refuse to record a deed if the recorder has reason to believe the deed is fraudulent or has been altered in a way that makes it unreliable or inaccurate.

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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.

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HOUSE BILL No. 1332

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

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:

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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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1 program.

2 (f) Fees and funds of whatever character accruing from the

3 administration of this article shall be accounted for by the secretary of

4 state and shall be deposited with the treasurer of state to be deposited

5 by the treasurer of the state in either the state general fund or the

6 enforcement account referenced below. **Subject to IC 4-2-6-15,**

7 expenses incurred in the administration of this article shall be paid

8 from the state general fund upon appropriation being made for the

9 expenses in the manner provided by law for the making of those

10 appropriations. However, grants and donations **received** under

11 subsection (e), costs of investigations **recovered under section 4(e) of**

12 **this chapter,** and civil penalties recovered under sections 3(b) and 4(d)

13 of this chapter shall be deposited by the treasurer of state in a separate

14 account to be known as the securities division enforcement account.

15 **Subject to IC 4-2-6-15,** the funds in the enforcement account shall be

16 available, with the approval of the budget agency:

17 (1) to augment and supplement the funds appropriated for the

18 administration of this article; and

19 (2) for grants and awards to nonprofit entities for programs and

20 activities that will further investor education and financial literacy

21 in the state.

22 The funds in the enforcement account do not revert to the state general

23 fund at the end of any state fiscal year.

24 (g) In connection with the administration and enforcement of this

25 article, the attorney general shall render all necessary assistance to the

26 commissioner upon the commissioner's request, and to that end, the

27 attorney general shall employ legal and other professional services as

28 are necessary to adequately and fully perform the service under the

29 direction of the commissioner as the demands of the securities division

30 shall require. Expenses incurred by the attorney general for the

31 purposes stated in this subsection shall be chargeable against and paid

32 out of funds appropriated to the attorney general for the administration

33 of the attorney general's office. The attorney general may authorize the

34 commissioner and the commissioner's designee to represent the

35 commissioner and the securities division in any proceeding involving

36 enforcement or defense of this article.

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

38 employee of the securities division shall be liable in their individual

39 capacity, except to the state, for an act done or omitted in connection

40 with the performance of their respective duties under this article.

41 (i) The commissioner shall take, prescribe, and file the oath of office

42 prescribed by law. The commissioner, chief deputy commissioner, and

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1 each attorney or investigator designated by the commissioner are police
2 officers of the state and shall have all the powers and duties of police
3 officers in making arrests for violations of this article, or in serving any
4 process, notice, or order connected with the enforcement of this article
5 by whatever officer, authority, or court issued and shall comprise the
6 enforcement department of the division and are considered a criminal
7 justice agency for purposes of IC 5-2-4 and IC 10-13-3.

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

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

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

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

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

33 SECTION 7. IC 23-19-6-12 IS ADDED TO THE INDIANA CODE
34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
35 1, 2010]: **Sec. 12. The commissioner may award, from any amount
36 imposed as a penalty under this article and recovered by the
37 securities division, a percentage, not to exceed ten percent (10%)
38 and as considered appropriate by the commissioner, of the amount
39 recovered, to any person who provided information leading to the
40 imposition of the penalty. Any determination under this section,
41 including whether to make a payment, to whom to make a
42 payment, or in what amount to make a payment, is in the sole**

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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 SECTION 8. IC 24-5-15-2, AS AMENDED BY P.L.171-2006,
 6 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2010]: Sec. 2. (a) As used in this chapter, "credit services
 8 organization" means a person that, with respect to the extension of
 9 credit by another person, sells, provides, performs, or represents that
 10 the person can or will sell, provide, or perform, in return for the
 11 payment of money or other valuable consideration, any of the following
 12 services:

13 (1) Improving a buyer's credit record, credit history, or credit
 14 rating.

15 (2) Obtaining an extension of credit for a buyer.

16 (3) Obtaining a delay or forbearance of a buyer's obligation under
 17 a mortgage.

18 **(4) Obtaining a lower interest rate for:**

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

20 **(B) a residential mortgage loan;**

21 **to which the buyer is a debtor or a prospective debtor.**

22 **(5) Providing debt settlement services on behalf of a buyer.**

23 ~~(4)~~ **(6) Providing advice or assistance to a buyer concerning the**
 24 **services described in ~~subdivision~~ subdivisions (1) ~~(2)~~, or ~~(3)~~.**
 25 **through (5).**

26 (b) The term "credit services organization" does not include any of
 27 the following:

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

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

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

38 (4) A nonprofit organization exempt from taxation under Section
 39 501(c)(3) of the Internal Revenue Code.

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

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- 1 (6) A person admitted to the practice of law in Indiana if the
- 2 person is acting within the course and scope of the person's
- 3 practice as an attorney.
- 4 (7) A broker-dealer registered with the Securities and Exchange
- 5 Commission or the Commodity Futures Trading Commission if
- 6 the broker-dealer is acting within the course and scope of the
- 7 broker-dealer's regulation.
- 8 (8) A consumer reporting agency (as defined in the Federal Fair
- 9 Credit Reporting Act (15 U.S.C. 1681 et seq.)).
- 10 **(9) A loan servicer acting on behalf of the holder of:**
- 11 **(A) a consumer loan; or**
- 12 **(B) a residential mortgage loan.**
- 13 **(10) A debt management company (as defined in**
- 14 **IC 28-1-29-1(2)).**

15 SECTION 9. IC 24-5-15-2.5 IS ADDED TO THE INDIANA CODE
 16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 17 1, 2010]: **Sec. 2.5. As used in this chapter, "debt settlement**
 18 **services" means any of the following services that a person**
 19 **performs, offers to perform, or represents, either directly or by**
 20 **implication, that the person will perform with respect to a debt**
 21 **between a buyer and one (1) or more unsecured creditors or debt**
 22 **collectors:**

- 23 **(1) A renegotiation of the debt.**
- 24 **(2) A settlement of the debt.**
- 25 **(3) An alteration of the terms of payment or other terms of**
- 26 **the debt, including a reduction in the balance, interest rate, or**
- 27 **fees owed by the buyer to the creditor or debt collector.**

28 SECTION 10. IC 24-5-15-6 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 6. Before executing a**
 30 **contract or agreement with a buyer or receiving money or other**
 31 **valuable consideration, a credit services organization must provide the**
 32 **buyer with a written statement that contains the following:**

- 33 **(1) A complete and detailed description of the services to be**
- 34 **performed by the credit services organization for the buyer and**
- 35 **the total cost of the services.**
- 36 **(2) A statement explaining the buyer's right to proceed against the**
- 37 **bond or surety account required under section 8 of this chapter.**
- 38 **(3) The name and address of the:**
- 39 **(A) surety company that issued a bond; or**
- 40 **(B) depository and the trustee of a surety account and the**
- 41 **account number of the surety account;**
- 42 **required under section 8 of this chapter.**

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- 1 (4) A complete and accurate statement of the buyer's right to
- 2 review any file on the buyer maintained by a consumer reporting
- 3 agency as provided under the Fair Credit Reporting Act (15
- 4 U.S.C. 1681 et seq.).
- 5 (5) A statement that the buyer's file is available for review:
- 6 (A) at no charge ~~on request made to the consumer reporting~~
- 7 ~~agency within thirty (30) days after the date of receipt of a~~
- 8 ~~notice that credit has been denied; at the times and under the~~
- 9 ~~circumstances set forth in 15 U.S.C. 1681j; and~~
- 10 (B) for a minimal charge at any other time **as provided by 15**
- 11 **U.S.C. 1681j(f).**
- 12 (6) A complete and accurate statement of the buyer's right to
- 13 dispute the completeness or accuracy of an item contained in a
- 14 file on the buyer maintained by a consumer reporting agency.
- 15 (7) A statement that accurate information cannot be permanently
- 16 removed from the files of a consumer reporting agency.
- 17 (8) A complete and accurate statement indicating when consumer
- 18 information becomes obsolete and when consumer reporting
- 19 agencies are prevented from issuing reports containing obsolete
- 20 information.
- 21 (9) A complete and accurate statement of the availability of
- 22 nonprofit credit counseling services.

23 SECTION 11. IC 24-5-15-8, AS AMENDED BY P.L.171-2006,
 24 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2010]: Sec. 8. (a) Before doing business in Indiana, a credit
 26 services organization must:

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

33 (b) The attorney general may waive the bonding requirement under
 34 subsection (a) and, instead of the bond, accept an irrevocable letter of
 35 credit for an equivalent amount issued in favor of the state for the
 36 benefit of a person that is damaged by a violation of this chapter. **A**
 37 **credit services organization that obtains an irrevocable letter of**
 38 **credit under this subsection must file a copy of the irrevocable**
 39 **letter of credit with the attorney general before doing business in**
 40 **Indiana.**

41 SECTION 12. IC 24-5.5-6-1, AS ADDED BY P.L.209-2007,
 42 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2010]: Sec. 1. A person who **knowingly or intentionally**
2 violates this article commits:

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

7 SECTION 13. IC 24-9-3-7, AS AMENDED BY P.L.105-2009,
8 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2010]: Sec. 7. (a) As used in this section, "mortgage
10 transaction" includes the following:

- 11 (1) A home loan subject to this article.
- 12 (2) **To the extent allowed under federal law**, a loan described
- 13 in IC 24-9-1-1 that is secured by a mortgage or deed of trust on
- 14 real estate in Indiana on which there is located or will be located
- 15 a structure or structures:
 - 16 (A) designed primarily for occupancy of one (1) to four (4)
 - 17 families; and
 - 18 (B) that is or will be occupied by a borrower as the borrower's
 - 19 principal dwelling.
- 20 (3) A first lien mortgage transaction (as defined in
- 21 IC 24-4.4-1-301) subject to IC 24-4.4.
- 22 (4) A consumer credit sale subject to IC 24-4.5-2 in which a
- 23 mortgage, deed of trust, or land contract that constitutes a lien is
- 24 created or retained against land:
 - 25 (A) **that is located in Indiana; and**
 - 26 (B) upon which there is a dwelling that is or will be used by
 - 27 the debtor primarily for personal, family, or household
 - 28 purposes.
- 29 (5) A consumer credit loan subject to IC 24-4.5-3 in which a
- 30 mortgage, deed of trust, or land contract that constitutes a lien is
- 31 created or retained against land:
 - 32 (A) **that is located in Indiana; and**
 - 33 (B) upon which there is a dwelling that is or will be used by
 - 34 the debtor primarily for personal, family, or household
 - 35 purposes.
- 36 (6) A loan in which a mortgage, deed of trust, or land contract that
- 37 constitutes a lien is created or retained against land:
 - 38 (A) that is located in Indiana;
 - 39 (B) upon which there is a dwelling that is not or will not be
 - 40 used by the borrower primarily for personal, family, or
 - 41 household purposes; and
 - 42 (C) that is classified as residential for property tax purposes.

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1 The term includes a loan that is secured by land in Indiana upon
 2 which there is a dwelling that is purchased by or through the
 3 borrower for investment or other business purposes.
 4 (7) A reverse mortgage transaction that is secured by real estate
 5 in Indiana on which there is located a structure that is occupied by
 6 a borrower as the borrower's principal dwelling.
 7 (b) As used in this section, "real estate transaction" means the sale
 8 or lease of any legal or equitable interest in real estate:
 9 (1) that is located in Indiana;
 10 (2) upon which there is a dwelling; and
 11 (3) that is classified as residential for property tax purposes.
 12 (c) A person may not **do any of the following**:
 13 (1) Divide a **home** loan transaction into separate parts with the
 14 intent of evading a provision of this article.
 15 (2) Structure a home loan transaction as an open-end loan with
 16 the intent of evading the provisions of this article if the **home** loan
 17 would be a high cost home loan if the home loan had been
 18 structured as a closed-end loan.
 19 (3) Engage in a deceptive act in connection with a mortgage
 20 transaction or a real estate transaction.
 21 (4) Engage in, or solicit to engage in, a real estate transaction or
 22 a mortgage transaction without a permit or license required by
 23 law. **or**
 24 (5) With respect to a real estate transaction or a mortgage
 25 transaction, represent that:
 26 (A) the transaction has:
 27 (i) certain terms or conditions; or
 28 (ii) the sponsorship or approval of a particular person or
 29 entity;
 30 that it does not have and that the person knows or reasonably
 31 should know it does not have; or
 32 (B) the real estate or property that is the subject of the
 33 transaction has any improvements, appurtenances, uses,
 34 characteristics, or associated benefits that it does not have and
 35 that the person knows or reasonably should know it does not
 36 have.
 37 (6) **Maintain or offer to maintain an account for the receipt of**
 38 **funds for the payment of real estate taxes and insurance**
 39 **unless the person is any of the following**:
 40 (A) **Any of the following that is chartered under the laws of**
 41 **a state or the United States**:
 42 (i) **A bank.**

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- 1 (ii) A savings and loan association.
- 2 (iii) A credit union.
- 3 (iv) A savings bank.
- 4 (B) The creditor in a mortgage transaction.
- 5 (C) A mortgage servicer acting on behalf of the creditor in
- 6 a mortgage transaction.
- 7 (7) Fail to provide the notice required under subsection (d),
- 8 within the time specified in subsection (d), if the person is a
- 9 seller in a real estate transaction described in subsection (d).
- 10 (d) This subsection applies to a real estate transaction that
- 11 involves a land contract between the seller and the buyer in the
- 12 transaction. If the real estate that is the subject of the transaction
- 13 is subject to any encumbrance, including any tax lien, foreclosure
- 14 action, legal judgment, or other encumbrance affecting the title to
- 15 the real estate, the seller must provide written notice of the
- 16 encumbrance to the buyer:
- 17 (1) not later than the time the land contract is executed, if the
- 18 encumbrance is created before or at the time the land
- 19 contract is executed; or
- 20 (2) not later than ten (10) business days after the
- 21 encumbrance is created, if the encumbrance is created after
- 22 the land contract is executed.
- 23 SECTION 14. IC 24-9-5-4, AS AMENDED BY P.L.105-2009,
- 24 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 25 JULY 1, 2010]: Sec. 4. (a) This section does not apply to a violation of
- 26 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
- 27 who violates this article is liable to a person who is a party to the home
- 28 loan transaction, **mortgage transaction (as defined in**
- 29 **IC 24-9-3-7(a)), or real estate transaction (as defined in**
- 30 **IC 24-9-3-7(b)), as appropriate**, that gave rise to the violation for the
- 31 following:
- 32 (1) Actual damages, including consequential damages. A person
- 33 is not required to demonstrate reliance in order to receive actual
- 34 damages.
- 35 (2) Statutory damages equal to two (2) times the finance charges
- 36 agreed to in ~~the~~ a home loan agreement.
- 37 (3) Costs and reasonable attorney's fees.
- 38 (b) A person may be granted injunctive, declaratory, and other
- 39 equitable relief as the court determines appropriate in an action to
- 40 enforce compliance with this chapter.
- 41 (c) The right of rescission granted under 15 U.S.C. 1601 et seq. for
- 42 a violation of the federal Truth in Lending Act (15 U.S.C. 1601 et seq.)

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1 is available to a person acting only in an individual capacity by way of
2 recoupment as a defense against a party foreclosing on a home loan at
3 any time during the term of the loan. Any recoupment claim asserted
4 under this provision is limited to the amount required to reduce or
5 extinguish the person's liability under the home loan plus amounts
6 required to recover costs, including reasonable attorney's fees. This
7 article shall not be construed to limit the recoupment rights available
8 to a person under any other law.

9 (d) The remedies provided in this section are cumulative but are not
10 intended to be the exclusive remedies available to a person. Except as
11 provided in subsection (e), a person is not required to exhaust any
12 administrative remedies under this article or under any other applicable
13 law.

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

- 16 (1) notify the homeowner protection unit established by
17 IC 4-6-12-2 of the alleged violation giving rise to the action; and
- 18 (2) allow the homeowner protection unit at least ninety (90) days
19 to institute appropriate administrative and civil action to redress
20 a violation.

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

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

26 SECTION 15. IC 24-9-8-1, AS AMENDED BY P.L.105-2009,
27 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
28 JULY 1, 2010]: Sec. 1. A person who knowingly or intentionally
29 violates this article commits:

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

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

- 42 (1) issue an injunction;

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- 1 (2) order a person to make restitution;
- 2 (3) order a person to reimburse the state for reasonable costs of
- 3 the attorney general's investigation and prosecution of the
- 4 violation of this article; and
- 5 (4) impose a civil penalty of not more than ten thousand dollars
- 6 (\$10,000) per violation.

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

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

12 SECTION 17. IC 25-34.1-4-5 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) Each principal
 14 broker:

15 (1) shall keep in one (1) or more trust accounts (interest or
 16 noninterest bearing) all funds belonging to others that come into
 17 the possession of the principal broker or of any associated
 18 salesperson or broker-salesperson; and

19 (2) shall clearly identify any account containing those funds as a
 20 trust account. The trust accounts shall contain all earnest money
 21 deposits, funds held for closing escrows, sale proceeds not yet
 22 disbursed, and all other funds belonging to others.

23 (b) The principal broker shall not use any trust account for the
 24 deposit of any personal funds or other business funds and shall keep a
 25 detailed record of the funds and any interest accrued in each trust
 26 account that identifies the amount of funds held for each beneficiary.
 27 Any interest earned shall be held for the beneficiary.

28 (c) Upon the death or termination of a principal broker or the
 29 expiration, ~~or~~ revocation, **or suspension** of the principal broker's
 30 license, the commission shall take custody of each trust account and
 31 may appoint a successor trustee to protect and distribute the proceeds
 32 of that account.

33 SECTION 18. IC 25-34.1-6-2.5, AS ADDED BY P.L.105-2009,
 34 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2010]: Sec. 2.5. (a) A violation of:

- 36 (1) IC 24-5-15; or
 - 37 (2) IC 24-5.5;
- 38 by a person licensed or required to be licensed under this article is a
 39 violation of this article.

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

- 42 (1) the enforcement procedures described in section 2 of this

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1 chapter; and
 2 (2) any sanction that may be imposed by the commission under
 3 IC 25-1-11-12. ~~for an act described in IC 25-1-11-11.~~
 4 SECTION 19. IC 36-2-11-16, AS AMENDED BY P.L.129-2008,
 5 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2010]: Sec. 16. (a) This section does not apply to:
 7 (1) an instrument executed before November 4, 1943;
 8 (2) a judgment, order, or writ of a court;
 9 (3) a will or death certificate; or
 10 (4) an instrument executed or acknowledged outside Indiana.
 11 (b) Whenever this section prescribes that the name of a person be
 12 printed, typewritten, or stamped immediately beneath the person's
 13 signature, the signature must be written on the instrument, directly
 14 preceding the printed, typewritten, or stamped name, and may not be
 15 superimposed on that name so as to render either illegible. However,
 16 the instrument may be received for record if the name and signature
 17 are, in the discretion of the county recorder, placed on the instrument
 18 so as to render the connection between the two apparent.
 19 (c) Except as provided in subsection (d), the recorder may receive
 20 for record an instrument only if all of the following requirements are
 21 met:
 22 (1) The name of each person who executed the instrument is
 23 legibly printed, typewritten, or stamped immediately beneath the
 24 person's signature or the signature itself is printed, typewritten, or
 25 stamped.
 26 (2) The name of each witness to the instrument is legibly printed,
 27 typewritten, or stamped immediately beneath the signature of the
 28 witness or the signature itself is printed, typewritten, or stamped.
 29 (3) The name of each notary public whose signature appears on
 30 the instrument is legibly printed, typewritten, or stamped
 31 immediately beneath the signature of the notary public or the
 32 signature itself is printed, typewritten, or stamped.
 33 (4) The name of each person who executed the instrument appears
 34 identically in the body of the instrument, in the acknowledgment
 35 or jurat, in the person's signature, and beneath the person's
 36 signature.
 37 (5) If the instrument is a copy, the instrument is marked "Copy".
 38 (d) The recorder may receive for record an instrument that does not
 39 comply with subsection (c) if all of the following requirements are met:
 40 (1) A printed or typewritten affidavit of a person with personal
 41 knowledge of the facts is recorded with the instrument.
 42 (2) The affidavit complies with this section.

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1 (3) The affidavit states the correct name of a person, if any, whose
 2 signature cannot be identified or whose name is not printed,
 3 typewritten, or stamped on the instrument as prescribed by this
 4 section.
 5 (4) When the instrument does not comply with subsection (c)(4),
 6 the affidavit states the correct name of the person and states that
 7 each of the names used in the instrument refers to the person.
 8 (5) If the instrument is a copy, the instrument is marked "Copy".
 9 (e) **Except as provided in subsection (g),** the recorder shall record
 10 a document presented for recording or a copy produced by a
 11 photographic process of the document presented for recording if:
 12 (1) the document complies with other statutory recording
 13 requirements; and
 14 (2) the document or copy will produce a clear and unobstructed
 15 copy.
 16 (f) An instrument, document, or copy received and recorded by a
 17 county recorder is conclusively presumed to comply with this section.
 18 A recorded copy shall have the same effect as if the original document
 19 had been recorded.
 20 (g) **The recorder may refuse to record a deed if the recorder has**
 21 **reason to believe the deed is fraudulent or has been altered in a**
 22 **way that makes it unreliable or inaccurate.**

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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
 - (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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