

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1332

Citations Affected: IC 2-3.5-5-3; IC 4-2-6-15; IC 4-13-16.5; IC 5-10.2-2; IC 23-2-5; IC 23-19; IC 23-20; IC 24-5; IC 24-5.5-6-1; IC 24-9; IC 25-34.1.

Synopsis: Credit services; real estate transactions; securities; business enterprises. Conference committee report for EHB 1332. Provides that a state officer may not use the state officer's name or likeness in an audio, video, or newspaper publication paid for entirely or in part with appropriations made by the general assembly, regardless of the source of the money. Provides that this prohibition does not apply to a communication made by the governor concerning the public health or safety or by a state officer for a publication that has a "compelling public policy reason" that is approved by the budget committee and the budget agency. Provides that a state officer may use the title of the office the state officer holds in a communication. Expands the duties of the governor's commission on minority and women's business enterprises (commission) to include setting goals for all contracts awarded by a recipient of state grant funds that: (1) involve the use of real property of a city, town, county, township, or school corporation (unit); and (2) will be paid for in whole or in part with state grant funds. Requires the department of administration to direct contractors to demonstrate a good faith effort to meet participation goals. Requires the commission to work with the department of administration to develop a statement for grantees stating the importance of the use of minority and women's business enterprises. 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 the law governing such entities to include a person that does or offers to do any of the following on behalf of a buyer: (1) Obtain a lower interest rate with respect to a consumer loan or a residential mortgage loan. (2) Provide debt settlement services. Provides that a "credit service organization" does not include: (A) a loan servicer acting on behalf of the holder of a consumer loan or a residential mortgage loan; or (B) a debt

management company. Amends the law concerning the disclosures that a credit services organization must provide to a buyer to reflect changes in the federal Fair Credit Reporting Act concerning the circumstances under which a consumer is entitled to a consumer report without charge from a consumer reporting agency. Provides that before a credit services organization may do business in Indiana, it must file a copy of the required surety bond or irrevocable letter of credit with the attorney general. Prohibits a person from maintaining an escrow account used to pay real estate taxes and insurance for residential real estate unless the person is: (1) a specified financial institution; (2) the creditor in a mortgage transaction; (3) a mortgage servicer acting on behalf of the creditor in a mortgage transaction; or (4) a closing agent. Provides that in a real estate transaction involving a land contract between the seller and the buyer, the seller must give to the buyer, at certain specified times, written notice of any encumbrance that affects the title to the real estate. Provides that upon the suspension of a principal broker's license, the real estate commission shall take custody of each trust account maintained by the principal broker on behalf of others. (Current law requires the real estate commission to take custody of a principal broker's trust accounts upon only the expiration or revocation of the broker's license.) Removes an incorrect cross-reference in the statute concerning real estate brokers and salespersons. Corrects an incorrect cross-reference in the home loan practices act. Provides that a person that knowingly or intentionally violates the statute concerning mortgage rescue fraud commits a Class A misdemeanor. Establishes the securities restitution fund to provide restitution assistance to victims and certain family members of victims for monetary injuries from securities violations. Provides that the fund consists of amounts: (1) from certain funds received for deposit in the securities division enforcement account; and (2) appropriations from the general assembly. Establishes requirements for and limitations on awarding restitution assistance to victims of securities violations. Requires five percent of funds received after June 30, 2010, for deposit in the securities division enforcement account to be deposited into the securities restitution fund. Continually appropriates money from the securities restitution fund to the division for the purposes of: (1) awarding restitution assistance; and (2) paying certain administrative expenses. Transfers \$2,000,000 from the securities division enforcement account to the securities restitution fund on July 1, 2010. Makes it a Class C felony for a person to make or cause to be made: (1) in any document filed with the securities commissioner or securities division; or (2) in any proceeding, investigation, or examination; under the provisions concerning restitution assistance for victims of securities violations any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect. Requires the securities division to pay from the loan broker regulation account a qualifying claim that is submitted by the office of the attorney general before July 1, 2010; and that includes a court order awarding restitution to individuals who suffered monetary injury as a result of a violation of the deceptive consumer sales act that: (1) involved the maintenance of accounts for the receipt of funds for the payment of real estate taxes and insurance periodically owed in connection with real estate; and (2) occurred before July 1, 2010. Provides that the total amount paid from the loan broker regulation account to all individuals identified in the qualifying claim may not exceed \$150,000. Establishes a voluntary five star mortgage program for creditors (including mortgage brokers) that offer qualifying mortgages to Indiana customers after June 30, 2010. Requires the department of financial institutions (department) to adopt guidelines to implement the program. Provides that to qualify as a five star mortgage lender, a creditor must provide to the department a certification attesting that the creditor meets specified criteria. Provides that to qualify as a five star mortgage, a mortgage: (1) must require: (A) a down payment of at least 10% of the purchase price of the dwelling, in the case of a purchase money transaction; or (B) that the customer have equity of at least 10% in the dwelling, in the case of a refinancing; (2) must have a fixed rate of interest; (3) must provide for an escrow account for the payment of taxes and insurance, if the creditor regularly provides for such escrow accounts in the creditor's ordinary course of business; (4) may not have a term that exceeds 30 years; and (5) may not include a prepayment penalty or fee. Requires a five star mortgage lender to provide a written statement to any Indiana customer who: (1) applies for a five star mortgage offered by the lender; and (2) does not qualify for the mortgage based on the lender's underwriting standards. Provides that the statement must set forth the reasons why the customer did not qualify

for the five star mortgage. Allows a creditor that qualifies as a five star mortgage lender to include that fact in marketing materials or solicitations directed at Indiana customers, subject to the department's guidelines. Requires the department to publish on the department's Internet web site a list of all creditors that have a current and accurate certification or renewal certification on file with the department. Requires the department to provide written notice to a creditor that the creditor does not qualify for the program whenever a creditor: (1) holds itself out as a five star mortgage lender when it does not qualify to participate in the program; or (2) fails to comply with any program requirement. Requires the department to remove such a creditor from the list of five star mortgage lenders on the department's Internet web site and to provide, on the same Internet web page on which the list is published, a link to the notice provided to the creditor. Provides that the authority of the boards of trustees of the public employees' retirement fund (PERF) and of the state teachers' retirement fund (TRF) to invest in pooled funds includes the authority to invest in pools consisting in part or entirely of five star mortgages. Allows the PERF board to maintain alternative investment programs within: (1) the PERF annuity savings account; and (2) the legislators' defined contribution plan; that invest in pooled funds consisting in part or entirely of five star mortgages, or that otherwise invest in five star mortgages. Allows the TRF board to maintain alternative investment programs within the TRF annuity savings account that invest in pooled funds consisting in part or entirely of five star mortgages, or that otherwise invest in five star mortgages. **(This conference committee report: (1) Replaces language prohibiting a state officer from using the state officer's name in certain communications paid for entirely or in part with money from the securities division enforcement account, or with appropriations made for administering the uniform securities act, with the provisions concerning communications by state officers contained in HB 1001 (as reprinted February 25, 2010). (2) Adds language from HB 1014 (as reprinted January 12, 2010) concerning the use of minority and women's business enterprises. (3) Adds language from HB 1206 (as reprinted February 2, 2010) concerning the five star mortgage program. (4) Specifies that a nonresident of Indiana is eligible for assistance from the securities restitution fund if the jurisdiction in which the person resides offers to Indiana residents who are victims of securities violations in that jurisdiction assistance that is substantially similar to the assistance offered under the provisions concerning the securities restitution fund. (5) Adds provisions requiring the securities division to pay from the loan broker regulation account a qualifying claim that is submitted by the office of the attorney general before July 1, 2010; and that includes a court order awarding restitution to individuals who suffered monetary injury as a result of a violation of the deceptive consumer sales act that: (A) involved the maintenance of accounts for the receipt of funds for the payment of real estate taxes and insurance periodically owed in connection with real estate; and (B) occurred before July 1, 2010.)**

Effective: Upon passage; July 1, 2010.

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1332 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
 2 SECTION 1. IC 2-3.5-5-3, AS AMENDED BY SEA 222-2010,
 3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2010]: Sec. 3. (a) The PERF board shall establish alternative
 5 investment programs within the fund, based on the following
 6 requirements:
 7 (1) The PERF board shall maintain at least one (1) alternative
 8 investment program that is an indexed stock fund, one (1)
 9 alternative investment program that is a bond fund, and one (1)
 10 alternative investment program that is a stable value fund. **The**
 11 **PERF board may maintain one (1) or more alternative**
 12 **investment programs that:**
 13 **(A) invest in one (1) or more commingled or pooled funds**
 14 **that consist in part or entirely of mortgages that qualify as**
 15 **five star mortgages under the program established by**
 16 **IC 24-5-23.6; or**
 17 **(B) otherwise invest in mortgages that qualify as five star**
 18 **mortgages under the program established by IC 24-5-23.6.**
 19 (2) The programs should represent a variety of investment
 20 objectives.
 21 (3) The programs may not permit a member to withdraw money
 22 from the member's account, except as provided in section 6 of this

- 1 chapter.
- 2 (4) All administrative costs of each alternative program shall be
3 paid from the earnings on that program.
- 4 (5) A valuation of each member's account must be completed as
5 of:
- 6 (A) the last day of each quarter; or
7 (B) a time that the board may specify by rule.
- 8 (b) A member shall direct the allocation of the amount credited to
9 the member among the available alternative investment funds, subject
10 to the following conditions:
- 11 (1) A member may make a selection or change an existing
12 selection under rules established by the PERF board. The PERF
13 board shall allow a member to make a selection or change any
14 existing selection at least once each quarter.
- 15 (2) The PERF board shall implement the member's selection
16 beginning on the first day of the next calendar quarter that begins
17 at least thirty (30) days after the selection is received by the PERF
18 board or an alternate date established by the rules of the board.
19 This date is the effective date of the member's selection.
- 20 (3) A member may select any combination of the available
21 investment funds, in ten percent (10%) increments or smaller
22 increments that may be established by the rules of the board.
- 23 (4) A member's selection remains in effect until a new selection
24 is made.
- 25 (5) On the effective date of a member's selection, the board shall
26 reallocate the member's existing balance or balances in
27 accordance with the member's direction, based on the market
28 value on the effective date.
- 29 (6) If a member does not make an investment selection of the
30 alternative investment programs, the member's account shall be
31 invested in the PERF board's general investment fund.
- 32 (7) All contributions to the member's account shall be allocated
33 as of the last day of the quarter in which the contributions are
34 received or at an alternate time established by the rules of the
35 board in accordance with the member's most recent effective
36 direction. The PERF board shall not reallocate the member's
37 account at any other time.
- 38 (c) When a member transfers the amount credited to the member
39 from one (1) alternative investment program to another alternative
40 investment program, the amount credited to the member shall be
41 valued at the market value of the member's investment, as of the day
42 before the effective date of the member's selection or at an alternate
43 time established by the rules of the board. When a member retires,
44 becomes disabled, dies, or withdraws from the fund, the amount
45 credited to the member shall be the market value of the member's
46 investment as of the last day of the quarter preceding the member's
47 distribution or annuitization at retirement, disability, death, or
48 withdrawal, plus contributions received after that date or at an alternate
49 time established by the rules of the board.
- 50 (d) The PERF board shall determine the value of each alternative
51 program in the defined contribution fund, as of the last day of each

1 calendar quarter, as follows:

2 (1) The market value shall exclude the employer contributions
3 and employee contributions received during the quarter ending on
4 the current allocation date.

5 (2) The market value as of the immediately preceding quarter end
6 date shall include the employer contributions and employee
7 contributions received during that preceding quarter.

8 (3) The market value as of the immediately preceding quarter end
9 date shall exclude benefits paid from the fund during the quarter
10 ending on the current quarter end date.

11 SECTION 2. IC 4-2-6-15 IS ADDED TO THE INDIANA CODE
12 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE
13 UPON PASSAGE]: **Sec. 15. (a) This section does not apply to the**
14 **following:**

15 **(1) A communication made by the governor concerning the**
16 **public health or safety.**

17 **(2) A communication:**

18 **(A) that a compelling public policy reason justifies the state**
19 **officer to make; and**

20 **(B) the expenditure for which is approved by the budget**
21 **agency after an advisory recommendation from the budget**
22 **committee.**

23 **(b) This section does not prohibit a state officer from using in a**
24 **communication the title of the office the state officer holds.**

25 **(c) As used in this section, "communication" refers only to the**
26 **following:**

27 **(1) An audio communication.**

28 **(2) A video communication.**

29 **(3) A print communication in a newspaper (as defined in**
30 **IC 5-3-1-0.4).**

31 **(d) A state officer may not use the state officer's name or**
32 **likeness in a communication paid for entirely or in part with**
33 **appropriations made by the general assembly, regardless of the**
34 **source of the money.**

35 SECTION 3. IC 4-13-16.5-1, AS AMENDED BY P.L.1-2009,
36 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
37 JULY 1, 2010]: Sec. 1. (a) The definitions in this section apply
38 throughout this chapter.

39 (b) "Commission" refers to the governor's commission on minority
40 and women's business enterprises established under section 2 of this
41 chapter.

42 (c) "Commissioner" refers to the deputy commissioner for minority
43 and women's business enterprises of the department.

44 (d) "Contract" means any contract awarded by a state agency **or, as**
45 **set forth in section 2(f)(11) of this chapter, awarded by a recipient**
46 **of state grant funds**, for construction projects or the procurement of
47 goods or services, including professional services. For purposes of this
48 subsection, "goods or services" may not include the following when
49 determining the total value of contracts for state agencies:

50 (1) Utilities.

51 (2) Health care services (as defined in IC 27-8-11-1(c)).

- 1 (3) Rent paid for real property or payments constituting the price
 2 of an interest in real property as a result of a real estate
 3 transaction.
- 4 **(e) "Contractor" means a person or entity that:**
 5 **(1) contracts with a state agency; or**
 6 **(2) as set forth in section 2(f)(11) of this chapter:**
 7 **(A) is a recipient of state grant funds; and**
 8 **(B) enters into a contract:**
 9 **(i) with a person or entity other than a state agency; and**
 10 **(ii) that is paid for in whole or in part with the state**
 11 **grant funds.**
- 12 ~~(e)~~ **(f)** "Department" refers to the Indiana department of
 13 administration established by IC 4-13-1-2.
- 14 ~~(f)~~ **(g)** "Minority business enterprise" or "minority business" means
 15 an individual, partnership, corporation, limited liability company, or
 16 joint venture of any kind that is owned and controlled by one (1) or
 17 more persons who are:
 18 (1) United States citizens; and
 19 (2) members of a minority group or a qualified minority nonprofit
 20 corporation.
- 21 ~~(g)~~ **(h)** "Qualified minority or women's nonprofit corporation"
 22 means a corporation that:
 23 (1) is exempt from federal income taxation under Section
 24 501(c)(3) of the Internal Revenue Code;
 25 (2) is headquartered in Indiana;
 26 (3) has been in continuous existence for at least five (5) years;
 27 (4) has a board of directors that has been in compliance with all
 28 other requirements of this chapter for at least five (5) years;
 29 (5) is chartered for the benefit of the minority community or
 30 women; and
 31 (6) provides a service that will not impede competition among
 32 minority business enterprises or women's business enterprises at
 33 the time a nonprofit applies for certification as a minority
 34 business enterprise or a women's business enterprise.
- 35 ~~(h)~~ **(i)** "Owned and controlled" means:
 36 (1) if the business is a qualified minority nonprofit corporation, a
 37 majority of the board of directors are minority;
 38 (2) if the business is a qualified women's nonprofit corporation,
 39 a majority of the members of the board of directors are women; or
 40 (3) if the business is a business other than a qualified minority or
 41 women's nonprofit corporation, having:
 42 (A) ownership of at least fifty-one percent (51%) of the
 43 enterprise, including corporate stock of a corporation;
 44 (B) control over the management and active in the day-to-day
 45 operations of the business; and
 46 (C) an interest in the capital, assets, and profits and losses of
 47 the business proportionate to the percentage of ownership.
- 48 ~~(i)~~ **(j)** "Minority group" means:
 49 (1) Blacks;
 50 (2) American Indians;
 51 (3) Hispanics; and

1 (4) Asian Americans.
 2 ~~(j)~~ **(k)** "Separate body corporate and politic" refers to an entity
 3 established by the general assembly as a body corporate and politic.

4 ~~(k)~~ **(l)** "State agency" refers to any authority, board, branch,
 5 commission, committee, department, division, or other instrumentality
 6 of the executive, including the administrative, department of state
 7 government.

8 SECTION 4. IC 4-13-16.5-1.3, AS AMENDED BY P.L.228-2007,
 9 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2010]: Sec. 1.3. As used in this chapter, "women's business
 11 enterprise" means a business that is one (1) of the following:

- 12 (1) A sole proprietorship owned and controlled by a woman.
 13 (2) A partnership or joint venture owned and controlled by
 14 women in which:
 15 (A) at least fifty-one percent (51%) of the ownership is held by
 16 women; and
 17 (B) the management and daily business operations are
 18 controlled by at least one (1) of the women who owns the
 19 business.
 20 (3) A corporation or other entity:
 21 (A) whose management and daily business operations are
 22 controlled by at least one (1) of the women who owns the
 23 business; and
 24 (B) that is at least fifty-one percent (51%) owned by women,
 25 or if stock is issued, at least fifty-one percent (51%) of the
 26 stock is owned by at least one (1) of the women.
 27 (4) A qualified women's nonprofit corporation as defined in
 28 ~~IC 4-13-16.5-1(g)~~ and ~~IC 4-13-16.5-1(h)~~ **section 1(h) of this**
 29 **chapter.**

30 SECTION 5. IC 4-13-16.5-2, AS AMENDED BY P.L.87-2008,
 31 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2010]: Sec. 2. (a) There is established a governor's
 33 commission on minority and women's business enterprises. The
 34 commission shall consist of the following members:

- 35 (1) A governor's designee, who shall serve as chairman of the
 36 commission.
 37 (2) The commissioner of the Indiana department of transportation,
 38 or the economic opportunity director of the Indiana department of
 39 transportation if the commissioner of the Indiana department of
 40 transportation so designates.
 41 (3) The chairperson of the board of the Indiana economic
 42 development corporation or the chairperson's designee.
 43 (4) The commissioner of the department.
 44 (5) Nine (9) individuals with demonstrated capabilities in
 45 business and industry, especially minority and women's business
 46 enterprises, appointed by the governor from the following
 47 geographical areas of the state:
 48 (A) Three (3) from the northern one-third (1/3) of the state.
 49 (B) Three (3) from the central one-third (1/3) of the state.
 50 (C) Three (3) from the southern one-third (1/3) of the state.
 51 (6) Two (2) members of the house of representatives, no more

1 than one (1) from the same political party, appointed by the
 2 speaker of the house of representatives to serve in a nonvoting
 3 advisory capacity.

4 (7) Two (2) members of the senate, no more than one (1) from the
 5 same political party, appointed by the president pro tempore of
 6 the senate to serve in a nonvoting advisory capacity.

7 Not more than six (6) of the ten (10) members appointed or designated
 8 by the governor may be of the same political party. Appointed members
 9 of the commission shall serve four (4) year terms. A vacancy occurs if
 10 a legislative member leaves office for any reason. Any vacancy on the
 11 commission shall be filled in the same manner as the original
 12 appointment.

13 (b) Each member of the commission who is not a state employee is
 14 entitled to the following:

- 15 (1) The minimum salary per diem provided by IC 4-10-11-2.1(b).
- 16 (2) Reimbursement for traveling expenses and other expenses
 17 actually incurred in connection with the member's duties as
 18 provided under IC 4-13-1-4 and in the state travel policies and
 19 procedures established by the Indiana department of
 20 administration and approved by the budget agency.

21 (c) Each legislative member of the commission is entitled to receive
 22 the same per diem, mileage, and travel allowances established by the
 23 legislative council and paid to members of the general assembly
 24 serving on interim study committees. The allowances specified in this
 25 subsection shall be paid by the legislative services agency from the
 26 amounts appropriated for that purpose.

27 (d) A member of the commission who is a state employee but who
 28 is not a member of the general assembly is not entitled to any of the
 29 following:

- 30 (1) The minimum salary per diem provided by IC 4-10-11-2.1(b).
- 31 (2) Reimbursement for traveling expenses as provided under
 32 IC 4-13-1-4.
- 33 (3) Other expenses actually incurred in connection with the
 34 member's duties.

35 (e) The commission shall meet at least four (4) times each year and
 36 at other times as the chairman considers necessary.

37 (f) The duties of the commission shall include but not be limited to
 38 the following:

- 39 (1) Identify minority and women's business enterprises in the
 40 state.
- 41 (2) Assess the needs of minority and women's business
 42 enterprises.
- 43 (3) Initiate aggressive programs to assist minority and women's
 44 business enterprises in obtaining state contracts.
- 45 (4) Give special publicity to procurement, bidding, and qualifying
 46 procedures.
- 47 (5) Include minority and women's business enterprises on
 48 solicitation mailing lists.
- 49 (6) Evaluate the competitive differences between qualified
 50 minority or women's nonprofit corporations and other than
 51 qualified minority or women's nonprofit corporations that offer

- 1 similar services and make recommendation to the department on
 2 policy changes necessary to ensure fair competition among
 3 minority and women's business enterprises.
- 4 (7) Define the duties, goals, and objectives of the deputy
 5 commissioner of the department as created under this chapter to
 6 assure compliance by all state agencies, separate bodies corporate
 7 and politic, and state educational institutions with state and
 8 federal legislation and policy concerning the awarding of
 9 contracts (including, notwithstanding section 1(d) of this chapter
 10 or any other law, contracts of state educational institutions) to
 11 minority and women's business enterprises.
- 12 (8) Establish annual goals:
- 13 (A) for the use of minority and women's business enterprises;
 14 and
- 15 (B) derived from a statistical analysis of utilization study of
 16 state contracts (including, notwithstanding section 1(d) of this
 17 chapter or any other law, contracts of state educational
 18 institutions) that are required to be updated every five (5)
 19 years.
- 20 (9) Prepare a review of the commission and the various affected
 21 departments of government to be submitted to the governor and
 22 the legislative council on March 1 and October 1 of each year,
 23 evaluating progress made in the areas defined in this subsection.
- 24 (10) Ensure that the statistical analysis required under this
 25 section:
- 26 (A) is based on goals for participation of minority business
 27 enterprises established in *Richmond v. Croson*, 488 U.S. 469
 28 (1989);
- 29 (B) includes information on both contracts and subcontracts
 30 (including, notwithstanding section 1(d) of this chapter or any
 31 other law, contracts and subcontracts of state educational
 32 institutions); and
- 33 (C) uses data on the combined capacity of minority and
 34 women's businesses enterprises in Indiana and not just
 35 regional data.
- 36 **(11) Establish annual goals for the use of minority and**
 37 **women's business enterprises for any contract that:**
- 38 **(A) will be paid for in whole or in part with state grant**
 39 **funds; and**
- 40 **(B) involves the use of real property of a unit (as defined in**
 41 **IC 4-4-32.2-9).**
- 42 **(g) The department shall direct contractors to demonstrate a**
 43 **good faith effort to meet the annual participation goals established**
 44 **under subsection (f)(11). The good faith effort shall be**
 45 **demonstrated by contractors using the repository of certified firms**
 46 **created under section 3 of this chapter or a similar repository**
 47 **maintained by a unit (as defined in IC 4-4-32.2-9).**
- 48 ~~(g)~~ **(h)** The department shall adopt rules of ethics under IC 4-22-2
 49 for commission members other than commission members appointed
 50 under subsection (a)(6) or (a)(7).
- 51 ~~(h)~~ **(i)** The department shall furnish administrative support and staff

1 as is necessary for the effective operation of the commission.

2 **(j) The commission shall advise the department on developing**
 3 **a statement, to be included in all applications for and agreements**
 4 **governing grants made with state funds, stating the importance of**
 5 **the use of minority and women's business enterprises in fulfilling**
 6 **the purposes of the grant.**

7 SECTION 6. IC 4-13-16.5-3, AS AMENDED BY P.L.228-2007,
 8 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2010]: Sec. 3. (a) There is created in the department a deputy
 10 commissioner for minority and women's business enterprise
 11 development. Upon consultation with the commission, the
 12 commissioner of the department, with the approval of the governor,
 13 shall appoint an individual who possesses demonstrated capability in
 14 business or industry, especially in minority or women's business
 15 enterprises, to serve as deputy commissioner to work with the
 16 commission in the implementation of this chapter.

17 (b) The deputy commissioner shall do the following:

18 (1) Identify and certify minority and women's business enterprises
 19 for state projects.

20 (2) Establish a central certification file.

21 (3) Periodically update the certification status of each minority or
 22 women's business enterprise.

23 (4) Monitor the progress in achieving the goals established under
 24 section 2(f)(8) **and 2(f)(11)** of this chapter.

25 (5) Require all state agencies, separate bodies corporate and
 26 politic, and state educational institutions to report on planned and
 27 actual participation of minority and women's business enterprises
 28 in contracts awarded by state agencies. The commissioner may
 29 exclude from the reports uncertified minority and women's
 30 business enterprises.

31 (6) Determine and define opportunities for minority and women's
 32 business participation in contracts awarded by all state agencies,
 33 separate bodies corporate and politic, and state educational
 34 institutions.

35 (7) Implement programs initiated by the commission under
 36 section 2 of this chapter.

37 (8) Perform other duties as defined by the commission or by the
 38 commissioner of the department.

39 SECTION 7. IC 5-10.2-2-2.5, AS AMENDED BY P.L.2-2006,
 40 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2010]: Sec. 2.5. (a) Each board may establish investment
 42 guidelines and limits on all types of investments (including, but not
 43 limited to, stocks and bonds) and take other actions necessary to fulfill
 44 its duty as a fiduciary for all assets under its control, subject to the
 45 limitations and restrictions set forth in section 18 of this chapter,
 46 IC 5-10.3-5-3, and IC 5-10.4-3-10.

47 (b) Each board may commingle or pool assets with the assets of any
 48 other persons or entities. This authority includes, but is not limited to,
 49 the power to invest in commingled or pooled funds, partnerships, or
 50 mortgage pools, **including pools that consist in part or entirely of**
 51 **mortgages that qualify as five star mortgages under the program**

1 **established by IC 24-5-23.6.** In the event of any such investment, the
 2 board shall keep separate detailed records of the assets invested. Any
 3 decision to commingle or pool assets is subject to the limitations and
 4 restrictions set forth in IC 5-10.3-5-3 and IC 5-10.4-3-10.

5 SECTION 8. IC 5-10.2-2-3, AS AMENDED BY SEA 222-2010,
 6 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2010]: Sec. 3. (a) The annuity savings account consists of:

- 8 (1) the members' contributions; and
- 9 (2) the interest credits on these contributions in the guaranteed
 10 fund or the gain or loss in market value on these contributions in
 11 the alternative investment program, as specified in section 4 of
 12 this chapter.

13 Each member shall be credited individually with the amount of the
 14 member's contributions and interest credits.

15 (b) Each board shall maintain the annuity savings account program
 16 in effect on December 31, 1995 (referred to in this chapter as the
 17 guaranteed program). In addition, the board of the Indiana state
 18 teachers' retirement fund shall establish and maintain a guaranteed
 19 program within the 1996 account. Each board may establish investment
 20 guidelines and limits on all types of investments (including, but not
 21 limited to, stocks and bonds) and take other actions necessary to fulfill
 22 its duty as a fiduciary of the annuity savings account, subject to the
 23 limitations and restrictions set forth in IC 5-10.3-5-3 and
 24 IC 5-10.4-3-10.

25 (c) Each board shall establish alternative investment programs
 26 within the annuity savings account of the public employees' retirement
 27 fund, the pre-1996 account, and the 1996 account, based on the
 28 following requirements:

- 29 (1) Each board shall maintain at least one (1) alternative
 30 investment program that is an indexed stock fund and one (1)
 31 alternative investment program that is a bond fund. **Each board**
 32 **may maintain one (1) or more alternative investment**
 33 **programs that:**

34 **(A) invest in one (1) or more commingled or pooled funds**
 35 **that consist in part or entirely of mortgages that qualify as**
 36 **five star mortgages under the program established by**
 37 **IC 24-5-23.6; or**

38 **(B) otherwise invest in mortgages that qualify as five star**
 39 **mortgages under the program established by IC 24-5-23.6.**

40 (2) The programs should represent a variety of investment
 41 objectives under IC 5-10.3-5-3.

42 (3) No program may permit a member to withdraw money from
 43 the member's account except as provided in IC 5-10.2-3 and
 44 IC 5-10.2-4.

45 (4) All administrative costs of each alternative program shall be
 46 paid from the earnings on that program or as may be determined
 47 by the rules of each board.

48 (5) Except as provided in section 4(e) of this chapter, a valuation
 49 of each member's account must be completed as of:

- 50 (A) the last day of each quarter; or
- 51 (B) another time as each board may specify by rule.

1 (d) The board must prepare, at least annually, an analysis of the
2 guaranteed program and each alternative investment program. This
3 analysis must:

- 4 (1) include a description of the procedure for selecting an
5 alternative investment program;
- 6 (2) be understandable by the majority of members; and
- 7 (3) include a description of prior investment performance.

8 (e) A member may direct the allocation of the amount credited to
9 the member among the guaranteed fund and any available alternative
10 investment funds, subject to the following conditions:

11 (1) A member may make a selection or change an existing
12 selection under rules established by each board. A board shall
13 allow a member to make a selection or change any existing
14 selection at least once each quarter.

15 (2) The board shall implement the member's selection beginning
16 on the first day of the next calendar quarter that begins at least
17 thirty (30) days after the selection is received by the board or on
18 an alternate date established by the rules of each board. This date
19 is the effective date of the member's selection.

20 (3) A member may select any combination of the guaranteed fund
21 or any available alternative investment funds, in ten percent
22 (10%) increments or smaller increments that may be established
23 by the rules of each board.

24 (4) A member's selection remains in effect until a new selection
25 is made.

26 (5) On the effective date of a member's selection, the board shall
27 reallocate the member's existing balance or balances in
28 accordance with the member's direction, based on:

29 (A) for an alternative investment program balance, the market
30 value on the effective date; and

31 (B) for any guaranteed program balance, the account balance
32 on the effective date.

33 All contributions to the member's account shall be allocated as of
34 the last day of that quarter or at an alternate time established by
35 the rules of each board in accordance with the member's most
36 recent effective direction. The board shall not reallocate the
37 member's account at any other time.

38 (f) When a member who participates in an alternative investment
39 program transfers the amount credited to the member from one (1)
40 alternative investment program to another alternative investment
41 program or to the guaranteed program, the amount credited to the
42 member shall be valued at the market value of the member's
43 investment, as of the day before the effective date of the member's
44 selection or at an alternate time established by the rules of each board.
45 When a member who participates in an alternative investment program
46 retires, becomes disabled, dies, or suspends membership and withdraws
47 from the fund, the amount credited to the member shall be the market
48 value of the member's investment as of the last day of the quarter
49 preceding the member's distribution or annuitization at retirement,
50 disability, death, or suspension and withdrawal, plus contributions
51 received after that date or at an alternate time established by the rules

1 of each board.

2 (g) When a member who participates in the guaranteed program
 3 transfers the amount credited to the member to an alternative
 4 investment program, the amount credited to the member in the
 5 guaranteed program is computed without regard to market value and is
 6 based on the balance of the member's account in the guaranteed
 7 program as of the last day of the quarter preceding the effective date of
 8 the transfer. However, each board may by rule provide for an alternate
 9 valuation date. When a member who participates in the guaranteed
 10 program retires, becomes disabled, dies, or suspends membership and
 11 withdraws from the fund, the amount credited to the member shall be
 12 computed without regard to market value and is based on the balance
 13 of the member's account in the guaranteed program as of the last day
 14 of the quarter preceding the member's distribution or annuitization at
 15 retirement, disability, death, or suspension and withdrawal, plus any
 16 contributions received since that date plus interest since that date.
 17 However, each board may by rule provide for an alternate valuation
 18 date.

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

- 22 (1) Adopt rules under IC 4-22-2 to implement this chapter.
 23 (2) Make investigations and examinations:
 24 (A) in connection with any application for licensure under this
 25 chapter or with any license already granted; or
 26 (B) whenever it appears to the commissioner, upon the basis
 27 of a complaint or information, that reasonable grounds exist
 28 for the belief that an investigation or examination is necessary
 29 or advisable for the more complete protection of the interests
 30 of the public.
 31 (3) Charge as costs of investigation or examination all reasonable
 32 expenses, including a per diem prorated upon the salary of the
 33 commissioner or employee and actual traveling and hotel
 34 expenses. All reasonable expenses are to be paid by the party or
 35 parties under investigation or examination if the party has violated
 36 this chapter.
 37 (4) Issue notices and orders, including cease and desist notices
 38 and orders, after making an investigation or examination under
 39 subdivision (2). ~~The commissioner may also bring an action on~~
 40 ~~behalf of the state to enjoin a person from violating this chapter:~~
 41 The commissioner shall notify the person that an order or notice
 42 has been issued, the reasons for it, and that a hearing will be set
 43 not later than fifteen (15) business days after the commissioner
 44 receives a written request from the person requesting a hearing if
 45 the original order issued by the commissioner was a summary
 46 suspension, summary revocation, or denial of a license and not
 47 later than forty-five (45) business days after the commissioner
 48 receives a written request from the person requesting a hearing for
 49 all other orders.
 50 (5) Sign all orders, official certifications, documents, or papers
 51 issued under this chapter or delegate the authority to sign any of

- 1 those items to a deputy.
- 2 (6) Hold and conduct hearings.
- 3 (7) Hear evidence.
- 4 (8) Conduct inquiries with or without hearings.
- 5 (9) Receive reports of investigators or other officers or employees
- 6 of the state of Indiana or of any municipal corporation or
- 7 governmental subdivision within the state.
- 8 (10) Administer oaths, or cause them to be administered.
- 9 (11) Subpoena witnesses, and compel them to attend and testify.
- 10 (12) Compel the production of books, records, and other
- 11 documents.
- 12 (13) Order depositions to be taken of any witness residing within
- 13 or without the state. The depositions shall be taken in the manner
- 14 prescribed by law for depositions in civil actions and made
- 15 returnable to the commissioner.
- 16 (14) Order that each witness appearing under the commissioner's
- 17 order to testify before the commissioner shall receive the fees and
- 18 mileage allowances provided for witnesses in civil cases.
- 19 (15) Provide interpretive opinions or issue determinations that the
- 20 commissioner will not institute a proceeding or an action under
- 21 this chapter against a specified person for engaging in a specified
- 22 act, practice, or course of business if the determination is
- 23 consistent with this chapter. The commissioner may adopt rules
- 24 to establish fees for individuals requesting an interpretive opinion
- 25 or a determination under this subdivision. A person may not
- 26 request an interpretive opinion or a determination concerning an
- 27 activity that:
- 28 (A) occurred before; or
- 29 (B) is occurring on;
- 30 the date the opinion or determination is requested.
- 31 (16) Subject to subsection (f), designate a multistate automated
- 32 licensing system and repository, established and operated by a
- 33 third party, to serve as the sole entity responsible for:
- 34 (A) processing applications for:
- 35 (i) licenses under this chapter; and
- 36 (ii) renewals of licenses under this chapter; and
- 37 (B) performing other services that the commissioner
- 38 determines are necessary for the orderly administration of the
- 39 division's licensing system.
- 40 A multistate automated licensing system and repository described
- 41 in this subdivision may include the Nationwide Mortgage
- 42 Licensing System and Registry established by the Conference of
- 43 State Bank Supervisors and the American Association of
- 44 Residential Mortgage Regulators. The commissioner may take
- 45 any action necessary to allow the division to participate in a
- 46 multistate automated licensing system and repository.
- 47 (b) If a witness, in any hearing, inquiry, or investigation conducted
- 48 under this chapter, refuses to answer any question or produce any item,
- 49 the commissioner may file a written petition with the circuit or superior
- 50 court in the county where the hearing, investigation, or inquiry in
- 51 question is being conducted requesting a hearing on the refusal. The

1 court shall hold a hearing to determine if the witness may refuse to
 2 answer the question or produce the item. If the court determines that
 3 the witness, based upon the witness's privilege against
 4 self-incrimination, may properly refuse to answer or produce an item,
 5 the commissioner may make a written request that the court grant use
 6 immunity to the witness. Upon written request of the commissioner, the
 7 court shall grant use immunity to a witness. The court shall instruct the
 8 witness, by written order or in open court, that:

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

13 (2) the witness must answer the questions asked and produce the
 14 items requested.

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

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

26 (d) If:

27 (1) a person disobeys any lawful:

28 (A) subpoena issued under this chapter; or

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

32 (2) a witness refuses to:

33 (A) appear when subpoenaed;

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

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

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

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

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

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

5 (A) submit information to; or

6 (B) participate in;

7 the multistate automated licensing system and repository.

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

12 SECTION 10. IC 23-2-5-11.5 IS ADDED TO THE INDIANA
 13 CODE AS A NEW SECTION TO READ AS FOLLOWS
 14 [EFFECTIVE JULY 1, 2010]: **Sec. 11.5. (a) If the commissioner**
 15 **believes that a person has engaged, is engaging, or is about to**
 16 **engage in an act, practice, or course of business constituting a**
 17 **violation of this chapter or a rule adopted or order issued under**
 18 **this chapter or that a person has engaged, is engaging, or is about**
 19 **to engage in an act, practice, or course of business that materially**
 20 **aids a violation of this chapter or a rule adopted or order issued**
 21 **under this chapter, the commissioner may maintain an action in**
 22 **the circuit or superior court in the county where the investigation**
 23 **or inquiry in question is being conducted to enjoin the act, practice,**
 24 **or course of business and to enforce compliance with this chapter**
 25 **or a rule adopted or order issued under this chapter.**

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

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

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

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

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

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

40 (ii) collect debts; and

41 (iii) acquire and dispose of property;

42 (C) imposing a civil penalty of up to ten thousand dollars
 43 (\$10,000) per violation and an order of rescission,
 44 restitution, or disgorgement directed to a person that has
 45 engaged in an act, practice, or course of business
 46 constituting a violation of this chapter or a rule adopted or
 47 order issued under this chapter; and

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

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

51 (c) The commissioner may not be required to post a bond in an

1 **action or proceeding under this chapter.**

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

5 SECTION 11. IC 23-2-5-20, AS AMENDED BY P.L.156-2009,
 6 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2010]: Sec. 20. (a) A person shall not, in connection with a
 8 contract for the services of a loan broker, either directly or indirectly,
 9 do any of the following:

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

1 information of one (1) or more borrowers or prospective
 2 borrowers. An activity described in this subdivision includes an
 3 action prohibited by section 18(d) of this chapter.

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

9 (10) Violate any of the following:

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

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

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

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

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

19 SECTION 12. IC 23-19-4-6, AS ADDED BY P.L.27-2007,
 20 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2010]: Sec. 6. (a) A person shall register as a broker-dealer,
 22 agent, investment adviser, or investment adviser representative by
 23 filing an application and a consent to service of process complying with
 24 IC 23-19-6-11, and paying the fee specified in section 10 of this
 25 chapter and any reasonable fees charged by the designee of the
 26 commissioner for processing the filing. The application must contain:

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

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

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

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

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

1 completing the application.

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

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

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

25 (b) The secretary of state:

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

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

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

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

42 (e) **Subject to IC 4-2-6-15**, the commissioner may develop and
43 implement investor education initiatives to inform the public about
44 investing in securities, with particular emphasis on the prevention and
45 detection of securities fraud. In developing and implementing these
46 initiatives, the commissioner may collaborate with public and nonprofit
47 organizations with an interest in investor education. The commissioner
48 may accept a grant or donation from a person that is not affiliated with
49 the securities industry or from a nonprofit organization, regardless of
50 whether the organization is affiliated with the securities industry, to
51 develop and implement investor education initiatives. This subsection

1 does not authorize the commissioner to require participation or
2 monetary contributions of a registrant in an investor education
3 program.

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

24 (1) to augment and supplement the funds appropriated for the
25 administration of this article; and

26 (2) for grants and awards to nonprofit entities for programs and
27 activities that will further investor education and financial literacy
28 in the state.

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

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

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

48 (i) The commissioner shall take, prescribe, and file the oath of office
49 prescribed by law. The commissioner, chief deputy commissioner, and
50 each attorney or investigator designated by the commissioner are police
51 officers of the state and shall have all the powers and duties of police

1 officers in making arrests for violations of this article, or in serving any
2 process, notice, or order connected with the enforcement of this article
3 by whatever officer, authority, or court issued and shall comprise the
4 enforcement department of the division and are considered a criminal
5 justice agency for purposes of IC 5-2-4 and IC 10-13-3.

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

9 (1) the practice or commission of fraud may be prohibited and
10 prevented;

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

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

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

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

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

31 SECTION 14. IC 23-19-6-12 IS ADDED TO THE INDIANA
32 CODE AS A NEW SECTION TO READ AS FOLLOWS
33 [EFFECTIVE JULY 1, 2010]: **Sec. 12. The commissioner may**
34 **award, from any amount imposed as a penalty under this article**
35 **and recovered by the securities division, a percentage, not to**
36 **exceed ten percent (10%) and as considered appropriate by the**
37 **commissioner, of the amount recovered, to any person who**
38 **provided information leading to the imposition of the penalty. Any**
39 **determination under this section, including whether to make a**
40 **payment, to whom to make a payment, or in what amount to make**
41 **a payment, is in the sole discretion of the commissioner. However,**
42 **a payment may not be made under this section to an employee of**
43 **the securities division. A determination under this section is final**
44 **and is not subject to judicial review.**

45 SECTION 15. IC 23-20 IS ADDED TO THE INDIANA CODE AS
46 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
47 2010]:

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

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

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

1 (b) The term includes:

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

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

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

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

- 12 (1) A final court order.
 13 (2) A final administrative order.

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

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

- 19 (1) The Securities Act of 1933, as amended, and any
 20 regulations related to that act.
 21 (2) The Securities Exchange Act of 1934, as amended, and any
 22 regulations related to that act.
 23 (3) The Investment Company Act of 1940, as amended, and
 24 any regulations related to that act.
 25 (4) The Investment Advisers Act of 1940, as amended, and any
 26 regulations related to that act.
 27 (5) The Indiana uniform securities act and any rules related
 28 to that act.
 29 (6) Other state securities acts and any rules or regulations
 30 related to those acts.

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

33 Sec. 8. The division shall do the following:

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

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

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

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

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

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

- 49 (1) A resident of Indiana who is a victim of a securities
 50 violation committed:
 51 (A) in Indiana; or

- 1 **(B) in a jurisdiction other than Indiana, including a foreign**
 2 **country, if the jurisdiction in which the securities violation**
 3 **occurred does not offer to Indiana residents who are**
 4 **victims of securities violations in that jurisdiction**
 5 **assistance that is substantially similar to the assistance**
 6 **offered under this chapter.**
- 7 **(2) A nonresident of Indiana who is a victim of a securities**
 8 **violation committed in Indiana if the jurisdiction in which the**
 9 **victim resides offers to Indiana residents who are victims of**
 10 **securities violations in that jurisdiction assistance that is**
 11 **substantially similar to the assistance offered under this**
 12 **chapter.**
- 13 **(3) A surviving spouse or dependent child of a victim**
 14 **described in subdivision (1) or (2).**
- 15 **(4) Any other person legally dependent for principal support**
 16 **upon a victim described in subdivision (1) or (2).**
- 17 **Sec. 12. (a) A person eligible for restitution assistance under**
 18 **section 11 of this chapter may file an application for restitution**
 19 **assistance with the division.**
- 20 **(b) The application must be received by the division not more**
 21 **than one hundred eighty (180) days after the date of the order**
 22 **described in section 17 of this chapter. The division may grant an**
 23 **extension of time for good cause shown by the claimant. However,**
 24 **the division may not accept an application that is received more**
 25 **than two (2) years after the date of the order described in section**
 26 **17 of this chapter.**
- 27 **(c) The application must be filed in the office of the division in**
 28 **person, through the division's Internet web site, or by first class or**
 29 **certified mail. If requested, the division shall assist a claimant in**
 30 **preparing the application.**
- 31 **(d) The division shall accept all applications filed in compliance**
 32 **with this chapter. Upon receipt of a complete application, the**
 33 **division shall promptly begin processing the application.**
- 34 **Sec. 13. (a) The division shall review all applications to ensure**
 35 **that the applications are complete.**
- 36 **(b) If an application is not complete, the application shall be**
 37 **returned to the claimant with a brief statement of the additional**
 38 **information required.**
- 39 **(c) The claimant may, not more than thirty (30) days after**
 40 **receipt of the request for additional information, either supply the**
 41 **information or appeal to the securities commissioner as to the**
 42 **completeness of the application.**
- 43 **(d) The decision of the securities commissioner as to the**
 44 **completeness of the application is final.**
- 45 **(e) The division shall deny the application if:**
- 46 **(1) the applicant does not furnish additional information; or**
 47 **(2) additional time is not granted by the securities**
 48 **commissioner for good cause.**
- 49 **Sec. 14. (a) Subject to subsection (b), the division may not award**
 50 **restitution assistance if the victim:**
- 51 **(1) sustained the monetary injury as a result of:**

1 (A) participating or assisting in; or
 2 (B) attempting to commit or committing;
 3 a securities violation; or
 4 (2) profited or would have profited from the securities
 5 violation.

6 (b) If the victim is a dependent child or dependent parent of the
 7 person who commits a securities violation, restitution assistance
 8 may be awarded if justice requires.

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

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

13 (b) The division may not award restitution assistance to a
 14 person described in section 11 of this chapter if the person had a
 15 net worth of greater than five hundred thousand dollars (\$500,000)
 16 at the time of suffering monetary injury from a securities violation.

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

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

23 (1) a final order has been entered ordering restitution to the
 24 victim in a proceeding described in subsection (a); and

25 (2) the party ordered to pay restitution has not paid the full
 26 amount.

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

30 Sec. 19. (a) The division may not award restitution assistance
 31 under this chapter on behalf of a victim whose award of restitution
 32 under a court or administrative order is overturned on appeal.

33 (b) If:

34 (1) restitution assistance is awarded under this chapter; and

35 (2) after the award of restitution assistance under this
 36 chapter, the victim's award of restitution under a court or
 37 administrative order is overturned on appeal;

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

40 Sec. 20. (a) The state is subrogated to the rights of the person
 41 awarded restitution under this chapter to the extent of the award.

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

45 Sec. 21. (a) In addition to the subrogation rights under section
 46 20 of this chapter, the state is entitled to a lien in the amount of the
 47 award on a recovery made by or on behalf of the victim.

48 (b) The state may:

49 (1) recover the amount under subsection (a) in a separate
 50 action; or

51 (2) intervene in an action brought by or on behalf of the

1 victim.

2 (c) If a claimant brings an action described in subsection (b)(2),
3 the claimant may deduct from the money owed to the state under
4 the lien the state's pro rata share of the reasonable expenses for the
5 court suit, including attorney's fees. The amount the claimant
6 deducts under this subsection for the state's pro rata share of the
7 expenses may not be more than fifteen percent (15%) of the money
8 owed under the lien.

9 Sec. 22. If:

- 10 (1) an award is made under this chapter; and
11 (2) a claimant receives a sum required to be deducted under
12 section 21(a) of this chapter;
13 the claimant shall refund to the state the amount of overpayment.

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

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

21 Sec. 24. An award under this chapter may not exceed the lesser
22 of the following:

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

26 Sec. 25. An award made by the division under this chapter is not
27 subject to execution, attachment, garnishment, or other process.

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

29 (b) The fund consists of amounts:

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

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

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

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

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

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

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

1 **division under this chapter.**

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

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

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

9 **(1) in any document filed with or sent to the securities**
 10 **commissioner or the division; or**

11 **(2) in any proceeding, investigation, or examination;**
 12 **under this chapter any statement that is, at the time and in the light**
 13 **of the circumstances under which it is made, false or misleading in**
 14 **any material respect.**

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

17 SECTION 16. IC 24-5-15-2, AS AMENDED BY P.L.171-2006,
 18 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2010]: Sec. 2. (a) As used in this chapter, "credit services
 20 organization" means a person that, with respect to the extension of
 21 credit by another person, sells, provides, performs, or represents that
 22 the person can or will sell, provide, or perform, in return for the
 23 payment of money or other valuable consideration, any of the following
 24 services:

25 (1) Improving a buyer's credit record, credit history, or credit
 26 rating.

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

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

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

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

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

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

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

35 ~~(4) (6) Providing advice or assistance to a buyer concerning the~~
 36 ~~services described in subdivision subdivisions (1) (2); or (3):~~
 37 **through (5).**

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

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

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

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

50 (4) A nonprofit organization exempt from taxation under Section
 51 501(c)(3) of the Internal Revenue Code.

- 1 (5) A person licensed as a real estate broker under IC 25-34.1 if
 2 the person is acting within the course and scope of the person's
 3 license.
 4 (6) A person admitted to the practice of law in Indiana if the
 5 person is acting within the course and scope of the person's
 6 practice as an attorney.
 7 (7) A broker-dealer registered with the Securities and Exchange
 8 Commission or the Commodity Futures Trading Commission if
 9 the broker-dealer is acting within the course and scope of the
 10 broker-dealer's regulation.
 11 (8) A consumer reporting agency (as defined in the Federal Fair
 12 Credit Reporting Act (15 U.S.C. 1681 et seq.)).
 13 **(9) A loan servicer acting on behalf of the holder of:**
 14 **(A) a consumer loan; or**
 15 **(B) a residential mortgage loan.**
 16 **(10) A debt management company (as defined in**
 17 **IC 28-1-29-1(2)).**

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

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

31 SECTION 18. IC 24-5-15-6 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 6. Before executing a
 33 contract or agreement with a buyer or receiving money or other
 34 valuable consideration, a credit services organization must provide the
 35 buyer with a written statement that contains the following:

- 36 (1) A complete and detailed description of the services to be
 37 performed by the credit services organization for the buyer and
 38 the total cost of the services.
 39 (2) A statement explaining the buyer's right to proceed against the
 40 bond or surety account required under section 8 of this chapter.
 41 (3) The name and address of the:
 42 (A) surety company that issued a bond; or
 43 (B) depository and the trustee of a surety account and the
 44 account number of the surety account;
 45 required under section 8 of this chapter.
 46 (4) A complete and accurate statement of the buyer's right to
 47 review any file on the buyer maintained by a consumer reporting
 48 agency as provided under the Fair Credit Reporting Act (15
 49 U.S.C. 1681 et seq.).
 50 (5) A statement that the buyer's file is available for review:
 51 (A) at no charge ~~on request made to the consumer reporting~~

1 agency within thirty (30) days after the date of receipt of a
 2 notice that credit has been denied; **at the times and under the**
 3 **circumstances set forth in 15 U.S.C. 1681j;** and

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

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

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

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

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

17 SECTION 19. IC 24-5-15-8, AS AMENDED BY P.L.171-2006,
 18 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2010]: Sec. 8. (a) Before doing business in Indiana, a credit
 20 services organization must:

21 (1) obtain a surety bond in the amount of twenty-five thousand
 22 dollars (\$25,000), issued by a surety company authorized to do
 23 business in Indiana in favor of the state for the benefit of a person
 24 that is damaged by a violation of this chapter; **and**

25 (2) **file a copy of the surety bond obtained under subdivision**
 26 **(1) with the attorney general.**

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

35 SECTION 20. IC 24-5-23.6 IS ADDED TO THE INDIANA CODE
 36 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 37 UPON PASSAGE]:

38 **Chapter 23.6. Five Star Mortgages**

39 **Sec. 1. (a) As used in this chapter, "creditor" means:**

40 (1) a person:

41 (A) that engages in Indiana in the extension of mortgages
 42 that are subject to a credit service charge or loan finance
 43 charge, as applicable, or are payable by written agreement
 44 in more than four (4) installments (not including a down
 45 payment); and

46 (B) to whom the obligation arising from a mortgage is
 47 initially payable, either on the face of the note or contract,
 48 or by agreement if there is not a note or contract; or

49 (2) a person who brokers a mortgage, including a person who:
 50 (A) directly or indirectly solicits, processes, places, or
 51 negotiates mortgages for others;

1 **(B) offers to solicit, process, place, or negotiate mortgages**
 2 **for others; or**

3 **(C) closes mortgages that may be in the person's own name**
 4 **with funds provided by others and that are thereafter**
 5 **assigned to the person providing funding for the**
 6 **mortgages.**

7 **(b) The term does not include a person described in**
 8 **IC 24-9-2-6(b).**

9 **Sec. 2. (a) As used in this chapter, "debtor", with respect to a**
 10 **mortgage, refers to the maker of the note secured by the mortgage.**

11 **(b) The term includes a prospective debtor with respect to a**
 12 **mortgage for which a closing has not occurred.**

13 **Sec. 3. As used in this chapter, "department" refers to the**
 14 **department of financial institutions established by IC 28-11-1-1.**

15 **Sec. 4. As used in this chapter, "dwelling" means a residential**
 16 **structure that is located in Indiana and that contains one (1) to**
 17 **four (4) units, regardless of whether the structure is permanently**
 18 **attached to real property. The term includes an individual:**

- 19 **(1) condominium unit;**
 20 **(2) cooperative unit;**
 21 **(3) mobile home; or**
 22 **(4) trailer;**

23 **that is used as a residence.**

24 **Sec. 5. As used in this chapter, "five star mortgage lender"**
 25 **means a creditor that:**

- 26 **(1) offers at least one (1) mortgage product that qualifies as a**
 27 **five star mortgage under the program; and**
 28 **(2) has a current and accurate certification on file with the**
 29 **department, as described in section 9(a)(3) of this chapter.**

30 **Sec. 6. As used in this chapter, "Indiana customer", with respect**
 31 **to a mortgage offered by a creditor, means an individual who:**

- 32 **(1) is an Indiana resident at the time the mortgage is offered**
 33 **by the creditor; or**
 34 **(2) would become an Indiana resident after purchasing and**
 35 **occupying the dwelling that is the subject of the mortgage**
 36 **being offered.**

37 **Sec. 7. (a) As used in this chapter, "mortgage" means a sale or**
 38 **loan, or the refinancing or consolidation of a sale or loan, in which**
 39 **a first mortgage, deed of trust, or a land contract that constitutes**
 40 **a first lien, is created or retained against land that is located in**
 41 **Indiana and upon which there is a dwelling that is or will be used**
 42 **by the debtor primarily for personal, family, or household**
 43 **purposes.**

44 **(b) The term includes any of the following that meets the**
 45 **conditions set forth in subsection (a):**

- 46 **(1) A home loan subject to IC 24-9.**
 47 **(2) A loan described in IC 24-9-1-1, to the extent allowed**
 48 **under federal law.**
 49 **(3) A first lien mortgage transaction (as defined in**
 50 **IC 24-4.4-1-301) subject to IC 24-4.4.**

51 **Sec. 8. As used in this chapter, "program" refers to the five star**

1 mortgage program established by section 9 of this chapter.

2 **Sec. 9. (a) The five star mortgage program is established. Not**
 3 **later than June 1, 2010, the department shall adopt guidelines to**
 4 **implement the program. The program established by this section,**
 5 **as implemented through the department's guidelines, must meet**
 6 **the following criteria:**

7 (1) **The program must be available on a voluntary basis to**
 8 **creditors that offer mortgages to Indiana customers after**
 9 **June 30, 2010.**

10 (2) **To participate in the program, a creditor must submit a**
 11 **certification, on a form prescribed by the department,**
 12 **attesting that the creditor qualifies as a five star mortgage**
 13 **lender.**

14 (3) **To qualify as a five star mortgage lender under the**
 15 **program, a creditor must certify, on the form described in**
 16 **subdivision (2), that the creditor meets the following**
 17 **conditions:**

18 (A) **The creditor offers or will offer to Indiana customers**
 19 **after June 30, 2010, at least one (1) mortgage product that**
 20 **qualifies as a five star mortgage under the program.**

21 (B) **The creditor does not have a record of any significant**
 22 **or recurring violation of:**

23 (i) **IC 24-5-23.5-7; or**

24 (ii) **any other state or federal law, regulation, or rule**
 25 **applicable to mortgage transactions;**

26 **as of the date of the creditor's certification. If the creditor**
 27 **is not certain whether it meets the criterion set forth in this**
 28 **clause, the creditor shall consult with the department**
 29 **before filing a certification to participate in the program.**

30 (C) **The creditor does not have a director or an executive**
 31 **officer who has been convicted of or pleaded guilty or nolo**
 32 **contendere to a felony involving fraud, deceit, or**
 33 **misrepresentation under the laws of Indiana or any other**
 34 **jurisdiction, as of the date of the creditor's certification. If**
 35 **the creditor is not certain whether it meets the criterion set**
 36 **forth in this clause, the creditor shall consult with the**
 37 **department before filing a certification to participate in**
 38 **the program.**

39 (4) **To qualify as a five star mortgage under the program, a**
 40 **mortgage must include the following terms and conditions:**

41 (A) **If the mortgage involves a purchase money transaction,**
 42 **the mortgage must require a down payment by the debtor,**
 43 **or a person acting on behalf of the debtor, of at least ten**
 44 **percent (10%) of the purchase price of the dwelling that is**
 45 **the subject of the mortgage. If the mortgage involves the**
 46 **refinancing of an existing mortgage, the customer must**
 47 **have equity of at least ten percent (10%) in the dwelling**
 48 **that is the subject of the mortgage.**

49 (B) **The mortgage must have a fixed rate of interest.**

50 (C) **The mortgage must provide for an escrow account**
 51 **that:**

- 1 (i) is established by the creditor, or a person acting on
 2 behalf of the creditor, for the benefit of the debtor;
 3 (ii) is maintained by the creditor, or a person acting on
 4 behalf of the creditor, during the life of the mortgage;
 5 and
 6 (iii) is used during the life of the mortgage to pay taxes
 7 and insurance owed with respect to the dwelling that is
 8 the subject of the mortgage.

9 However, this clause does not apply if, in the creditor's
 10 ordinary course of business, the creditor does not regularly
 11 establish and maintain, or contract for the establishment
 12 and maintenance of, escrow accounts for the payment of
 13 taxes and insurance, on behalf of the creditor's customers.

14 (D) The term of the mortgage may not exceed thirty (30)
 15 years.

16 (E) The mortgage may not include a prepayment penalty
 17 or fee.

18 (5) A creditor that qualifies as a five star mortgage lender and
 19 files a certification with the department under subdivision (3)
 20 shall provide a written statement, on a form and in the
 21 manner prescribed by the department, to any Indiana
 22 customer who:

23 (A) applies for a five star mortgage offered by the creditor;
 24 and

25 (B) does not qualify for the five star mortgage based on the
 26 creditor's underwriting standards for the five star
 27 mortgage.

28 The statement must set forth the reasons why the Indiana
 29 customer did not qualify for the five star mortgage.

30 (6) A creditor that qualifies as a five star mortgage lender and
 31 files a certification with the department may include that fact
 32 in any marketing material or solicitation directed at Indiana
 33 customers, subject to any conditions or limitations imposed by
 34 the department in the guidelines adopted under this section.

35 (7) If a creditor:

36 (A) holds itself out as a five star mortgage lender and:

37 (i) the creditor has not filed an accurate certification,
 38 including any renewal certification required by the
 39 department under subsection (b)(3), with the department
 40 under this chapter; or

41 (ii) the creditor has filed a certification or a renewal
 42 certification with the department under this chapter and
 43 subsequently ceases offering at least one (1) mortgage
 44 product that qualifies as a five star mortgage; or

45 (B) fails to comply with any program requirement;

46 the department, upon discovering the act described in clause
 47 (A) or (B), shall immediately provide written notice to the
 48 creditor that the creditor does not qualify for participation in
 49 the program, or no longer qualifies for participation in the
 50 program, as appropriate. The notice provided under this
 51 subdivision must inform the creditor of the reason or reasons

1 the creditor does not qualify for participation in the program,
 2 or no longer qualifies for participation in the program, as
 3 appropriate. Not later than seven (7) days after the date of the
 4 notice provided to the creditor under this subdivision, the
 5 department shall remove the creditor from the list of
 6 creditors published on the department's Internet web site
 7 under subsection (c), as appropriate, and shall post, on the
 8 same Internet web page on which the list described in
 9 subsection (c) is published, a link to the notice provided to the
 10 creditor under this subdivision.

11 (b) In addition to the program criteria required by subsection
 12 (a), the guidelines adopted by the department under this section
 13 may include the following:

14 (1) Provisions allowing a creditor that qualifies as a five star
 15 mortgage lender and files a certification with the department
 16 to include in the paperwork associated with a five star
 17 mortgage:

18 (A) a statement;

19 (B) a seal; or

20 (C) any other designation considered appropriate by the
 21 department;

22 indicating that the particular mortgage product is a five star
 23 mortgage.

24 (2) A requirement that a creditor that qualifies as a five star
 25 mortgage lender and files a certification with the department
 26 shall report the following information to the department on
 27 an annual basis, or any other basis determined appropriate by
 28 the department:

29 (A) The total number and types of residential mortgage
 30 products that were offered by the creditor to Indiana
 31 customers during the applicable reporting period,
 32 including any five star mortgages reported under clause
 33 (C).

34 (B) The total number of residential mortgages described in
 35 clause (A) that were closed by the creditor during the
 36 applicable reporting period, including any five star
 37 mortgages that were closed during the reporting period, as
 38 reported under clause (D).

39 (C) The number of mortgage products that:

40 (i) qualified as five star mortgages under the program;
 41 and

42 (ii) were offered by the creditor to Indiana customers;
 43 during the applicable reporting period.

44 (D) The number of five star mortgages offered to Indiana
 45 customers that were closed by the creditor during the
 46 applicable reporting period.

47 (3) A requirement that a creditor that qualifies as a five star
 48 mortgage lender and files a certification with the department
 49 shall periodically submit to the department a renewal
 50 certification, on a form prescribed by the department, in
 51 conjunction with a report filed under subdivision (2), or at

1 such other time as the department determines appropriate. In
 2 any renewal certification required under this subdivision, a
 3 creditor must attest that the creditor:

4 (A) continued to meet the criteria necessary to qualify as
 5 a five star mortgage lender; and

6 (B) complied with all program requirements;
 7 during the applicable reporting period.

8 (4) A fee fixed by the department under IC 28-11-3-5 for each
 9 certification and recertification submitted by a creditor under
 10 this chapter. However, any fee fixed by the department under
 11 this subdivision may not exceed the department's actual costs
 12 to:

13 (A) process certifications and renewal certifications;

14 (B) publish the list described in subsection (c) on the
 15 department's Internet web site; and

16 (C) otherwise administer the program.

17 (5) Any other program requirements, criteria, or incentives
 18 that the department determines necessary to implement and
 19 evaluate a program to encourage creditors to offer stable
 20 mortgage products to qualified Indiana customers.

21 (c) The department shall publish on the department's Internet
 22 web site a list of all creditors that have a current and accurate:

23 (1) certification under this chapter; or

24 (2) renewal certification under this chapter;

25 on file with the department. The Indiana housing and community
 26 development authority and the securities division of the office of
 27 the secretary of state shall provide a link to the list described in this
 28 subsection on their respective Internet web sites.

29 (d) The program guidelines established by the department
 30 under subsections (a) and (b) must be made available:

31 (1) for public inspection and copying at the offices of the
 32 department under IC 5-14-3; and

33 (2) on the department's Internet web site.

34 (e) The department shall investigate any credible complaint
 35 received by any means alleging that a creditor has committed a
 36 violation described in subsection (a)(7). If the creditor that is the
 37 subject of a complaint under this subsection is not subject to
 38 regulation by the department, the department shall forward the
 39 complaint to the appropriate state or federal regulatory agency.

40 (f) Notwithstanding subsection (a), the department may adopt
 41 a different name for the program, other than the five star
 42 mortgage program, in adopting the guidelines to implement the
 43 program.

44 SECTION 21. IC 24-5.5-6-1, AS ADDED BY P.L.209-2007,
 45 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 46 JULY 1, 2010]: Sec. 1. A person who **knowingly or intentionally**
 47 violates this article commits:

48 (1) a **Class A misdemeanor**; and

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

1 SECTION 22. IC 24-9-3-7, AS AMENDED BY P.L.105-2009,
 2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2010]: Sec. 7. (a) As used in this section, "mortgage
 4 transaction" includes the following:

5 (1) A home loan subject to this article.

6 (2) **To the extent allowed under federal law**, a loan described
 7 in IC 24-9-1-1 that is secured by a mortgage or deed of trust on
 8 real estate in Indiana on which there is located or will be located
 9 a structure or structures:

10 (A) designed primarily for occupancy of one (1) to four (4)
 11 families; and

12 (B) that is or will be occupied by a borrower as the borrower's
 13 principal dwelling.

14 (3) A first lien mortgage transaction (as defined in
 15 IC 24-4.4-1-301) subject to IC 24-4.4.

16 (4) A consumer credit sale subject to IC 24-4.5-2 in which a
 17 mortgage, deed of trust, or land contract that constitutes a lien is
 18 created or retained against land:

19 **(A) that is located in Indiana; and**

20 **(B)** upon which there is a dwelling that is or will be used by
 21 the debtor primarily for personal, family, or household
 22 purposes.

23 (5) A consumer credit loan subject to IC 24-4.5-3 in which a
 24 mortgage, deed of trust, or land contract that constitutes a lien is
 25 created or retained against land:

26 **(A) that is located in Indiana; and**

27 **(B)** upon which there is a dwelling that is or will be used by
 28 the debtor primarily for personal, family, or household
 29 purposes.

30 (6) A loan in which a mortgage, deed of trust, or land contract that
 31 constitutes a lien is created or retained against land:

32 (A) that is located in Indiana;

33 (B) upon which there is a dwelling that is not or will not be
 34 used by the borrower primarily for personal, family, or
 35 household purposes; and

36 (C) that is classified as residential for property tax purposes.

37 The term includes a loan that is secured by land in Indiana upon
 38 which there is a dwelling that is purchased by or through the
 39 borrower for investment or other business purposes.

40 (7) A reverse mortgage transaction that is secured by real estate
 41 in Indiana on which there is located a structure that is occupied by
 42 a borrower as the borrower's principal dwelling.

43 (b) As used in this section, "real estate transaction" means the sale
 44 or lease of any legal or equitable interest in real estate:

45 (1) that is located in Indiana;

46 (2) upon which there is a dwelling; and

47 (3) that is classified as residential for property tax purposes.

48 (c) A person may not **do any of the following**:

49 (1) Divide a **home** loan transaction into separate parts with the
 50 intent of evading a provision of this article.

51 (2) Structure a home loan transaction as an open-end loan with

1 the intent of evading the provisions of this article if the **home** loan
 2 would be a high cost home loan if the home loan had been
 3 structured as a closed-end loan.

4 (3) Engage in a deceptive act in connection with a mortgage
 5 transaction or a real estate transaction.

6 (4) Engage in, or solicit to engage in, a real estate transaction or
 7 a mortgage transaction without a permit or license required by
 8 law. or

9 (5) With respect to a real estate transaction or a mortgage
 10 transaction, represent that:

11 (A) the transaction has:

12 (i) certain terms or conditions; or

13 (ii) the sponsorship or approval of a particular person or
 14 entity;

15 that it does not have and that the person knows or reasonably
 16 should know it does not have; or

17 (B) the real estate or property that is the subject of the
 18 transaction has any improvements, appurtenances, uses,
 19 characteristics, or associated benefits that it does not have and
 20 that the person knows or reasonably should know it does not
 21 have.

22 **(6) Maintain or offer to maintain an account for the receipt of**
 23 **funds for the payment of real estate taxes and insurance**
 24 **unless the person is any of the following:**

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

27 **(i) A bank.**

28 **(ii) A savings and loan association.**

29 **(iii) A credit union.**

30 **(iv) A savings bank.**

31 **(B) The creditor in a mortgage transaction.**

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

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

35 **(7) Fail to provide the notice required under subsection (d),**
 36 **within the time specified in subsection (d), if the person is a**
 37 **seller in a real estate transaction described in subsection (d).**

38 **(d) This subsection applies to a real estate transaction that**
 39 **involves a land contract between the seller and the buyer in the**
 40 **transaction. If the real estate that is the subject of the transaction**
 41 **is subject to any encumbrance, including any tax lien, foreclosure**
 42 **action, legal judgment, or other encumbrance affecting the title to**
 43 **the real estate, the seller must provide written notice by certified**
 44 **mail, return receipt requested, of the encumbrance to the buyer:**

45 **(1) not later than the time the land contract is executed, if the**
 46 **encumbrance is created before or at the time the land**
 47 **contract is executed; or**

48 **(2) not later than ten (10) business days after the**
 49 **encumbrance is created, if the encumbrance is created after**
 50 **the land contract is executed.**

51 SECTION 23. IC 24-9-5-4, AS AMENDED BY P.L.105-2009,

1 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2010]: Sec. 4. (a) This section does not apply to a violation of
3 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
4 who violates this article is liable to a person who is a party to the home
5 loan transaction, **mortgage transaction (as defined in**
6 **IC 24-9-3-7(a)), or real estate transaction (as defined in**
7 **IC 24-9-3-7(b)), as appropriate**, that gave rise to the violation for the
8 following:

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

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

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

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

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

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

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

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

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

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

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

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

49 (1) a Class A misdemeanor; and

50 (2) except for a violation of ~~IC 24-9-7-3(c)(4)~~ **IC 24-9-3-7(c)(4)**
51 by a person required to be licensed by the department of financial

1 institutions, an act that is actionable by the attorney general under
2 IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

3 SECTION 25. IC 24-9-8-3, AS AMENDED BY P.L.105-2009,
4 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2010]: Sec. 3. (a) This section does not apply to a violation of
6 ~~IC 24-9-7-3(c)(4)~~ IC 24-9-3-7(c)(4) by a person required to be licensed
7 by the department of financial institutions. The attorney general may
8 bring an action to enjoin a violation of this article. A court in which the
9 action is brought may:

- 10 (1) issue an injunction;
- 11 (2) order a person to make restitution;
- 12 (3) order a person to reimburse the state for reasonable costs of
13 the attorney general's investigation and prosecution of the
14 violation of this article; and
- 15 (4) impose a civil penalty of not more than ten thousand dollars
16 (\$10,000) per violation.

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

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

22 SECTION 26. IC 25-34.1-4-5 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) Each principal
24 broker:

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

33 (b) The principal broker shall not use any trust account for the
34 deposit of any personal funds or other business funds and shall keep a
35 detailed record of the funds and any interest accrued in each trust
36 account that identifies the amount of funds held for each beneficiary.
37 Any interest earned shall be held for the beneficiary.

38 (c) Upon the death or termination of a principal broker or the
39 expiration, ~~or~~ revocation, **or suspension** of the principal broker's
40 license, the commission shall take custody of each trust account and
41 may appoint a successor trustee to protect and distribute the proceeds
42 of that account.

43 SECTION 27. IC 25-34.1-6-2.5, AS ADDED BY P.L.105-2009,
44 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
45 JULY 1, 2010]: Sec. 2.5. (a) A violation of:

- 46 (1) IC 24-5-15; or
- 47 (2) IC 24-5.5;

48 by a person licensed or required to be licensed under this article is a
49 violation of this article.

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

1 (1) the enforcement procedures described in section 2 of this
2 chapter; and

3 (2) any sanction that may be imposed by the commission under
4 IC 25-1-11-12. ~~for an act described in IC 25-1-11-11.~~

5 SECTION 28. [EFFECTIVE JULY 1, 2010] (a) **Two million**
6 **dollars (\$2,000,000) shall be transferred from the securities**
7 **division enforcement account established under IC 23-19-6-1 to the**
8 **securities restitution fund established by IC 23-20-1-26, as added**
9 **by this act, on July 1, 2010.**

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

11 SECTION 29. [EFFECTIVE UPON PASSAGE] (a) **As used in this**
12 **SECTION, "account" refers to the loan broker regulation account**
13 **created by IC 23-2-5-7.**

14 (b) **As used in this SECTION, "division" refers to the securities**
15 **division of the office of the secretary of state.**

16 (c) **As used in this SECTION, "qualifying claim" means a claim**
17 **that:**

18 (1) **is submitted by the office of the attorney general to the**
19 **division not later than July 1, 2010;**

20 (2) **includes a court order that awards restitution to one (1) or**
21 **more individuals who suffered monetary injury as a result of**
22 **a violation under IC 24-5-0.5 that:**

23 (A) **involved the maintenance, on behalf of the injured**
24 **individuals, of accounts for the receipt of funds for the**
25 **payment of real estate taxes and insurance periodically**
26 **owed in connection with real estate; and**

27 (B) **occurred before July 1, 2010;**

28 (3) **identifies the individuals described in subdivision (2) and**
29 **each individual's pro rata share of the restitution awarded by**
30 **the court;**

31 (4) **attests that the party ordered to pay the restitution**
32 **awarded by the court has not paid the amount ordered; and**

33 (5) **seeks payment of the restitution awarded by the court**
34 **from the account.**

35 (d) **Subject to subsection (e) and notwithstanding IC 23-2-5-7,**
36 **upon receiving a qualifying claim from the office of the attorney**
37 **general, the division shall pay to each individual identified under**
38 **subsection (c)(3) an amount from the account that is needed to**
39 **satisfy the individual's pro rata share of the restitution awarded by**
40 **the court in the order described in subsection (c)(2), as set forth in**
41 **qualifying claim under subsection (c)(3).**

42 (e) **The total amount paid from the account under subsection (d)**
43 **to all individuals identified in the qualifying claim under subsection**
44 **(c)(3) may not exceed one hundred fifty thousand dollars**
45 **(\$150,000).**

46 (f) **The personal information (as defined in IC 4-1-11-3) of an**
47 **individual identified under subsection (c)(3) is confidential.**

48 (g) **This SECTION expires August 1, 2010.**

49 SECTION 30. **An emergency is declared for this act.**

(Reference is to EHB 1332 as reprinted February 25, 2010.)

Conference Committee Report
on
Engrossed House Bill 1332

Signed by:

Representative Bardon
Chairperson

Senator Bray

Representative Burton

Senator Lanane

House Conferees

Senate Conferees