

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

## HOUSE ENROLLED ACT No. 1332

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

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

SECTION 1. IC 4-2-6-15, AS ADDED BY HEA 1001-2010, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) This section does not apply to the following:

- (1) A communication made by the governor concerning the public health or safety.
- (2) A communication:
  - (A) that a compelling public policy reason justifies the state officer to make; and
  - (B) the expenditure for which is approved by the budget agency after an advisory recommendation from the budget committee.

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

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

- (1) An audio communication.
- (2) A video communication.
- (3) A print communication in a newspaper (as defined in IC 5-3-1-0.4).

(d) A state officer may not use the state officer's name or likeness in

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a communication paid for entirely or in part with appropriations made by the general assembly, regardless of the source of the money.

**(e) A state officer may not use the state officer's name or likeness in a communication paid for entirely or in part with:**

**(1) money from the securities division enforcement account established under IC 23-19-6-1(f); or**

**(2) appropriations from the state general fund made under IC 23-19-6-1(f).**

SECTION 2. IC 4-13-16.5-1, AS AMENDED BY P.L.1-2009, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) The definitions in this section apply throughout this chapter.

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

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

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

- (1) Utilities.
- (2) Health care services (as defined in IC 27-8-11-1(c)).
- (3) Rent paid for real property or payments constituting the price of an interest in real property as a result of a real estate transaction.

**(e) "Contractor" means a person or entity that:**

- (1) contracts with a state agency; or**
- (2) as set forth in section 2(f)(11) of this chapter:**
  - (A) is a recipient of state grant funds; and**
  - (B) enters into a contract:**
    - (i) with a person or entity other than a state agency; and**
    - (ii) that is paid for in whole or in part with the state grant funds.**

~~(e)~~ **(f)** "Department" refers to the Indiana department of administration established by IC 4-13-1-2.

~~(f)~~ **(g)** "Minority business enterprise" or "minority business" means an individual, partnership, corporation, limited liability company, or joint venture of any kind that is owned and controlled by one (1) or more persons who are:

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- (1) United States citizens; and
- (2) members of a minority group or a qualified minority nonprofit corporation.

~~(g)~~ **(h)** "Qualified minority or women's nonprofit corporation" means a corporation that:

- (1) is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code;
- (2) is headquartered in Indiana;
- (3) has been in continuous existence for at least five (5) years;
- (4) has a board of directors that has been in compliance with all other requirements of this chapter for at least five (5) years;
- (5) is chartered for the benefit of the minority community or women; and
- (6) provides a service that will not impede competition among minority business enterprises or women's business enterprises at the time a nonprofit applies for certification as a minority business enterprise or a women's business enterprise.

~~(h)~~ **(i)** "Owned and controlled" means:

- (1) if the business is a qualified minority nonprofit corporation, a majority of the board of directors are minority;
- (2) if the business is a qualified women's nonprofit corporation, a majority of the members of the board of directors are women; or
- (3) if the business is a business other than a qualified minority or women's nonprofit corporation, having:
  - (A) ownership of at least fifty-one percent (51%) of the enterprise, including corporate stock of a corporation;
  - (B) control over the management and active in the day-to-day operations of the business; and
  - (C) an interest in the capital, assets, and profits and losses of the business proportionate to the percentage of ownership.

~~(i)~~ **(j)** "Minority group" means:

- (1) Blacks;
- (2) American Indians;
- (3) Hispanics; and
- (4) Asian Americans.

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

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

SECTION 3. IC 4-13-16.5-1.3, AS AMENDED BY P.L.228-2007,



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SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1.3. As used in this chapter, "women's business enterprise" means a business that is one (1) of the following:

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

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

- (1) A governor's designee, who shall serve as chairman of the commission.
- (2) The commissioner of the Indiana department of transportation, or the economic opportunity director of the Indiana department of transportation if the commissioner of the Indiana department of transportation so designates.
- (3) The chairperson of the board of the Indiana economic development corporation or the chairperson's designee.
- (4) The commissioner of the department.
- (5) Nine (9) individuals with demonstrated capabilities in business and industry, especially minority and women's business enterprises, appointed by the governor from the following geographical areas of the state:
  - (A) Three (3) from the northern one-third (1/3) of the state.
  - (B) Three (3) from the central one-third (1/3) of the state.
  - (C) Three (3) from the southern one-third (1/3) of the state.

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(6) Two (2) members of the house of representatives, no more than one (1) from the same political party, appointed by the speaker of the house of representatives to serve in a nonvoting advisory capacity.

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

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

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

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

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

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

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

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

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

- (1) Identify minority and women's business enterprises in the state.
- (2) Assess the needs of minority and women's business

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enterprises.

(3) Initiate aggressive programs to assist minority and women's business enterprises in obtaining state contracts.

(4) Give special publicity to procurement, bidding, and qualifying procedures.

(5) Include minority and women's business enterprises on solicitation mailing lists.

(6) Evaluate the competitive differences between qualified minority or women's nonprofit corporations and other than qualified minority or women's nonprofit corporations that offer similar services and make recommendation to the department on policy changes necessary to ensure fair competition among minority and women's business enterprises.

(7) Define the duties, goals, and objectives of the deputy commissioner of the department as created under this chapter to assure compliance by all state agencies, separate bodies corporate and politic, and state educational institutions with state and federal legislation and policy concerning the awarding of contracts (including, notwithstanding section 1(d) of this chapter or any other law, contracts of state educational institutions) to minority and women's business enterprises.

(8) Establish annual goals:

(A) for the use of minority and women's business enterprises; and

(B) derived from a statistical analysis of utilization study of state contracts (including, notwithstanding section 1(d) of this chapter or any other law, contracts of state educational institutions) that are required to be updated every five (5) years.

(9) Prepare a review of the commission and the various affected departments of government to be submitted to the governor and the legislative council on March 1 and October 1 of each year, evaluating progress made in the areas defined in this subsection.

(10) Ensure that the statistical analysis required under this section:

(A) is based on goals for participation of minority business enterprises established in *Richmond v. Croson*, 488 U.S. 469 (1989);

(B) includes information on both contracts and subcontracts (including, notwithstanding section 1(d) of this chapter or any other law, contracts and subcontracts of state educational institutions); and

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(C) uses data on the combined capacity of minority and women's businesses enterprises in Indiana and not just regional data.

**(11) Establish annual goals for the use of minority and women's business enterprises for any contract that:**

**(A) will be paid for in whole or in part with state grant funds; and**

**(B) involves the use of real property of a unit (as defined in IC 4-4-32.2-9).**

**(g) The department shall direct contractors to demonstrate a good faith effort to meet the annual participation goals established under subsection (f)(11). The good faith effort shall be demonstrated by contractors using the repository of certified firms created under section 3 of this chapter or a similar repository maintained by a unit (as defined in IC 4-4-32.2-9).**

~~(g)~~ **(h)** The department shall adopt rules of ethics under IC 4-22-2 for commission members other than commission members appointed under subsection (a)(6) or (a)(7).

~~(h)~~ **(i)** The department shall furnish administrative support and staff as is necessary for the effective operation of the commission.

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

SECTION 5. IC 4-13-16.5-3, AS AMENDED BY P.L.228-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) There is created in the department a deputy commissioner for minority and women's business enterprise development. Upon consultation with the commission, the commissioner of the department, with the approval of the governor, shall appoint an individual who possesses demonstrated capability in business or industry, especially in minority or women's business enterprises, to serve as deputy commissioner to work with the commission in the implementation of this chapter.

(b) The deputy commissioner shall do the following:

- (1) Identify and certify minority and women's business enterprises for state projects.
- (2) Establish a central certification file.
- (3) Periodically update the certification status of each minority or women's business enterprise.
- (4) Monitor the progress in achieving the goals established under

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section 2(f)(8) **and 2(f)(11)** of this chapter.

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

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

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

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

SECTION 6. IC 23-2-5-11, AS AMENDED BY P.L.156-2009, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 11. (a) The commissioner may do the following:

(1) Adopt rules under IC 4-22-2 to implement this chapter.

(2) Make investigations and examinations:

(A) in connection with any application for licensure under this chapter or with any license already granted; or

(B) whenever it appears to the commissioner, upon the basis of a complaint or information, that reasonable grounds exist for the belief that an investigation or examination is necessary or advisable for the more complete protection of the interests of the public.

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

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

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suspension, summary revocation, or denial of a license and not later than forty-five (45) business days after the commissioner receives a written request from the person requesting a hearing for all other orders.

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

(6) Hold and conduct hearings.

(7) Hear evidence.

(8) Conduct inquiries with or without hearings.

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

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

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

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

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

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

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

(A) occurred before; or

(B) is occurring on;

the date the opinion or determination is requested.

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

(A) processing applications for:

(i) licenses under this chapter; and

(ii) renewals of licenses under this chapter; and

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

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

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

- (1) any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against that witness, unless the evidence is volunteered by the witness or is not responsive to a question; and
- (2) the witness must answer the questions asked and produce the items requested.

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

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

(d) If:

- (1) a person disobeys any lawful:

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(A) subpoena issued under this chapter; or  
 (B) order or demand requiring the production of any books, accounts, papers, records, documents, or other evidence or information as provided in this chapter; or  
 (2) a witness refuses to:  
 (A) appear when subpoenaed;  
 (B) testify to any matter about which the witness may be lawfully interrogated; or  
 (C) take or subscribe to any oath required by this chapter;  
 the circuit or superior court of the county in which the hearing, inquiry, or investigation in question is held, if demand is made or if, upon written petition, the production is ordered to be made, or the commissioner or a hearing officer appointed by the commissioner, shall compel compliance with the lawful requirements of the subpoena, order, or demand, compel the production of the necessary or required books, papers, records, documents, and other evidence and information, and compel any witness to attend in any Indiana county and to testify to any matter about which the witness may lawfully be interrogated, and to take or subscribe to any oath required.

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

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

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

- (A) submit information to; or
- (B) participate in;

the multistate automated licensing system and repository.

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

SECTION 7. IC 23-2-5-11.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 11.5. (a) If the commissioner believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has engaged, is engaging, or is about to engage in an act, practice,**

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or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the commissioner may maintain an action in the circuit or superior court in the county where the investigation or inquiry in question is being conducted to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

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

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

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

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

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

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

(ii) collect debts; and

(iii) acquire and dispose of property;

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

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

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

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

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

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

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

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

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

(10) Violate any of the following:

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

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

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

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

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

SECTION 9. IC 23-19-4-6, AS ADDED BY P.L.27-2007, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 6. (a) A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with IC 23-19-6-11, and paying the fee specified in section 10 of this chapter and any reasonable fees charged by the designee of the commissioner for processing the filing. The application must contain:

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

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

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

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

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**section 12(d) of this chapter. The applicant shall pay any fees or costs associated with the fingerprints and background check required under this subsection.**

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

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

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

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

(b) The secretary of state:

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

(c) It is unlawful for the commissioner or an officer, employee, or designee of the commissioner to use for personal benefit or the benefit

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

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

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

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

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

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administration of this article; and

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

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

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

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

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

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

- (1) the practice or commission of fraud may be prohibited and prevented;
- (2) disclosure of sufficient and reliable information in order to afford reasonable opportunity for the exercise of independent judgment of the persons involved may be assured; and
- (3) the qualifications may be prescribed to assure availability of reliable broker-dealers, investment advisers, and agents engaged

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in and in connection with the issuance, barter, sale, purchase, transfer, or disposition of securities in this state.

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

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

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

SECTION 11. IC 23-19-6-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 12. The commissioner may award, from any amount imposed as a penalty under this article and recovered by the securities division, a percentage, not to exceed ten percent (10%) and as considered appropriate by the commissioner, of the amount recovered, to any person who provided information leading to the imposition of the penalty. Any determination under this section, including whether to make a payment, to whom to make a payment, or in what amount to make a payment, is in the sole discretion of the commissioner. However, a payment may not be made under this section to an employee of the securities division. A determination under this section is final and is not subject to judicial review.**

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

**ARTICLE 20. VICTIMS OF SECURITIES VIOLATIONS**

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

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

**(b) The term includes:**

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

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

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**Sec. 3.** As used in this chapter, "fund" refers to the securities restitution fund established by section 25 of this chapter.

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

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

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

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

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

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

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

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

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

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

that demonstrates that restitution has been awarded to the claimant as described in section 16 of this chapter.

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

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

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(1) A resident of Indiana who is a victim of a securities violation committed:

(A) in Indiana; or

(B) in a jurisdiction other than Indiana, including a foreign country, if the jurisdiction in which the securities violation occurred does not offer to Indiana residents who are victims of securities violations in that jurisdiction assistance that is substantially similar to the assistance offered under this chapter.

(2) A nonresident of Indiana who is a victim of a securities violation committed in Indiana if the jurisdiction in which the victim resides offers to Indiana residents who are victims of securities violations in that jurisdiction assistance that is substantially similar to the assistance offered under this chapter.

(3) A surviving spouse or dependent child of a victim described in subdivision (1) or (2).

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

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

(b) The application must be received by the division not more than one hundred eighty (180) days after the date of the order described in section 16 of this chapter. The division may grant an extension of time for good cause shown by the claimant. However, the division may not accept an application that is received more than two (2) years after the date of the order described in section 16 of this chapter.

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

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

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

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

(c) The claimant may, not more than thirty (30) days after

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receipt of the request for additional information, either supply the information or appeal to the securities commissioner as to the completeness of the application.

(d) The decision of the securities commissioner as to the completeness of the application is final.

(e) The division shall deny the application if:

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

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

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

- (A) participating or assisting in; or
- (B) attempting to commit or committing;

a securities violation; or

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

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

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

Sec. 16. (a) The division may not award restitution assistance under this chapter unless the securities violation was adjudicated in a state or federal court or a regulatory agency administrative proceeding.

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

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

Sec. 17. The division shall deny an award of restitution assistance under this chapter if a court or administrative order does not contain an award of restitution to the victim.

Sec. 18. (a) The division may not award restitution assistance under this chapter on behalf of a victim whose award of restitution under a court or administrative order is overturned on appeal.

(b) If:

- (1) restitution assistance is awarded under this chapter; and
- (2) after the award of restitution assistance under this chapter, the victim's award of restitution under a court or

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administrative order is overturned on appeal;  
the claimant shall forfeit the restitution assistance received under this chapter.

**Sec. 19. (a)** The state is subrogated to the rights of the person awarded restitution under this chapter to the extent of the award.

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

**Sec. 20. (a)** In addition to the subrogation rights under section 19 of this chapter, the state is entitled to a lien in the amount of the award on a recovery made by or on behalf of the victim.

**(b)** The state may:

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

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

**Sec. 21. If:**

- (1)** an award is made under this chapter; and
- (2)** a claimant receives a sum required to be deducted under section 20(a) of this chapter;

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

**Sec. 22. (a)** In determining the amount of restitution assistance to award under this chapter, the division shall determine whether a victim contributed to the infliction of the victim's monetary injury.

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

**Sec. 23.** An award under this chapter may not exceed the lesser of the following:

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

**Sec. 24.** An award made by the division under this chapter is not subject to execution, attachment, garnishment, or other process.

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**Sec. 25. (a) The securities restitution fund is established.**

**(b) The fund consists of amounts:**

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

**Sec. 26. The money in the fund is continually appropriated to the division for purposes of:**

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

**Sec. 27. Money in the fund and income derived from money in the fund do not revert to the state general fund at the end of a state fiscal year.**

**Sec. 28. (a) If the fund would be reduced below two hundred fifty thousand dollars (\$250,000) by payment in full of all awards that become final in a month, the division shall suspend payment of the claims that become final during the month and the following two (2) months.**

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

**Sec. 29. The state is not liable for a written determination made by the division under this chapter except to the extent that money is available in the fund on the date the award is computed by the division under this chapter.**

**Sec. 30. (a) A claimant convicted of forgery, fraud, or deception in connection with a claim under this chapter forfeits an award paid to the claimant under this chapter.**

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

**Sec. 31. A person commits a Class C felony if the person knowingly makes or causes to be made:**

- (1) in any document filed with or sent to the securities commissioner or the division; or**
- (2) in any proceeding, investigation, or examination;**

**under this chapter any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.**

**Sec. 32. The division may adopt rules under IC 4-22-2 to implement this chapter.**

**SECTION 13. IC 24-5-15-2, AS AMENDED BY P.L.171-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**

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JULY 1, 2010]: Sec. 2. (a) As used in this chapter, "credit services organization" means a person that, with respect to the extension of credit by another person, sells, provides, performs, or represents that the person can or will sell, provide, or perform, in return for the payment of money or other valuable consideration, any of the following services:

- (1) Improving a buyer's credit record, credit history, or credit rating.
- (2) Obtaining an extension of credit for a buyer.
- (3) Obtaining a delay or forbearance of a buyer's obligation under a mortgage.
- (4) Obtaining a lower interest rate for:**
  - (A) a consumer loan; or**
  - (B) a residential mortgage loan;****to which the buyer is a debtor or a prospective debtor.**
- (5) Providing debt settlement services on behalf of a buyer.**
- ~~(6)~~ **(6) Providing advice or assistance to a buyer concerning the services described in ~~subdivision (1) (2); or (3);~~ subdivisions (1) (2), or (3) through (5).**

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

- (1) A person authorized to make loans or extensions of credit under state or federal laws that is subject to regulation and supervision under state or federal laws, or a lender approved by the United States Secretary of Housing and Urban Development for participation in a mortgage insurance program under the federal National Housing Act (12 U.S.C. 1701 et seq.).
- (2) A bank or savings association or a subsidiary of a bank or savings association that has deposits or accounts that are eligible for insurance by the Federal Deposit Insurance Corporation.
- (3) A credit union doing business in Indiana.
- (4) A nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.
- (5) A person licensed as a real estate broker under IC 25-34.1 if the person is acting within the course and scope of the person's license.
- (6) A person admitted to the practice of law in Indiana if the person is acting within the course and scope of the person's practice as an attorney.
- (7) A broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission if the broker-dealer is acting within the course and scope of the

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broker-dealer's regulation.

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

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

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

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

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

SECTION 14. IC 24-5-15-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 2.5. As used in this chapter, "debt settlement services" means any of the following services that a person performs, offers to perform, or represents, either directly or by implication, that the person will perform with respect to a debt between a buyer and one (1) or more unsecured creditors or debt collectors:**

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

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

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

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

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

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

(3) The name and address of the:

(A) surety company that issued a bond; or

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

required under section 8 of this chapter.

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

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

(A) at no charge on request made to the consumer reporting

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

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

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

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

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

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

SECTION 16. IC 24-5-15-8, AS AMENDED BY P.L.171-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. (a) Before doing business in Indiana, a credit services organization must:

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

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

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

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

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

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

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SECTION 18. IC 24-9-3-7, AS AMENDED BY P.L.105-2009, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. (a) As used in this section, "mortgage transaction" includes the following:

- (1) A home loan subject to this article.
- (2) **To the extent allowed under federal law**, a loan described in IC 24-9-1-1 that is secured by a mortgage or deed of trust on real estate in Indiana on which there is located or will be located a structure or structures:
  - (A) designed primarily for occupancy of one (1) to four (4) families; and
  - (B) that is or will be occupied by a borrower as the borrower's principal dwelling.
- (3) A first lien mortgage transaction (as defined in IC 24-4.4-1-301) subject to IC 24-4.4.
- (4) A consumer credit sale subject to IC 24-4.5-2 in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land:
  - (A) that is located in Indiana; and**
  - (B)** upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.
- (5) A consumer credit loan subject to IC 24-4.5-3 in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land:
  - (A) that is located in Indiana; and**
  - (B)** upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.
- (6) A loan in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land:
  - (A) that is located in Indiana;
  - (B) upon which there is a dwelling that is not or will not be used by the borrower primarily for personal, family, or household purposes; and
  - (C) that is classified as residential for property tax purposes.

The term includes a loan that is secured by land in Indiana upon which there is a dwelling that is purchased by or through the borrower for investment or other business purposes.
- (7) A reverse mortgage transaction that is secured by real estate in Indiana on which there is located a structure that is occupied by a borrower as the borrower's principal dwelling.

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

- (1) that is located in Indiana;
- (2) upon which there is a dwelling; and
- (3) that is classified as residential for property tax purposes.

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

- (1) Divide a **home** loan transaction into separate parts with the intent of evading a provision of this article.
- (2) Structure a home loan transaction as an open-end loan with the intent of evading the provisions of this article if the **home** loan would be a high cost home loan if the home loan had been structured as a closed-end loan.
- (3) Engage in a deceptive act in connection with a mortgage transaction or a real estate transaction.
- (4) Engage in, or solicit to engage in, a real estate transaction or a mortgage transaction without a permit or license required by law. ~~or~~
- (5) With respect to a real estate transaction or a mortgage transaction, represent that:

(A) the transaction has:

- (i) certain terms or conditions; or
- (ii) the sponsorship or approval of a particular person or entity;

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

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

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

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

- (i) A bank.**
- (ii) A savings and loan association.**
- (iii) A credit union.**
- (iv) A savings bank.**

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

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

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

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

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

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

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

SECTION 19. IC 24-9-5-4, AS AMENDED BY P.L.105-2009, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. (a) This section does not apply to a violation of 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 who violates this article is liable to a person who is a party to the home loan transaction, **mortgage transaction (as defined in IC 24-9-3-7(a)), or real estate transaction (as defined in IC 24-9-3-7(b)), as appropriate**, that gave rise to the violation for the following:

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

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

(3) Costs and reasonable attorney's fees.

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

(c) The right of rescission granted under 15 U.S.C. 1601 et seq. for a violation of the federal Truth in Lending Act (15 U.S.C. 1601 et seq.) is available to a person acting only in an individual capacity by way of recoupment as a defense against a party foreclosing on a home loan at any time during the term of the loan. Any recoupment claim asserted under this provision is limited to the amount required to reduce or extinguish the person's liability under the home loan plus amounts

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required to recover costs, including reasonable attorney's fees. This article shall not be construed to limit the recoupment rights available to a person under any other law.

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

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

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

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

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

SECTION 20. IC 24-9-8-1, AS AMENDED BY P.L.105-2009, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. A person who knowingly or intentionally violates this article commits:

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

SECTION 21. IC 24-9-8-3, AS AMENDED BY P.L.105-2009, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) This section does not apply to a violation of ~~IC 24-9-7-3(c)(4)~~ **IC 24-9-3-7(c)(4)** by a person required to be licensed by the department of financial institutions. The attorney general may bring an action to enjoin a violation of this article. A court in which the action is brought may:

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

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(\$10,000) per violation.

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

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

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

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

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

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

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

SECTION 23. IC 25-34.1-6-2.5, AS ADDED BY P.L.105-2009, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2.5. (a) A violation of:

(1) IC 24-5-15; or

(2) IC 24-5.5;

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

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

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

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

SECTION 24. [EFFECTIVE JULY 1, 2010] **(a) Two million dollars (\$2,000,000) shall be transferred from the securities**

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division enforcement account established under IC 23-19-6-1 to the securities restitution fund established by IC 23-20-1-26, as added by this act, on July 1, 2010.

(b) This SECTION expires July 2, 2010.

SECTION 25. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "account" refers to the loan broker regulation account created by IC 23-2-5-7.

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

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

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

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

(A) involved the maintenance, on behalf of the injured individuals, 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;

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

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

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

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

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

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

(g) This SECTION expires August 1, 2010.

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SECTION 26. **An emergency is declared for this act.**

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Speaker of the House of Representatives

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President of the Senate

\_\_\_\_\_  
President Pro Tempore

\_\_\_\_\_  
Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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