HOUSE BILL No. 1206

DIGEST OF INTRODUCED BILL

Citations Affected: IC 2-3.5-5-3; IC 5-10.2-2; IC 24-5-23.6.

Synopsis: Five star mortgages. Requires the department of financial institutions (department) to establish a voluntary five star mortgage program for creditors that offer qualifying mortgages to Indiana customers after June 30, 2010. Provides that to qualify as a five star mortgage, a mortgage: (1) must require a down payment of at least 20% of the purchase price of the dwelling; (2) must have a fixed rate of interest; (3) must provide for an escrow account for the payment of taxes and insurance; (4) may not have a term that exceeds 30 years; and (5) may not include a prepayment penalty or fee. Provides that to qualify as a five star mortgage lender, a creditor: (1) must offer to Indiana customers one or more mortgage products that qualify as five star mortgages; (2) must not have a record of any violation of the law concerning mortgage appraisal fraud or, in certain circumstances, other laws concerning mortgage transactions; and (3) must not have a key officer or director with a record of a felony involving fraud, deceit, or misrepresentation. Requires the department to issue to a creditor that qualifies as five star mortgage lender a certificate that: (1) designates the creditor as a five star mortgage lender; and (2) may be displayed at any of the creditor's Indiana business locations at which the creditor offers five star mortgages. 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
(Continued next page)

Effective: Upon passage; July 1, 2010.

DeLaney, Bardon

January 7, 2010, read first time and referred to Committee on Financial Institutions.

solicitations directed at Indiana customers, subject to the department's rules. Provides that the department's rules establishing the program may provide for the following: (1) Reporting requirements for five star mortgage lenders. (2) Civil penalties for creditors that falsely hold themselves out as five star mortgage lenders. (3) The use of a statement, a seal, or another designation on paperwork associated with a five star mortgage or in marketing materials or solicitations that include the creditor's designation as a five star mortgage lender. (4) An application fee for applications submitted by creditors seeking to participate in the program. 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.

Introduced

Second Regular Session 116th General Assembly (2010)

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

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

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

HOUSE BILL No. 1206

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

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

SECTION 1. IC 2-3.5-5-3, AS AMENDED BY P.L.165-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) The PERF board shall establish alternative investment programs within the fund, based on the following requirements:

(1) The PERF board shall maintain at least one (1) alternative investment program that is an indexed stock fund, one (1) alternative investment program that is a bond fund, and one (1) alternative investment program that is a stable value fund. **The PERF board may maintain one (1) or more alternative investment programs that:**

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

(B) otherwise invest in mortgages that qualify as five star mortgages under the program established by the department of financial institutions under IC 24-5-23.6.

(2) The programs should represent a variety of investment objectives.

(3) The programs may not permit a member to withdraw money from the member's account, except as provided in section 6 of this chapter.

(4) All administrative costs of each alternative program shall be paid from the earnings on that program.

(5) A valuation of each member's account must be completed as of:

(A) the last day of each quarter; or

(B) a time that the board may specify by rule.

(b) A member shall direct the allocation of the amount credited to the member among the available alternative investment funds, subject to the following conditions:

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

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

(3) A member may select any combination of the available investment funds, in ten percent (10%) increments or smaller increments that may be established by the rules of the board.

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

(5) On the effective date of a member's selection, the board shall reallocate the member's existing balance or balances in accordance with the member's direction, based on the market value on the effective date.

(6) If a member does not make an investment selection of the alternative investment programs, the member's account shall be invested in the PERF board's general investment fund.

(7) All contributions to the member's account shall be allocated as of the last day of the quarter in which the contributions are received or at an alternate time established by the rules of the board in accordance with the member's most recent effective

direction. The PERF board shall not reallocate the member's account at any other time.

(c) When a member transfers the amount credited to the member from one (1) alternative investment program to another alternative investment program, the amount credited to the member shall be valued at the market value of the member's investment, as of the day before the effective date of the member's selection or at an alternate time established by the rules of the board. When a member retires, becomes disabled, dies, or withdraws from the fund, the amount credited to the member shall be the market value of the member's investment as of the last day of the quarter preceding the member's distribution or annuitization at retirement, disability, death, or withdrawal, plus contributions received after that date or at an alternate time established by the rules of the board.

(d) The PERF board shall determine the value of each alternative program in the defined contribution fund, as of the last day of each calendar quarter, as follows:

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

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

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

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

(b) Each board may commingle or pool assets with the assets of any other persons or entities. This authority includes, but is not limited to, the power to invest in commingled or pooled funds, partnerships, or mortgage pools, **including pools that consist in part or entirely of mortgages that qualify as five star mortgages under the program established by the department of financial institutions under IC 24-5-23.6.** In the event of any such investment, the board shall keep separate detailed records of the assets invested. Any decision to commingle or pool assets is subject to the limitations and restrictions set forth in IC 5-10.3-5-3 and IC 5-10.4-3-10.

SECTION 3. IC 5-10.2-2-3, AS AMENDED BY P.L.165-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) The annuity savings account consists of:

(1) the members' contributions; and

(2) the interest credits on these contributions in the guaranteed fund or the gain or loss in market value on these contributions in the alternative investment program, as specified in section 4 of this chapter.

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

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

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

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

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

(B) otherwise invest in mortgages that qualify as five star mortgages under the program established by the department of financial institutions under IC 24-5-23.6.

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

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

IC 5-10.2-4.

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

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

(A) the last day of each quarter; or

(B) another time as each board may specify by rule.

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

(1) include a description of the procedure for selecting an alternative investment program;

(2) be understandable by the majority of members; and

(3) include a description of prior investment performance.

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

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

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

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

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

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

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

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

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

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

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

SECTION 4. IC 24-5-23.6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 23.6. Five Star Mortgages

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

(1) that regularly engages in Indiana in the extension of mortgages that are subject to a credit service charge or loan

finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and

(2) to whom the obligation arising from a mortgage is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.

(b) The term does not include a person described in:

(1) IC 24-9-2-6(a)(2) if the person described in IC 24-9-2-6(a)(2) is not the person extending the credit in the transaction; or

(2) IC 24-9-2-6(b).

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

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

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

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

(1) condominium unit;

(2) cooperative unit;

(3) mobile home; or

(4) trailer;

that is used as a residence.

Sec. 5. As used in this chapter, "five star mortgage lender" means a creditor that offers one (1) or more mortgage products that qualify as five star mortgages under the program.

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

(1) is an Indiana resident at the time the mortgage is offered by the creditor; or

(2) would become an Indiana resident after purchasing and occupying the dwelling that is the subject of the mortgage being offered.

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

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

(1) A home loan subject to IC 24-9.

(2) A loan described in IC 24-9-1-1, to the extent allowed under federal law.

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

Sec. 8. As used in this chapter, "program" refers to the five star mortgage program established by rules adopted by the department under section 9 of this chapter.

Sec. 9. (a) Not later than June 1, 2010, the department shall adopt emergency rules under IC 4-22-2-37.1 to establish a five star mortgage program for creditors that offer mortgages to Indiana residents after June 30, 2010. The program established by the department under this section must meet the following criteria:

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

(2) To participate in the program, a creditor must submit an application, on a form prescribed by the department, for each mortgage product that the creditor:

(A) offers or will offer to Indiana customers after June 30, 2010; and

(B) seeks to have designated a five star mortgage under the criteria set forth in subdivision (3).

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

(A) The mortgage must require a down payment by the debtor, or a person acting on behalf of the debtor, of at least twenty percent (20%) of the purchase price of the dwelling that is the subject of the mortgage.

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

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

(i) is established by the creditor on behalf of the debtor;

(ii) is maintained by the creditor, or a person acting on behalf of the creditor, during the life of the mortgage; and

(iii) is used during the life of the mortgage to pay taxes and insurance owed with respect to the dwelling that is the subject of the mortgage.

(D) The term of the mortgage may not exceed thirty (30)

years.

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

(4) To qualify as a five star mortgage lender under the program, a creditor:

(A) must offer to Indiana customers one (1) or more mortgage products that qualify as five star mortgages under subdivision (3);

(B) must not have a record of any violation of:

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

(ii) any other state or federal law, regulation, or rule applicable to mortgage transactions, if the department determines that the violation was willful or part of a course of repeated violations;

as of the date of the creditor's application under subdivision (2); and

(C) must not have a key officer or director who has been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction, as of the date of the creditor's application under subdivision (2).

(5) The department shall issue a certificate, on a form prescribed by the department, to any creditor that qualifies as a five star mortgage lender under subdivision (4). A certificate described in this subdivision:

(A) must designate the creditor as a five star mortgage lender;

(B) may be displayed at any of the creditor's Indiana business locations at which the creditor offers one (1) or more mortgage products that qualify as five star mortgages; and

(C) may be suspended or revoked by the department if the creditor:

(i) ceases offering at least one (1) mortgage product that qualifies as a five star mortgage;

(ii) fails to comply with any program requirements established by the department in the rules adopted under this section; or

(iii) fails to qualify under one (1) or both of the criteria set forth in subdivision (4)(B) and (4)(C);

at any time after the certificate is issued.

(6) A creditor that qualifies as a five star mortgage lender and

receives a certificate from the department under subdivision (5) shall provide a written statement, on a form and in the manner prescribed by the department, to any Indiana customer who:

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

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

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

(7) In addition to displaying the certificate issued to the creditor under subdivision (5), as allowed under subdivision (5)(B), a creditor that qualifies as a five star mortgage lender under subdivision (4) may include that fact in any marketing material or solicitation directed at Indiana customers, subject to any conditions or limitations imposed by the department in the rules adopted under this section.

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

(1) Provisions allowing a creditor that has been designated a five star mortgage lender under the program to include in the paperwork associated with a five star mortgage:

(A) a statement;

(B) a seal; or

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

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

(2) Provisions:

(A) allowing a creditor that has been designated a five star mortgage lender under the program to include in any marketing material or solicitation described in subsection (a)(7):

(i) a statement, whether written or oral;

(ii) a seal, in the case of written materials or solicitations; or

(iii) any other designation considered appropriate by the department;

indicating that the creditor is a five star mortgage lender; or

(B) regulating or imposing certain conditions or limitations on a creditor's use of the five star mortgage lender designation in any marketing material or solicitation described in subsection (7)(a).

(3) A requirement that a creditor that has been designated a five star mortgage lender under the program shall report the following information to the department on an annual basis, or any other basis determined appropriate by the department:

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

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

(C) The number and types of mortgage products that:

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

(ii) were offered by the creditor to Indiana customers;

during the applicable reporting period.

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

(E) Any other information determined by the department to be necessary to determine whether the creditor:

(i) continued to meet the criteria necessary to maintain the five star mortgage lender designation; and

(ii) complied with all program requirements established by the department;

during the applicable reporting period.

(4) Civil penalties or other appropriate penalties for a creditor that:

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

(i) the creditor has not received that designation from the department;

(ii) a certificate issued to the creditor by the department under subsection (a)(5) has been suspended or revoked and has not been reinstated; or

(iii) the creditor has been issued a certificate by the

department under subsection (a)(5) and subsequently ceases offering at least one (1) mortgage product that qualifies as a five star mortgage; or

(B) fails to comply with any program requirement established by the department.

(5) An application fee fixed by the department under IC 28-11-3-5 for each application submitted by a creditor for a particular mortgage product, as described in subsection (a)(2). However, any application fee fixed by the department may not exceed the department's actual costs to:

(A) process and review the application; and

(B) otherwise administer the program.

(6) Any other program requirements, criteria, or incentives that the department determines necessary to establish and evaluate a program to encourage creditors to offer stable mortgage products to qualified Indiana customers.

(c) The program criteria established by the department under subsection (a) must be made available:

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

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

(d) Emergency rules adopted by the department under this section expire on the date the rules are adopted by the department under IC 4-22-2-24 through IC 4-22-2-36.

SECTION 5. **An emergency is declared for this act.**