April 6, 2007

ENGROSSED
SENATE BILL No. 377

DIGEST OF SB 377 (Updated April 4, 2007 2:54 pm - DI 51)

Citations Affected: IC 25-1; IC 25-34.1.

Synopsis: Real estate appraisers. Requires that continuing education for real estate appraisers be approved by the Appraiser Qualifications Board or the real estate appraiser licensure and certification board for specific courses or course subjects. Provides that a person may not conduct, solicit, or accept student enrollment for a real estate appraiser school or course represented as satisfying the requirements of the real estate appraiser licensure board without approval of the school or course by the Appraiser Qualifications Board. Repeals and replaces provisions that require: (1) the real estate appraiser licensure and certification board to submit recommendations to the real estate commission to establish a fee of not more than $20 to fund the investigative fund; and (2) the real estate commission to establish fees for real estate brokers, salespersons, and real estate appraisers of not more than $20 to fund the investigate fund. Repeals a provision that requires a person to submit certain items to the real estate appraiser licensure and certification board to obtain approval of a real estate appraiser course.

Effective: July 1, 2007.

Becker, Riegsecker

(HOUSE SPONSORS — TYLER, NIEZGODSKI, BUCK)

January 11, 2007, read first time and referred to Committee on Commerce, Public Policy & Interstate Cooperation.
February 22, 2007, amended, reported favorably — Do Pass.
February 26, 2007, read second time, amended, ordered engrossed. Engrossed.
February 27, 2007, read third time, passed. Yeas 47, nays 0.

HOUSE ACTION

March 6, 2007, read first time and referred to Committee on Interstate and International Cooperation.
April 5, 2007, reported — Do Pass.

C o p y

April 6, 2007

First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

C o p y

ENGROSSED
SENATE BILL No. 377

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

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

SECTION 1. IC 25-1-4-0.5, AS ADDED BY P.L.157-2006, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 0.5. As used in this chapter, "continuing education" means an orderly process of instruction:

(1) that is approved by:

(A) an approved organization or the board **for a profession or occupation other than a real estate appraiser; or**

(B) for a real estate appraiser:

(i) the Appraiser Qualifications Board, under the regulatory oversight of the Appraisal Subcommittee established under Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989; or

(ii) the real estate appraiser licensure and certification board established under IC 25-34.1-8 for specific courses and course subjects, as determined by the real estate appraiser licensure and certification board; and

(2) that is designed to directly enhance the practitioner's

knowledge and skill in providing services relevant to the practitioner's profession or occupation.

SECTION 2. IC 25-34.1-2-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 7. (a) Except as provided in subsection (b), all funds collected under this article shall, at the end of each month, be reported to the auditor of state and deposited with the treasurer of state for deposit in the general fund. All expenses incurred in the administration of this article shall be paid from the general fund.**

(b) The commission shall establish a fee of not more than twenty dollars ($20) for real estate brokers and salespersons to provide funds for the purpose of administering and enforcing the provisions of this article, including investigating and taking enforcement action against real estate fraud and real estate appraisal fraud. All funds collected under this subsection shall be deposited in the investigative fund established by IC 25-34.1-8-7.5.

SECTION 3. IC 25-34.1-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) This section does not preclude a person who:

(1) is not licensed or certified as a real estate appraiser under this section; and

(2) is licensed as a broker under this article;

from appraising real estate in Indiana for compensation.

(b) As used in this section, "federal act" refers to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (12 U.S.C. 3331 through 3351).

(c) The commission shall adopt rules to establish a real estate appraiser licensure and certification program to be administered by the board.

(d) The commission may not adopt rules under this section except upon the action and written recommendations of the board under ~~IC 25-34.1-8-6.~~ **IC 25-34.1-8-6.5.**

(e) The real estate appraiser licensure and certification program established by the commission under this section must meet the requirements of:

(1) the federal act;

(2) any federal regulations adopted under the federal act; and

(3) any other requirements established by the commission as recommended by the board, including requirements for education, experience, examination, reciprocity, and temporary practice.

(f) The real estate appraiser licensure and certification requirements established by the commission under this section must require a person

C o p y

to meet the standards for real estate appraiser certification and licensure established:

(1) under the federal act;

(2) by federal regulations; and

(3) any other requirements established by the commission as recommended by the board, including requirements for education, experience, examination, reciprocity, and temporary practice.

(g) The commission may require continuing education as a condition of renewal for real estate appraiser licensure and certification.

(h) The following are not required to be a licensed or certified real estate appraiser to perform the requirements of IC 6-1.1-4:

(1) A county assessor who holds office under IC 36-2-15.

(2) A township assessor who holds office under IC 36-6-5.

(3) An individual employed by an officer described in subdivision (1) or (2).

(i) Notwithstanding IC 25-34.1-3-2(a):

(1) only a person who receives a license or certificate issued under the real estate appraiser licensure and certification program established under this section may appraise real estate involved in transactions governed by:

(A) the federal act; and

(B) any regulations adopted under the federal act;

as determined under rules adopted by the commission, as recommended by the board; and

(2) a person who receives a license or certificate issued under the real estate appraiser licensure and certification program established under this section may appraise real estate not involved in transactions governed by:

(A) the federal act; and

(B) any regulations adopted under the federal act;

as determined under rules adopted by the commission, as recommended by the board.

SECTION 4. IC 25-34.1-3-9.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 9.5. (a) The commission shall establish fees under IC 25-1-8-2 to implement section 8 of this chapter.**

(b) Notwithstanding IC 25-1-8-2, a fee established under IC 25-1-8-2 to implement section 8 of this chapter may not be less than fifty dollars ($50).

(c) The commission shall establish fees to provide funding for

C o p y

the investigative fund established by IC 25-34.1-8-7.5. The fees under this subsection may not be more than twenty dollars ($20).

(d) The board may collect a fee required by federal law and transmit the fees to the federal government as required by federal law.

(e) A fee described in subsection (a) is in addition to any fees required by federal law.

SECTION 5. IC 25-34.1-8-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 6.5. The board shall submit recommendations to the commission concerning the following:**

(1) Implementation and operation of the real estate appraiser licensure and certification program under IC 25-34.1-3-8.

(2) Rules governing real estate appraisers licensed and certified under IC 25-34.1-3-8.

(3) Establishing a fee in an amount necessary to fund the investigative fund established by section 7.5 of this chapter but not more than twenty dollars ($20).

(4) Rules governing the administration of the investigative fund established by section 7.5 of this chapter.

SECTION 6. IC 25-34.1-8-7.5, AS AMENDED BY P.L.87-2006, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7.5. (a) The investigative fund is established to provide funds for administering and enforcing the provisions of this article, including investigating and taking enforcement action against real estate fraud and real estate appraisal fraud. The fund shall be administered by the attorney general and the professional licensing agency.

(b) The expenses of administering the fund shall be paid from the money in the fund. The fund consists of money from a fee imposed upon licensed or certified appraisers and real estate brokers and salespersons under ~~IC 25-34.1-2-6 and IC 25-34.1-3-9.~~ **IC 25-34.1-2-7 and IC 25-34.1-3-9.5.**

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(d) Except as otherwise provided in this subsection, money in the fund at the end of a state fiscal year does not revert to the state general fund. If the total amount in the investigative fund exceeds seven hundred fifty thousand dollars ($750,000) at the end of a state fiscal year after payment of all claims and expenses, the amount that exceeds seven hundred fifty thousand dollars ($750,000) reverts to the state

C o p y

general fund.

(e) Money in the fund is continually appropriated for use by the attorney general and the licensing agency to administer and enforce the provisions of this article and to conduct investigations and take enforcement action against real estate and appraisal fraud under this article. The attorney general shall receive five dollars ($5) of each fee collected under ~~IC 25-34.1-2-6 and IC 25-34.1-3-9,~~ **IC 25-34.1-2-7 and IC 25-34.1-3-9.5,** and the licensing agency shall receive any amount that exceeds five dollars ($5) of each fee collected under ~~IC 25-34.1-2-6 and IC 25-34.1-3-9.~~ **IC 25-34.1-2-7 and IC 25.34.1-3-9.5.**

SECTION 7. IC 25-34.1-8-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. (a) A person who:

(1) performs:

(A) the acts of a licensed real estate appraiser without a license; or

(B) the acts of a certified real estate appraiser without a certificate; or

(2) conducts or solicits or accepts enrollment of students for a course as prescribed in IC 25-34.1-3-10 without course approval **as required by section 13 of this chapter;**

commits a Class B infraction. When a judgment is entered for an offense under this section, the court shall add to any fine imposed the amount of any fee or other compensation earned in the commission of the offense. Each transaction constitutes a separate offense.

(b) In all actions for the collection of a fee or other compensation for performing acts regulated by this article, a party seeking relief must allege and prove that at the time the cause of action arose the party was not in violation of this section.

(c) The attorney general, the board, or the prosecuting attorney of any county in which a violation occurs may maintain an action in the name of the state of Indiana to enjoin a person from violating this section.

(d) In charging any person in a complaint for a judgment or an injunction for the violation of this section, it is sufficient, without averring any further or more particular facts, to charge that the person upon a certain day and in a certain county:

(1) acted as:

(A) a ~~certfied~~ **certified** real estate appraiser without a certificate; or

(B) a licensed real estate appraiser without a license; or

(2) conducted, or solicited or accepted enrollment of students for

C o p y

a real estate appraiser course without course approval.

(e) Each enforcement procedure established in this section is supplemental to other enforcement procedures established in this section.

SECTION 8. IC 25-34.1-8-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 13. ~~(a)~~ A person may not conduct, solicit, or accept student enrollment for a real estate appraiser ~~school or~~ course represented as satisfying the requirements of the board without approval of the ~~school or~~ course by the ~~board.~~ **Appraiser Qualifications Board, under the regulatory oversight of the Appraisal Subcommittee established under Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.).**

~~(b) The approval of a school and course expires January 1 of each year. To obtain renewal of approval of a school or course, a school must submit a letter requesting approval or renewal to the board.~~

~~(c) A school conducting an approved course shall allow the board to inspect the school's records and facilities. A school shall report any significant proposed change in curriculum, faculty, or facilities to the board at least thirty (30) days before the change. A change is not effective unless the change is approved by the board.~~

~~(d) The board may deny, suspend, or revoke approval of a school or course if the board determines that the school or course does not comply with the requirements established:~~

~~(1) under the federal act;~~

~~(2) by federal regulations; and~~

~~(3) by the commission as recommended by the board.~~

SECTION 9. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2007]: **IC 25-34.1-2-6; IC 25-34.1-3-9;** IC 25-34.1-8-14; IC 25-34.1-8-6.

C o p y

COMMITTEE REPORT

Madam President: The Senate Committee on Commerce, Public Policy and Interstate Cooperation, to which was referred Senate Bill No. 377, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 8, after "(B)" insert "**for a real estate appraiser: (i)**".

Page 1, line 11, delete "1989, for a real".

Page 1, line 12, delete "estate appraiser;" and insert "**1989; or (ii) the real estate appraiser licensure and certification board established under IC 25-34.1-8 for specific courses and course subjects, as determined by the real estate appraiser licensure and certification board;**".

Page 1, between lines 15 and 16, begin a new paragraph and insert:

"SECTION 2. IC 25-34.1-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) This section does not preclude a person who:

(1) is not licensed or certified as a real estate appraiser under this section; and

(2) is licensed as a broker under this article;

from appraising real estate in Indiana for compensation.

(b) As used in this section, "federal act" refers to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (12 U.S.C. 3331 through 3351).

(c) The commission shall adopt rules to establish a real estate appraiser licensure and certification program to be administered by the board.

(d) The commission may not adopt rules under this section except upon the action and written recommendations of the board under ~~IC 25-34.1-8-6.~~ **IC 25-34.1-8-6.5.**

(e) The real estate appraiser licensure and certification program established by the commission under this section must meet the requirements of:

(1) the federal act;

(2) any federal regulations adopted under the federal act; and

(3) any other requirements established by the commission as recommended by the board, including requirements for education, experience, examination, reciprocity, and temporary practice.

(f) The real estate appraiser licensure and certification requirements established by the commission under this section must require a person to meet the standards for real estate appraiser certification and

C o p y

licensure established:

(1) under the federal act;

(2) by federal regulations; and

(3) any other requirements established by the commission as recommended by the board, including requirements for education, experience, examination, reciprocity, and temporary practice.

(g) The commission may require continuing education as a condition of renewal for real estate appraiser licensure and certification.

(h) The following are not required to be a licensed or certified real estate appraiser to perform the requirements of IC 6-1.1-4:

(1) A county assessor who holds office under IC 36-2-15.

(2) A township assessor who holds office under IC 36-6-5.

(3) An individual employed by an officer described in subdivision (1) or (2).

(i) Notwithstanding IC 25-34.1-3-2(a):

(1) only a person who receives a license or certificate issued under the real estate appraiser licensure and certification program established under this section may appraise real estate involved in transactions governed by:

(A) the federal act; and

(B) any regulations adopted under the federal act;

as determined under rules adopted by the commission, as recommended by the board; and

(2) a person who receives a license or certificate issued under the real estate appraiser licensure and certification program established under this section may appraise real estate not involved in transactions governed by:

(A) the federal act; and

(B) any regulations adopted under the federal act;

as determined under rules adopted by the commission, as recommended by the board.

SECTION 3. IC 25-34.1-8-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 6.5. The board shall submit recommendations to the commission concerning the following:**

(1) Implementation and operation of the real estate appraiser licensure and certification program under IC 25-34.1-3-8.

(2) Rules governing real estate appraisers licensed and certified under IC 25-34.1-3-8.

(3) Establishing a fee in an amount necessary to fund the investigative fund established by section 7.5 of this chapter

C o p y

but not more than twenty dollars ($20).

(4) Rules governing the administration of the investigative fund established by section 7.5 of this chapter.".

Page 2, line 37, strike "school or".

Page 2, line 38, strike "school or".

Page 3, delete lines 15 through 16, begin a new paragraph and insert:

"SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2007]: IC 25-34.1-8-14; IC 25-34.1-8-6.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 377 as introduced.)

RIEGSECKER, Chairperson

Committee Vote: Yeas 9, Nays 0.

SENATE MOTION

Madam President: I move that Senator Riegsecker be added as second author of Senate Bill 377.

BECKER

SENATE MOTION

Madam President: I move that Senate Bill 377 be amended to read as follows:

Page 2, between lines 2 and 3, begin a new paragraph and insert:

"SECTION 2. IC 25-34.1-2-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 7. (a) Except as provided in subsection (b), all funds collected under this article shall, at the end of each month, be reported to the auditor of state and deposited with the treasurer of state for deposit in the general fund. All expenses incurred in the administration of this article shall be paid from the general fund.**

(b) The commission shall establish a fee of not more than twenty dollars ($20) for real estate brokers and salespersons to provide funds for the purpose of administering and enforcing the

C o p y

provisions of this article, including investigating and taking enforcement action against real estate fraud and real estate appraisal fraud. All funds collected under this subsection shall be deposited in the investigative fund established by IC 25-34.1-8-7.5.".

Page 3, between lines 19 and 20, begin a new paragraph and insert:

"SECTION 4. IC 25-34.1-3-9.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 9.5. (a) The commission shall establish fees under IC 25-1-8-2 to implement section 8 of this chapter.**

(b) Notwithstanding IC 25-1-8-2, a fee established under IC 25-1-8-2 to implement section 8 of this chapter may not be less than fifty dollars ($50).

(c) The commission shall establish fees to provide funding for the investigative fund established by IC 25-34.1-8-7.5. The fees under this subsection may not be more than twenty dollars ($20).

(d) The board may collect a fee required by federal law and transmit the fees to the federal government as required by federal law.

(e) A fee described in subsection (a) is in addition to any fees required by federal law.".

Page 3, between lines 32 and 33, begin a new paragraph and insert:

"SECTION 6. IC 25-34.1-8-7.5, AS AMENDED BY P.L.87-2006, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7.5. (a) The investigative fund is established to provide funds for administering and enforcing the provisions of this article, including investigating and taking enforcement action against real estate fraud and real estate appraisal fraud. The fund shall be administered by the attorney general and the professional licensing agency.

(b) The expenses of administering the fund shall be paid from the money in the fund. The fund consists of money from a fee imposed upon licensed or certified appraisers and real estate brokers and salespersons under ~~IC 25-34.1-2-6 and IC 25-34.1-3-9.~~ **IC 25-34.1-2-7 and IC 25-34.1-3-9.5.**

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(d) Except as otherwise provided in this subsection, money in the fund at the end of a state fiscal year does not revert to the state general fund. If the total amount in the investigative fund exceeds seven

C o p y

hundred fifty thousand dollars ($750,000) at the end of a state fiscal year after payment of all claims and expenses, the amount that exceeds seven hundred fifty thousand dollars ($750,000) reverts to the state general fund.

(e) Money in the fund is continually appropriated for use by the attorney general and the licensing agency to administer and enforce the provisions of this article and to conduct investigations and take enforcement action against real estate and appraisal fraud under this article. The attorney general shall receive five dollars ($5) of each fee collected under ~~IC 25-34.1-2-6 and IC 25-34.1-3-9,~~ **IC 25-34.1-2-7 and IC 25-34.1-3-9.5,** and the licensing agency shall receive any amount that exceeds five dollars ($5) of each fee collected under ~~IC 25-34.1-2-6 and IC 25-34.1-3-9.~~ **IC 25-34.1-2-7 and IC 25.34.1-3-9.5.**".

Page 5, line 8, before "IC 25-34.1-8-14;" insert "**IC 25-34.1-2-6; IC 25-34.1-3-9;**".

Renumber all SECTIONS consecutively.

(Reference is to SB 377 as printed February 23, 2007.)

RIEGSECKER

COMMITTEE REPORT

Mr. Speaker: Your Committee on Interstate and International Cooperation, to which was referred Senate Bill 377, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

HARRIS E, Chair

Committee Vote: yeas 10, nays 0.

C o p y