
SENATE BILL No. 551

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5.5; IC 24-9; IC 25-1-11; IC 25-34.1-6-2.

Synopsis: Mortgage and real estate matters. Provides that certain notice of foreclosure requirements apply to all mortgagees. Requires a foreclosure consultant to retain certain records for a specific time. Allows certain licensing boards to require practitioners to pay real estate appraisal costs in certain administrative actions. Prohibits certain professional licensing boards from accepting the surrender of a practitioner's license if the attorney general has filed a complaint against the practitioner and opposes the surrender. Provides that a broker or salesperson licensee who violates the credit services organizations or mortgage rescue protection fraud provisions is subject to certain disciplinary actions. Prohibits a person from: (1) engaging in real estate transactions or consumer credit mortgage transactions without a permit or license; or (2) misrepresenting certain terms and characteristics of real estate transactions and consumer credit mortgages; and subjects a person who violates any of these prohibitions to certain penalties under the home loan practices law. Removes language prohibiting a person from engaging in a deceptive act in connection with certain loans.

Effective: July 1, 2009.

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January 15, 2009, read first time and referred to Committee on Judiciary.

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First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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SENATE BILL No. 551



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

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

1 SECTION 1. IC 24-5.5-1-1, AS ADDED BY P.L.209-2007,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 1. **Except for IC 24-5.5-3**, this article does not
4 apply to the following:

- 5 (1) A person organized or chartered under the laws of this state,
6 any other state, or the United States that relate to a bank, a trust
7 company, a savings association, a savings bank, a credit union, or
8 an industrial loan and investment company.
- 9 (2) The Federal National Mortgage Association, the Federal
10 Home Loan Mortgage Corporation, or a Federal Home Loan
11 Bank.
- 12 (3) A department or agency of the United States or of Indiana.
- 13 (4) A person that is servicing or enforcing a loan that it owns.
- 14 (5) A person that is servicing a loan:
 - 15 (A) for a person described in subdivisions (1) through (4) of
16 this section; or
 - 17 (B) insured by the Department of Housing and Urban



1 Development or guaranteed by the Veterans Administration.
2 (6) An attorney licensed to practice law in Indiana who is
3 representing a mortgagor.
4 SECTION 2. IC 24-5.5-5-7 IS ADDED TO THE INDIANA CODE
5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
6 1, 2009]: **Sec. 7. A foreclosure consultant shall retain all records
7 and documents related to services performed on behalf of a
8 homeowner for at least three (3) years after the termination or
9 conclusion of a contract with the homeowner.**
10 SECTION 3. IC 24-9-2-12.5 IS ADDED TO THE INDIANA CODE
11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
12 1, 2009]: **Sec. 12.5. "Real estate transaction" has the meaning set
13 forth in IC 25-34.1-10-8.**
14 SECTION 4. IC 24-9-3-7, AS AMENDED BY P.L.141-2005,
15 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2009]: Sec. 7. A person may not:
17 (1) divide a loan transaction into separate parts with the intent of
18 evading a provision of this article;
19 (2) structure a home loan transaction as an open-end loan with the
20 intent of evading the provisions of this article if the loan would be
21 a high cost home loan if the home loan had been structured as a
22 closed-end loan; or
23 (3) engage in a deceptive act in connection with a:
24 (A) home loan; or
25 (B) loan described in IC 24-9-1-1.
26 (3) engage or solicit to engage in a real estate transaction or
27 a consumer credit mortgage transaction without a permit or
28 license required by law; or
29 (4) represent that a real estate transaction or a consumer
30 credit mortgage transaction has sponsorship, approval,
31 performance, characteristics, accessories, uses, or benefits
32 that:
33 (A) the real estate transaction or consumer credit
34 mortgage does not have; and
35 (B) the person knows or reasonably should know the real
36 estate transaction or consumer credit mortgage does not
37 have.
38 SECTION 5. IC 25-1-11-17 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. A practitioner may
40 petition the board to accept the surrender of the practitioner's license
41 instead of having a hearing before the board. The practitioner may not
42 surrender the practitioner's license without the written approval of the

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1 board, and the board may impose any conditions appropriate to the
2 surrender or reinstatement of a surrendered license. **The board may**
3 **not accept the surrender of a practitioner's license if the office of**
4 **attorney general:**

5 (1) **has filed an administrative complaint concerning the**
6 **practitioner's license; and**

7 (2) **opposes the surrender of the license.**

8 SECTION 6. IC 25-1-11-18, AS AMENDED BY P.L.194-2005,
9 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2009]: Sec. 18. A practitioner who has been subjected to
11 disciplinary sanctions may be required by a board to pay the costs of
12 the proceeding. The practitioner's ability to pay shall be considered
13 when costs are assessed. If the practitioner fails to pay the costs, a
14 suspension may not be imposed solely upon the practitioner's inability
15 to pay the amount assessed. These costs are limited to costs for the
16 following:

- 17 (1) Court reporters.
- 18 (2) Transcripts.
- 19 (3) Certification of documents.
- 20 (4) Photo duplication.
- 21 (5) Witness attendance and mileage fees.
- 22 (6) Postage.
- 23 (7) Expert witnesses.
- 24 (8) Depositions.
- 25 (9) Notarizations.
- 26 (10) Administrative law judges.

27 **(11) Real estate appraisals.**

28 SECTION 7. IC 25-34.1-6-2 IS AMENDED TO READ AS
29 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A person who:

- 30 (1) performs the acts of a salesperson without a salesperson
31 license;
- 32 (2) performs the acts of a broker without a broker license; or
- 33 (3) conducts, or solicits or accepts enrollment of students for, a
34 course as prescribed in IC 25-34.1-3 without course approval;

35 commits a Class A infraction. Upon conviction for an offense under
36 this section, the court shall add to any fine imposed, the amount of any
37 fee or other compensation earned in the commission of the offense.
38 Each transaction constitutes a separate offense.

39 (b) In all actions for the collection of a fee or other compensation for
40 performing acts regulated by this article, it must be alleged and proved
41 that, at the time the cause of action arose, the party seeking relief was
42 not in violation of this section.

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1 (c) The commission may issue a cease and desist order to prevent
 2 violations of this section.
 3 (1) If the commission determines that a person is violating this
 4 section, or is believed to be violating this section, the commission
 5 may issue an order to that person setting forth the time and place
 6 for a hearing at which the affected person may appear and show
 7 cause as to why the challenged activities are not in violation of
 8 this section.
 9 (2) After an opportunity for hearing, if the commission determines
 10 that the person is violating this section, the commission shall
 11 issue a cease and desist order which shall describe the person and
 12 activities which are the subject of the order.
 13 (3) A cease and desist order issued under this section is
 14 enforceable in the circuit courts of this state.
 15 (d) The attorney general, the commission, or the prosecuting
 16 attorney of any county in which a violation occurs may maintain an
 17 action in the name of the state to enjoin a person from violating this
 18 section.
 19 (e) In charging any person in a complaint for an injunction or in
 20 affidavit, information, or indictment with the violation of the provisions
 21 of this section, it is sufficient, without averring any further or more
 22 particular facts, to charge that the person upon a certain day and in a
 23 certain county either acted as a real estate broker or salesperson not
 24 having a license or conducted, or solicited or accepted enrollment of
 25 students for, a broker or salesperson course without course approval.
 26 **(f) A licensee who violates IC 24-5-15 or IC 24-5.5 may be**
 27 **disciplined under IC 25-1-11 and this section.**
 28 ~~(f)~~ **(g)** Each enforcement procedure established in this section is
 29 supplemental to other enforcement procedures established in this
 30 section.

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