
SENATE BILL No. 393

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-19-6-1; IC 23-20.

Synopsis: Restitution for victims of securities violations. Establishes the securities restitution fund to provide restitution assistance to victims and certain family members of victims for monetary injuries from securities violations. Provides that the fund consists of amounts: (1) from certain funds received for deposit in the securities division enforcement account; and (2) appropriations from the general assembly. Requires the securities division to: (1) prescribe forms for processing applications for restitution assistance; and (2) determine whether a claim for restitution assistance should be awarded. Establishes requirements for and limitations on awarding restitution assistance to victims of securities violations. Requires ten percent of funds received after June 30, 2010, for deposit in the securities division enforcement account to be deposited into the securities restitution fund. Continually appropriates money from the securities restitution fund to the division for the purposes of: (1) awarding restitution assistance under this chapter; and (2) paying expenses incurred in administering this chapter. Transfers \$2,000,000 from the securities division enforcement account to the securities restitution fund on July 1, 2010. Makes it a Class C felony for a person to make or cause to be made: (1) in any document filed with the securities commissioner or securities division; or (2) in any proceeding, investigation, or examination; under the restitution assistance for victims of a securities violations provisions 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.

Effective: July 1, 2010.

Waltz

January 12, 2010, read first time and referred to Committee on Judiciary.

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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.

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SENATE BILL No. 393



A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations and to make an appropriation.

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

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

11 (b) The secretary of state:
12 (1) shall employ a chief deputy, attorneys, a senior investigator,
13 a senior accountant, and other deputies, investigators,
14 accountants, clerks, stenographers, and other employees necessary
15 for the administration of this article; and
16 (2) shall fix their compensation with the approval of the budget
17 agency.



1 (c) It is unlawful for the commissioner or an officer, employee, or
2 designee of the commissioner to use for personal benefit or the benefit
3 of others records or other information obtained by or filed with the
4 commissioner that are not public under section 7(b) of this chapter.
5 This article does not authorize the commissioner or an officer,
6 employee, or designee of the commissioner to disclose the record or
7 information, except in accordance with section 2, 7(c), or 8 of this
8 chapter.

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

11 (e) The commissioner may develop and implement investor
12 education initiatives to inform the public about investing in securities,
13 with particular emphasis on the prevention and detection of securities
14 fraud. In developing and implementing these initiatives, the
15 commissioner may collaborate with public and nonprofit organizations
16 with an interest in investor education. The commissioner may accept
17 a grant or donation from a person that is not affiliated with the
18 securities industry or from a nonprofit organization, regardless of
19 whether the organization is affiliated with the securities industry, to
20 develop and implement investor education initiatives. This subsection
21 does not authorize the commissioner to require participation or
22 monetary contributions of a registrant in an investor education
23 program.

24 (f) Fees and funds of whatever character accruing from the
25 administration of this article shall be accounted for by the secretary of
26 state and shall be deposited with the treasurer of state to be deposited
27 by the treasurer of the state in either the state general fund or the
28 enforcement account referenced below. Expenses incurred in the
29 administration of this article shall be paid from the state general fund
30 upon appropriation being made for the expenses in the manner
31 provided by law for the making of those appropriations. However,
32 grants and donations under subsection (e), costs of investigations, and
33 civil penalties recovered under sections 3(b) and 4(d) of this chapter
34 shall be deposited by the treasurer of state in a separate account to be
35 known as the securities division enforcement account.
36 **Notwithstanding IC 9-23-6-4, IC 23-2-2.5-34, IC 23-2-2.5-43,**
37 **IC 23-2-5-7, IC 23-19-4-12, IC 25-11-1-15, and this chapter, ten**
38 **percent (10%) of funds received after June 30, 2010, for deposit in**
39 **the enforcement account shall instead be deposited in the securities**
40 **restitution fund established under IC 23-20-1-27.** The funds
41 **deposited** in the enforcement account shall be available, with the
42 approval of the budget agency:

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- 1 (1) to augment and supplement the funds appropriated for the
- 2 administration of this article; and
- 3 (2) for grants and awards to nonprofit entities for programs and
- 4 activities that will further investor education and financial literacy
- 5 in the state.

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

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

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

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

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

- 37 (1) the practice or commission of fraud may be prohibited and
- 38 prevented;
- 39 (2) disclosure of sufficient and reliable information in order to
- 40 afford reasonable opportunity for the exercise of independent
- 41 judgment of the persons involved may be assured; and
- 42 (3) the qualifications may be prescribed to assure availability of

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1 reliable broker-dealers, investment advisers, and agents engaged
2 in and in connection with the issuance, barter, sale, purchase,
3 transfer, or disposition of securities in this state.

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

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

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

17 SECTION 2. IC 23-20 IS ADDED TO THE INDIANA CODE AS
18 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
19 2010]:

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

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

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

24 **(b) The term includes the:**

- 25 (1) parent;
- 26 (2) surviving spouse;
- 27 (3) legal dependent; or
- 28 (4) personal representative;

29 **of an individual who suffers monetary injury as a result of a**
30 **securities violation.**

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

33 **Sec. 3. As used in this chapter, "FINRA" means the Financial**
34 **Industry Regulatory Authority.**

35 **Sec. 4. As used in this chapter, "fund" refers to the securities**
36 **restitution fund established by section 27 of this chapter.**

37 **Sec. 5. As used in this chapter, "out-of-pocket loss" means an**
38 **amount equal to the amount of restitution ordered under any of the**
39 **following:**

- 40 (1) A final court order.
- 41 (2) A final arbitration award.
- 42 (3) A final administrative order.

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1 **Sec. 6. As used in this chapter, "person" includes a sole**
2 **proprietorship, a partnership, a corporation, an association, a**
3 **fiduciary, or an individual.**

4 **Sec. 7. As used in this chapter, "securities violation" means a**
5 **violation of the following:**

6 **(1) The Securities Act of 1933, as amended, and any**
7 **regulations related to the Act.**

8 **(2) The Securities Exchange Act of 1934, as amended, and any**
9 **regulations related to the Act.**

10 **(3) The Investment Company Act of 1940, as amended, and**
11 **any regulations related to the Act.**

12 **(4) The Investment Advisers Act of 1940, as amended, and any**
13 **regulations related to the Act.**

14 **(5) The Indiana uniform securities act and any rules related**
15 **to the act.**

16 **(6) Other state securities acts and any rules or regulations**
17 **related to those acts.**

18 **(7) Rules or regulations promulgated by:**
19 **(A) the National Association of Securities Dealers;**
20 **(B) the New York Stock Exchange as adopted by FINRA;**
21 **or**
22 **(C) FINRA.**

23 **Sec. 8. As used in this chapter, "victim" means an individual**
24 **who suffers monetary injury as a result of a securities violation.**

25 **Sec. 9. The division shall do the following:**
26 **(1) Prescribe forms for processing applications for restitution**
27 **assistance.**

28 **(2) Determine whether a claim for restitution assistance filed**
29 **under this chapter should be awarded.**

30 **Sec. 10. The division may require a claimant to produce a copy**
31 **of:**

32 **(1) a court order;**
33 **(2) an arbitration award; or**
34 **(3) an administrative order;**

35 **that demonstrates that restitution has been awarded to the**
36 **claimant as described in section 18 of this chapter.**

37 **Sec. 11. A claimant's personal information (as defined in**
38 **IC 9-14-3.5-5) is confidential.**

39 **Sec. 12. Except as otherwise provided in this chapter, the**
40 **following persons are eligible for restitution assistance under this**
41 **chapter:**

42 **(1) A resident of Indiana who is a victim of a securities**

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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 assistance to a victim of a securities violation 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.

(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. 13. (a) A person eligible for restitution assistance under section 12 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 or award described in section 18 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 or award described in section 18 of this chapter.

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

Sec. 14. (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 applicant with a brief statement of the additional information required.

(c) The applicant may, not more than thirty (30) days after receipt of the request for additional information, either supply the information or appeal to the securities commissioner.

(d) The decision of the securities commissioner 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**

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1 commissioner for good cause.
 2 **Sec. 15. (a)** Subject to subsection (b), the division may not award
 3 restitution assistance if the victim:
 4 (1) sustained the monetary injury as a result of:
 5 (A) participating or assisting in; or
 6 (B) attempting to commit or committing;
 7 a securities violation; or
 8 (2) profited or would have profited from the securities
 9 violation.
 10 (b) If the victim is a dependent child or dependent parent of the
 11 person who commits a securities violation, restitution assistance
 12 may be awarded where justice requires.
 13 **Sec. 16.** The division may not award restitution assistance under
 14 this chapter to more than one (1) claimant per victim.
 15 **Sec. 17.** The division may not award restitution assistance to a
 16 claimant eligible under section 12 of this chapter if the victim or
 17 claimant had a net worth of greater than five hundred thousand
 18 dollars (\$500,000) at the time of suffering monetary injury from a
 19 securities violation.
 20 **Sec. 18. (a)** The division may not award restitution assistance
 21 under this chapter unless the securities violation was adjudicated
 22 in a state or federal court, an FINRA arbitration proceeding, or a
 23 regulatory agency administrative proceeding.
 24 (b) The division may not award restitution assistance under this
 25 chapter unless:
 26 (1) a final order or award has been entered ordering
 27 restitution to the victim in a proceeding described in
 28 subsection (a); and
 29 (2) the party ordered to pay restitution has not paid the full
 30 amount.
 31 **Sec. 19.** The division shall deny an award of restitution
 32 assistance under this chapter if a court or administrative order or
 33 an arbitration award does not contain an award of restitution to
 34 the victim.
 35 **Sec. 20. (a)** The division may not award restitution assistance
 36 under this chapter to a claimant whose award of restitution under
 37 a court or administration order or an arbitration award is
 38 overturned on appeal.
 39 (b) If:
 40 (1) a claimant is awarded restitution assistance under this
 41 chapter; and
 42 (2) after receiving an award of restitution assistance under

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1 **this chapter, the claimant's award of restitution under a court**
2 **or administrative order or an arbitration award is overturned**
3 **on appeal;**
4 **the claimant shall forfeit the restitution assistance received under**
5 **this chapter.**

6 **Sec. 21. (a) The state is subrogated to the rights of the victim**
7 **awarded restitution to the extent of the award.**

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

11 **Sec. 22. (a) In addition to the subrogation rights under section**
12 **21 of this chapter, the state is entitled to a lien in the amount of the**
13 **award on a recovery made by or on behalf of the victim.**

14 **(b) The state may:**
15 **(1) recover the amount under subsection (a) in a separate**
16 **action; or**
17 **(2) intervene in an action brought by or on behalf of the**
18 **victim.**

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

25 **Sec. 23. If:**
26 **(1) an award is made under this chapter; and**
27 **(2) a claimant receives a sum required to be deducted under**
28 **section 22 of this chapter;**
29 **the claimant shall refund to the state the amount of overpayment.**

30 **Sec. 24. (a) In determining the amount of restitution assistance**
31 **to award under this chapter, the division shall determine whether**
32 **a victim contributed to the infliction of the victim's monetary**
33 **injury.**

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

37 **Sec. 25. An award to a claimant under this chapter may not**
38 **exceed the lesser of the following:**

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

42 **Sec. 26. An award made by the division to a claimant is not**

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1 subject to execution, attachment, garnishment, or other process.

2 **Sec. 27. (a) The securities restitution fund is established.**

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

4 **(1) from funds received for deposit in the securities division**
 5 **enforcement account as provided in IC 23-19-6-1(f); and**

6 **(2) appropriated from the general assembly.**

7 **Sec. 28. The money in the fund is continually appropriated to**
 8 **the division for purposes of:**

9 **(1) awarding restitution assistance under this chapter; and**

10 **(2) paying expenses incurred in administering this chapter.**

11 **Sec. 29. Money in the fund and income derived from money in**
 12 **the fund do not revert to the state general fund at the end of a state**
 13 **fiscal year.**

14 **Sec. 30. (a) If the fund would be reduced below two hundred**
 15 **fifty thousand dollars (\$250,000) by payment in full of all awards**
 16 **that become final in a month, the division shall suspend payment**
 17 **of the claims that become final during the month and the following**
 18 **two (2) months.**

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

23 **Sec. 31. The state is not liable for a written determination made**
 24 **by the division under this chapter except to the extent that money**
 25 **is available in the fund on the date the award is computed by the**
 26 **division under this chapter.**

27 **Sec. 32. (a) A claimant convicted of forgery, fraud, or deception**
 28 **in connection with a claim under this chapter forfeits an award**
 29 **paid to the claimant under this chapter.**

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

32 **Sec. 33. A person commits a Class C felony if the person**
 33 **knowingly makes or causes to be made:**

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

36 **(2) in any proceeding, investigation, or examination;**

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

40 **Sec. 34. The division may adopt rules under IC 4-22-2 to**
 41 **implement this chapter.**

42 **SECTION 3. [EFFECTIVE JULY 1, 2010] (a) Two million dollars**

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1 **(\$2,000,000) shall be transferred from the securities division**
2 **enforcement account established under IC 23-19-6-1 to the**
3 **securities restitution fund established by IC 23-20-1-27, as added**
4 **by this act, on July 1, 2010.**

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

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