



Reprinted  
March 27, 2013

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# ENGROSSED HOUSE BILL No. 1179

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DIGEST OF HB 1179 (Updated March 26, 2013 2:05 pm - DI 73)

**Citations Affected:** IC 23-19.

**Synopsis:** Securities matters. Requires that certain financial statements that are submitted with a registration statement for securities that: (1) are registered by qualification; and (2) are to be offered in Indiana with a maximum aggregate offering price in excess of \$1,000,000; be prepared using U.S. generally accepted accounting principles and be audited by an independent certified public accountant under U.S. generally accepted auditing standards or standards of the Public Company Accounting Oversight Board. Makes it unlawful for a person to violate an agreement that is: (1) entered into between the securities division and the person; and (2) ordered by the securities commissioner under the Indiana Uniform Securities Act. Provides that a violation of an agreement does not subject the person to liability to a purchaser or seller.

**Effective:** July 1, 2013.

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## Heaton, Hale, Moed, DeVon

(SENATE SPONSORS — SMITH J, ECKERTY, STOOPS)

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January 10, 2013, read first time and referred to Committee on Financial Institutions.  
January 31, 2013, amended, reported — Do Pass.  
February 4, 2013, read second time, ordered engrossed. Engrossed.  
February 5, 2013, read third time, passed. Yeas 99, nays 0.

SENATE ACTION

February 25, 2013, read first time and referred to Committee on Financial Institutions.  
March 14, 2013, reported favorably — Do Pass.  
March 18, 2013, read second time, ordered engrossed. Engrossed.  
March 19, 2013, returned to second reading.  
March 26, 2013, re-read second time, amended, ordered engrossed.

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EH 1179—LS 6611/DI 110+



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March 27, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1179

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

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

- 1 SECTION 1. IC 23-19-3-4, AS ADDED BY P.L.27-2007,  
2 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2013]: Sec. 4. (a) A security may be registered by  
4 qualification under this section.  
5 (b) A registration statement under this section must contain the  
6 information or records specified in section 5 of this chapter, a consent  
7 to service of process complying with IC 23-19-6-11, and, if required by  
8 rule adopted under this article, the following information or records:  
9 (1) With respect to the issuer and any significant subsidiary, its  
10 name, address, and form of organization; the state or foreign  
11 jurisdiction and date of its organization; the general character and  
12 location of its business; a description of its physical properties  
13 and equipment; and a statement of the general competitive  
14 conditions in the industry or business in which it is or will be  
15 engaged.  
16 (2) With respect to each director and officer of the issuer, and  
17 other person having a similar status or performing similar

EH 1179—LS 6611/DI 110+



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- 1 functions, the person's name, address, and principal occupation  
2 for the previous five (5) years; the amount of securities of the  
3 issuer held by the person as of the thirtieth day before the filing  
4 of the registration statement; the amount of the securities covered  
5 by the registration statement to which the person has indicated an  
6 intention to subscribe; and a description of any material interest  
7 of the person in any material transaction with the issuer or a  
8 significant subsidiary effected within the previous three (3) years  
9 or proposed to be effected.
- 10 (3) With respect to persons covered by subdivision (2), the  
11 aggregate sum of the remuneration paid to those persons during  
12 the previous twelve (12) months and estimated to be paid during  
13 the next twelve (12) months, directly or indirectly, by the issuer,  
14 and all predecessors, parents, subsidiaries, and affiliates of the  
15 issuer.
- 16 (4) With respect to a person owning of record or owning  
17 beneficially, if known, ten percent (10%) or more of the  
18 outstanding shares of any class of equity security of the issuer, the  
19 information specified in subdivision (2) other than the person's  
20 occupation.
- 21 (5) With respect to a promoter, if the issuer was organized within  
22 the previous three (3) years, the information or records specified  
23 in subdivision (2), any amount paid to the promoter within that  
24 period or intended to be paid to the promoter, and the  
25 consideration for the payment.
- 26 (6) With respect to a person on whose behalf any part of the  
27 offering is to be made in a nonissuer distribution, the person's  
28 name and address; the amount of securities of the issuer held by  
29 the person as of the date of the filing of the registration statement;  
30 a description of any material interest of the person in any material  
31 transaction with the issuer or any significant subsidiary effected  
32 within the previous three (3) years or proposed to be effected; and  
33 a statement of the reasons for making the offering.
- 34 (7) The capitalization and long term debt, on both a current and  
35 pro forma basis, of the issuer and any significant subsidiary,  
36 including a description of each security outstanding or being  
37 registered or otherwise offered, and a statement of the amount and  
38 kind of consideration, whether in the form of cash, physical  
39 assets, services, patents, goodwill, or anything else of value, for  
40 which the issuer or any subsidiary has issued its securities within  
41 the previous two (2) years or is obligated to issue its securities.
- 42 (8) The kind and amount of securities to be offered; the proposed

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1 offering price or the method by which it is to be computed; any  
2 variation at which a proportion of the offering is to be made to a  
3 person or class of persons other than the underwriters, with a  
4 specification of the person or class; the basis on which the  
5 offering is to be made if otherwise than for cash; the estimated  
6 aggregate underwriting and selling discounts or commissions and  
7 finders' fees, including separately cash, securities, contracts, or  
8 anything else of value to accrue to the underwriters or finders in  
9 connection with the offering or, if the selling discounts or  
10 commissions are variable, the basis of determining them and their  
11 maximum and minimum amounts; the estimated amounts of other  
12 selling expenses, including legal, engineering, and accounting  
13 charges; the name and address of each underwriter and each  
14 recipient of a finder's fee; a copy of any underwriting or selling  
15 group agreement under which the distribution is to be made or the  
16 proposed form of any such agreement whose terms have not yet  
17 been determined; and a description of the plan of distribution of  
18 any securities that are to be offered otherwise than through an  
19 underwriter.

20 (9) The estimated monetary proceeds to be received by the issuer  
21 from the offering; the purposes for which the proceeds are to be  
22 used by the issuer; the estimated amount to be used for each  
23 purpose; the order or priority in which the proceeds will be used  
24 for the purposes stated; the amounts of any funds to be raised  
25 from other sources to achieve the purposes stated; the sources of  
26 the funds; and, if a part of the proceeds is to be used to acquire  
27 property, including goodwill, otherwise than in the ordinary  
28 course of business, the names and addresses of the vendors, the  
29 purchase price, the names of any persons that have received  
30 commissions in connection with the acquisition, and the amounts  
31 of the commissions and other expenses in connection with the  
32 acquisition, including the cost of borrowing money to finance the  
33 acquisition.

34 (10) A description of any stock options or other security options  
35 outstanding, or to be created in connection with the offering, and  
36 the amount of those options held or to be held by each person  
37 required to be named in subdivision (2), (4), (5), (6), or (8) and by  
38 any person that holds or will hold ten percent (10%) or more in  
39 the aggregate of those options.

40 (11) The dates of, parties to, and general effect concisely stated of  
41 each managerial or other material contract made or to be made  
42 otherwise than in the ordinary course of business to be performed

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- 1 in whole or in part at or after the filing of the registration  
 2 statement or that was made within the previous two (2) years, and  
 3 a copy of the contract.
- 4 (12) A description of any pending litigation, action, or proceeding  
 5 to which the issuer is a party and that materially affects its  
 6 business or assets, and any litigation, action, or proceeding known  
 7 to be contemplated by governmental authorities.
- 8 (13) A copy of any prospectus, pamphlet, circular, form letter,  
 9 advertisement, or other sales literature intended as of the effective  
 10 date to be used in connection with the offering and any  
 11 solicitation of interest used in compliance with  
 12 IC 23-19-2-2(17)(B).
- 13 (14) A specimen or copy of the security being registered, unless  
 14 the security is uncertificated; a copy of the issuer's articles of  
 15 incorporation and bylaws or their substantial equivalents, in  
 16 effect; and a copy of any indenture or other instrument covering  
 17 the security to be registered.
- 18 (15) A signed or conformed copy of an opinion of counsel  
 19 concerning the legality of the security being registered, with an  
 20 English translation if it is in a language other than English, which  
 21 states whether the security when sold will be validly issued, fully  
 22 paid, and nonassessable and, if a debt security, a binding  
 23 obligation of the issuer.
- 24 (16) A signed or conformed copy of a consent of any accountant,  
 25 engineer, appraiser, or other person whose profession gives  
 26 authority for a statement made by the person, if the person is  
 27 named as having prepared or certified a report or valuation, other  
 28 than an official record that is public, which is used in connection  
 29 with the registration statement.
- 30 (17) A balance sheet of the issuer as of a date within four (4)  
 31 months before the filing of the registration statement; a statement  
 32 of income and a statement of cash flows for each of the three (3)  
 33 fiscal years preceding the date of the balance sheet and for any  
 34 period between the close of the immediately previous fiscal year  
 35 and the date of the balance sheet, or for the period of the issuer's  
 36 and any predecessor's existence if less than three (3) years; and,  
 37 if any part of the proceeds of the offering is to be applied to the  
 38 purchase of a business, the financial statements that would be  
 39 required if that business were the registrant. **If the maximum  
 40 aggregate offering price at which the securities registered  
 41 under this section are to be offered in Indiana is in excess of  
 42 one million dollars (\$1,000,000), the balance sheet, statement**

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1 **of income, statement of cash flows, and any other financial**  
 2 **statement required under this subdivision must be prepared**  
 3 **using U.S. generally accepted accounting principles and must**  
 4 **be audited by an independent certified public accountant**  
 5 **under U.S. generally accepted auditing standards or**  
 6 **standards of the Public Company Accounting Oversight**  
 7 **Board.**

8 (18) Any additional information or records required by rule  
 9 adopted or order issued under this article.

10 (c) A registration statement under this section becomes effective  
 11 thirty (30) days, or any shorter period provided by rule adopted or order  
 12 issued under this article, after the date the registration statement or the  
 13 last amendment other than a price amendment is filed, if:

14 (1) a stop order is not in effect and a proceeding is not pending  
 15 under section 6 of this chapter;

16 (2) the commissioner has not issued an order under section 6 of  
 17 this chapter delaying effectiveness; and

18 (3) the applicant or registrant has not requested that effectiveness  
 19 be delayed.

20 (d) The commissioner may delay effectiveness once for not more  
 21 than ninety (90) days if the commissioner determines the registration  
 22 statement is not complete in all material respects and promptly notifies  
 23 the applicant or registrant of that determination. The commissioner  
 24 may also delay effectiveness for a further period of not more than thirty  
 25 (30) days if the commissioner determines that the delay is necessary or  
 26 appropriate.

27 (e) A rule adopted or order issued under this article may require as  
 28 a condition of registration under this section that a prospectus  
 29 containing a specified part of the information or record specified in  
 30 subsection (b) be sent or given to each person to which an offer is  
 31 made, before or concurrently with the earliest of:

32 (1) the first offer made in a record to the person otherwise than by  
 33 means of a public advertisement, by or for the account of the  
 34 issuer or another person on whose behalf the offering is being  
 35 made or by an underwriter or broker-dealer that is offering part of  
 36 an unsold allotment or subscription taken by the person as a  
 37 participant in the distribution;

38 (2) the confirmation of a sale made by or for the account of the  
 39 person;

40 (3) payment under such a sale; or

41 (4) delivery of the security under such a sale.

42 SECTION 2. IC 23-19-5-9, AS ADDED BY P.L.27-2007,

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1 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 2 JULY 1, 2013]: Sec. 9. (a) **Except as provided in section 11 of this**  
 3 **chapter**, a person is liable to the purchaser if the person sells a security  
 4 in violation of this article, including a violation of IC 23-19-4-12(d)(9)  
 5 or IC 23-19-4-12(d)(13). It is a defense if the person selling the security  
 6 sustains the burden of proof that either the person did not know, and in  
 7 the exercise of reasonable care could not have known, of the violation  
 8 or the purchaser knowingly participated in the violation. An action  
 9 under this subsection is governed by the following:

10 (1) The purchaser may maintain an action to recover the  
 11 consideration paid for the security, less the amount of any income  
 12 received on the security, and interest at the greater of eight  
 13 percent (8%) per annum or the rate provided for in the security  
 14 from the date of the purchase, costs, and reasonable attorney's  
 15 fees determined by the court or arbitrator, upon the tender of the  
 16 security, or for actual damages as provided in subdivision (3).

17 (2) The tender referred to in subdivision (1) may be made any  
 18 time before entry of judgment. Tender requires only notice in a  
 19 record of ownership of the security and willingness to exchange  
 20 the security for the amount specified. A purchaser that no longer  
 21 owns the security may recover actual damages as provided in  
 22 subdivision (3).

23 (3) Actual damages in an action arising under this subsection are  
 24 the amount that would be recoverable upon a tender less the value  
 25 of the security when the purchaser disposed of it, and interest at  
 26 the greater of eight percent (8%) per annum or the rate provided  
 27 for in the security from the date of the purchase, costs, and  
 28 reasonable attorneys' fees determined by the court or arbitrator.

29 (b) **Except as provided in section 11 of this chapter**, a person is  
 30 liable to the seller if the person buys a security in violation of this  
 31 article, including a violation of IC 23-19-4-12(d)(9) or  
 32 IC 23-19-4-12(d)(13). It is a defense if the person purchasing the  
 33 security sustains the burden of proof that either the person did not  
 34 know, and in the exercise of reasonable care could not have known, of  
 35 the conduct constituting the violation or the seller knowingly  
 36 participated in the violation. An action under this subsection is  
 37 governed by the following:

38 (1) The seller may maintain an action to recover the security, and  
 39 any income received on the security, costs, and reasonable  
 40 attorney's fees determined by the court or arbitrator, upon the  
 41 tender of the purchase price, or for actual damages as provided in  
 42 subdivision (3).

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1 (2) The tender referred to in subdivision (1) may be made any  
 2 time before entry of judgment. Tender requires only notice in a  
 3 record of the present ability to pay the amount tendered and  
 4 willingness to take delivery of the security for the amount  
 5 specified. If the purchaser no longer owns the security, the seller  
 6 may recover actual damages as provided in subdivision (3).

7 (3) Actual damages in an action arising under this subsection are  
 8 the difference between the price at which the security was sold  
 9 and the value the security would have had at the time of the sale  
 10 in the absence of the purchaser's conduct causing liability, and  
 11 interest at the greater of eight percent (8%) per annum or the rate  
 12 provided for in the security from the date of the sale of the  
 13 security, costs, and reasonable attorney's fees determined by the  
 14 court or arbitrator.

15 (c) A person acting as an investment adviser or investment adviser  
 16 representative that provides investment advice for compensation in  
 17 violation of this article is liable to the client. An action under this  
 18 subsection shall be governed by the following:

19 (1) For a violation of section 1 or 2 of this chapter, the client may  
 20 maintain an action to recover the consideration paid for the advice  
 21 and the amount of any actual damages caused by the fraudulent  
 22 conduct, interest at the greater of eight percent (8%) per annum  
 23 or the rate provided for in the security from the date of the  
 24 fraudulent conduct, costs, and reasonable attorney's fees  
 25 determined by the court less the amount of any income received  
 26 as a result of the fraudulent conduct.

27 (2) For a violation of any other section of this article, the client  
 28 may maintain an action to recover the consideration paid for the  
 29 advice, interest at the greater of eight percent (8%) per annum or  
 30 the rate provided for in the security from the date of payment,  
 31 costs, and reasonable attorney's fees determined by the court or  
 32 arbitrator.

33 (3) This subsection does not apply to a broker-dealer or its agents  
 34 if the investment advice provided is solely incidental to  
 35 transacting business as a broker-dealer and no special  
 36 compensation is received for the investment advice.

37 (d) The following persons are liable jointly and severally with and  
 38 to the same extent as persons liable under subsections (a) through (c):

39 (1) A person that directly or indirectly controls a person liable  
 40 under subsections (a) and (b), unless the controlling person  
 41 sustains the burden of proof that the controlling person did not  
 42 know, and in the exercise of reasonable care could not have

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- 1 known, of the existence of the conduct by reason of which the
- 2 liability is alleged to exist.
- 3 (2) An individual who is a managing partner, executive officer, or
- 4 director of a person liable under subsections (a) through (c),
- 5 including an individual having a similar status or performing
- 6 similar functions, unless the individual sustains the burden of
- 7 proof that the individual did not know, and in the exercise of
- 8 reasonable care could not have known, of the existence of conduct
- 9 by reason of which the liability is alleged to exist.
- 10 (3) An individual who is an employee of or associated with a
- 11 person liable under subsections (a) through (c) and who
- 12 materially aids the conduct giving rise to the liability, unless the
- 13 individual sustains the burden of proof that the individual did not
- 14 know, and in the exercise of reasonable care could not have
- 15 known, of the existence of conduct by reason of which the
- 16 liability is alleged to exist.
- 17 (4) A person that is a broker-dealer, agent, investment adviser, or
- 18 investment adviser representative that materially aids the conduct
- 19 giving rise to the liability under subsections (a) through (c),
- 20 unless the person sustains the burden of proof that the person did
- 21 not know, and in the exercise of reasonable care could not have
- 22 known, of the existence of conduct by reason of which liability is
- 23 alleged to exist.
- 24 (e) A person liable under this section has a right of contribution as
- 25 in cases of contract against any other person liable under this section
- 26 for the same conduct.
- 27 (f) A cause of action under this section survives the death of an
- 28 individual who might have been a plaintiff or defendant.
- 29 (g) Action under this section shall be commenced within three (3)
- 30 years after discovery by the person bringing the action of a violation of
- 31 this article, and not afterwards.
- 32 (h) A person that has made, or has engaged in the performance of,
- 33 a contract in violation of this article or a rule adopted or order issued
- 34 under this article, or that has acquired a purported right under the
- 35 contract with knowledge of conduct by reason of which its making or
- 36 performance was in violation of this article, may not base an action on
- 37 the contract.
- 38 (i) A condition, stipulation, or provision binding a person
- 39 purchasing or selling a security or receiving investment advice to waive
- 40 compliance with this article or a rule adopted or order issued under this
- 41 article is void.
- 42 (j) The rights and remedies provided by this article are in addition

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1 to any other rights or remedies that may exist.  
2 SECTION 3. IC 23-19-5-11 IS ADDED TO THE INDIANA CODE  
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
4 1, 2013]: **Sec. 11. (a) It is unlawful for a person to violate any**  
5 **agreement that is:**  
6 (1) entered into between the securities division and the  
7 person; and  
8 (2) ordered by the commissioner under this article.  
9 (b) A person is not liable under section 9(a) or 9(b) of this  
10 chapter for a violation of this section.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1179, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 42, delete "five million dollars (\$5,000,000)," and insert "**one million dollars (\$1,000,000),**".

and when so amended that said bill do pass.

(Reference is to HB 1179 as introduced.)

BURTON, Chair

Committee Vote: yeas 13, nays 0.

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COMMITTEE REPORT

Madam President: The Senate Committee on Financial Institutions, to which was referred House Bill No. 1179, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1179 as printed February 1, 2013.)

HOLDMAN, Chairperson

Committee Vote: Yeas 7, Nays 0.

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1179, which is eligible for third reading, be returned to second reading for purposes of amendment.

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1179 be amended to read as follows:

Page 5, line 2, delete "audited in" and insert "**prepared using U.S. generally accepted accounting principles and must be audited by an independent certified public accountant under U.S. generally accepted auditing standards or standards of the Public Company Accounting Oversight Board.**".

Page 5, delete lines 3 through 4.

(Reference is to EHB 1179 as printed March 15, 2013.)

SMITH J

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