

## **IC 23-2-6**

### Chapter 6. Indiana Commodity Code

#### **IC 23-2-6-1**

##### **"Board of trade" defined**

Sec. 1. As used in this chapter, "board of trade" refers to a person or group of persons engaged in:

- (1) buying or selling a commodity; or
- (2) receiving a commodity for sale on consignment;

whether the person or group of persons is characterized as a board of trade, an exchange, or any other type of marketplace.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-2**

##### **"Commissioner" defined**

Sec. 2. As used in this chapter, "commissioner" refers to the securities commissioner appointed under IC 23-19-6-1(a).

*As added by P.L.177-1991, SEC.10. Amended by P.L.27-2007, SEC.20.*

#### **IC 23-2-6-3**

##### **"CFTC Rule" defined**

Sec. 3. As used in this chapter, "CFTC Rule" means a rule, regulation, or order of the Commodity Futures Trading Commission that is in effect on July 1, 1991, and any subsequent amendment, addition, or revision to the rule, regulation, or order unless the commissioner disallows the application to this chapter of the amendment, addition, or revision not later than ten (10) days after the effective date of the amendment, addition, or revision.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-4**

##### **"Commodity" defined**

Sec. 4. As used in this chapter, "commodity" means, except as otherwise specified by a rule, regulation, or order of the commissioner, any of the following:

- (1) An agricultural, a grain, or a livestock product or byproduct.
- (2) A metal or mineral, including a precious metal.
- (3) A gem or gemstone, whether the gem or gemstone is characterized as precious, semiprecious, or another characterization.
- (4) A fuel (whether liquid, gaseous, or otherwise).
- (5) Foreign currency.
- (6) All other goods, articles, products, or items of any kind, except the following:

- (A) A numismatic coin whose fair market value is at least

fifteen percent (15%) higher than the fair market value of the metal contained in the coin.

(B) Real property.

(C) Any timber, agricultural, or livestock product that is grown or raised on real property and that is offered or sold by the owner or lessee of the real property.

(D) A work of art that is offered or sold by art dealers, offered or sold at a public auction, or offered or sold through a private sale by the owner of the work of art.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-5**

##### **"Commodity broker-dealer" defined**

Sec. 5. As used in this chapter, "commodity broker-dealer" means a person engaged in the business of executing transactions in commodity contracts or commodity options for:

(A) the account of others; or

(B) the person's own account.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-6**

##### **"Commodity contract" defined**

Sec. 6. As used in this chapter, "commodity contract" means an account, an agreement, or a contract that:

(1) is for the purchase or sale of at least one (1) commodity;

(2) is primarily for speculation or investment purposes; and

(3) is not primarily for the use or consumption by the offeree or purchaser;

regardless of whether the account, agreement, or contract is for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. For purposes of this chapter, any commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes. The term does not include a contract or agreement that requires, and under which the purchaser receives, physical delivery of the total amount of each commodity to be purchased under the contract or agreement not later than twenty-eight (28) calendar days after payment in good funds of any portion of the purchase price.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-7**

##### **"Commodity Exchange Act" defined**

Sec. 7. As used in this chapter, "Commodity Exchange Act" means the act of the United States Congress known as the Commodity Exchange Act (7 U.S.C. 1 et seq., as in effect June 30, 1991), and including all subsequent amendments, additions, or revisions to the act unless the commissioner by rule or order disallows the application of the amendments, additions, or revisions to this chapter or to any provision of this chapter not later than ten (10) days after the effective date of the amendment, addition, or revision.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-8**

##### **"Commodity Futures Trading Commission" defined**

Sec. 8. As used in this chapter, "Commodity Futures Trading Commission" means the independent regulatory agency established to administer the Commodity Exchange Act.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-9**

##### **"Commodity merchant" defined**

Sec. 9. As used in this chapter, "commodity merchant" means any of the following (as defined or described in the Commodity Exchange Act or in a CFTC rule):

- (1) A futures commission merchant.
- (2) A commodity pool operator.
- (3) A commodity trading advisor.
- (4) An introducing broker.
- (5) A leverage transaction merchant.
- (6) A person associated with a person described in subdivisions (1) through (5).
- (7) A floor broker.
- (8) Any other person, other than a futures association, that is required to register with the Commodity Futures Trading Commission.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-10**

##### **"Commodity option" defined**

Sec. 10. As used in this chapter, "commodity option" means an account, an agreement, or a contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell:

- (1) at least one (1) commodity; or
  - (2) at least one (1) commodity contract;
- whether characterized as an option, privilege, indemnity, bid, offer,

put, call, advance guaranty, decline guaranty, or otherwise. However, the term does not include an option traded on a national securities exchange that is registered with the Securities and Exchange Commission.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-11**

##### **"Commodity sales representative" defined**

Sec. 11. As used in this chapter, "commodity sales representative" means a person who:

- (1) is acting for a commodity broker-dealer in executing or attempting to execute a transaction in a commodity contract or a commodity option; and
- (2) is authorized to take those actions by the commodity broker-dealer.

*As added by P.L.177-1991, SEC.10. Amended by P.L.1-1992, SEC.115.*

#### **IC 23-2-6-12**

##### **"Financial institution" defined**

Sec. 12. As used in this chapter, "financial institution" means a bank, savings institution, or trust company that is organized or supervised under the laws of the United States or of any state.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-13**

##### **"Offer" defined**

Sec. 13. As used in this chapter, "offer" means an offer to sell, offer to purchase, or offer to enter into a commodity contract or commodity option.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-14**

##### **"Person" defined**

Sec. 14. (a) As used in this chapter, "person" means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(b) The term does not include a contract market designated by any of the following:

- (1) The Commodity Futures Trading Commission.
- (2) Any clearinghouse of the Commodity Futures Trading Commission.

(3) A national securities exchange that is registered with the Securities and Exchange Commission.

(4) An employee, an officer, or a director of a contract market designated clearinghouse or exchange who is acting solely in that capacity.

*As added by P.L.177-1991, SEC.10. Amended by P.L.8-1993, SEC.315.*

#### **IC 23-2-6-15**

##### **"Precious metal" defined**

Sec. 15. As used in this chapter, "precious metal" means the following in coin, bullion, or other form:

- (1) Silver.
- (2) Gold.
- (3) Platinum.
- (4) Palladium.
- (5) Copper.
- (6) Any other items specified by a rule, a regulation, or an order of the commissioner.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-16**

##### **"Sale" defined**

Sec. 16. As used in this chapter, "sale" means any:

- (1) exchange;
- (2) contract of sale;
- (3) contract to sell; or
- (4) disposition;

for value.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-17**

##### **Limitations; commodity contracts or options**

Sec. 17. Except as provided in sections 18 and 19 of this chapter, a person may not:

- (1) sell, purchase, or offer to sell or purchase a commodity under any commodity contract or under any commodity option; or
- (2) offer to enter into as seller or purchaser any commodity contract or any commodity option.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-18**

##### **Persons permitted to offer transactions under IC 23-2-6-17**

Sec. 18. (a) The prohibitions set forth in section 17 of this chapter

do not apply to any transaction offered by any of the following persons (or any employee, officer, or director of the person who is acting solely in that capacity) if the person is the purchaser or seller in the transaction:

- (1) A person:
  - (A) who is registered with the Commodity Futures Trading Commission as a futures commission merchant, a leverage transaction merchant, an introducing broker, or an associated person of an introducing broker; and
  - (B) whose activities require that registration.
- (2) A person registered with the Securities and Exchange Commission as a broker-dealer whose activities require that registration.
- (3) A person:
  - (A) who is affiliated with; and
  - (B) whose obligations and liabilities under the transaction are guaranteed by;a person described in subdivision (1) or (2).
- (4) A person who is a member of a contract market designated by the Commodity Futures Trading Commission or any clearinghouse of the Commodity Futures Trading Commission.
- (5) A financial institution.
- (6) A person registered in Indiana as a securities broker-dealer whose activities require that registration.

(b) The exemption provided by subsection (a) does not apply to any transaction or activity that is prohibited by the Commodity Exchange Act or by a CFTC rule.

*As added by P.L.177-1991, SEC.10.*

### **IC 23-2-6-19**

#### **Contracts or transactions permitted under IC 23-2-6-17**

Sec. 19. (a) The prohibitions set forth in section 17 of this chapter do not apply to any of the following:

- (1) An account, an agreement, or a transaction that is within the exclusive jurisdiction of the Commodity Futures Trading Commission as provided under the Commodity Exchange Act.
- (2) A commodity contract:
  - (A) that is for the purchase of at least one (1) precious metal;
  - (B) that requires physical delivery of the quantity of the precious metals purchased not later than twenty-eight (28) calendar days after payment of any portion of the purchase price; and
  - (C) under which the purchaser receives physical delivery of the quantity of precious metals purchased not later than twenty-eight (28) calendar days after payment of any portion

of the purchase price.

(3) A commodity contract solely between persons engaged in producing, processing, using commercially, or handling as merchants:

(A) each commodity subject to the contract; or

(B) any byproduct of the commodity subject to the contract.

(4) A commodity contract under which the offeree or the purchaser is any of the following:

(A) A person described in section 18(a) of this chapter.

(B) An insurance company.

(C) An investment company (as defined in the Investment Company Act of 1940).

(b) For purposes of this section, physical delivery is considered to have occurred if both of the following occur:

(1) The quantity of precious metals purchased is delivered (in specifically segregated or fungible bulk form) within the twenty-eight (28) day period to the possession of a depository that:

(A) is not the seller; and

(B) is any of the following:

(i) A depository that issues warehouse receipts that are recognized for delivery purposes for any commodity on a contract market designated by the Commodity Futures Trading Commission.

(ii) A storage facility that is licensed or regulated by the United States or any agency of the United States.

(iii) A depository designated by the commissioner.

(2) The depository, any other person described in subdivision (1)(B), or a qualified seller issues and the purchaser receives a certificate, document of title, confirmation, or other instrument that evidences that the quantity of precious metals:

(A) has been delivered to the depository; and

(B) is held and will continue to be held:

(i) by the depository on the purchaser's behalf; and

(ii) free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses that have previously been disclosed to the purchaser.

(c) For the purposes of this section, a qualified seller is a person who meets the following conditions:

(1) Is a seller of precious metals.

(2) Has:

(A) a tangible net worth of at least five million dollars (\$5,000,000); or

(B) has an affiliate who:

- (i) has unconditionally guaranteed the obligations and liabilities of the person; and
- (ii) has a tangible net worth of at least five million dollars (\$5,000,000).

(3) Has stored precious metals with at least one (1) depository on behalf of customers for at least the preceding three (3) years.

(4) Before any offer, and annually after any offer, files with the commissioner a sworn notice of intent to act as a qualified seller under this section that contains the following:

- (A) The person's name and address.
- (B) The names of the person's directors, officers, controlling shareholders, partners, principals, and other controlling persons.
- (C) The address of the person's principal place of business.
- (D) The state and date of the person's incorporation or organization.
- (E) The name and address of the person's registered agent in Indiana.

(F) A statement that:

- (i) the person; or
- (ii) an affiliate of the person who has guaranteed the obligations and liabilities of the person;

has a tangible net worth of at least five million dollars (\$5,000,000).

(G) Depository information required by the commissioner, including the following:

- (i) The name and address of any depository that the person intends to use.
- (ii) The name and address of each depository in which the person has stored precious metals on behalf of customers at any time during the preceding three (3) years.
- (iii) Independent verification from each depository named in item (ii) that the person has in fact stored precious metals on behalf of the person's customers in the depository during the preceding three (3) years and a statement by each depository showing the total deposits made by the person during the three (3) years.

(H) A financial statement, audited by an independent certified public accountant, for:

- (i) the person; or
- (ii) an affiliate of the person who has guaranteed the obligations and liabilities of the person;

for the past three (3) years.

(I) The certified public accountant's audit report of the financial statement described in clause (H).

(J) A statement describing the details of any civil, criminal, or administrative proceedings currently pending or adversely resolved against the person or the person's directors, officers, controlling shareholders, partners, principals, or other controlling persons during the preceding ten (10) years, including the following:

(i) Civil litigation and administrative proceedings involving securities or commodities violations or fraud.

(ii) Criminal proceedings.

(iii) Denials, suspensions, or revocations of securities or commodities licenses or registrations.

(iv) Suspensions or expulsions from membership in or associations with a self-regulatory organization registered under the Securities Exchange Act of 1934 or the Commodities Exchange Act.

(K) A statement declaring that proceedings described in clause (J) have not occurred if there have been no proceedings of that type.

(5) Notifies the commissioner of any material changes in the information provided in the notice of intent under subdivision (4) not later than fifteen (15) days after the changes occur or are made.

(6) Annually furnishes to:

(A) each purchaser for whom the seller is currently storing precious metals; and

(B) the commissioner;

a report by an independent certified public accountant of the accountant's examination of the seller's precious metals storage program.

*As added by P.L.177-1991, SEC.10.*

### **IC 23-2-6-20**

#### **Waiver of requirements; qualified sellers; limitation on authority to engage in business**

Sec. 20. (a) The commissioner may unconditionally or conditionally waive any of the requirements under section 19(c) of this chapter that a person must otherwise satisfy to be considered a qualified seller.

(b) The commissioner may by order deny, suspend, revoke, or limit a person's authority to engage in business as a qualified seller under section 19 of this chapter if the commissioner determines that:

(1) the order is in the public interest; and

(2) the person, the person's officers, directors, partners, agents, servants, or employees, any person occupying a similar status or performing similar functions, any person who directly or

indirectly controls or is controlled by the person or other person listed in this subdivision, or the person's affiliates or subsidiaries meet any of the following conditions:

(A) Has filed a notice of intention under section 19(c) of this chapter that:

- (i) is incomplete in any material respect; or
- (ii) contains a statement that, under the circumstances in which the statement was made, is false or misleading with respect to a material fact.

(B) Has during the preceding ten (10) years:

- (i) pled guilty or nolo contendere to a crime; or
- (ii) been convicted of a crime;

indicating a lack of fitness to engage in the investment commodity business.

(C) Has been permanently enjoined or temporarily enjoined by a court from engaging in or continuing any conduct or practice that indicates a lack of fitness to engage in the investment commodities business.

(D) Is the subject of an order of the commissioner denying, suspending, or revoking the person's license as:

- (i) a securities broker-dealer;
- (ii) a sales representative; or
- (iii) an investment adviser.

(E) Is the subject of any of the following orders that are in effect and that were issued during the preceding five (5) years.

(i) An order by the commissioner, by a securities agency or the securities administrator of any other state, Canadian province, or territory, by the Securities and Exchange Commission, or by the Commodity Futures Trading Commission, that was entered after notice and opportunity for hearing and that denied, suspended, or revoked the person's registration as a futures commission merchant, commodity trading adviser, commodity pool operator, securities broker-dealer, sales representative, investment adviser, or any substantially similar occupation.

(ii) An order suspending or expelling the person from membership in or association with a self-regulatory organization registered under the Securities Exchange Act of 1934 or the Commodity Exchange Act.

(iii) A United States postal service fraud order.

(iv) A cease and desist order entered after notice and opportunity for hearing by a person described in item (i).

(v) An order entered by the Commodity Futures Trading Commission denying, suspending, or revoking registration

- under the Commodity Exchange Act.
- (F) Has engaged in an unethical or dishonest act or practice in the investment commodities or securities business.
- (G) Has failed to reasonably supervise sales representatives or employees.

*As added by P.L.177-1991, SEC.10.*

### **IC 23-2-6-21**

#### **Summary denial or suspension of exemption; qualified sellers**

Sec. 21. (a) To protect the public interest or to protect investors, the commissioner may by order summarily deny or suspend an exemption provided under section 19 of this chapter for a qualified seller. Upon the entry of an order denying or suspending an exemption for a qualified seller, the commissioner shall promptly notify the person claiming the exemption:

- (1) that an order has been entered;
- (2) of the reasons for the entry of the order; and
- (3) that a date for a hearing concerning the order will be determined not later than thirty (30) days after the commissioner receives a written request for a hearing.

(b) The provisions of sections 39 and 40 of this chapter apply to all subsequent proceedings after the entry of an order under this section.

(c) The commissioner may by order deny or revoke an exemption provided under section 19 of this chapter for a qualified seller if the commissioner finds that an applicant or qualified seller:

- (1) is no longer in existence;
- (2) has ceased to do business;
- (3) is subject to:
  - (A) an adjudication of mental incompetence; or
  - (B) the control of a committee, conservator, or guardian; or
- (4) cannot be located after reasonable search.

*As added by P.L.177-1991, SEC.10.*

### **IC 23-2-6-22**

#### **Rules; orders**

Sec. 22. The commissioner may adopt rules and issue orders to do the following:

- (1) Prescribe terms and conditions of all transactions and contracts that:
  - (A) are covered by this chapter; and
  - (B) are not within the exclusive jurisdiction of the Commodity Futures Trading Commission, as granted by the Commodity Exchange Act.
- (2) Exempt persons from this chapter.

- (3) Implement the provisions of this chapter for the protection of purchasers and sellers of commodities.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-23**

##### **Registration of commodity merchants; places for trading commodities or options**

Sec. 23. (a) A person may not engage in the commodities trade or business or otherwise act as a commodity merchant unless the person:

- (1) is registered or temporarily licensed with the Commodity Futures Trading Commission for each activity causing the person to be considered a commodity merchant and the registration or temporary license has not expired or been revoked or suspended; or
- (2) is exempt from registration with the Commodity Futures Trading Commission under:
  - (A) the Commodity Exchange Act; or
  - (B) a CFTC rule.

(b) A board of trade may not trade or provide a place for the trading of any commodity contract or commodity option if the commodity contract or commodity option must be traded on a contract market or commodity market designated by the Commodity Futures Trading Commission or is subject to the rules of a contract market or commodity market designated by the Commodity Futures Trading Commission, unless:

- (1) the board of trade has been designated for the commodity contract or commodity option by the Commodity Futures Trading Commission; and
- (2) the designation has not been vacated, suspended, or revoked.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-24**

##### **Fraud**

Sec. 24. A person may not directly or indirectly:

- (1) cheat or defraud or attempt to cheat or defraud any person;
- (2) employ any device, scheme, or artifice to defraud any person;
- (3) make a false report, enter a false record, or make an untrue statement of a material fact;
- (4) fail to state a material fact that is necessary to make a report, record, or statement made, under the circumstances in which the report, record, or statement was made, not misleading;
- (5) engage in a transaction, act, practice, or course of business, including any form of advertising or solicitation, that operates

or would operate as a fraud or deceit upon any person; or  
(6) misappropriate or convert the funds, security, or property of any person;  
in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into of, any commodity contract or commodity option subject to section 18, 19(a)(2), or 19(a)(4) of this chapter.  
*As added by P.L.177-1991, SEC.10.*

### **IC 23-2-6-25**

#### **Liability; violation of chapter**

Sec. 25. (a) The act, omission, or failure of any official, agent, or other person acting for an individual, an association, a partnership, a limited liability company, a corporation, or a trust within the scope of the official's, agent's, or person's employment or office constitutes the act, omission, or failure of both:

- (1) the individual, association, partnership, limited liability company, corporation, or trust; and
- (2) the official, agent, or person.

(b) Except as provided in subsection (c), the following are jointly and severally liable for the violation of this chapter by a person and are liable to the same extent as the person:

- (1) Each person who directly or indirectly controls the person who committed the violation.
- (2) Each partner, officer, and director of the person who committed the violation.
- (3) Each person occupying a similar status or performing a similar function as a partner, officer, or director described in subdivision (2).
- (4) Each person who:
  - (A) is an employee of the person who committed the violation; and
  - (B) materially aids in the violation.

(c) A person is not liable under subsection (b) if the person proves that the person:

- (1) did not know; and
- (2) in exercise of reasonable care could not have known;

of the existence of the facts on which the liability is alleged to exist.  
*As added by P.L.177-1991, SEC.10. Amended by P.L.8-1993, SEC.316.*

### **IC 23-2-6-26**

#### **Effect of chapter on securities law**

Sec. 26. This chapter does not impair, derogate, or otherwise affect any of the following:

(1) The authority or powers of the commissioner under the Indiana securities law.

(2) The application of any provision of the Indiana securities law to any person or transaction subject to the Indiana securities law.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-27**

##### **Construction and implementation of chapter**

Sec. 27. (a) This chapter shall be construed and implemented to carry out the chapter's general purpose to do the following:

(1) Protect investors.

(2) Prevent and prosecute illegal and fraudulent schemes involving commodity contracts.

(3) Maximize coordination with federal law and the law of other states and the administration and enforcement of those laws.

(b) This chapter does not create any rights or remedies upon which actions may be brought by private persons against persons who violate this chapter.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-28**

##### **Investigations; examinations; hearings; civil penalties**

Sec. 28. (a) The commissioner may make investigations in or outside Indiana that the commissioner finds necessary or appropriate to:

(1) determine whether any person has violated or is about to violate this chapter or any rule or order of the commissioner; or

(2) aid in the enforcement of this chapter.

(b) The commissioner may charge as costs of an investigation or examination all reasonable expenses, including a per diem prorated on the salary of the commissioner or an employee. All reasonable expenses of investigation, examination, or hearing shall be paid by the party under investigation or examination.

(c) The commissioner may publish information concerning any violation of this chapter or any rule or order of the commissioner. The commissioner shall upon request make available for inspection and copying under IC 5-14-3 information concerning any violation of this chapter or any rule or order of the commissioner.

(d) For purposes of an investigation or a proceeding under this chapter, the commissioner or an officer or employee designated by rule or order may do any of the following:

(1) Administer oaths and affirmations.

(2) Subpoena witnesses and compel the attendance of witnesses.

(3) Take evidence.

(4) Require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner finds to be relevant or material to the investigation or proceeding.

(e) If a person does not give testimony or produce the documents required by the commissioner or the commissioner's designee under an administrative subpoena, the commissioner or the designee may petition for a court order compelling compliance with the subpoena or the giving of the required testimony.

(f) A petition for an order of compliance under subsection (e) may be filed in any of the following:

(1) The circuit or superior court of a county containing a consolidated city.

(2) The circuit or superior court where service may be obtained on the person refusing to comply with the subpoena if the person is within Indiana.

(3) The appropriate court of the state having jurisdiction over the person refusing to comply with the subpoena if the person is outside Indiana.

(g) Costs of investigations, examinations, and hearings and civil penalties recovered under this chapter shall be deposited in the securities division enforcement account established under IC 23-19-6-1(f). With the approval of the budget agency, the funds in the securities division enforcement account may be used to augment and supplement the funds appropriated for the administration of this chapter.

*As added by P.L.177-1991, SEC.10. Amended by P.L.27-2007, SEC.21.*

### **IC 23-2-6-29**

#### **Cease and desist orders; civil remedies**

Sec. 29. (a) If the commissioner believes, whether or not based upon an investigation conducted under section 28 of this chapter, that a person has engaged or is about to engage in any act or practice that violates this chapter or any rule or order adopted or issued by the commissioner, the commissioner may do any of the following:

(1) Issue a cease and desist order.

(2) Issue an order imposing a civil penalty of not more than ten thousand dollars (\$10,000) for any single violation.

(3) Initiate any of the actions specified in subsection (b).

(b) In addition to any other legal or equitable remedies, the commissioner may bring any of the following actions in circuit or superior court or in the appropriate courts of another state:

(1) An action for declaratory judgment.

(2) An action for a prohibitory injunction or mandatory injunction to:

(A) enjoin any violation; and

(B) ensure compliance with this chapter or any rule or order adopted or issued by the commissioner.

(3) An action for disgorgement.

(4) An action for the appointment of a receiver or conservator for the defendant or the defendant's assets.

*As added by P.L.177-1991, SEC.10.*

### **IC 23-2-6-30**

#### **Violations; special remedies**

Sec. 30. (a) Upon a showing by the commissioner that a person has violated or is about to violate this chapter or any rule or order adopted or issued by the commissioner, a court may grant appropriate legal or equitable remedies.

(b) Upon a showing by the commissioner of a violation of this chapter or a rule or order adopted or issued by the commissioner, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may order the following special remedies:

(1) A civil penalty of not more than ten thousand dollars (\$10,000) for any single violation.

(2) Disgorgement.

(3) Declaratory judgment.

(4) Restitution to investors that request restitution.

(5) Appointment of a receiver or conservator for the defendant or the defendant's assets.

(c) If the commissioner shows only that a person is about to violate this chapter or a rule or order issued or adopted by the commissioner, appropriate remedies under this chapter are limited to the following:

(1) A temporary restraining order.

(2) A temporary injunction or permanent injunction.

(3) A writ of prohibition or writ of mandamus.

(4) An order appointing a receiver or conservator for the defendant or the defendant's assets.

*As added by P.L.177-1991, SEC.10.*

### **IC 23-2-6-31**

#### **Commodity codes of other states; violations; remedies**

Sec. 31. (a) Upon a showing by the commissioner or by a securities or commodity agency of another state that a person, other than a government or a governmental agency, has violated or is about

to violate the commodity code of that state or any rule or order of the securities commissioner or the securities agency or commodity agency of that state, the court may grant appropriate legal and equitable remedies.

(b) Upon a showing of a violation of the securities or commodity act of another foreign state or a rule or an order of the securities commissioner or securities agency or commodity agency of that state, a court, in addition to traditional legal or equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may order the following special remedies:

- (1) Disgorgement.
- (2) Appointment of a receiver, a conservator, or an ancillary receiver or conservator for the defendant or for the defendant's assets located in Indiana.

(c) If the commissioner shows only that a person is about to violate the securities act or commodities act of another state or a rule or order issued or adopted by the administrator of the securities act or commodities act of another state, appropriate remedies under this chapter are limited to the following:

- (1) A temporary restraining order.
- (2) A temporary injunction or permanent injunction.
- (3) A writ of prohibition or writ of mandamus.
- (4) An order appointing a receiver, a conservator, or an ancillary receiver or conservator for the defendant or for the defendant's assets located in Indiana.

*As added by P.L.177-1991, SEC.10.*

### **IC 23-2-6-32**

#### **Bonds; official actions**

Sec. 32. A court may not require the commissioner to post a bond in any official action under this chapter.

*As added by P.L.177-1991, SEC.10.*

### **IC 23-2-6-33**

#### **Penalties**

Sec. 33. (a) A person who knowingly violates:

- (1) this chapter; or
- (2) any rule or order issued or adopted by the commissioner under this chapter;

commits a Class C felony.

(b) A person who violates a rule or an order issued or adopted under this chapter may be assessed a civil penalty of up to ten thousand dollars (\$10,000).

(c) The commissioner may refer any evidence concerning

violations of this chapter or violations of any rule or order issued or adopted by the commissioner to any prosecuting attorney in Indiana.  
*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-34**

##### **Administration of chapter**

Sec. 34. (a) The securities division of the office of the secretary of state shall administer this chapter.

(b) The commissioner and any employees of the commissioner may not do the following:

(1) Use for personal gain or benefit any information that:

(A) is filed with the commissioner or obtained by the commissioner; and

(B) is not public information.

(2) Conduct securities dealings or commodity dealings based on public or confidential information that is filed with the commissioner or obtained by the commissioner if there has not been a sufficient time for the securities markets or commodity markets to assimilate the information.

(c) Except as provided in subsection (d), all information that is collected, assembled, or maintained by the commissioner:

(1) is public information; and

(2) is available for inspection by the public.

(d) The following information is not public information and may not be made available by the commissioner for public inspection:

(1) Information obtained in private investigations under section 28(a) or 28(d) of this chapter.

(2) Information that:

(A) is obtained from a federal agency; and

(B) may not be disclosed under federal law.

(e) The commissioner shall have the discretion to disclose any information that is confidential under subsection (d)(1) to a person described in section 35(a) of this chapter.

(f) This chapter does not create or derogate any privilege that exists at common law, by statute, or otherwise, when any documentary evidence or other evidence is sought under subpoena directed to the commissioner or any employee of the commissioner.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-35**

##### **Cooperation with other authorities**

Sec. 35. (a) In order to encourage uniform application and interpretation of this chapter and in order to encourage securities regulation and enforcement, the commissioner and the commissioner's employees may cooperate with any of the following:

- (1) A securities or commodities agency or the securities commissioner of any other jurisdiction, including any foreign jurisdiction.
- (2) An agency administering any laws similar to this chapter.
- (3) The Commodity Futures Trading Commission.
- (4) The Securities and Exchange Commission.
- (5) A self-regulatory organization established under the Commodity Exchange Act or the Securities Exchange Act of 1934.
- (6) A national or international organization of commodities or securities officials or agencies.
- (7) A governmental law enforcement agency.

(b) The cooperation authorized by subsection (a) may include the following if the information sought would be subject to lawful subpoena for conduct occurring in Indiana:

- (1) Bearing the expense of any type of cooperation described in this subsection.
- (2) Making joint examinations or investigations.
- (3) Holding joint administrative hearings.
- (4) Filing and prosecuting joint litigation.
- (5) Sharing and exchanging personnel.
- (6) Sharing and exchanging information and documents.
- (7) Writing and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes, and releases.
- (8) Issuing and enforcing subpoenas at the request of any of the following:
  - (A) An agency in another jurisdiction that administers a law similar to this chapter.
  - (B) A securities or commodities agency of another jurisdiction.
  - (C) The Commodity Futures Trading Commission.
  - (D) The Securities and Exchange Commission.

*As added by P.L.177-1991, SEC.10.*

### **IC 23-2-6-36**

#### **Rules; forms; orders**

Sec. 36. (a) In addition to specific authority granted under this chapter, the commissioner may make, amend, and rescind rules, forms, and orders necessary to carry out this chapter.

(b) Unless specifically provided in this chapter, a rule, a form, or an order may not be adopted, amended, or rescinded unless the commissioner finds that the action is:

- (1) necessary or appropriate for the public interest or for the protection of investors; and
- (2) consistent with the purposes fairly intended by the policy

and provisions of this chapter.

(c) All rules and forms of the commissioner must be published.

(d) A provision of this chapter imposing any liability does not apply to an act that is:

(1) committed or omitted in good faith; and

(2) in conformity with a rule, an order, or a form adopted or issued by the commissioner;

even if the rule, order, or form is later amended, rescinded, or is determined to be invalid for any reason by judicial authority or other authority.

*As added by P.L.177-1991, SEC.10.*

### **IC 23-2-6-37**

#### **Service of process**

Sec. 37. (a) If a person, including a person that is not a resident of Indiana, engages in conduct prohibited or made actionable by this chapter or any rule or order adopted or issued by the commissioner, the commissioner shall be considered the person's attorney for the purpose of receiving service of any lawful process in a noncriminal proceeding that is:

(1) brought against the person, a successor of the person, or a personal representative of the person;

(2) related to the prohibited or actionable conduct; and

(3) brought under this chapter or any rule or order issued or adopted by the commissioner.

(b) Process served on the commissioner under subsection (a) has the same force and validity as personal service on the person engaging in the prohibited or actionable conduct.

*As added by P.L.177-1991, SEC.10.*

### **IC 23-2-6-38**

#### **Application of sections IC 23-2-6-17, IC 23-2-6-23, and IC 23-2-6-24**

Sec. 38. (a) Sections 17, 23, and 24 of this chapter apply to a person who sells or offers to sell if:

(1) the offer to sell is made in Indiana; or

(2) an offer to buy is made and accepted in Indiana.

(b) Sections 17, 23, and 24 of this chapter apply to a person who buys or offers to buy if:

(1) the offer to buy is made in Indiana; or

(2) an offer to sell is made and accepted in Indiana.

(c) For purposes of this section:

(1) an offer to sell or an offer to buy is made in Indiana, whether or not any party is present in Indiana, if the offer:

(A) originates from Indiana; or

- (B) is directed by the offeror to Indiana and is received at:
  - (i) the place to which the offer is directed; or
  - (ii) any post office in Indiana, in the case of a mailed offer;and
- (2) an offer to sell or to buy is accepted in Indiana if the acceptance:
  - (A) is communicated to the offeror in Indiana; and
  - (B) has not previously been communicated to the offeror, orally or in writing, outside Indiana.
- (d) For purposes of this section, acceptance is communicated to an offeror in Indiana, whether or not any party is then present in Indiana, if:
  - (1) the offeree:
    - (A) directs the acceptance to the offeror in Indiana; and
    - (B) reasonably believes that the offeror is present in Indiana;and
  - (2) the acceptance is received at:
    - (A) the place to which the acceptance is directed; or
    - (B) any post office in Indiana, in the case of a mailed acceptance.
- (e) For purposes of this section, an offer to sell or to buy is not made in Indiana if:
  - (1) a publisher circulates in Indiana, or there is circulated in Indiana on the behalf of the publisher, a newspaper or other publication of general, regular, and paid circulation that:
    - (A) is not published in Indiana; or
    - (B) is published in Indiana, but has had more than two-thirds (2/3) of the newspaper's circulation outside Indiana during the past twelve (12) months; or
  - (2) a newspaper or a radio or television program originating outside Indiana is received in Indiana.

*As added by P.L.177-1991, SEC.10.*

### **IC 23-2-6-39**

#### **Administrative proceedings**

Sec. 39. (a) The commissioner shall initiate an administrative proceeding under this chapter by entering a notice of intent to take a specific act or by entering a summary order. The notice of intent or summary order:

- (1) may be entered without notice;
  - (2) may be entered without opportunity for a hearing;
  - (3) is not required to be supported by findings of fact or conclusions of law; and
  - (4) must be in writing.
- (b) After entering a notice of intent or summary order, the

commissioner shall promptly notify all interested parties that the notice of intent or summary order has been entered and of the reasons for the entry.

(c) If a proceeding is under a notice of intent, the commissioner shall inform all interested parties of the date, time, and place set for the hearing on the notice.

(d) If the proceeding is under a summary order, the commissioner shall inform all interested parties that:

(1) the parties have thirty (30) business days from the entry of the order to file with the commissioner a written request for a hearing on the matter; and

(2) a hearing will be scheduled to begin not later than thirty (30) business days after the receipt of a written request.

(e) If the proceeding is under a summary order, the commissioner may, by the commissioner's own motion, set a hearing for the proceeding, whether or not a written request for a hearing is received from an interested party.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-40**

##### **Summary orders; final orders**

Sec. 40. (a) A summary order becomes a final order if:

(1) thirty (30) business days have passed since the summary order was entered; and

(2) a hearing on the order is not:

(A) requested under section 39(d) of this chapter; or

(B) ordered by the commissioner under section 39(e) of this chapter.

(b) If a hearing on an order is requested or ordered under section 39 of this chapter, the commissioner may modify, vacate, or extend the order until final determination after the commissioner has provided:

(1) a notice of a hearing to all interested persons; and

(2) an opportunity for a hearing by all interested persons.

(c) A final order or an order after a hearing may not be returned without:

(1) appropriate notice to all interested persons;

(2) opportunity for hearing by all interested persons; and

(3) entry of written findings of fact and conclusions of law.

(d) All hearings in an administrative proceeding under this chapter shall be subject to IC 5-14-1.5.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-41**

##### **Review; final orders of commissioner**

Sec. 41. (a) Any person aggrieved by a final order of the commissioner may obtain a review of the order in a circuit or superior court of Marion County by filing in court, not later than sixty (60) days after the entry of the order, a written petition requesting the order to be modified or set aside in whole or in part. A copy of a petition for review shall be served on the commissioner.

(b) Except where the taking of additional evidence is ordered by a court under subsections (e) and (f), after the filing of a petition for review:

- (1) the court shall have exclusive jurisdiction of the matter; and
- (2) the commissioner may not modify or set aside the order, in whole or in part.

(c) Unless specifically ordered by the court:

- (1) the filing of a petition for review under subsection (a) does not operate as a stay of the commissioner's order; and
- (2) the commissioner may enforce or ask the court to enforce an order pending the outcome of the review proceedings.

(d) Upon receipt of a petition for review, the commissioner shall certify and file in the court a copy of the order and the transcript or record of the evidence upon which the order was based. If the order became final by operation of law under section 40(a) of this chapter, the commissioner shall certify and file in court:

- (1) a certified copy of the summary order;
- (2) evidence of service of the summary order on the parties to the order; and
- (3) an affidavit certifying that:
  - (A) a hearing on the summary order has not been held; and
  - (B) the summary order became final under section 40(a) of this chapter.

(e) The court may order additional evidence to be taken by the commissioner under conditions the court considers proper if an aggrieved party or the commissioner:

- (1) applies to the court for leave to enter additional evidence; and
- (2) shows to the satisfaction of the court that:
  - (A) there were reasonable grounds for failure to enter the evidence in the hearing before the commissioner; or
  - (B) good cause exists to allow the additional evidence to be taken.

(f) If the court orders new evidence to be taken, the commissioner:

- (1) may modify the findings and order by reason of the additional evidence; and
- (2) shall file in the court the additional evidence and any modified or new findings or order.

(g) The court shall review the petition based on the original record

before the commissioner and any additions or modifications under subsections (e) and (f). The commissioner's findings of facts are conclusive if those findings are supported by competent, material, and substantive evidence. Based on review under this subsection, the court may affirm, modify, enforce, or set aside the order, in whole or in part.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-42**

##### **Burden of proof; exemptions**

Sec. 42. If a person claims an exemption in any complaint, information, indictment, writ, or proceeding under this chapter:

- (1) the commissioner is not required to disprove the exemption; and
- (2) the party claiming the exemption bears the burden of proof concerning the existence of the exemption.

*As added by P.L.177-1991, SEC.10.*

#### **IC 23-2-6-43**

##### **Failure to make physical delivery; defenses**

Sec. 43. In any complaint, information, indictment, writ, or proceeding brought under this chapter that alleges a violation of section 17 of this chapter solely on the failure in an individual case to make physical delivery within the applicable time under section 19(a)(2) of this chapter, it is a defense if both of the following are shown:

- (1) Failure to make physical delivery was due solely to factors beyond the control of all of the following:
  - (A) The seller.
  - (B) Officers, directors, partners, agents, servants, or employees of the seller.
  - (C) Each person occupying a similar status or performing similar functions as a person described in clause (B).
  - (D) Each person who directly or indirectly controls or is controlled by the seller or by any person described in clause (B) or (C).
  - (E) The seller's affiliates, subsidiaries, and successors.
- (2) Physical delivery was completed within a reasonable time under the applicable circumstances.

*As added by P.L.177-1991, SEC.10.*