

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.

HOUSE ENROLLED ACT No. 1332

AN ACT to amend the Indiana Code concerning trade regulation and to make an appropriation.

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

SECTION 1. IC 4-2-6-15, AS ADDED BY HEA 1001-2010, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) This section does not apply to the following:

- (1) A communication made by the governor concerning the public health or safety.
- (2) A communication:
 - (A) that a compelling public policy reason justifies the state officer to make; and
 - (B) the expenditure for which is approved by the budget agency after an advisory recommendation from the budget committee.

(b) This section does not prohibit a state officer from using in a communication the title of the office the state officer holds.

(c) As used in this section, "communication" refers only to the following:

- (1) An audio communication.
- (2) A video communication.
- (3) A print communication in a newspaper (as defined in IC 5-3-1-0.4).
- (d) A state officer may not use the state officer's name or likeness in



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in and in connection with the issuance, barter, sale, purchase, transfer, or disposition of securities in this state.

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

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

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

SECTION 11. IC 23-19-6-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 12. The commissioner may award, from any amount imposed as a penalty under this article and recovered by the securities division, a percentage, not to exceed ten percent (10%) and as considered appropriate by the commissioner, of the amount recovered, to any person who provided information leading to the imposition of the penalty. Any determination under this section, including whether to make a payment, to whom to make a payment, or in what amount to make a payment, is in the sole discretion of the commissioner. However, a payment may not be made under this section to an employee of the securities division. A determination under this section is final and is not subject to judicial review.**

SECTION 12. IC 23-20 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]:

ARTICLE 20. VICTIMS OF SECURITIES VIOLATIONS

Chapter 1. Restitution for Victims of Securities Violations

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

(b) The term includes:

- (1) a named party in an award;**
- (2) the executor of a named party in an award; or**
- (3) the heirs and assigns of a named party in an award.**

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

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Sec. 3. As used in this chapter, "fund" refers to the securities restitution fund established by section 25 of this chapter.

Sec. 4. As used in this chapter, "out-of-pocket loss" means an amount equal to the amount of restitution ordered under any of the following:

- (1) A final court order.
- (2) A final administrative order.

Sec. 5. As used in this chapter, "person" includes a sole proprietorship, a partnership, a corporation, an association, a fiduciary, or an individual.

Sec. 6. As used in this chapter, "securities violation" means a violation of the following:

- (1) The Securities Act of 1933, as amended, and any regulations related to that act.
- (2) The Securities Exchange Act of 1934, as amended, and any regulations related to that act.
- (3) The Investment Company Act of 1940, as amended, and any regulations related to that act.
- (4) The Investment Advisers Act of 1940, as amended, and any regulations related to that act.
- (5) The Indiana uniform securities act and any rules related to that act.
- (6) Other state securities acts and any rules or regulations related to those acts.

Sec. 7. As used in this chapter, "victim" means an individual who suffers monetary injury as a result of a securities violation.

Sec. 8. The division shall do the following:

- (1) Prescribe forms for processing applications for restitution assistance.
- (2) Determine whether a claim for restitution assistance filed under this chapter should be awarded.

Sec. 9. The division shall require a claimant to produce a copy of:

- (1) a court order; or
- (2) an administrative order;

that demonstrates that restitution has been awarded to the claimant as described in section 16 of this chapter.

Sec. 10. A claimant's personal information (as defined in IC 9-14-3.5-5) is confidential.

Sec. 11. Except as otherwise provided in this chapter, the following persons are eligible for restitution assistance under this chapter:

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(1) A resident of Indiana who is a victim of a securities 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 to Indiana residents who are victims of securities violations in that jurisdiction assistance 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 if the jurisdiction in which the victim resides offers to Indiana residents who are victims of securities violations in that jurisdiction assistance that is substantially similar to the assistance offered under this chapter.

(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. 12. (a) A person eligible for restitution assistance under section 11 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 described in section 16 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 described in section 16 of this chapter.

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

Sec. 13. (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 claimant with a brief statement of the additional information required.

(c) The claimant may, not more than thirty (30) days after

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receipt of the request for additional information, either supply the information or appeal to the securities commissioner as to the completeness of the application.

(d) The decision of the securities commissioner as to the completeness of the application 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 commissioner for good cause.

Sec. 14. (a) Subject to subsection (b), the division may not award restitution assistance if the victim:

(1) sustained the monetary injury as a result of:

- (A) participating or assisting in; or
- (B) attempting to commit or committing;

a securities violation; or

(2) profited or would have profited from the securities violation.

(b) If the victim is a dependent child or dependent parent of the person who commits a securities violation, restitution assistance may be awarded if justice requires.

Sec. 15. The division may not award restitution assistance under this chapter to more than one (1) claimant per victim.

Sec. 16. (a) The division may not award restitution assistance under this chapter unless the securities violation was adjudicated in a state or federal court or a regulatory agency administrative proceeding.

(b) The division may not award restitution assistance under this chapter unless:

- (1) a final order has been entered ordering restitution to the victim in a proceeding described in subsection (a); and
- (2) the party ordered to pay restitution has not paid the full amount.

Sec. 17. The division shall deny an award of restitution assistance under this chapter if a court or administrative order does not contain an award of restitution to the victim.

Sec. 18. (a) The division may not award restitution assistance under this chapter on behalf of a victim whose award of restitution under a court or administrative order is overturned on appeal.

(b) If:

- (1) restitution assistance is awarded under this chapter; and
- (2) after the award of restitution assistance under this chapter, the victim's award of restitution under a court or

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administrative order is overturned on appeal;
the claimant shall forfeit the restitution assistance received under
this chapter.

Sec. 19. (a) The state is subrogated to the rights of the person
awarded restitution under this chapter to the extent of the award.

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

Sec. 20. (a) In addition to the subrogation rights under section
19 of this chapter, the state is entitled to a lien in the amount of the
award on a recovery made by or on behalf of the victim.

(b) The state may:

(1) recover the amount under subsection (a) in a separate
action; or

(2) intervene in an action brought by or on behalf of the
victim.

(c) If a claimant brings an action described in subsection (b)(2),
the claimant may deduct from the money owed to the state under
the lien the state's pro rata share of the reasonable expenses for the
court suit, including attorney's fees. The amount the claimant
deducts under this subsection for the state's pro rata share of the
expenses may not be more than fifteen percent (15%) of the money
owed under the lien.

Sec. 21. If:

(1) an award is made under this chapter; and

(2) a claimant receives a sum required to be deducted under
section 20(a) of this chapter;

the claimant shall refund to the state the amount of overpayment.

Sec. 22. (a) In determining the amount of restitution assistance
to award under this chapter, the division shall determine whether
a victim contributed to the infliction of the victim's monetary
injury.

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

Sec. 23. An award under this chapter may not exceed the lesser
of the following:

(1) Fifteen thousand dollars (\$15,000).

(2) Twenty-five percent (25%) of the amount of the
out-of-pocket loss.

Sec. 24. An award made by the division under this chapter is not
subject to execution, attachment, garnishment, or other process.

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Sec. 25. (a) The securities restitution fund is established.

(b) The fund consists of amounts:

- (1) from funds received for deposit in the securities division enforcement account as provided in IC 23-19-6-1(f); and**
- (2) appropriated from the general assembly.**

Sec. 26. The money in the fund is continually appropriated to the division for purposes of:

- (1) awarding restitution assistance under this chapter; and**
- (2) paying expenses incurred in administering this chapter.**

Sec. 27. Money in the fund and income derived from money in the fund do not revert to the state general fund at the end of a state fiscal year.

Sec. 28. (a) If the fund would be reduced below two hundred fifty thousand dollars (\$250,000) by payment in full of all awards that become final in a month, the division shall suspend payment of the claims that become final during the month and the following two (2) months.

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

Sec. 29. The state is not liable for a written determination made by the division under this chapter except to the extent that money is available in the fund on the date the award is computed by the division under this chapter.

Sec. 30. (a) A claimant convicted of forgery, fraud, or deception in connection with a claim under this chapter forfeits an award paid to the claimant under this chapter.

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

Sec. 31. A person commits a Class C felony if the person knowingly makes or causes to be made:

- (1) in any document filed with or sent to the securities commissioner or the division; or**
- (2) in any proceeding, investigation, or examination;**

under this chapter 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.

Sec. 32. The division may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 13. IC 24-5-15-2, AS AMENDED BY P.L.171-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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