

TITLE 710 SECURITIES DIVISION

Notice of First Public Comment Period

LSA Document #25-231

Indiana Securities Division Fines and Civil Penalties Rule

PURPOSE OF NOTICE

The Indiana Securities Division (Securities Division) is soliciting public comment on adding rules at 710 IAC 5 concerning fines and civil penalties as required by House Enrolled Act (HEA) 1623-2023. The Securities Division seeks comment on the affected citations listed and any other provision of Title 710 that may be affected by this rulemaking.

ADDITIONAL DOCUMENTS

Regulatory Analysis:

CITATIONS AFFECTED: 710 IAC 5

STATUTORY AUTHORITY:

- (1) Ind. Code 23-19-6-1 (Securities)
- (2) Ind Code 23-19-6-5 (Securities)
- (3) Ind. Code 23-2.5-1-8 (Loan Brokers)
- (4) Ind Code 23-2.5-1-36 (Loan Brokers)
- (5) Ind Code 23-2.5-11-6 (Loan Brokers)
- (6) Ind Code 23-2-2.5-1 (Franchises)
- (7) Ind Code 23-2-2.5-42 (Franchises)
- (8) Ind Code 23-2-2.5-47 (Franchises)
- (9) Ind Code 25-11-1-8 (Collection Agencies)
- (10) Ind Code 25-11-1-14 (Collection Agencies)
- (11) Ind Code 23-2-6-22 (Commodities)
- (12) Ind Code 23-2-6-34 (Commodities)

OVERVIEW

Basic Purpose and Background

The Indiana Securities Division regulates multiple industries doing business in Indiana, including Securities, Loan Brokers, Franchises, Collection Agencies, and Commodities. The Securities Division regulates those entities through enforcing rules promulgated under Title 710 as well as Indiana laws codified in the respective Indiana Code relating to Securities (Ind. Code 23-19), Loan Brokers (Ind. Code 23-2.5), Franchises (Ind. Code 23-2-2.5), Collection Agencies (Ind. Code 25-11) and Commodities (23-2-6).

When a violation of any of the statutory provisions or promulgated rules under Title 710 is discovered, the Securities Division is allowed to take a variety of actions based upon the circumstances of the violation. Specifically, the Division is authorized to issue a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation.

While what constitutes a violation is clearly defined through rule or statute, the exact amount of civil penalty issued for any violation has historically been set by policy. With the passage of HEA 1623-2023, that policy must not be promulgated in rule. The proposed rule establishes the considerations taken in determining the amount of penalty assessed in a matter.

Specifically, the proposed rule adds 710 IAC 5-1 to establish mitigating and aggravating factors for consideration when determining the amount to impose as a fine or civil penalty for violation of the Indiana Uniform Securities Act (Ind. Code 23-19). The proposed rule adds 710 IAC 5-2 which establishes mitigating and aggravating factors for consideration when determining the amount to impose as a fine or civil penalty for violation of the Indiana Loan Brokers Act (Ind. Code 23-2.5). The proposed rule adds 710 IAC 5-3 which establishes mitigating and aggravating factors for consideration when determining the amount to impose as a fine or civil penalty for violation of the Indiana Franchises Act (Ind. Code 23-2-2.5). The proposed rule 710 IAC 5-4 which establishes mitigating and aggravating factors for consideration when determining the amount to impose as a fine or civil penalty for violation of the Indiana Collection Agencies Act (Ind. Code 5-11). The proposed rule adds 710 IAC 5-5 which establishes mitigating and aggravating factors for consideration when determining the amount to impose as a fine or civil penalty for violation of the Indiana Commodities Act (Ind. Code 23-2-6).

For purposes of IC 4-22-2-28.1, small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Mr. Jerry Bonnet
General Counsel
Indiana Secretary of State
200 West Washington Street, Room 201
Indianapolis, IN 46204
jbonnet@sos.in.gov
(317) 232-6534

For purposes of IC 4-22-2-28.1, the Small Business Ombudsman designated by IC 5-28-17-6 is:

Matthew Jaworowski
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 650-0126
majaworowski@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in IC 5-28-17-6, specifically IC 5-28-17-6(9), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

REQUEST FOR PUBLIC COMMENT

The Securities Division is soliciting public comment on the proposed rule. Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

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Marie Castetter, Indiana Securities Commissioner

302 W. Washington Street, Room E-111

Indianapolis, IN 46204

(2) By email to mcastetter@sos.in.gov. PLEASE NOTE: Email comments will not be considered part of the official written comment period unless they are sent to the address indicated in this notice.

(3) Attend scheduled public hearing.

COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than May 27, 2025.

The rule, Regulatory Analysis, appendices referenced in the Regulatory Analysis, and materials incorporated by reference (if applicable) are on file at the Indiana Securities Division, 302 W. Washington Street, Room E-111, Indianapolis, Indiana and are available for public inspection. Copies of the rule, Regulatory Analysis, and appendices referenced in the Regulatory Analysis are available at the Indiana Securities Division.

If the Securities Division does not receive substantive comments during the public comment period or public hearing, the rule may be adopted with text that is the same as or does not substantially differ from the text of the proposed rule published in this notice.

PROPOSED RULE

TITLE 710 IAC 5 IS ADDED TO READ AS FOLLOWS:

TITLE 710 SECURITIES DIVISION

PROPOSED NEW RULES

Identification Number: 710 IAC 5

Date Proposed:

Article 5 Assessment of Fines and Civil Penalties

Rule 1 Definitions

Rule 2 Assessment of Indiana Uniform Securities Act Fines and Civil Penalties

Rule 3 Assessment of Indiana Franchise Act Fines and Civil Penalties

Rule 4 Assessment of Indiana Loan Broker Act Fines and Civil Penalties

Rule 5 Assessment of Indiana Commodities Act Fines and Civil Penalties

Rule 6 Assessment of Indiana Collection Agency Act Fines and Civil Penalties

RULE 1 Definitions

710 IAC 5-1-1	Applicability
710 IAC 5-1-2	“Commissioner” defined
710 IAC 5-1-3	“Fraud”, fraudulent”, “deceit”, and “defraud” defined
710 IAC 5-1-4	“Harmed person” defined
710 IAC 5-1-5	“Person” defined
710 IAC 5-1-6	“Respondent” defined

710 IAC 5-1-1 Applicability

Authority: Ind. Code § 23-19-6-1, Ind Code § 23-19-6-5, Ind Code § 23-2.5-1-8, Ind Code § 23-2.5-1-36, Ind Code § 23-2.5-11-6, Ind Code § 23-2-2.5-1, Ind Code § 23-2-2.5-42, Ind Code § 23-2-2.5-47, Ind Code § 25-11-1-8, Ind Code § 25-11-1-14, Ind Code § 23-2-6-22, and Ind Code § 23-2-6-34

Affected: Ind. Code § 23, Ind. Code § 25

Sec. 1. (a) Except as provided in subsection (b), the definitions contained in this title apply throughout this title.

(b) If a definition in this article conflicts with a definition of specific applicability in another part of this title or in a statute that controls another part of this title, the definition of specific applicability controls.

710 IAC 5-1-2 “Commissioner” defined

Authority: Ind. Code § 23-19-6-1, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2.5-11-6

Affected: Ind. Code § 23-19-1-2(9), Ind. Code § 23-2-2.5-1, Ind. Code § 23, Ind. Code § 25

Sec. 2. “Commissioner” means the Indiana Securities Commissioner appointed under Ind. Code 23-19-6-1(a).

710 IAC 5-1-3 “Fraud” defined

Authority: Ind. Code § 23-19-6-1, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2.5-11-6

Affected: Ind. Code § 23-19-1-2(9), Ind. Code § 23-2-2.5-1, Ind. Code § 23, Ind. Code § 25

Sec. 3. (a) Except as provided in subsection (b), “fraud”, “fraudulent”, “deceit”, and “defraud” have the meaning given in Ind. Code § 23-19-1-2(9).

(b) “Fraud” and “deceit” as it relates to franchises includes any

misrepresentation in any manner of a material fact, any promise or representation or prediction as to the future not made honestly or in good faith, or the failure or omission to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading.

710 IAC 5-1-4 “Harmed Person” defined

Authority: Ind. Code § 23-19-6-1, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2.5-11-6

Affected: Ind. Code § 23-19-1-2(9), Ind. Code § 23-2-2.5-1, Ind. Code § 23, Ind. Code § 25

Sec. 4. “Harmed person” means the person harmed, defrauded, misled, or deceived by the violation.

710 IAC 5-1-5 “Person” defined

Authority: Ind. Code § 23-19-6-1, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2.5-11-6

Affected: Ind. Code § 23-19-1-2(9), Ind. Code § 23-2-2.5-1, Ind. Code § 23, Ind. Code § 25

Sec. 5. (a) Except as set forth in subsection (b), “person” has the meaning given in Ind. Code § 23-19-1-2(20).

(b) “Person” as it relates to commodities under Ind. Code 23-2-6 has the meaning set forth in Ind. Code 23-2-6-14.

710 IAC 5-1-6 “Respondent” defined

Authority: Ind. Code § 23-19-6-1, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2.5-11-6

Affected: Ind. Code § 23-19-1-2(9), Ind. Code § 23-2-2.5-1, Ind. Code § 23, Ind. Code § 25

Sec. 6. “Respondent” means the responding party in the legal proceedings in which a fine or civil penalty has been imposed against.

RULE 2 Assessment of Indiana Uniform Securities Act Fines and Civil Penalties

710 IAC 5-2-1	Applicability
710 IAC 5-2-2	Mitigating Factors
710 IAC 5-2-3	Aggravating Factors
710 IAC 5-2-4	Multiple Violations

710 IAC 5-2-1 Applicability

Authority: Ind. Code § 23-19-6-1
Affected: Ind. Code § 23-19-4-12, Ind. Code § 23-19-6-4

Sec. 1. (a) The Commissioner may impose a civil penalty in an amount not to exceed a maximum of ten thousand dollars (\$10,000) on a Respondent per each violation under Ind. Code § 23-19. Mitigating and aggravating factors can affect the amount of civil penalty imposed.

(b) Nothing in this rule requires the Commissioner to impose a civil penalty for a violation.

710 IAC 5-2-2 Mitigating Factors

Authority: Ind. Code § 23-19-6-1
Affected: Ind. Code § 23-19-4-12, Ind. Code § 23-19-6-4

Sec. 2. Mitigating factors are extenuating circumstances that may lead to a reduced civil penalty. The mitigating circumstances that may be considered may include:

- (1)**The violation resulted in no harm to the public.
- (2)** The Respondent has had no other prior violations.
- (3)** The violation did not involve fraud.
- (4)** Any other circumstances presented by the Respondent for consideration.

710 IAC 5-2-3 Aggravating Factors

Authority: Ind. Code § 23-19-6-1
Affected: Ind. Code § 23-19-4-12, Ind. Code § 23-19-6-4

Sec. 3. Aggravating factors are circumstances that may increase an imposed civil penalty. The aggravating circumstances that may be considered may include:

- (1)** The Respondent has a history of prior violations.
- (2)** The Respondent has had a prior violation of similar behavior.
- (3)** The Respondent's actions caused significant harm or loss to the harmed person.
- (4)** The Respondent's actions caused significant harm or loss to multiple

individuals.

- (5) The Respondent owed a fiduciary duty to the harmed person.**
- (6) The harmed person is at least sixty (60) years of age.**
- (7) The violation was committed while using or taking advantage of or in connection with a relationship that is based on religious affiliation or worship.**
- (8) The violation involved fraudulent conduct.**
- (9) The violation amounted to substantial gains to the Respondent.**
- (10) The Respondent obstructed or failed to comply with the Division's investigation.**
- (11) Any other willful or intentional misconduct by the Respondent.**

710 IAC 5-2-4 Multiple Violations

Authority: Ind. Code § 23-19-6-1

Affected: Ind. Code § 23-19-4-12, Ind. Code § 23-19-6-4

Sec. 4. In certain situations, several violations may have been committed. Separate violations may be grouped for the purpose of applying this policy. The total fine or civil penalty assessed in an enforcement case may include penalties for several violations or groups of violations, each calculated pursuant to this policy.

RULE 3 Assessment of Indiana Franchise Act Fines and Civil Penalties

710 IAC 5-3-1	Applicability
710 IAC 5-3-2	Mitigating Factors
710 IAC 5-3-3	Aggravating Factors
710 IAC 5-3-4	Multiple Violations

710 IAC 5-3-1 Applicability

Authority: Ind. Code § 23-2-2.5-1, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2-2.5-47

Affected: Ind. Code § 23-2-2.5

Sec. 1. (a) The Commissioner may impose a civil penalty in an amount not to exceed a maximum of ten thousand dollars (\$10,000) on a Respondent per each violation under Ind. Code § 23-2-2.5. Mitigating and aggravating factors can affect the amount of civil penalty imposed.

(b) Nothing in this rule requires the Commissioner to impose a civil penalty for a violation.

710 IAC 5-3-2 Mitigating Factors

Authority: Ind. Code § 23-2-2.5-1, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2-2.5-47

Affected: Ind. Code § 23-2-2.5

Sec. 2. Mitigating factors are extenuating circumstances that may lead to a reduced civil penalty. The mitigating circumstances that may be considered may include:

- (1)** The violation resulted in no harm to the public.
- (2)** The Respondent has had no other prior violations.
- (3)** The violation did not involve fraud.
- (4)** Any other circumstances presented by the Respondent for consideration.

710 IAC 5-3-3 Aggravating Factors

Authority: Ind. Code § 23-2-2.5-1, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2-2.5-47

Affected: Ind. Code § 23-2-2.5

Sec. 3. Aggravating factors are circumstances that may increase an imposed civil penalty. The aggravating circumstances that may be considered may include:

- (1) The Respondent has a history of prior violations.**
- (2) The Respondent has had a prior violation of similar behavior.**
- (3) The Respondent's actions caused significant harm or loss to the harmed person.**
- (4) The Respondent's actions caused significant harm or loss to multiple individuals.**
- (5) The violation involved fraudulent conduct.**
- (6) The violation amounted to substantial gains to the Respondent.**
- (7) The Respondent obstructed or failed to comply with the Division's investigation.**
- (8) Any other willful or intentional misconduct by the Respondent.**

710 IAC 5-3-4 Multiple Violations

Authority: Ind. Code § 23-2-2.5-1, Ind. Code § 23-2-2.5-42, Ind. Code § 23-2-2.5-47

Affected: Ind. Code § 23-2-2.5

Sec. 4. In certain situations, several violations may have been committed. Separate violations may be grouped for the purpose of imposing a civil penalty. The total fine or civil penalty assessed in an enforcement case may include penalties for several violations or groups of violations, each calculated pursuant to this policy.

RULE 4 Assessment of Indiana Loan Broker Act Fines and Civil Penalties

710 IAC 5-4-1	Applicability
710 IAC 5-4-2	Mitigating Factors
710 IAC 5-4-3	Aggravating Factors
710 IAC 5-4-4	Multiple Violations

710 IAC 5-4-1 Applicability

6 Authority: Ind. Code § 23-2.5-1-8, Ind. Code § 23-2.5-1-36, Ind. Code § 23-2.5-11-6

Affected: Ind. Code § 23-2.5

Sec. 1. (a) The Commissioner may impose a civil penalty in an amount not to exceed a maximum of ten thousand dollars (\$10,000) on a Respondent per each violation under Ind. Code § 23-2.5. Mitigating and aggravating factors can affect the amount of civil penalty imposed.

(b) Nothing in this rule requires the Commissioner to impose a civil penalty for a violation.

710 IAC 5-4-2 Mitigating Factors

6 Authority: Ind. Code § 23-2.5-1-8, Ind. Code § 23-2.5-1-36, Ind. Code § 23-2.5-11-6

Affected: Ind. Code § 23-2.5

Sec. 2. Mitigating factors are extenuating circumstances that may lead to a reduced civil penalty. The mitigating circumstances that may be considered may include:

- (1)** The violation resulted in no harm to the public.
- (2)** The Respondent has had no other prior violations.
- (3)** The violation did not involve fraud.
- (4)** The circumstances that lead to the violation are not likely to reoccur in the future.
- (5)** Any other circumstances presented by the Respondent for consideration.

710 IAC 5-4-3 Aggravating Factors

6 Authority: Ind. Code § 23-2.5-1-8, Ind. Code § 23-2.5-1-36, Ind. Code § 23-2.5-11-6

Affected: Ind. Code § 23-2.5

Sec. 3. Aggravating factors are circumstances that may increase an imposed civil

penalty. The aggravating circumstances that may be considered may include:

- (1) The Respondent has a history of prior violations.
- (2) The Respondent has had a prior violation of similar behavior.
- (3) The Respondent's actions caused significant harm or loss to the harmed person.
- (4) The Respondent's actions caused significant harm or loss to multiple individuals.
- (5) The violation involved fraudulent conduct.
- (6) The violation amounted to substantial gains to the Respondent.
- (7) The Respondent obstructed or failed to comply with the Division's investigation.
- (8) Any other willful or intentional misconduct by the Respondent.

710 IAC 5-4-4 Multiple Violations

Authority: Ind. Code § 23-2.5-1-8, Ind. Code § 23-2.5-1-36, Ind. Code § 23-2.5-11-6

Affected: Ind. Code § 23-2.5

Sec. 4. In certain situations, several violations may have been committed. Separate violations may be grouped for the purpose of imposing a civil penalty. The total fine or civil penalty assessed in an enforcement case may include penalties for several violations or groups of violations, each calculated pursuant to this policy.

RULE 5 Assessment of Indiana Commodities Act Fines and Civil Penalties

710 IAC 5-5-1	Applicability
710 IAC 5-5-2	Mitigating Factors
710 IAC 5-5-3	Aggravating Factors
710 IAC 5-5-4	Multiple Violations

710 IAC 5-5-1 Applicability

Authority: Ind. Code § 23-2-6-22, Ind. Code § 23-2-6-34
Affected: Ind. Code § 23-2-6

Sec. 1. (a) The Commissioner may impose a civil penalty of not more than ten thousand dollars (\$10,000) on a Respondent for any single violation under Ind. Code § 23-2-6. Mitigating and aggravating factors can affect the amount of civil penalty imposed.

(b) Nothing in this rule requires the Commissioner to impose a civil penalty for a violation.

710 IAC 5-5-2 Mitigating Factors

Authority: Ind. Code § 23-2-6-22, Ind. Code § 23-2-6-34
Affected: Ind. Code § 23-2-6

Sec. 2. Mitigating factors are extenuating circumstances that may lead to a reduced civil penalty. The mitigating circumstances that may be considered may include:

- (1)** The violation resulted in no harm to the public.
- (2)** The Respondent has had no other prior violations.
- (3)** The violation did not involve fraud.
- (4)** Any other circumstances presented by the Respondent for consideration.

710 IAC 5-5-3 Aggravating Factors

Authority: Ind. Code § 23-2-6-22, Ind. Code § 23-2-6-34
Affected: Ind. Code § 23-2-6

Sec. 3. Aggravating factors are circumstances that may increase an imposed civil penalty. The aggravating circumstances that may be considered may include:

- (1)** The Respondent has a history of prior violations.
- (2)** The Respondent has had a prior violation of similar behavior.
- (3)** The Respondent's actions caused significant harm or loss to the harmed person.
- (4)** The Respondent's actions caused significant harm or loss to multiple individuals.

- (5) The Respondent owed a fiduciary duty to the harmed person.**
- (6) The harmed person is at least sixty (60) years of age.**
- (7) The violation was committed while using or taking advantage of or in connection with a relationship that is based on religious affiliation or worship.**
- (8) The violation involved fraudulent conduct.**
- (9) The violation amounted to substantial gains to the Respondent.**
- (10) The Respondent obstructed or failed to comply with the Division's investigation.**
- (11) Any other willful or intentional misconduct by the Respondent.**

710 IAC 5-5-4 Multiple Violations

Authority: Ind. Code § 23-2-6-22, Ind. Code § 23-2-6-34
Affected: Ind. Code § 23-2-6

Sec. 4. In certain situations, several violations may have been committed. Separate violations may be grouped for the purpose of applying this policy. The total fine or civil penalty assessed in an enforcement case may include penalties for several violations or groups of violations, each calculated pursuant to this policy.

RULE 6 Assessment of Indiana Collection Agency Act Fines and Civil Penalties

710 IAC 5-6-1	Applicability
710 IAC 5-6-2	Mitigating Factors
710 IAC 5-6-3	Aggravating Factors
710 IAC 5-6-4	Multiple Violations

710 IAC 5-6-1 Applicability

Authority: Ind. Code § 25-11-1-8, Ind. Code § 25-11-1-14

Affected: Ind. Code § 25-11-1-15

Sec. 1. (a) The Commissioner may impose a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) on a Respondent per each violation under Ind. Code § 25-11. Mitigating and aggravating factors can affect the amount of civil penalty imposed.

(b) Nothing in this rule requires the Commissioner to impose a civil penalty for a violation.

710 IAC 5-6-2 Mitigating Factors

Authority: Ind. Code § 25-11-1-8, Ind. Code § 25-11-1-14

Affected: Ind. Code § 25-11-1-15

Sec. 2. Mitigating factors are extenuating circumstances that may lead to a reduced civil penalty. The mitigating circumstances that may be considered may include:

- (1)** The violation resulted in no harm to the public.
- (2)** The Respondent has had no other prior violations.
- (3)** The violation did not involve fraud.
- (4)** Any other circumstances presented by the Respondent for consideration.

710 IAC 5-6-3 Aggravating Factors

Authority: Ind. Code § 25-11-1-8, Ind. Code § 25-11-1-14

Affected: Ind. Code § 25-11-1-15

Sec. 3. Aggravating factors are circumstances that may increase an imposed civil penalty. The aggravating circumstances that may be considered may include:

- (1)** The Respondent has a history of prior violations.
- (2)** The Respondent has had a prior violation of similar behavior.
- (3)** The Respondent's actions caused significant harm or loss to the harmed person.
- (4)** The Respondent's actions caused significant harm or loss to multiple

individuals.

- (5) The harmed person is at least sixty (60) years of age.**
- (6) The violation involved fraudulent conduct.**
- (7) The violation amounted to substantial gains to the Respondent.**
- (8) The Respondent obstructed or failed to comply with the Division's investigation.**
- (9) Any other willful or intentional misconduct by the Respondent.**

710 IAC 5-6-4 Multiple Violations

Authority: Ind. Code § 25-11-1-8, Ind. Code § 25-11-1-14

Affected: Ind. Code § 25-11-1-15

Sec. 4. In certain situations, several violations may have been committed. Separate violations may be grouped for the purpose of applying this policy. The total fine or civil penalty assessed in an enforcement case may include penalties for several violations or groups of violations, each calculated pursuant to this policy.