

TITLE 710 SECURITIES DIVISION**Notice of Public Comment Period For Interim Rule**

LSA Document #25-276

FINES AND CIVIL PENALTIES**PURPOSE OF NOTICE**

The Securities Division (division) is soliciting public comment on an interim rule to be temporarily added before the adoption of a rule concerning fines and civil penalties required by House Enrolled Act (HEA) 1623-2023. The division seeks comment on the affected citations listed and any other provisions of Title 710 that may be affected by this rulemaking.

ADDITIONAL DOCUMENTS

Governor's Approval: [20250514-IR-710250276GAA](#)

Regulatory Analysis: [20250514-IR-710250276RAA](#)

CITATIONS AFFECTED: [710 IAC 5](#)

STATUTORY AUTHORITY: [IC 23-2-2.5-42](#); [IC 23-2-2.5-47](#); [IC 23-2-6-22](#); [IC 23-2-6-34](#); [IC 23-2.5-11-6](#); [IC 23-19-6-1](#); [IC 23-19-6-5](#); [IC 25-11-1-8](#); [IC 25-11-1-14](#)

OVERVIEW**Basic Purpose and Background**

The division regulates multiple industries doing business in Indiana, including securities, loan brokers, franchises, collection agencies, and commodities. The division regulates those industries through enforcing rules promulgated under Title 710, as well as Indiana laws codified in the Indiana Code relating to securities (IC 23-19), loan brokers (IC 23-2.5), franchises (IC 23-2-2.5), collection agencies (IC 25-11), and commodities (IC 23-2-6).

When a violation of any statutory provisions or promulgated rules under Title 710 is discovered, the division is allowed to take a variety of actions based on 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 may 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: (1) [710 IAC 5-1](#) for violation of the Indiana Uniform Securities Act under [IC 23-19](#); (2) [710 IAC 5-2](#) for violation of the Indiana Loan Brokers Act under [IC 23-2.5](#); (3) [710 IAC 5-3](#) for violation of the Indiana Franchises Act under [IC 23-2-2.5](#); (4) [710 IAC 5-4](#) for violation of the Indiana Collection Agencies Act under [IC 5-11](#); and (5) [710 IAC 5-5](#) for violation of the Indiana Commodities Act under [IC 23-2-6](#); to establish mitigating and aggravating factors considered when determining the amount to impose as a fine or civil penalty.

The division has initiated the permanent rulemaking process for the interim rule through making this a temporary rule until the permanent rule is approved.

Statement Justifying Requirement or Cost

The interim rule does not add or increase fines or civil penalties allowed by statute, but rather identifies mitigating and aggravating factors that may be considered in assessing fines or civil penalties that were not previously in the Indiana Code

or Indiana Administrative Code. Additionally, the proposed permanent rule places the fines and civil penalties set and currently charged by the division into a single article, [710 IAC 5](#).

REQUEST FOR PUBLIC COMMENT

The division is soliciting public comment on the interim rule. Comments may be submitted in one of the following ways:

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

LSA Document #25-276 Fines and Civil Penalties
Marie Castetter, Indiana Securities Commissioner
302 West 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.

COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than June 13, 2025.

The rule, Regulatory Analysis, appendices referenced in the Regulatory Analysis and Statement Justifying Requirement or Cost, and materials incorporated by reference (if applicable) are on file at the Securities Division, 302 West 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 and Statement Justifying Requirement or Cost are available at the Securities Division office.

PROPOSED INTERIM RULE

SECTION 1. [710 IAC 5](#) IS TEMPORARILY ADDED TO READ AS FOLLOWS:

ARTICLE 5. ASSESSMENT OF FINES AND CIVIL PENALTIES (INTERIM RULE)

Rule 1. Definitions (Interim Rule)

[710 IAC 5-1-1](#) Applicability (Interim Rule)

Authority: [IC 23-2-2.5-42](#); [IC 23-2-2.5-47](#); [IC 23-2-6-22](#); [IC 23-2-6-34](#); [IC 23-2.5-11-6](#); [IC 23-19-6-1](#); [IC 23-19-6-5](#); [IC 25-11-1-8](#); [IC 25-11-1-14](#)

Affected: [IC 23-2](#); [IC 23-2.5](#); [IC 23-19](#); [IC 25-11](#)

Sec. 1. (a) Except as provided in subsection (b), the definitions contained in this article 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. (*Securities Division; [710 IAC 5-1-1](#)*)

[710 IAC 5-1-2](#) "Commissioner" defined (Interim Rule)

Authority: [IC 23-19-6-1](#); [IC 23-2-2.5-42](#); [IC 23-2-2.5-47](#); [IC 23-2.5-11-6](#)

Affected: [IC 23-19-1-2](#); [IC 23-19-6-1](#); [IC 23-2-2.5-1](#)

Sec. 2. "Commissioner" means the securities commissioner appointed under [IC 23-19-6-1\(a\)](#). (*Securities Division; 710 IAC 5-1-2*)

[710 IAC 5-1-3](#) "Fraud" defined (Interim Rule)

Authority: [IC 23-19-6-1](#); [IC 23-2-2.5-42](#); [IC 23-2-2.5-47](#); [IC 23-2.5-11-6](#)

Affected: [IC 23-19-1-2](#); [IC 23-2-2.5-1](#)

Sec. 3. (a) Except as provided in subsection (b), "fraud", "fraudulent", "deceit", and "defraud" have the meaning set forth in [IC 23-19-1-2\(9\)](#).

(b) Fraud and deceit related to franchises includes:

- (1)** the misrepresentation in any way of a material fact;
- (2)** any promise or representation or prediction concerning the future not made honestly or in good faith; or
- (3)** the failure or omission to state a material fact necessary to make the statements made, because of the circumstances under which they were made, not misleading.

(*Securities Division; 710 IAC 5-1-3*)

[710 IAC 5-1-4](#) "Harmed person" defined (Interim Rule)

Authority: [IC 23-2-2.5-42](#); [IC 23-2-2.5-47](#); [IC 23-2.5-11-6](#); [IC 23-19-6-1](#)

Affected: [IC 23-2-2.5-1](#); [IC 23-19-1-2](#)

Sec. 4. "Harmed person" means the person harmed, defrauded, misled, or deceived by the violation. (*Securities Division; 710 IAC 5-1-4*)

[710 IAC 5-1-5](#) "Person" defined (Interim Rule)

Authority: [IC 23-2-2.5-42](#); [IC 23-2-2.5-47](#); [IC 23-2.5-11-6](#); [IC 23-19-6-1](#)

Affected: [IC 23-2-2.5-1](#); [IC 23-2-6-14](#); [IC 23-19-1-2](#)

Sec. 5. (a) Except as provided in subsection (b), "person" has the meaning set forth in [IC 23-19-1-2\(20\)](#).

(b) "Person", as it relates to commodities under [IC 23-2-6](#), has the meaning set forth in [IC 23-2-6-14](#).

(*Securities Division; 710 IAC 5-1-5*)

[710 IAC 5-1-6](#) "Respondent" defined (Interim Rule)

Authority: [IC 23-2-2.5-42](#); [IC 23-2-2.5-47](#); [IC 23-2.5-11-6](#); [IC 23-19-6-1](#)

Affected: [IC 23-2-2.5-1](#); [IC 23-19-1-2](#)

Sec. 6. "Respondent" means the responding party in legal proceedings that a fine or civil penalty has been imposed against. (*Securities Division; 710 IAC 5-1-6*)

Rule 2. Assessment of Indiana Uniform Securities Act Fines and Civil Penalties (Interim Rule)

[710 IAC 5-2-1](#) Applicability (Interim Rule)

Authority: [IC 23-19-6-1](#)

Affected: [IC 23-19-4-12](#); [IC 23-19-6-4](#)

Sec. 1. (a) The commissioner may impose a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) on a respondent for each violation under IC 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. (*Securities Division; 710 IAC 5-2-1*)

710 IAC 5-2-2 Mitigating factors (Interim Rule)

Authority: [IC 23-19-6-1](#)

Affected: [IC 23-19-4-12](#); [IC 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 include the following:

- (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.**

(*Securities Division; 710 IAC 5-2-2*)

710 IAC 5-2-3 Aggravating factors (Interim Rule)

Authority: [IC 23-19-6-1](#)

Affected: [IC 23-19-4-12](#); [IC 23-19-6-4](#)

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

- (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 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.**

(*Securities Division; 710 IAC 5-2-3*)

710 IAC 5-2-4 Multiple violations (Interim Rule)

Authority: [IC 23-19-6-1](#)

Affected: [IC 23-19-4-12](#); [IC 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 under this policy. (*Securities Division; [710 IAC 5-2-4](#)*)

Rule 3. Assessment of Indiana Franchise Act Fines and Civil Penalties (Interim Rule)

[710 IAC 5-3-1](#) Applicability (Interim Rule)

Authority: [IC 23-2-2.5-42](#); [IC 23-2-2.5-47](#)

Affected: [IC 23-2-2.5](#)

Sec. 1. (a) The commissioner may impose a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) on a respondent for each violation under IC 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. (*Securities Division; [710 IAC 5-3-1](#)*)

[710 IAC 5-3-2](#) Mitigating factors (Interim Rule)

Authority: [IC 23-2-2.5-42](#); [IC 23-2-2.5-47](#)

Affected: [IC 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 include the following:

- (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.

(*Securities Division; [710 IAC 5-3-2](#)*)

[710 IAC 5-3-3](#) Aggravating factors (Interim Rule)

Authority: [IC 23-2-2.5-42](#); [IC 23-2-2.5-47](#)

Affected: [IC 23-2-2.5](#)

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

- (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.

(Securities Division; [710 IAC 5-3-3](#))

710 IAC 5-3-4 Multiple violations (Interim Rule)

Authority: [IC 23-2-2.5-42](#); [IC 23-2-2.5-47](#)

Affected: [IC 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 under this policy. (Securities Division; [710 IAC 5-3-4](#))

Rule 4. Assessment of Indiana Loan Broker Act Fines and Civil Penalties (Interim Rule)

710 IAC 5-4-1 Applicability (Interim Rule)

Authority: [IC 23-2.5-1-8](#); [IC 23-2.5-1-36](#); [IC 23-2.5-11-6](#)

Affected: [IC 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 for each violation under IC 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. (Securities Division; [710 IAC 5-4-1](#))

710 IAC 5-4-2 Mitigating factors (Interim Rule)

Authority: [IC 23-2.5-11-6](#)

Affected: [IC 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 include the following:

- (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.

(Securities Division; [710 IAC 5-4-2](#))

710 IAC 5-4-3 Aggravating factors (Interim Rule)

Authority: [IC 23-2.5-11-6](#)

Affected: [IC 23-2.5](#)

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

- (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.**

(Securities Division; [710 IAC 5-4-3](#))

[710 IAC 5-4-4](#) Multiple violations (Interim Rule)

Authority: [IC 23-2.5-11-6](#)

Affected: [IC 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 under this policy. *(Securities Division; [710 IAC 5-4-4](#))*

Rule 5. Assessment of Indiana Commodities Act Fines and Civil Penalties (Interim Rule)

[710 IAC 5-5-1](#) Applicability (Interim Rule)

Authority: [IC 23-2-6-22](#); [IC 23-2-6-34](#)

Affected: [IC 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 IC 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. *(Securities Division; [710 IAC 5-5-1](#))*

[710 IAC 5-5-2](#) Mitigating factors (Interim Rule)

Authority: [IC 23-2-6-22](#); [IC 23-2-6-34](#)

Affected: [IC 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 include the following:

- (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.

(Securities Division; [710 IAC 5-5-2](#))

710 IAC 5-5-3 Aggravating factors (Interim Rule)

Authority: [IC 23-2-6-22](#); [IC 23-2-6-34](#)

Affected: [IC 23-2-6](#)

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

- (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 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.

(Securities Division; [710 IAC 5-5-3](#))

710 IAC 5-5-4 Multiple violations (Interim Rule)

Authority: [IC 23-2-6-22](#); [IC 23-2-6-34](#)

Affected: [IC 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 under this policy. (Securities Division; [710 IAC 5-5-4](#))

Rule 6. Assessment of Indiana Collection Agency Act Fines and Civil Penalties (Interim Rule)

710 IAC 5-6-1 Applicability (Interim Rule)

Authority: [IC 25-11-1-8](#); [IC 25-11-1-14](#)

Affected: [IC 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 for each violation under IC 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. (*Securities Division; 710 IAC 5-6-1*)

710 IAC 5-6-2 Mitigating factors (Interim Rule)

Authority: [IC 25-11-1-8](#); [IC 25-11-1-14](#)

Affected: [IC 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 include the following:

- (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.**

(*Securities Division; 710 IAC 5-6-2*)

710 IAC 5-6-3 Aggravating factors (Interim Rule)

Authority: [IC 25-11-1-8](#); [IC 25-11-1-14](#)

Affected: [IC 25-11-1-15](#)

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

- (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.**

(*Securities Division; 710 IAC 5-6-3*)

710 IAC 5-6-4 Multiple violations (Interim Rule)

Authority: [IC 25-11-1-8](#); [IC 25-11-1-14](#)

Affected: [IC 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 under this policy. (*Securities Division; 710 IAC 5-6-4*)

SECTION 2. This document expires 425 days after the publisher accepts the Interim Final Rule for filing.

Posted: 05/14/2025 by Legislative Services Agency