

TITLE 710 SECURITIES DIVISION

Regulatory Analysis LSA Document #25-231

I. Description of Rule

a. History and Background of the Rule – HEA 1623-2023 established new requirements for executive agency rulemaking. HEA 1623-2023 provided for a safe harbor for executive agencies to get their fees, fines, civil penalties, financial benefit limitations, and another payment amount set by an agency that otherwise qualifies as a rule into compliance with the Indiana Code. The proposed permanent rule is the result of the efforts of the Securities Division to comply with the requirements of the safe harbor and to get the Securities Division into compliance with the changes to HEA 1623-2023. The process used by the Securities Division for fees, fines, civil penalties, financial benefit limitations, and another payment amount set by an agency that otherwise qualifies as a rule was to publish the rule on the website of the Indiana Securities Division after approval of the Division. While the fees are statutorily set, the fines and civil penalties set forth statutory maximums that may be imposed by the Securities Division.

b. Scope of the Rule – The proposed permanent rule adds the schedule of fines and civil penalties that may be imposed with further explanation of how the amounts within the discretion of the Securities Division are assessed. The rule identifies mitigating and aggregating factors that may be considered is assessing fines or civil penalties that otherwise qualifies as a rule that were not previously in the Indiana Code or the Indiana Administrative Code. The Indiana Securities Division is placing all fines and civil penalties imposed by the Indiana Securities Division that otherwise qualifies as a rule into one (1) article in the Indiana Administrative Code for ease of access and transparency.

c. Statement of Need – The proposed permanent rule will be established in order to comply with Ind. Code 4-22-2-19.6. For each fine or civil penalty the Indiana Securities Division may impose, the fine or civil penalty must be set forth 1) as a specific dollar amount; 2) as a formula by which a specific dollar amount can be reasonably calculated by persons regulated or otherwise affected by the rule; or 3) as a range of potential dollar amounts, stating the factors that the Securities Division will utilize to set a specific dollar amount in an individual case with sufficient certainty that a review of the Securities Division's action under Ind. Code 4-21.5 or comparable process can evaluate whether the amount was reasonable. Therefore, the proposed permanent rule will identify some factors that may be used in determining the fine or civil penalty to be imposed. Pursuant to Ind. Code 23-19-6-5, the Indiana Securities Commissioner finds that this proposed permanent rule is appropriate in the public interest.

d. Statutory Authority for the Proposed Rule –

The statutory authority for the agency to generally regulate fines and civil penalties imposed by the Indiana Securities Division that otherwise qualifies as a rule and the

specific authority for the Securities Division to issue the proposed permanent rule as follows:

- (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)

e. Fines and Civil Penalties – The proposed permanent 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 the Indiana Administrative Code. Additionally, the proposed permanent rule places the fines and civil penalties set by the Indiana Securities Division currently charged by the Securities Division into a single article, 710 IAC 5.

II. Fiscal Impact Analysis

a. Anticipated Effective Date of the Rule – The anticipated effective date for the rule is before the July 1, 2025 deadline under Ind. Code 4-22-2-19.6(e).

b. Estimated Fiscal Impact on State and Local Government – The proposed permanent rule does not impact expenditures and revenues of the Indiana Securities Division or local government because the amounts charged are what is current for the Securities Division. There is no impact here.

c. Sources of Expenditures or Revenues Affected by the Rule – The proposed permanent rule does not impact expenditures and revenues of the Indiana Securities Division or local government because the amounts charged are what is current for the department. Additionally, there is no fiscal impact here.

III. Impacted Parties

Because the proposed permanent rule establishes factors to be considered in assessing fines and civil penalties within the statutory maximums currently allowed where there is no consent agreement between the parties, the impact to regulated persons by the Securities Division is nominal. In the past five (5) years, there have been a total of fifty-seven (57) civil penalties issued with only one of those penalties assessed by the Commissioner while all other penalties were agreed upon via consent agreement and approved by the Commissioner. The proposed permanent rule is to ensure the Securities Division is compliant with the changes to Ind. Code 4-22-2-19.6.

IV. Changes in Proposed Rule

Indiana Administrative Code Provision	Proposed Changes
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710 IAC 5-1	Moves to one (1) article the Indiana Administrative Code that establishes how the fines and civil penalties amounts imposed by the Securities Division under the Indiana Uniform Securities Act (Ind Code 23-19) are determined.
710 IAC 5-2	Moves to one (1) article the Indiana Administrative Code that establishes how the fines and civil penalties amounts imposed by the Securities Division under the Indiana Loan Broker Act (Ind Code 23-2.5) are determined.
710 IAC 5-3	Moves to one (1) article the Indiana Administrative Code that establishes how the fines and civil penalties amounts imposed by the Securities Division under the Indiana Franchises Act (Ind Code 23-2-2.5) are determined.
710 IAC 5-4	Moves to one (1) article the Indiana Administrative Code that establishes how the fines and civil penalties amounts imposed by the Securities Division under the Indiana Collection Agencies Act (Ind Code 25-11) are determined.
710 IAC 5-5	Moves to one (1) article the Indiana Administrative Code that establishes how the fines and civil penalties amounts imposed by the Securities Division under the Indiana Commodities Act (Ind Code 23-2-6) are determined.

V. Benefit Analysis

a.Estimate of Primary and Direct Benefits of the Rule – The proposed permanent rule has the estimated primary and direct benefit of getting the Securities Division into compliance with Ind. Code 4-22-2-19.6.

b.Estimate of Secondary or Indirect Benefits of the Rule – The proposed permanent rule has the estimated secondary or indirect benefits of increasing the transparency of the Securities Division to a regulated person and providing clarity to the regulated person regarding the determination of fines and civil penalties imposed by the Securities Division to ensure the regulated person can reasonably determine the fine or civil penalty.

c.Estimate of Any Cost Savings to Regulated Industries – The proposed permanent rule will not provide cost savings to an individual, a business, or both.

VI. Cost Analysis

a. Estimate of Compliance Costs for Regulated Entities – Because the maximum amounts of fines and civil penalties are already defined by statute and the proposed permanent rule only provides factors to be considered when assessing fines and civil penalties imposed by the Securities Division, there are not any direct costs or indirect costs associated with the proposed permanent rule to the Securities Division.

b. Estimate of Administrative Expenses Imposed by the Rules – There are not any legal, consulting, reporting, accounting, or other administrative expenses imposed by the requirements of the proposed permanent rule. There is no additional time that a regulated person would need to spend to understand the proposed permanent rule because the proposed permanent rule does not make any changes to the current operations of the Securities Division.

c. The fees, fines, and civil penalties analysis required by IC 4-22-2-19.6 – The proposed permanent rule does not add or increase a fine or a civil penalty as the maximum amount allowed to be imposed has already been established in the Indiana Code. The proposed permanent rule provides information about how the Securities Division determines the amount of the fine or civil penalty based upon mitigating and aggravating factors that may be applicable. The fines and civil penalties are assessed by keeping in mind the Indiana Securities Division's ultimate objective of investor protection, but may include consideration of the harm to the public or investor, prior violations by the offender, the need for deterrence, and the nature of the violation.

d. Implementation costs – The implementation costs of the proposed rule are not expected to exceed \$1,000,000 over a two-year period per Ind. Code § 4-22-2-22(c)(6).

VII. Sources of Information

a. Independent Verifications or Studies – No studies were conducted or relied upon for the cost-benefit analysis.

b. Sources Relied Upon in Determining and Calculating Costs and Benefits – No sources outside of the Securities Division were used to calculate costs and benefits.

VIII. Regulatory Analysis

There are no new requirements proposed in the proposed permanent rule. The proposed permanent rule ensures compliance with Ind. Code 4-22-2-19.6.

IX. Contact Information of Staff to Answer Substantive Questions

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[Text to be added by the Register]

First Notice of Public Comment Period with Proposed Rule [link to document with proposed rule]

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