

TITLE 710 SECURITIES DIVISION

STATEMENT JUSTIFYING INTERIM RULEMAKING

LSA Document #25-276

Interim Rulemaking for the Indiana Securities Division

Pursuant to Ind. Code §4-22-2-37.2, the Indiana Securities Division (“Division”) requests approval to supplement rules with the interim rulemaking procedures. The proposed interim rules are attached. A change in state law under HEA 1623 (eff. July 1, 2023) justifies interim rulemaking as HEA 1623 abolished emergency rulemaking authority and replaced it with interim rulemaking. Further, HEA 1623 required Agencies that assess fines or civil penalties to prepare rules describing the circumstances for which the agency will assess a fee, fine or civil penalty and set forth specific dollar amounts, a formula for the dollar amounts, and factors to set dollar amount. (Ind. Code § 4-22-2-19.6(b)).

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 now be promulgated in rule. The proposed rule establishes the considerations taken in determining the amount of penalty assessed in a matter.

The Division regulates multiple industries 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 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. These civil penalties may be imposed on individuals and/or firms that work in these industries.

Specifically, the interim rule temporarily 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 interim rule temporarily 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 interim rule temporarily 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 interim rule temporarily adds 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 25-11). The interim rule

temporarily 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).

The interim 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.

The Division has initiated the permanent rulemaking process for the interim rule thereby making this a temporary rule until the permanent rule is approved. The Division anticipates that the regular rulemaking will be completed and approved by October 1, 2025.

TITLE 710 SECURITIES DIVISION

PROPOSED INTERIM RULES

Identification Number: 710 IAC 5

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

47

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

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

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

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.
- (4)** Any other circumstances presented by the Respondent for consideration.

710 IAC 5-4-3 Aggravating Factors

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.