

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1332, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning trade
- 3 regulation and to make an appropriation.
- 4 Page 10, line 14, after "account." insert "**Notwithstanding**
- 5 **IC 9-23-6-4, IC 23-2-2.5-34, IC 23-2-2.5-43, IC 23-2-5-7,**
- 6 **IC 23-19-4-12, IC 25-11-1-15, and this chapter, five percent (5%)**
- 7 **of funds received after June 30, 2010, for deposit in the**
- 8 **enforcement account shall instead be deposited in the securities**
- 9 **restitution fund established under IC 23-20-1-26."**
- 10 Page 10, line 15, after "funds" insert "**deposited**".
- 11 Page 12, between lines 4 and 5, begin a new paragraph and insert:
- 12 "SECTION 8. IC 23-20 IS ADDED TO THE INDIANA CODE AS
- 13 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 14 2010]:
- 15 **ARTICLE 20. VICTIMS OF SECURITIES VIOLATIONS**
- 16 **Chapter 1. Restitution for Victims of Securities Violations**
- 17 **Sec. 1. (a) As used in this chapter, "claimant" means a victim**
- 18 **filing an application for restitution assistance under this chapter.**
- 19 **(b) The term includes:**
- 20 **(1) a named party in an award;**
- 21 **(2) the executor of a named party in an award; or**

1 **(3) the heirs and assigns of a named party in an award.**

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

4 **Sec. 3. As used in this chapter, "fund" refers to the securities**
5 **restitution fund established by section 26 of this chapter.**

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

9 **(1) A final court order.**

10 **(2) A final administrative order.**

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

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

16 **(1) The Securities Act of 1933, as amended, and any**
17 **regulations related to that act.**

18 **(2) The Securities Exchange Act of 1934, as amended, and any**
19 **regulations related to that act.**

20 **(3) The Investment Company Act of 1940, as amended, and**
21 **any regulations related to that act.**

22 **(4) The Investment Advisers Act of 1940, as amended, and any**
23 **regulations related to that act.**

24 **(5) The Indiana uniform securities act and any rules related**
25 **to that act.**

26 **(6) Other state securities acts and any rules or regulations**
27 **related to those acts.**

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

30 **Sec. 8. The division shall do the following:**

31 **(1) Prescribe forms for processing applications for restitution**
32 **assistance.**

33 **(2) Determine whether a claim for restitution assistance filed**
34 **under this chapter should be awarded.**

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

37 **(1) a court order; or**

38 **(2) an administrative order;**

1 that demonstrates that restitution has been awarded to the
2 claimant as described in section 17 of this chapter.

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

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

8 (1) A resident of Indiana who is a victim of a securities
9 violation committed:

10 (A) in Indiana; or

11 (B) in a jurisdiction other than Indiana, including a foreign
12 country, if the jurisdiction in which the securities violation
13 occurred does not offer assistance to a victim of a securities
14 violation that is substantially similar to the assistance
15 offered under this chapter.

16 (2) A nonresident of Indiana who is a victim of a securities
17 violation committed in Indiana.

18 (3) A surviving spouse or dependent child of a victim
19 described in subdivision (1) or (2).

20 (4) Any other person legally dependent for principal support
21 upon a victim described in subdivision (1) or (2).

22 Sec. 12. (a) A person eligible for restitution assistance under
23 section 11 of this chapter may file an application for restitution
24 assistance with the division.

25 (b) The application must be received by the division not more
26 than one hundred eighty (180) days after the date of the order
27 described in section 17 of this chapter. The division may grant an
28 extension of time for good cause shown by the claimant. However,
29 the division may not accept an application that is received more
30 than two (2) years after the date of the order described in section
31 17 of this chapter.

32 (c) The application must be filed in the office of the division in
33 person, through the division's web site, or by first class or certified
34 mail. If requested, the division shall assist a victim in preparing the
35 application.

36 (d) The division shall accept all applications filed in compliance
37 with this chapter. Upon receipt of a complete application, the
38 division shall promptly begin the processing of an application.

1 **Sec. 13. (a) The division shall review all applications to ensure**
2 **that the applications are complete.**

3 **(b) If an application is not complete, the application shall be**
4 **returned to the applicant with a brief statement of the additional**
5 **information required.**

6 **(c) The applicant may, not more than thirty (30) days after**
7 **receipt of the request for additional information, either supply the**
8 **information or appeal to the securities commissioner.**

9 **(d) The decision of the securities commissioner is final.**

10 **(e) The division shall deny the application if:**

11 **(1) the applicant does not furnish additional information; or**

12 **(2) additional time is not granted by the securities**
13 **commissioner for good cause.**

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

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

17 **(A) participating or assisting in; or**

18 **(B) attempting to commit or committing;**
19 **a securities violation; or**

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

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

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

27 **Sec. 16. (a) As used in this section, "net worth" means the excess**
28 **of total assets over total liabilities.**

29 **(b) The division may not award restitution assistance to a**
30 **claimant eligible under section 11 of this chapter if the victim or**
31 **claimant had a net worth of greater than five hundred thousand**
32 **dollars (\$500,000) at the time of suffering monetary injury from a**
33 **securities violation.**

34 **Sec. 17. (a) The division may not award restitution assistance**
35 **under this chapter unless the securities violation was adjudicated**
36 **in a state or federal court or a regulatory agency administrative**
37 **proceeding.**

38 **(b) The division may not award restitution assistance under this**

1 **chapter unless:**

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

6 **Sec. 18. The division shall deny an award of restitution**
7 **assistance under this chapter if a court or administrative order**
8 **does not contain an award of restitution to the victim.**

9 **Sec. 19. (a) The division may not award restitution assistance**
10 **under this chapter to a claimant whose award of restitution under**
11 **a court or administrative order is overturned on appeal.**

12 **(b) If:**

- 13 (1) a claimant is awarded restitution assistance under this
14 chapter; and
15 (2) after receiving an award of restitution assistance under
16 this chapter, the claimant's award of restitution under a court
17 or administrative order is overturned on appeal;

18 **the claimant shall forfeit the restitution assistance received under**
19 **this chapter.**

20 **Sec. 20. (a) The state is subrogated to the rights of the victim**
21 **awarded restitution to the extent of the award.**

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

25 **Sec. 21. (a) In addition to the subrogation rights under section**
26 **20 of this chapter, the state is entitled to a lien in the amount of the**
27 **award on a recovery made by or on behalf of the victim.**

28 **(b) The state may:**

- 29 (1) recover the amount under subsection (a) in a separate
30 action; or
31 (2) intervene in an action brought by or on behalf of the
32 victim.

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

1 **Sec. 22. If:**
2 **(1) an award is made under this chapter; and**
3 **(2) a claimant receives a sum required to be deducted under**
4 **section 21(a) of this chapter;**
5 **the claimant shall refund to the state the amount of overpayment.**

6 **Sec. 23. (a) In determining the amount of restitution assistance**
7 **to award under this chapter, the division shall determine whether**
8 **a victim contributed to the infliction of the victim's monetary**
9 **injury.**

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

13 **Sec. 24. An award to a claimant under this chapter may not**
14 **exceed the lesser of the following:**

- 15 **(1) Fifteen thousand dollars (\$15,000).**
16 **(2) Twenty-five percent (25%) of the amount of out-of-pocket**
17 **loss.**

18 **Sec. 25. An award made by the division to a claimant is not**
19 **subject to execution, attachment, garnishment, or other process.**

20 **Sec. 26. (a) The securities restitution fund is established.**

21 **(b) The fund consists of amounts:**

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

25 **Sec. 27. The money in the fund is continually appropriated to**
26 **the division for purposes of:**

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

29 **Sec. 28. Money in the fund and income derived from money in**
30 **the fund do not revert to the state general fund at the end of a state**
31 **fiscal year.**

32 **Sec. 29. (a) If the fund would be reduced below two hundred**
33 **fifty thousand dollars (\$250,000) by payment in full of all awards**
34 **that become final in a month, the division shall suspend payment**
35 **of the claims that become final during the month and the following**
36 **two (2) months.**

37 **(b) At the end of the suspension period, the division shall pay the**
38 **suspended claims. If the fund would be exhausted by payment in**

1 full of the suspended claims, the amount paid to each claimant shall
2 be prorated.

3 **Sec. 30. The state is not liable for a written determination made**
4 **by the division under this chapter except to the extent that money**
5 **is available in the fund on the date the award is computed by the**
6 **division under this chapter.**

7 **Sec. 31. (a) A claimant convicted of forgery, fraud, or deception**
8 **in connection with a claim under this chapter forfeits an award**
9 **paid to the claimant under this chapter.**

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

12 **Sec. 32. A person commits a Class C felony if the person**
13 **knowingly makes or causes to be made:**

14 **(1) in any document filed with or sent to the securities**
15 **commissioner or the division; or**

16 **(2) in any proceeding, investigation, or examination;**
17 **under this chapter any statement that is, at the time and in the light**
18 **of the circumstances under which it is made, false or misleading in**
19 **any material respect.**

20 **Sec. 33. The division may adopt rules under IC 4-22-2 to**
21 **implement this chapter."**

22 Page 17, line 15, after "notice" insert "**by certified mail, return**
23 **receipt requested,"**.

24 Page 20, delete lines 4 through 42, begin a new paragraph and
25 insert:

26 "SECTION 20. IC 27-7-3.7-1.3 IS ADDED TO THE INDIANA
27 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
28 [EFFECTIVE JULY 1, 2010]: **Sec. 1.3. As used in this chapter,**
29 **"collected funds" means funds that are finally settled and deposited**
30 **in, and irrevocably credited to, a closing agent's escrow account.**

31 SECTION 21. IC 27-7-3.7-4, AS ADDED BY P.L.92-2009,
32 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
33 JULY 1, 2010]: **Sec. 4. As used in this chapter, "good funds" means**
34 **funds in any of the following forms:**

35 **(1) United States currency.**

36 **(2) ~~Wired funds~~ Any of the following that are unconditionally**
37 **held by and irrevocably credited to the escrow account of the**
38 **closing agent:**

- 1 **(A) Wire funds.**
 2 **(B) Electronic funds transfers.**
 3 (3) Certified or cashier's checks that are drawn on an existing
 4 account at a:
 5 (A) bank;
 6 (B) savings and loan association;
 7 (C) credit union; or
 8 (D) savings bank;
 9 chartered under the laws of a state or the United States.
 10 **(4) Internal transfers that:**
 11 **(A) are credited to the escrow account of the closing agent;**
 12 **and**
 13 **(B) are initiated and funded by a:**
 14 **(i) bank;**
 15 **(ii) savings and loan association;**
 16 **(iii) credit union; or**
 17 **(iv) savings bank;**
 18 **chartered under the laws of a state or the United States.**
 19 ~~(4)~~ **(5)** A check drawn on the trust account of a real estate broker
 20 licensed under IC 25-34.1, if the closing agent has reasonable and
 21 prudent grounds to believe that sufficient funds will be available
 22 for withdrawal from the account on which the check is drawn at
 23 the time of disbursement of funds from the closing agent's escrow
 24 account.
 25 ~~(5)~~ **(6)** A personal check not to exceed five hundred dollars
 26 (\$500) per closing.
 27 ~~(6)~~ **(7)** A check issued by the state, the United States, or a
 28 political subdivision of the state or the United States.
 29 ~~(7)~~ **(8)** A check drawn on the escrow account of another closing
 30 agent, if the closing agent in the escrow transaction has
 31 reasonable and prudent grounds to believe that sufficient funds
 32 will be available for withdrawal from the account upon which the
 33 check is drawn at the time of disbursement of funds from the
 34 escrow account of the closing agent in the escrow transaction.
 35 ~~(8)~~ **(9)** A check issued by a farm credit service authorized under
 36 the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

37 SECTION 22. IC 27-7-3.7-7, AS ADDED BY P.L.92-2009,
 38 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

1 JULY 1, 2010]: Sec. 7. A closing agent may not make disbursements
 2 from an escrow account in connection with a real estate transaction
 3 unless any funds that ~~(1)~~ are received from any single party to the real
 4 estate transaction and ~~(2)~~ **that** in the aggregate are at least ten thousand
 5 dollars (\$10,000) are:

- 6 (1) wired funds that are unconditionally held by and irrevocably
 7 credited to the escrow account of the closing agent;
 8 (2) **good funds described in section 4(2), 4(4), 4(7), or 4(9) of**
 9 **this chapter; or**
 10 (3) **collected funds.**

11 SECTION 23. IC 27-7-3.7-8, AS ADDED BY P.L.92-2009,
 12 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2010]: Sec. 8. A closing agent may not make disbursements
 14 from an escrow account in connection with a real estate transaction
 15 unless any funds that:

- 16 (1) are received from any single party to the real estate
 17 transaction; and
 18 (2) in the aggregate are less than ten thousand dollars (\$10,000);
 19 are good funds **or collected funds.**

20 SECTION 24. [EFFECTIVE JULY 1, 2010] **(a) Two million**
 21 **dollars (\$2,000,000) shall be transferred from the securities**
 22 **division enforcement account established under IC 23-19-6-1 to the**
 23 **securities restitution fund established by IC 23-20-1-26, as added**
 24 **by this act, on July 1, 2010.**

25 **(b) This SECTION expires July 2, 2010."**

26 Delete page 21.

27 Renumber all SECTIONS consecutively.

(Reference is to HB 1332 as reprinted February 2, 2010.)

and when so amended that said bill do pass.

Committee Vote: Yeas 9, Nays 0.

Paul

Chairperson