

HOUSE BILL No. 1462

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-2; IC 23-2.5; IC 23-19-4-12; IC 25-11-1.

Synopsis: Secretary of state securities division matters. Allows the Indiana securities commissioner to request additional information for determining whether a franchise offer or sale is exempt from registration requirements. Provides that a continuing care retirement community's annual disclosure statement must be filed not later than 12 months following the end of its fiscal year. Provides that an individual may not engage in loan processing activities unless certain requirements have been met. Provides that a registered mortgage loan originator is not required to obtain a license under the law governing loan brokers. Provides that the securities division may discipline an individual who fails to comply with disclosure requirements. Adds a definition for "branch office". Makes changes related to unlawful acts for licensed collection agencies.

Effective: July 1, 2021.

**Heaton, Carbaugh, Schaibley,
Mayfield**

January 14, 2021, read first time and referred to Committee on Financial Institutions and Insurance.



First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1462

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-2-2.5-8 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 8. **(a)** The
3 commissioner may determine whether any proposed offer or sale is
4 entitled to an exemption. However, the commissioner may decline to
5 exercise that authority as to any such offer or sale. Any interested party
6 desiring the commissioner to exercise ~~that~~ **the authority to determine**
7 **whether a proposed offer or sale is entitled to an exemption** shall
8 submit to the commissioner **the following:**
9 (1) A verified statement of all material facts relating to the
10 proposed offer or sale. ~~which verified statement shall be~~
11 ~~accompanied by~~
12 **(2) Documentation demonstrating that the requirements for**
13 **exemption under sections 3, 4, and 5 of this chapter, and any**
14 **rules adopted under those sections, are met.**
15 **(3) A written** request for a ruling as to the particular exemption
16 claimed. ~~together with~~
17 **(4) A filing fee of fifty dollars (\$50.00).**



1 (b) After such notice to interested parties as the commissioner
 2 deems proper and after a hearing, if any, the commissioner may enter
 3 an order finding the proposed offer or sale entitled or not entitled to the
 4 exemption claimed. Any order so entered, unless an appeal be taken
 5 therefrom in the manner prescribed in this chapter is binding upon the
 6 commissioner and upon all interested parties if the proposed offer or
 7 sale of a franchise when consummated or issued conforms in every
 8 relevant and material particular with the facts set forth in the verified
 9 statement submitted.

10 SECTION 2. IC 23-2-4-5, AS AMENDED BY P.L.153-2009,
 11 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2021]: Sec. 5. (a) Each year after the initial year in which a
 13 continuing care retirement community is registered under section 3 of
 14 this chapter, the provider shall file with the commissioner **within not**
 15 **later than** four (4) months after the end of the provider's fiscal year,
 16 unless otherwise extended by the written consent of the commissioner
 17 **under subsection (c)**, an annual disclosure statement which shall
 18 consist of the financial information set forth in section 4(11) of this
 19 chapter.

20 (b) The annual disclosure statement required to be filed with the
 21 commissioner under this section shall be accompanied by an annual
 22 filing fee of one hundred dollars (\$100), **which shall be paid to the**
 23 **commissioner not later than four (4) months after the end of the**
 24 **provider's fiscal year, regardless whether the commissioner issues**
 25 **an extension under subsection (c).**

26 (c) **The commissioner may, by issuing a written statement,**
 27 **extend the time in which a provider files its annual disclosure**
 28 **statement. However, an extension under this subsection shall not**
 29 **allow an annual disclosure statement to be filed later than twelve**
 30 **(12) months after the end of the provider's fiscal year. The**
 31 **commissioner may request information from a provider to**
 32 **determine whether an extension is necessary.**

33 (d) **A provider that receives an extension under subsection (c)**
 34 **and has not filed its annual disclosure statement during the period**
 35 **specified in subsection (a) shall inform all prospective residents, in**
 36 **a manner prescribed by the commissioner, that the provider has**
 37 **received an extension for filing its annual disclosure statement.**

38 SECTION 3. IC 23-2.5-3-3, AS ADDED BY P.L.175-2019,
 39 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2021]: Sec. 3. An individual may not engage in loan
 41 processing activities unless the individual:

42 (1) is employed by a loan processing company; and



1 (2) obtains a mortgage loan originator license under this article:
 2 **has met the requirements described in IC 23-2.5-5-4.**

3 SECTION 4. IC 23-2.5-3-6 IS ADDED TO THE INDIANA CODE
 4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 5 1, 2021]: **Sec. 6. A registered mortgage loan originator is not
 6 required to obtain a license under this article.**

7 SECTION 5. IC 23-2.5-5-4, AS ADDED BY P.L.175-2019,
 8 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2021]: **Sec. 4. A loan processing company may not employ a
 10 individual to engage in loan processing activities unless the individual:
 11 maintains a valid mortgage loan originator license under this article.**

12 **(1) has completed the education and examination
 13 requirements for a mortgage loan originator; and**

14 **(2) is registered to conduct business in Indiana through the
 15 Nationwide Multistate Licensing System.**

16 SECTION 6. IC 23-19-4-12, AS AMENDED BY P.L.85-2012,
 17 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2021]: **Sec. 12. (a) If the commissioner finds that the order is
 19 in the public interest and subsection (d) authorizes the action, an order
 20 issued under this article may deny an application, or may condition or
 21 limit registration, of an applicant to be a broker-dealer, agent,
 22 investment adviser, or investment adviser representative and, if the
 23 applicant is a broker-dealer or investment adviser, of a partner, officer,
 24 director, or person having a similar status or performing similar
 25 functions, or a person directly or indirectly in control of the
 26 broker-dealer or investment adviser.**

27 **(b) If the commissioner finds that the order is in the public interest
 28 and subsection (d) authorizes the action, an order issued under this
 29 article may revoke, suspend, condition, or limit the registration of a
 30 registrant and, if the registrant is a broker-dealer or investment adviser,
 31 of a partner, officer, director, or person having a similar status or
 32 performing similar functions, or a person directly or indirectly in
 33 control of the broker-dealer or investment adviser. However, the
 34 commissioner may not:**

35 **(1) institute a revocation or suspension proceeding under this
 36 subsection based on an order issued under a law of another state
 37 that is reported to the commissioner or a designee of the
 38 commissioner more than one (1) year after the date of the order on
 39 which it is based; or**

40 **(2) under subsection (d)(5)(A) and (d)(5)(B), issue an order on
 41 the basis of an order issued under the securities act of another
 42 state unless the other order was based on conduct for which**



- 1 subsection (d) would authorize the action had the conduct
2 occurred in this state.
- 3 (c) If the commissioner finds that the order is in the public interest
4 and subsection (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(6), (d)(8), (d)(9),
5 (d)(11), (d)(12), or (d)(13) authorizes the action, an order under this
6 article may censure, impose a bar, or impose a civil penalty in an
7 amount not to exceed a maximum of ten thousand dollars (\$10,000) per
8 violation on a registrant, and, if the registrant is a broker-dealer or
9 investment adviser, a partner, officer, director, or person having a
10 similar status or performing similar functions, or a person directly or
11 indirectly in control of the broker-dealer or investment adviser.
- 12 (d) A person may be disciplined under subsections (a) through (c)
13 if the person:
- 14 (1) has filed an application for registration in this state under this
15 article or the predecessor act within the previous ten (10) years,
16 which, as of the effective date of registration or as of any date
17 after filing in the case of an order denying effectiveness, was
18 incomplete in any material respect or contained a statement that,
19 in light of the circumstances under which it was made, was false
20 or misleading with respect to a material fact;
- 21 (2) knowingly violated or knowingly failed to comply with this
22 article or the predecessor act or a rule adopted or order issued
23 under this article or the predecessor act within the previous ten
24 (10) years;
- 25 (3) has been convicted of a felony or within the previous ten (10)
26 years has been convicted of a misdemeanor involving a security,
27 a commodity future or option contract, or an aspect of a business
28 involving securities, commodities, investments, franchises,
29 insurance, banking, or finance;
- 30 (4) is enjoined or restrained by a court with jurisdiction in an
31 action instituted by the commissioner under this article or the
32 predecessor act, a state, the Securities and Exchange Commission,
33 or the United States from engaging in or continuing an act,
34 practice, or course of business involving an aspect of a business
35 involving securities, commodities, investments, franchises,
36 insurance, banking, or finance;
- 37 (5) is the subject of an order, issued after notice and opportunity
38 for hearing, by:
- 39 (A) the securities, depository institution, insurance, or other
40 financial services regulator of a state or by the Securities and
41 Exchange Commission or other federal agency denying,
42 revoking, barring, or suspending registration as a



- 1 broker-dealer, agent, investment adviser, federal covered
2 investment adviser, or investment adviser representative;
3 (B) the securities regulator of a state or the Securities and
4 Exchange Commission against a broker-dealer, agent,
5 investment adviser, investment adviser representative, or
6 federal covered investment adviser;
7 (C) the Securities and Exchange Commission or a
8 self-regulatory organization suspending or expelling the
9 registrant from membership in the self-regulatory
10 organization;
11 (D) a court adjudicating a United States Postal Service fraud
12 order;
13 (E) the insurance regulator of a state denying, suspending, or
14 revoking registration as an insurance agent;
15 (F) a depository institution regulator suspending or barring the
16 person from the depository institution business; or
17 (G) any state regulatory body or organization governing real
18 estate brokers or sales persons denying, suspending, or
19 revoking a person's registration or license in the real estate
20 industry;
- 21 (6) is the subject of an adjudication or determination, after notice
22 and opportunity for hearing, by the Securities and Exchange
23 Commission, the Commodity Futures Trading Commission, the
24 Federal Trade Commission, a federal depository institution
25 regulator, or a depository institution, insurance, or other financial
26 services regulator of a state that the person willfully violated the
27 Securities Act of 1933, the Securities Exchange Act of 1934, the
28 Investment Advisers Act of 1940, the Investment Company Act
29 of 1940, or the Commodity Exchange Act, the securities or
30 commodities law of a state, or a federal or state law under which
31 a business involving investments, franchises, insurance, banking,
32 or finance is regulated;
- 33 (7) is insolvent, either because the person's liabilities exceed the
34 person's assets or because the person cannot meet the person's
35 obligations as they mature, but the commissioner may not enter an
36 order against an applicant or registrant under this subdivision
37 without a finding of insolvency as to the applicant or registrant;
- 38 (8) refuses to allow or otherwise impedes the commissioner from
39 conducting an audit or inspection under section 11(d) of this
40 chapter or refuses access to a registrant's office to conduct an
41 audit or inspection under section 11(d) of this chapter;
- 42 (9) has failed to reasonably supervise an agent, investment adviser



1 representative, or other individual, if the agent, investment
2 adviser representative, or other individual was subject to the
3 person's supervision and committed a violation of this article or
4 the predecessor act or a rule adopted or order issued under this
5 article or the predecessor act within the previous ten (10) years;
6 (10) has not paid the proper filing fee within thirty (30) days after
7 having been notified by the commissioner of a deficiency, but the
8 commissioner shall vacate an order under this subdivision when
9 the deficiency is corrected;

10 (11) after notice and opportunity for a hearing, has been found
11 within the previous ten (10) years:

12 (A) by a court with jurisdiction to have willfully violated the
13 laws of a foreign jurisdiction under which the business of
14 securities, commodities, investment, franchises, insurance,
15 banking, or finance is regulated;

16 (B) to have been the subject of an order of a securities
17 regulator of a foreign jurisdiction denying, revoking, or
18 suspending the right to engage in the business of securities as
19 a broker-dealer, agent, investment adviser, investment adviser
20 representative, or similar person; or

21 (C) to have been suspended or expelled from membership by
22 or participation in a securities exchange or securities
23 association operating under the securities laws of a foreign
24 jurisdiction;

25 (12) is the subject of a cease and desist order issued by the
26 Securities and Exchange Commission or issued under the
27 securities, commodities, investment, franchise, banking, finance,
28 or insurance laws of a state;

29 (13) has engaged in dishonest or unethical practices in the
30 securities, commodities, investment, franchise, banking, finance,
31 or insurance business within the previous ten (10) years;

32 (14) is not qualified on the basis of factors such as training,
33 experience, and knowledge of the securities business. However,
34 in the case of an application by an agent for a broker-dealer that
35 is a member of a self-regulatory organization or by an individual
36 for registration as an investment adviser representative, a denial
37 order may not be based on this subdivision if the individual has
38 successfully completed all examinations required by subsection
39 (e). The commissioner may require an applicant for registration
40 under section 2 or 4 of this chapter who has not been registered
41 in a state within the two (2) years preceding the filing of an
42 application in this state to successfully complete an examination;



1 (15) is on the most recent tax warrant list supplied to the
 2 commissioner by the department of state revenue; ~~or~~

3 (16) is an individual who is:

4 (A) an applicant for registration as an agent for a broker-dealer
 5 or as an investment adviser representative; or

6 (B) registered as an agent for a broker-dealer or as an
 7 investment adviser representative;

8 and has failed to comply with a court order imposing a child
 9 support obligation; **or**

10 **(17) fails to comply with the disclosure requirements set forth**
 11 **under IC 24-4.9-3.**

12 (e) A rule adopted or order issued under this article may require that
 13 an examination, including an examination developed or approved by
 14 an organization of securities regulators, be successfully completed by
 15 a class of individuals or all individuals. An order issued under this
 16 article may waive, in whole or in part, an examination as to an
 17 individual and a rule adopted under this article may waive, in whole or
 18 in part, an examination as to a class of individuals if the commissioner
 19 determines that the examination is not necessary or appropriate in the
 20 public interest and for the protection of investors.

21 (f) The commissioner may suspend or deny an application
 22 summarily; restrict, condition, limit, or suspend a registration; or
 23 censure, bar, or impose a civil penalty on a registrant before final
 24 determination of an administrative proceeding. Upon the issuance of
 25 an order, the commissioner shall promptly notify each person subject
 26 to the order that the order has been issued, the reasons for the action,
 27 and that within fifteen (15) days after the receipt of a request in a
 28 record from the person the matter will be scheduled for a hearing. If a
 29 hearing is not requested and none is ordered by the commissioner
 30 within thirty (30) days after the date of service of the order, the order
 31 becomes final by operation of law. If a hearing is requested or ordered,
 32 the commissioner, after notice of and opportunity for hearing to each
 33 person subject to the order, may modify or vacate the order or extend
 34 the order until final determination.

35 (g) An order may not be issued under this section, except under
 36 subsection (f), without:

37 (1) appropriate notice to the applicant or registrant;

38 (2) opportunity for hearing; and

39 (3) findings of fact and conclusions of law in a record.

40 (h) A person that controls, directly or indirectly, a person not in
 41 compliance with this section may be disciplined by order of the
 42 commissioner under subsections (a) through (c) to the same extent as



1 the noncomplying person, unless the controlling person did not know,
2 and in the exercise of reasonable care could not have known, of the
3 existence of conduct that is a ground for discipline under this section.

4 (i) The commissioner may not institute a proceeding under
5 subsection (a), (b), or (c) based solely on material facts actually known
6 by the commissioner unless an investigation or the proceeding is
7 instituted within one (1) year after the commissioner actually acquires
8 knowledge of the material facts.

9 (j) All fines and penalties collected under this section shall be
10 deposited into the securities division enforcement account as
11 established by IC 23-19-6-1(f).

12 SECTION 7. IC 25-11-1-1, AS AMENDED BY P.L.145-2006,
13 SECTION 159, IS AMENDED TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2021]: Sec. 1. As used in this chapter, unless
15 the context otherwise requires:

16 (a) The term "person" means any individual, firm, partnership,
17 limited liability company, or corporation.

18 (b) The term "collection agency" means and includes all persons
19 engaging directly or indirectly and as a primary or secondary object,
20 business, or pursuit, in soliciting claims for collection, or in the
21 collection of claims owed or due or asserted to be owed or due to
22 another, including child support arrearages under IC 31-25-4. The term
23 "collection agency" also means and includes, but shall not be limited
24 to, any person who sells, furnishes, or maintains a letter or written
25 demand service, including stickers or coupon books, designed for the
26 purpose of making demand on any debtor on behalf of any creditor for
27 the payment of any claim wherein the person furnishing or maintaining
28 such letter or written demand service, including stickers or coupon
29 books, shall sell such services for a stated amount or for a percentage
30 of money collected whether paid to the creditor or to the collection
31 agency, or where such services may be rendered as a part of a
32 membership in such collection agency regardless of whether or not a
33 separate fee or percentage is charged. The term "collection agency"
34 shall also include, but not be limited to, any individual, firm,
35 partnership, limited liability company, or corporation who uses a
36 fictitious name, or any name other than the individual's or entity's
37 name, in the collection of accounts receivable with the intention of
38 conveying to the debtor that a third person has been employed.

39 (c) The term "claim" means any obligation for the payment of
40 money or its equivalent and any sum or sums owed or due or asserted
41 to be owed or due to another, for which any person may be employed
42 to demand payment and to collect or enforce payment thereof. The term



1 "claim" also includes obligations for the payment of money in the form
 2 of conditional sales agreements, notwithstanding that the personal
 3 property sold thereunder, for which payment is claimed, may be or is
 4 repossessed in lieu of payment.

5 **(d) The term "branch office" means a fixed physical location:**

6 **(1) that is not designated by a collection agency as its main**
 7 **office; and**

8 **(2) where one (1) or more of the following occur:**

9 **(A) A person holds itself out as a collection agency or**
 10 **engages in conduct that suggests to the public that the**
 11 **person acts as a collection agency.**

12 **(B) The address of the branch office appears on the**
 13 **business cards or other advertisement material of the**
 14 **collection agency.**

15 **(C) A person's name, advertising, promotional materials,**
 16 **or signage suggests that a person acts as a collection**
 17 **agency.**

18 SECTION 8. IC 25-11-1-7 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 7. (a) It is unlawful for
 20 any person to conduct, within this state, a collection agency without
 21 first having applied for and obtained a license under the provisions of
 22 this chapter.

23 (b) It is unlawful for any person conducting a collection agency
 24 within this state to fail to render an account of and pay to the client, for
 25 whom collection has been made, the proceeds of such collection, less
 26 the charges for collection in accordance with the terms of agreement
 27 between the applicant and client. This account shall be made within
 28 sixty (60) days from the date of the collection of any claim.

29 (c) It is unlawful for any person conducting a collection agency,
 30 within this state, to fail to deposit with a local depository not less than
 31 one (1) time each week all money due and owing to clients collected by
 32 said person, and keep the same on deposit in such depository in a
 33 special account until remitted to the clients. It shall be unlawful for any
 34 person to fail to keep a record of the money collected and the
 35 remittance thereof.

36 **(d) It is unlawful for any person to operate a branch office**
 37 **without having first satisfied the requirements for operating a**
 38 **branch office as described in section 3(c) and 3(e) of this chapter.**

39 **(e) It is unlawful for any person licensed under this chapter to**
 40 **fail to comply with any disclosure requirements under IC 24-4.9.**

