



February 2, 2023

HOUSE BILL No. 1581

DIGEST OF HB 1581 (Updated February 2, 2023 9:51 am - DI 101)

Citations Affected: IC 15-12; IC 23-0.5; IC 23-2; IC 23-18; IC 23-19; IC 23-20.

Synopsis: Business associations. Provides that the definitions for the uniform business organizations code apply to agricultural cooperatives. Removes the requirement that articles of incorporation for agricultural cooperatives must be acknowledged by at least one incorporator before a notary public. Provides that the uniform business transactions act applies to agricultural cooperatives for certain purposes. Adds business trusts and agricultural cooperatives to lists of entities that the secretary of state may revoke registrations for or dissolve. Makes conforming changes. Amends the statute concerning the securities restitution fund (fund) as follows: (1) Provides that 2% of funds received from fees and revenues from the administration of the Indiana Uniform Securities Act must be deposited in the fund instead of the state general fund. (2) Provides that any amount of the balance of the fund at the end of a particular state fiscal year that exceeds \$2,000,000 reverts to the state general fund. (3) Provides that to ensure the financial viability of the fund, the securities commissioner may: (A) divide into installments; (B) delay; or (C) divide into installments and delay; any payments owed to claimants.

Effective: July 1, 2023.

Heaton, McGuire

January 19, 2023, read first time and referred to Committee on Financial Institutions.
February 2, 2023, amended, reported — Do Pass.

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February 2, 2023

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

HOUSE BILL No. 1581

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 15-12-1-2, AS ADDED BY P.L.2-2008, SECTION
2 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2023]: Sec. 2. The definitions in **IC 23-0.5 and IC 23-1** apply to this
4 chapter to the extent they do not conflict with the definitions in this
5 chapter.
6 SECTION 2. IC 15-12-1-12, AS AMENDED BY P.L.118-2017,
7 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2023]: Sec. 12. (a) The incorporators of an association to be
9 formed under this chapter shall execute and file articles of
10 incorporation setting forth the following:
11 (1) The name of the proposed association.
12 (2) The purpose or purposes for which it is formed.
13 (3) The period during which it is to continue to exist, if the period
14 is to be limited.
15 (4) The post office address of its principal office and the name
16 and address of its registered agent as provided in IC 23-0.5-4.
17 (5) If organized without capital stock, whether the property rights

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1 and interest of the members are equal or unequal. If property
2 rights and interest of the members are unequal, the articles of
3 incorporation must set forth the provisions under and by which
4 the property rights and interests of the respective members are to
5 be determined and fixed.

6 (6) The following information, if the association is organized with
7 capital stock:

8 (A) The total number of shares that the association may issue.

9 (B) Whether all or part of the shares have a par value.

10 (C) If all or part of the shares have a par value, the number and
11 par value of the shares.

12 (D) Whether all or part of the shares are without a par value.

13 (E) If all or part of the shares are without a par value, the
14 number of shares without a par value.

15 (F) If the shares are to be divided into classes or kinds:

16 (i) the number and par value, if any, of the shares of each
17 class; and

18 (ii) subject to the limitations provided in this chapter with
19 respect to issuance of voting stock, either a statement of the
20 relative rights, preferences, limitations, and restrictions of
21 each class, or a provision expressly vesting authority in the
22 board of directors to determine the relative rights,
23 preferences, limitations, and restrictions of each class by
24 resolution or resolutions adopted before the issuance of any
25 shares of the specific class.

26 (G) If the shares of any class are to be issuable in series:

27 (i) descriptions of the several series; and

28 (ii) subject to the limitation provided in this chapter with
29 respect to the issuance of voting stock, a statement of the
30 relative rights, preferences, limitations, and restrictions of
31 each series, or a provision expressly vesting authority in the
32 board of directors to determine the relative rights,
33 preferences, limitations, and restrictions of each series by
34 resolution or resolutions adopted before the issuance of any
35 of the shares of the specific series.

36 (7) The number of directors constituting the initial board of
37 directors of the association.

38 (8) The names and post office addresses of the first board of
39 directors.

40 (9) The names and post office addresses of the incorporators.

41 (10) Any other provisions, consistent with Indiana laws, for the
42 regulation of the business and conduct of the affairs of the



1 association and for creating, defining, limiting, or regulating the
2 powers of the following:

3 (A) The association.

4 (B) The directors.

5 (C) The members.

6 (D) The shareholders of any class or classes of shareholders.

7 (b) The articles of incorporation must be:

8 (1) prepared and signed in duplicate by the incorporators; **and**

9 ~~(2) acknowledged by at least one (1) of the incorporators before~~
10 ~~a notary public; and~~

11 ~~(3) (2) presented in duplicate to the secretary of state at the~~
12 ~~secretary of state's office and accompanied by the fees prescribed~~
13 ~~by this chapter.~~

14 SECTION 3. IC 15-12-1-14, AS ADDED BY P.L.2-2008,
15 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2023]: Sec. 14. (a) Subject to subsections (b) and (c), an
17 association may amend the association's articles of incorporation,
18 merge or consolidate with one (1) or more other associations or
19 corporations, effect special corporate transactions as described in
20 **IC 23-0.6 and IC 23-1**, or dissolve by following the procedures
21 specified in **IC 23-0.6 and IC 23-1**.

22 (b) An amendment to the articles of incorporation of an association
23 organized under or governed by this chapter or an agreement of merger
24 or consolidation to which an association organized under or governed
25 by this chapter is a party may be adopted:

26 (1) by the affirmative votes of the majority of the members
27 entitled to vote with respect to the amendment or agreement and
28 voting at the meeting called for that purpose, if the voting rights
29 of the members are equal; or

30 (2) by the affirmative votes of the majority of the votes cast by the
31 members entitled to vote with respect to the amendment or
32 agreement and voting at the meeting called for that purpose, if the
33 voting rights of the members are not equal.

34 (c) A special corporate transaction or dissolution of an association
35 organized under or governed by this chapter may be authorized:

36 (1) by the affirmative votes of three-fourths (3/4) of the members
37 entitled to vote with respect to the transaction or dissolution and
38 voting at the meeting called for that purpose, if the voting rights
39 of the members are equal; or

40 (2) by the affirmative votes of three-fourths (3/4) of the votes cast
41 by the members entitled to vote with respect to the transaction or
42 dissolution and voting at the meeting called for that purpose, if



1 the voting rights of the members are not equal.

2 SECTION 4. IC 15-12-1-47, AS ADDED BY P.L.2-2008,
3 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2023]: Sec. 47. **IC 23-0.5, IC 23-0.6**, IC 23-1, and all powers
5 and rights under **IC 23-0.5, IC 23-0.6, and IC 23-1** apply to
6 associations organized under or governed by this chapter, except where
7 **IC 23-0.5, IC 23-0.6, or IC 23-1** conflicts with or is inconsistent with
8 this chapter.

9 SECTION 5. IC 23-0.5-5-10, AS ADDED BY P.L.118-2017,
10 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2023]: Sec. 10. (a) If a registered foreign entity merges into
12 a **registered or** nonregistered foreign entity or converts to a foreign
13 entity required to register with the secretary of state to do business in
14 Indiana, the foreign entity shall deliver to the secretary of state for
15 filing a notice of merger or conversion. The notice must be signed by
16 the surviving or converted entity and state:

- 17 (1) the name of the registered foreign entity before the merger or
18 conversion;
- 19 (2) the type of entity it was before the merger or conversion;
- 20 (3) the name of the applicant entity and, if the name does not
21 comply with IC 23-0.5-3-1, an alternate name adopted under
22 section 6(a) of this chapter;
- 23 (4) the type of entity of the applicant entity and its jurisdiction of
24 formation; and
- 25 (5) the following information regarding the entity, if different than
26 the information for the foreign entity before the merger or
27 conversion:
 - 28 (A) The street address of the principal office of the entity.
 - 29 (B) The information required under IC 23-0.5-4-3(b).

30 (b) When a notice of merger or conversion takes effect, the
31 registration of the registered foreign entity to do business in Indiana is
32 transferred without interruption to the entity into which it has merged
33 or to which it has been converted.

34 SECTION 6. IC 23-0.5-5-11, AS AMENDED BY P.L.52-2018,
35 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2023]: Sec. 11. (a) The secretary of state may revoke the
37 registration of a registered foreign entity, **business trust, or**
38 **agricultural cooperative** if:

- 39 (1) the entity does not pay, not later than sixty (60) days after the
40 due date, any fee, tax, interest, or penalty required to be paid to
41 the secretary of state under this article or law of Indiana other
42 than this article;



- 1 (2) the entity does not deliver to the secretary of state for filing,
2 not later than sixty (60) days after the due date, a biennial report;
3 (3) the entity does not have a registered agent as required by
4 IC 23-0.5-4-1;
5 (4) the entity does not deliver to the secretary of state for filing a
6 statement of change under IC 23-0.5-4-6 not later than thirty (30)
7 days after a change occurs in the name or address of the entity's
8 registered agent; or
9 (5) the secretary of state receives a duly authenticated certificate
10 from the secretary of state or other official having custody of
11 entity filings in the state or country under whose law the entity is
12 registered stating that it has been dissolved or disappeared as the
13 result of a merger.
- 14 (b) If the secretary of state determines that one (1) or more grounds
15 exists under subsection (a) for revocation of a registration, the secretary
16 of state shall provide to the foreign entity written notice of the
17 determination, unless the secretary of state:
- 18 (1) receives a receipt showing failure of a previous attempt of
19 service of process upon the entity's registered agent at the address
20 of the registered office; and
21 (2) determines that the secretary of state's office has no record of
22 the entity's principal office address.
- 23 (c) The notice under subsection (b) must state:
- 24 (1) the effective date of the revocation, which must be at least
25 sixty (60) days after the date the secretary of state delivers the
26 copy; and
27 (2) the grounds for revocation under subsection (a).
- 28 (d) The authority of a registered foreign entity to do business in
29 Indiana ceases on the effective date of the notice of revocation under
30 subsection (b), unless before that date the entity cures each ground for
31 revocation stated in the notice. If the entity cures each ground, the
32 secretary of state shall file a record so stating.
- 33 (e) The secretary of state's revocation of a registration appoints the
34 secretary of state the entity's agent for service of process in any
35 proceeding based on a cause of action that arose during the time the
36 entity was authorized to transact business in Indiana. Service of process
37 on the secretary of state under this subsection is service on the entity.
38 Upon receipt of process, the secretary of state shall mail a copy of the
39 process to the entity at its principal office shown in its most recent
40 biennial report or in any subsequent communication received from the
41 entity stating the current mailing address of its principal office, unless
42 the secretary of state:



1 (1) receives a receipt showing failure of a previous attempt of
 2 service of process upon the entity's registered agent at the address
 3 of the registered office; and

4 (2) determines that the secretary of state's office has no record of
 5 the entity's principal office address.

6 (f) Revocation of an entity's registration does not terminate the
 7 authority of the registered agent of the entity.

8 SECTION 7. IC 23-0.5-6-2, AS AMENDED BY P.L.206-2021,
 9 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2023]: Sec. 2. (a) If the secretary of state determines that one
 11 (1) or more grounds exist under section 1 of this chapter for
 12 administratively dissolving an entity, **business trust, or agricultural**
 13 **cooperative**, the secretary of state shall provide to the entity written
 14 notice of the determination unless the secretary of state:

15 (1) receives a receipt showing failure of a previous attempt of
 16 service of process upon the entity's registered agent at the address
 17 of the registered office; and

18 (2) determines that the secretary of state's office has no record of
 19 the filing entity's principal office address.

20 (b) If a domestic filing entity, not later than sixty (60) days after
 21 receiving the notice provided under subsection (a), does not cure or
 22 demonstrate to the satisfaction of the secretary of state the nonexistence
 23 of each ground determined by the secretary of state, the secretary of
 24 state shall administratively dissolve the entity by signing a certificate
 25 of administrative dissolution that recites the grounds for dissolution
 26 and the effective date of dissolution. The secretary of state shall file the
 27 certificate and provide to the entity a copy of the certificate.

28 (c) A domestic filing entity that is dissolved administratively
 29 continues its existence as the same type of entity but may not carry on
 30 any activities except:

31 (1) to apply for reinstatement under section 3 of this chapter; or

32 (2) as necessary to wind up its activities and affairs and liquidate
 33 its assets in the manner provided in its organic law as follows:

34 (A) For corporations, under:

35 (i) IC 6-8.1-10-9;

36 (ii) IC 23-1-45-5;

37 (iii) IC 23-1-45-6; and

38 (iv) IC 23-1-45-7.

39 (B) For nonprofit corporations, under:

40 (i) IC 6-8.1-10-9;

41 (ii) IC 23-17-22-5;

42 (iii) IC 23-17-22-6; and



- 1 (iv) IC 23-17-22-7.
- 2 (C) For limited liability companies, under:
- 3 (i) IC 23-18-9-3;
- 4 (ii) IC 23-18-9-4;
- 5 (iii) IC 23-18-9-5;
- 6 (iv) IC 23-18-9-6;
- 7 (v) IC 23-18-9-8;
- 8 (vi) IC 23-18-9-9; and
- 9 (vii) IC 23-18-9-10.
- 10 (D) For limited partnerships, under:
- 11 (i) IC 23-16-9-3; and
- 12 (ii) IC 23-16-9-4.
- 13 (E) For limited liability partnerships, under:
- 14 (i) IC 23-4-1-36; and
- 15 (ii) IC 23-4-1-37.
- 16 (d) The administrative dissolution of a domestic filing entity does
- 17 not terminate the authority of its registered agent.
- 18 SECTION 8. IC 23-0.5-7-1, AS ADDED BY P.L.118-2017,
- 19 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 20 JULY 1, 2023]: Sec. 1. The secretary of state may propound to any:
- 21 (1) domestic or foreign entity, **business trust, or agricultural**
- 22 **cooperative**, that the secretary of state has reason to believe is
- 23 subject to the provisions of this title under which the domestic
- 24 entity was created or foreign entity is permitted to transact
- 25 business in Indiana; and
- 26 (2) any governing person of the entity described in subdivision
- 27 (1);
- 28 any written interrogatories as may be reasonably necessary and proper
- 29 to enable the secretary of state to ascertain whether the entity was
- 30 formed using suspected fraudulent or alternate filings or is being used
- 31 to commit fraud.
- 32 SECTION 9. IC 23-2-4-1, AS AMENDED BY P.L.278-2013,
- 33 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 34 JULY 1, 2023]: Sec. 1. As used in this chapter, the term:
- 35 "Application fee" means the fee charged an individual, in addition
- 36 to the entrance fee or any other fee, to cover the provider's reasonable
- 37 costs in processing the individual's application to become a resident.
- 38 "Commissioner" means the securities commissioner as provided in
- 39 IC 23-19-6-1(a).
- 40 "Continuing care agreement" means the following:
- 41 (1) For continuing care retirement communities registered before
- 42 January 2, 2007, an agreement by a provider to furnish to at least



1 one (1) individual, for the payment of an entrance fee and
 2 periodic charges, accommodations in a living unit of a home, and
 3 at least two (2) of the following services for the life of the
 4 individual or for more than one (1) month unless the agreement
 5 is cancelled:

- 6 (A) Meals and related services.
- 7 (B) Nursing care services.
- 8 (C) Medical services.
- 9 (D) Other health related services.

10 (2) For continuing care retirement communities registered after
 11 January 1, 2007, and before July 1, 2009, an agreement by a
 12 provider to furnish to an individual, for the payment of an
 13 entrance fee of at least twenty-five thousand dollars (\$25,000),
 14 ~~and~~ periodic charges, **accommodations in a living unit of a**
 15 **home, and at least one (1) of the following services for the life**
 16 **of the individual or for more than one (1) month unless the**
 17 **agreement is canceled:**

- 18 ~~(A)~~ accommodations in a living unit of a continuing care
 19 retirement community;
- 20 ~~(B)~~ (A) meals and related services;
- 21 ~~(C)~~ (B) nursing care services;
- 22 ~~(D)~~ (C) medical services;
- 23 ~~(E)~~ (D) other health related services; or
- 24 ~~(F)~~ (E) any combination of these services.

25 ~~for the life of the individual or for more than one (1) month;~~
 26 ~~unless the agreement is canceled.~~

27 (3) For continuing care retirement communities registered after
 28 June 30, 2009, an agreement by a provider to furnish to an
 29 individual, for the payment of an entrance fee of at least
 30 twenty-five thousand dollars (\$25,000), ~~and~~ periodic charges,
 31 **accommodations in a living unit of a home, and at least one (1)**
 32 **of the following services for the life of the individual unless**
 33 **the agreement is terminated as specified under this chapter:**

- 34 ~~(A)~~ accommodations in a living unit of a continuing care
 35 retirement community;
- 36 ~~(B)~~ (A) meals and related services;
- 37 ~~(C)~~ (B) nursing care services;
- 38 ~~(D)~~ (C) medical services;
- 39 ~~(E)~~ (D) other health related services; or
- 40 ~~(F)~~ (E) any combination of these services.

41 ~~for the life of the individual; unless the agreement is terminated~~
 42 ~~as specified under this chapter.~~



1 "Continuing care retirement community" includes both of the
2 following:

3 (1) An independent living facility.

4 (2) A health facility licensed under IC 16-28.

5 "Contracting party" means a person or persons who enter into a
6 continuing care agreement with a provider.

7 "Entrance fee" means the sum of money or other property paid or
8 transferred, or promised to be paid or transferred, to a provider in
9 consideration for one (1) or more individuals becoming a resident of a
10 continuing care retirement community under a continuing care
11 agreement.

12 "Living unit" means a room, apartment, cottage, or other area within
13 a continuing care retirement community set aside for the use of one (1)
14 or more identified residents.

15 "Long term financing" means financing for a period in excess of one
16 (1) year.

17 "Omission of a material fact" means the failure to state a material
18 fact required to be stated in any disclosure statement or registration in
19 order to make the disclosure statement or registration, in light of the
20 circumstances under which they were made, not misleading.

21 "Person" means an individual, a corporation, a partnership, a
22 association, a limited liability company, or other legal entity.

23 "Provider" means a person that agrees to provide care under a
24 continuing care agreement.

25 "Refurbishment fee" means the fee charged an individual, in
26 addition to the entrance fee or any other fee, to cover the provider's
27 reasonable costs in refurbishing a previously occupied living unit
28 specifically designated for occupancy by that individual.

29 "Resident" means an individual who is entitled to receive benefits
30 under a continuing care agreement.

31 "Solicit" means any action of a provider in seeking to have an
32 individual residing in Indiana pay an application fee and enter into a
33 continuing care agreement, including:

34 (1) personal, telephone, or mail communication or any other
35 communication directed to and received by any individual in
36 Indiana; and

37 (2) advertising in any media distributed or communicated by any
38 means to individuals residing in Indiana.

39 "Termination" refers to the cancellation of a continuing care
40 agreement under this chapter.

41 SECTION 10. IC 23-18-1-6 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 6. "Corporation" means



1 a domestic corporation or a foreign corporation (as defined in either
2 ~~IC 23-1~~ **IC 23-0.5** or IC 23-17).

3 SECTION 11. IC 23-18-6-4 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. (a) Unless otherwise
5 provided in a written operating agreement, a limited liability company
6 existing under this article on or before June 30, 1999, is governed by
7 this section.

8 (b) Except as otherwise provided in a written operating agreement,
9 **if a limited liability company has at least two (2) members**, an
10 assignee of an interest may become a member only if the other
11 members unanimously consent. **If a limited liability company has**
12 **only one (1) member, an assignee of the entire interest may become**
13 **a member:**

14 **(1) under the terms of an agreement between the assignor and**
15 **the assignee; or**

16 **(2) except as otherwise provided in a written operating**
17 **agreement by a specific reference to this subsection or as**
18 **otherwise provided in an agreement between the assignor and**
19 **the assignee, automatically upon the voluntary assignment by**
20 **the sole member of all the member's interest to a single**
21 **assignee that the member consented to at the time of the**
22 **assignment and that was not affected by foreclosure or other**
23 **similar legal process.**

24 The consent of a member may be evidenced in any manner specified
25 in writing in an operating agreement, but in the absence of a
26 specification, consent must be evidenced by a written instrument, dated
27 and signed by the member.

28 (c) An assignee who becomes a member:

29 (1) has, to the extent assigned, the rights and powers and is
30 subject to the restrictions and liabilities of a member under the
31 articles of organization, any operating agreement, and this article;
32 and

33 (2) is liable for any obligations of the member's assignor for
34 unpaid contributions under IC 23-18-5-1 or for any wrongful
35 distributions under IC 23-18-5-7.

36 However, the assignee is not obligated for liabilities of which the
37 assignee had no knowledge at the time the assignee became a member
38 and that could not be ascertained from a written operating agreement.

39 (d) Whether or not an assignee of an interest becomes a member, the
40 assignor is not released from the assignor's liability to the limited
41 liability company for unpaid contributions under IC 23-18-5-1 or for
42 any wrongful distributions under IC 23-18-5-7 that are solely a result



1 of the assignment.

2 (e) Unless otherwise provided in a written operating agreement, a
3 member who assigns the member's entire interest in the limited liability
4 company ceases to be a member or to have the power to exercise any
5 rights of a member when an assignee of the member's interest becomes
6 a member with respect to the assigned interest.

7 SECTION 12. IC 23-18-6-4.1 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4.1. (a) A limited
9 liability company formed under this article after June 30, 1999, is
10 governed by this section.

11 (b) Except as otherwise provided in a written operating agreement,
12 if a limited liability company has at least two (2) members, an assignee
13 of an interest may become a member only if the other members
14 unanimously consent. ~~The consent of a member may be evidenced in~~
15 ~~any manner specified in writing in an operating agreement; but in the~~
16 ~~absence of a specification, consent must be evidenced by a written~~
17 ~~instrument, dated and signed by the member.~~ If a limited liability
18 company has **only** one (1) member, an assignee of ~~an~~ **the entire**
19 interest may become a member:

20 (1) in accordance with the terms of an agreement between the
21 assignor and the assignee; **or**

22 (2) **except as otherwise provided in a written operating**
23 **agreement by a specific reference to this subsection or as**
24 **otherwise provided in an agreement between the assignor and**
25 **the assignee, automatically upon the voluntary assignment by**
26 **the sole member of all of the member's interest to a single**
27 **assignee that the member consented to at the time of the**
28 **assignment and that was not affected by foreclosure or other**
29 **similar legal process.**

30 **The consent of a member may be evidenced in any manner**
31 **specified in writing in an operating agreement, but in the absence**
32 **of a specification, consent must be evidenced by a written**
33 **instrument, dated and signed by the member.**

34 (c) An assignee who becomes a member:

35 (1) has, to the extent assigned, the rights and powers and is
36 subject to the restrictions and liabilities of a member under the
37 articles of organization, any operating agreement, and this article;
38 and

39 (2) is liable for any obligations of the member's assignor for
40 unpaid contributions under IC 23-18-5-1 or for any wrongful
41 distributions under IC 23-18-5-7.

42 However, the assignee is not obligated for liabilities of which the



1 assignee had no knowledge at the time the assignee became a member
2 and that could not be ascertained from a written operating agreement.

3 (d) Whether or not an assignee of an interest becomes a member, the
4 assignor is not released from the assignor's liability to the limited
5 liability company for unpaid contributions under IC 23-18-5-1 or for
6 any wrongful distributions under IC 23-18-5-7 that are solely a result
7 of the assignment.

8 (e) Unless otherwise provided in a written operating agreement, a
9 member who assigns the member's entire interest in the limited liability
10 company ceases to be a member or to have the power to exercise any
11 rights of a member.

12 SECTION 13. IC 23-19-6-1, AS AMENDED BY P.L.175-2019,
13 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2023]: Sec. 1. (a) This article shall be administered by a
15 division of the office of the secretary of state. The secretary of state
16 shall appoint a securities commissioner who shall be responsible for
17 the direction and supervision of the division and the administration of
18 this article under the direction and control of the secretary of state. The
19 salary of the securities commissioner shall be paid out of the funds
20 appropriated for the administration of this article. The commissioner
21 shall serve at the will of the secretary of state.

22 (b) The secretary of state:

23 (1) shall employ a chief deputy, attorneys, a senior investigator,
24 a senior accountant, and other deputies, investigators,
25 accountants, clerks, stenographers, and other employees necessary
26 for the administration of this article; and

27 (2) shall fix their compensation with the approval of the budget
28 agency.

29 (c) It is unlawful for the commissioner or an officer, employee, or
30 designee of the commissioner to use for personal benefit or the benefit
31 of others records or other information obtained by or filed with the
32 commissioner that is not public under section 7(b) of this chapter. This
33 article does not authorize the commissioner or an officer, employee, or
34 designee of the commissioner to disclose the record or information,
35 except in accordance with section 2, 7(c), or 8 of this chapter.

36 (d) This article does not create or diminish a privilege or exemption
37 that exists at common law, by statute or rule, or otherwise.

38 (e) Subject to IC 4-2-6-15, the commissioner may develop and
39 implement investor education initiatives to inform the public about
40 investing in securities, with particular emphasis on the prevention and
41 detection of securities fraud. In developing and implementing these
42 initiatives, the commissioner may collaborate with public and nonprofit



1 organizations with an interest in investor education. The commissioner
 2 may accept a grant or donation from a person that is not affiliated with
 3 the securities industry or from a nonprofit organization, regardless of
 4 whether the organization is affiliated with the securities industry, to
 5 develop and implement investor education initiatives. This subsection
 6 does not authorize the commissioner to require participation or
 7 monetary contributions of a registrant in an investor education
 8 program.

9 (f) The securities division enforcement account is established.
 10 **Except as provided in subsection (o)**, fees and funds of whatever
 11 character accruing from the administration of this article shall be
 12 accounted for by the secretary of state and shall be deposited with the
 13 treasurer of state to be deposited by the treasurer of the state in either
 14 the state general fund or the securities division enforcement account.
 15 Subject to IC 4-2-6-15, expenses incurred in the administration of this
 16 article shall be paid from the state general fund upon appropriation
 17 being made for the expenses in the manner provided by law for the
 18 making of those appropriations. The following shall be deposited by the
 19 treasurer of state in the securities division enforcement account:

- 20 (1) Grants and donations received under subsection (e).
 21 (2) Costs of investigations recovered under section 4(e) of this
 22 chapter.
 23 (3) Fifty percent (50%) of the first four million dollars
 24 (\$4,000,000):
 25 (A) of a civil penalty recovered under section 3(b) or 4(d) of
 26 this chapter;
 27 (B) recovered in a settlement of an action initiated to enforce
 28 this article; or
 29 (C) awarded as a judgment in an action to enforce this article.

30 (g) The following shall be deposited by the treasurer of state in the
 31 state general fund:

- 32 (1) Fifty percent (50%) of the first four million dollars
 33 (\$4,000,000):
 34 (A) of a civil penalty recovered under section 3(b) or 4(d) of
 35 this chapter;
 36 (B) recovered in a settlement of an action initiated to enforce
 37 this article; or
 38 (C) awarded as a judgment in an action to enforce this article.
 39 (2) Any amount exceeding four million dollars (\$4,000,000):
 40 (A) of a civil penalty recovered under section 3(b) or 4(d) of
 41 this chapter;
 42 (B) recovered in a settlement of an action initiated to enforce



- 1 this article; or
 2 (C) awarded as a judgment in an action to enforce this article.
 3 **(3) Subject to subsection (o)**, other fees and revenues that are not
 4 designated for deposit in the securities division enforcement
 5 account or the securities restitution fund.
 6 (h) Notwithstanding IC 23-2-2.5-34, IC 23-2-2.5-43, IC 23-2.5-2,
 7 IC 23-19-4-12, IC 25-11-1-15, and this chapter, five percent (5%) of
 8 funds received for deposit in the securities division enforcement
 9 account shall instead be deposited in the securities restitution fund
 10 established by IC 23-20-1-25. Subject to IC 4-2-6-15, the funds
 11 deposited in the enforcement account shall be available, with the
 12 approval of the budget agency:
 13 (1) to augment and supplement the funds appropriated for the
 14 administration of this article; and
 15 (2) for grants and awards to nonprofit entities for programs and
 16 activities that will further investor education and financial literacy
 17 in the state.
 18 The funds in the enforcement account do not revert to the state general
 19 fund at the end of any state fiscal year.
 20 (i) In connection with the administration and enforcement of this
 21 article, the attorney general shall render all necessary assistance to the
 22 commissioner upon the commissioner's request, and to that end, the
 23 attorney general shall employ legal and other professional services as
 24 are necessary to adequately and fully perform the service under the
 25 direction of the commissioner as the demands of the securities division
 26 shall require. Expenses incurred by the attorney general for the
 27 purposes stated in this subsection shall be chargeable against and paid
 28 out of funds appropriated to the attorney general for the administration
 29 of the attorney general's office. The attorney general may authorize the
 30 commissioner and the commissioner's designee to represent the
 31 commissioner and the securities division in any proceeding involving
 32 enforcement or defense of this article.
 33 (j) Neither the secretary of state, the commissioner, nor an employee
 34 of the securities division shall be liable in their individual capacity,
 35 except to the state, for an act done or omitted in connection with the
 36 performance of their respective duties under this article.
 37 (k) The commissioner shall take, prescribe, and file the oath of
 38 office prescribed by law. The commissioner, chief deputy
 39 commissioner, and each attorney or investigator designated by the
 40 commissioner are police officers of the state and shall have all the
 41 powers and duties of police officers in making arrests for violations of
 42 this article, or in serving any process, notice, or order connected with



1 the enforcement of this article by whatever officer, authority, or court
 2 issued and shall comprise the enforcement department of the division
 3 and are considered a criminal justice agency for purposes of IC 5-2-4
 4 and IC 10-13-3.

5 (l) The provisions of this article delegating and granting power to
 6 the secretary of state, the securities division, and the commissioner
 7 shall be liberally construed to the end that:

- 8 (1) the practice or commission of fraud may be prohibited and
 9 prevented;
- 10 (2) disclosure of sufficient and reliable information in order to
 11 afford reasonable opportunity for the exercise of independent
 12 judgment of the persons involved may be assured; and
- 13 (3) the qualifications may be prescribed to assure availability of
 14 reliable broker-dealers, investment advisers, and agents engaged
 15 in and in connection with the issuance, barter, sale, purchase,
 16 transfer, or disposition of securities in this state.

17 It is the intent and purpose of this article to delegate and grant to and
 18 vest in the secretary of state, the securities division, and the
 19 commissioner full and complete power to carry into effect and
 20 accomplish the purpose of this article and to charge them with full and
 21 complete responsibility for its effective administration.

22 (m) Copies of any statement and documents filed in the office of the
 23 secretary of state and of any records of the secretary of state certified
 24 by the commissioner shall be admissible in any prosecution, action,
 25 suit, or proceeding based upon, arising out of, or under this article to
 26 the same effect as the original of such statement, document, or record
 27 would be if actually produced.

28 (n) IC 4-21.5 and any rules of practice adopted by the securities
 29 division are applicable to administrative proceedings under this article.

30 **(o) Notwithstanding any other law, two percent (2%) of funds**
 31 **received for deposit in the state general fund as described in**
 32 **subsection (g)(3) shall instead be deposited in the securities**
 33 **restitution fund established by IC 23-20-1-25.**

34 SECTION 14. IC 23-20-1-25, AS ADDED BY P.L.114-2010,
 35 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2023]: Sec. 25. (a) The securities restitution fund is
 37 established.

38 (b) The fund consists of: ~~amounts:~~

- 39 (1) **amounts** from funds received for deposit in the securities
 40 division enforcement account as provided in ~~IC 23-19-6-1(f);~~
 41 **IC 23-19-6-1(h); and**
- 42 **(2) two percent (2%) of funds received from other fees and**



1 revenues from the administration of IC 23-19 that would
 2 otherwise be deposited in the state general fund as provided
 3 in IC 23-19-6-1(o); and

4 ~~(2)~~ (3) amounts appropriated from the general assembly.

5 SECTION 15. IC 23-20-1-27 IS REPEALED [EFFECTIVE JULY
 6 1, 2023]. ~~Sec. 27. Money in the fund and income derived from money~~
 7 ~~in the fund do not revert to the state general fund at the end of a state~~
 8 ~~fiscal year.~~

9 SECTION 16. IC 23-20-1-27.5 IS ADDED TO THE INDIANA
 10 CODE AS A NEW SECTION TO READ AS FOLLOWS
 11 [EFFECTIVE JULY 1, 2023]: **Sec. 27.5. If the balance of the fund at**
 12 **the end of a particular state fiscal year exceeds two million dollars**
 13 **(\$2,000,000), the amount that exceeds two million dollars**
 14 **(\$2,000,000) reverts to the state general fund.**

15 SECTION 17. IC 23-20-1-28, AS ADDED BY P.L.114-2010,
 16 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2023]: Sec. 28. (a) If the fund would be reduced below two
 18 hundred fifty thousand dollars (\$250,000) by payment in full of all
 19 awards that become final in a month, the division shall suspend
 20 payment of the claims that become final during the month and the
 21 following two (2) months.

22 (b) At the end of the suspension period, the division shall pay the
 23 suspended claims. If the fund would be exhausted by payment in full
 24 of the suspended claims, the amount paid to each claimant shall be
 25 prorated.

26 (c) **To ensure the financial viability of the fund, the**
 27 **commissioner may:**

28 (1) divide into installments;

29 (2) delay; or

30 (3) divide into installments and delay;

31 **any payments owed to claimants under this chapter.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1581, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 9, delete lines 41 through 42.

Delete pages 10 through 24.

Page 25, delete lines 1 through 23.

Page 27, after line 36, begin a new paragraph and insert:

"SECTION 13. IC 23-19-6-1, AS AMENDED BY P.L.175-2019, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) This article shall be administered by a division of the office of the secretary of state. The secretary of state shall appoint a securities commissioner who shall be responsible for the direction and supervision of the division and the administration of this article under the direction and control of the secretary of state. The salary of the securities commissioner shall be paid out of the funds appropriated for the administration of this article. The commissioner shall serve at the will of the secretary of state.

(b) The secretary of state:

(1) shall employ a chief deputy, attorneys, a senior investigator, a senior accountant, and other deputies, investigators, accountants, clerks, stenographers, and other employees necessary for the administration of this article; and

(2) shall fix their compensation with the approval of the budget agency.

(c) It is unlawful for the commissioner or an officer, employee, or designee of the commissioner to use for personal benefit or the benefit of others records or other information obtained by or filed with the commissioner that is not public under section 7(b) of this chapter. This article does not authorize the commissioner or an officer, employee, or designee of the commissioner to disclose the record or information, except in accordance with section 2, 7(c), or 8 of this chapter.

(d) This article does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(e) Subject to IC 4-2-6-15, the commissioner may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the commissioner may collaborate with public and nonprofit organizations with an interest in investor education. The commissioner



may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the commissioner to require participation or monetary contributions of a registrant in an investor education program.

(f) The securities division enforcement account is established. **Except as provided in subsection (o)**, fees and funds of whatever character accruing from the administration of this article shall be accounted for by the secretary of state and shall be deposited with the treasurer of state to be deposited by the treasurer of the state in either the state general fund or the securities division enforcement account. Subject to IC 4-2-6-15, expenses incurred in the administration of this article shall be paid from the state general fund upon appropriation being made for the expenses in the manner provided by law for the making of those appropriations. The following shall be deposited by the treasurer of state in the securities division enforcement account:

- (1) Grants and donations received under subsection (e).
- (2) Costs of investigations recovered under section 4(e) of this chapter.
- (3) Fifty percent (50%) of the first four million dollars (\$4,000,000):
 - (A) of a civil penalty recovered under section 3(b) or 4(d) of this chapter;
 - (B) recovered in a settlement of an action initiated to enforce this article; or
 - (C) awarded as a judgment in an action to enforce this article.

(g) The following shall be deposited by the treasurer of state in the state general fund:

- (1) Fifty percent (50%) of the first four million dollars (\$4,000,000):
 - (A) of a civil penalty recovered under section 3(b) or 4(d) of this chapter;
 - (B) recovered in a settlement of an action initiated to enforce this article; or
 - (C) awarded as a judgment in an action to enforce this article.
- (2) Any amount exceeding four million dollars (\$4,000,000):
 - (A) of a civil penalty recovered under section 3(b) or 4(d) of this chapter;
 - (B) recovered in a settlement of an action initiated to enforce this article; or



(C) awarded as a judgment in an action to enforce this article.

(3) **Subject to subsection (o)**, other fees and revenues that are not designated for deposit in the securities division enforcement account or the securities restitution fund.

(h) Notwithstanding IC 23-2-2.5-34, IC 23-2-2.5-43, IC 23-2.5-2, IC 23-19-4-12, IC 25-11-1-15, and this chapter, five percent (5%) of funds received for deposit in the securities division enforcement account shall instead be deposited in the securities restitution fund established by IC 23-20-1-25. Subject to IC 4-2-6-15, the funds deposited in the enforcement account shall be available, with the approval of the budget agency:

- (1) to augment and supplement the funds appropriated for the administration of this article; and
- (2) for grants and awards to nonprofit entities for programs and activities that will further investor education and financial literacy in the state.

The funds in the enforcement account do not revert to the state general fund at the end of any state fiscal year.

(i) In connection with the administration and enforcement of this article, the attorney general shall render all necessary assistance to the commissioner upon the commissioner's request, and to that end, the attorney general shall employ legal and other professional services as are necessary to adequately and fully perform the service under the direction of the commissioner as the demands of the securities division shall require. Expenses incurred by the attorney general for the purposes stated in this subsection shall be chargeable against and paid out of funds appropriated to the attorney general for the administration of the attorney general's office. The attorney general may authorize the commissioner and the commissioner's designee to represent the commissioner and the securities division in any proceeding involving enforcement or defense of this article.

(j) Neither the secretary of state, the commissioner, nor an employee of the securities division shall be liable in their individual capacity, except to the state, for an act done or omitted in connection with the performance of their respective duties under this article.

(k) The commissioner shall take, prescribe, and file the oath of office prescribed by law. The commissioner, chief deputy commissioner, and each attorney or investigator designated by the commissioner are police officers of the state and shall have all the powers and duties of police officers in making arrests for violations of this article, or in serving any process, notice, or order connected with the enforcement of this article by whatever officer, authority, or court



issued and shall comprise the enforcement department of the division and are considered a criminal justice agency for purposes of IC 5-2-4 and IC 10-13-3.

(l) The provisions of this article delegating and granting power to the secretary of state, the securities division, and the commissioner shall be liberally construed to the end that:

- (1) the practice or commission of fraud may be prohibited and prevented;
- (2) disclosure of sufficient and reliable information in order to afford reasonable opportunity for the exercise of independent judgment of the persons involved may be assured; and
- (3) the qualifications may be prescribed to assure availability of reliable broker-dealers, investment advisers, and agents engaged in and in connection with the issuance, barter, sale, purchase, transfer, or disposition of securities in this state.

It is the intent and purpose of this article to delegate and grant to and vest in the secretary of state, the securities division, and the commissioner full and complete power to carry into effect and accomplish the purpose of this article and to charge them with full and complete responsibility for its effective administration.

(m) Copies of any statement and documents filed in the office of the secretary of state and of any records of the secretary of state certified by the commissioner shall be admissible in any prosecution, action, suit, or proceeding based upon, arising out of, or under this article to the same effect as the original of such statement, document, or record would be if actually produced.

(n) IC 4-21.5 and any rules of practice adopted by the securities division are applicable to administrative proceedings under this article.

(o) Notwithstanding any other law, two percent (2%) of funds received for deposit in the state general fund as described in subsection (g)(3) shall instead be deposited in the securities restitution fund established by IC 23-20-1-25.

SECTION 14. IC 23-20-1-25, AS ADDED BY P.L.114-2010, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 25. (a) The securities restitution fund is established.

(b) The fund consists of: ~~amounts:~~

- (1) **amounts** from funds received for deposit in the securities division enforcement account as provided in ~~IC 23-19-6-1(f);~~ **IC 23-19-6-1(h); and**
- (2) **two percent (2%) of funds received from other fees and revenues from the administration of IC 23-19 that would**



otherwise be deposited in the state general fund as provided in IC 23-19-6-1(o); and

(2) (3) amounts appropriated from the general assembly.

SECTION 15. IC 23-20-1-27 IS REPEALED [EFFECTIVE JULY 1, 2023]. *Sec. 27. Money in the fund and income derived from money in the fund do not revert to the state general fund at the end of a state fiscal year.*

SECTION 16. IC 23-20-1-27.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2023]: **Sec. 27.5. If the balance of the fund at the end of a particular state fiscal year exceeds two million dollars (\$2,000,000), the amount that exceeds two million dollars (\$2,000,000) reverts to the state general fund.**

SECTION 17. IC 23-20-1-28, AS ADDED BY P.L.114-2010, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: *Sec. 28. (a) If the fund would be reduced below two hundred fifty thousand dollars (\$250,000) by payment in full of all awards that become final in a month, the division shall suspend payment of the claims that become final during the month and the following two (2) months.*

(b) At the end of the suspension period, the division shall pay the suspended claims. If the fund would be exhausted by payment in full of the suspended claims, the amount paid to each claimant shall be prorated.

(c) To ensure the financial viability of the fund, the commissioner may:

(1) divide into installments;

(2) delay; or

(3) divide into installments and delay;

any payments owed to claimants under this chapter."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1581 as introduced.)

SPEEDY

Committee Vote: yeas 13, nays 0.

HB 1581—LS 7151/DI 148

