

Second Regular Session 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 221

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

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

SECTION 1. IC 23-19-4.1 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]:

Chapter 4.1. Senior Savings Protection

Sec. 1. As used in this chapter, "financial exploitation" means the wrongful or unauthorized taking, withholding, appropriation, or use of money, real property, or personal property of a financially endangered adult.

Sec. 2. As used in this chapter, "financially endangered adult" means an individual to whom one (1) or more of the following apply:

- (1) The individual is at least sixty-five (65) years of age.**
 - (2) The individual is:**
 - (A) at least eighteen (18) years of age; and**
 - (B) incapable, by reason of:**
 - (i) mental illness;**
 - (ii) intellectual disability;**
 - (iii) dementia; or**
 - (iv) other physical or mental incapacity;**
- of managing or directing the management of the**

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individual's property.

Sec. 3. As used in this chapter, "immediate family member" means a spouse, child, parent, or sibling.

Sec. 4. As used in this chapter, "protective agencies" refers to both of the following:

- (1) The adult protective services unit described in IC 12-10-3-1.
- (2) The commissioner.

Sec. 5. As used in this chapter, "qualified individual" means an individual associated with a broker-dealer who serves in a supervisory, compliance, or legal capacity as part of the individual's job.

Sec. 6. (a) If a qualified individual has reason to believe that financial exploitation of a financially endangered adult has occurred, has been attempted, or is being attempted, the qualified individual shall, as required by IC 12-10-3-9(a):

- (1) make a report to an entity listed in IC 12-10-3-10(a); and
- (2) notify the commissioner.

(b) After a qualified individual makes a report and provides notification under subsection (a), the qualified individual may, to the extent permitted under federal law, notify any of the following concerning the qualified individual's belief:

- (1) An immediate family member of the financially endangered adult.
- (2) A legal guardian of the financially endangered adult.
- (3) A conservator of the financially endangered adult.
- (4) A trustee, cotrustee, or successor trustee of the account of the financially endangered adult.
- (5) An agent under a power of attorney of the financially endangered adult.
- (6) Any other person permitted under existing laws, rules, regulations, or customer agreement.

Sec. 7. (a) A qualified individual may refuse a request for disbursement of funds from an account:

- (1) owned by a financially endangered adult; or
- (2) of which a financially endangered adult is a beneficiary or beneficial owner;

if the qualified individual has reason to believe that the requested disbursement may result in financial exploitation of the financially endangered adult.

(b) If a qualified individual refuses a request for disbursement under subsection (a), a broker-dealer involved in the transaction



or the qualified individual shall:

(1) subject to subsection (c), make a reasonable effort to notify all parties authorized to transact business on the account:

(A) orally; or

(B) in writing by:

(i) electronic communication; or

(ii) mail postmarked;

not more than two (2) business days after the qualified individual refuses the request for disbursement; and

(2) notify the protective agencies:

(A) orally; or

(B) in writing by:

(i) electronic communication; or

(ii) mail postmarked;

not more than three (3) business days after the qualified individual refuses the request for disbursement.

(c) A broker-dealer or the qualified individual described in subsection (b) is not required to contact a party authorized to transact business on the account if the broker-dealer or qualified individual has reason to believe that the party has engaged in suspected or attempted financial exploitation of the financially endangered adult.

(d) Unless a court or the commissioner enters an order extending the refusal of disbursement or providing any other applicable protective relief, any refusal of disbursement under this section expires upon the earlier of the following:

(1) The date that the qualified individual has reason to believe that the disbursement will not result in financial exploitation of the financially endangered adult.

(2) Fifteen (15) business days after the date of the initial refusal of disbursement by the qualified individual. However, if a broker-dealer's internal review of the facts and circumstances supports the broker-dealer's reasonable belief that the financial exploitation of the financially endangered adult has occurred, is occurring, has been attempted, or will be attempted, the commissioner shall extend the refusal of disbursement for an additional fifteen (15) business days after the expiration date that would otherwise apply under this subdivision.

(e) A court with jurisdiction may enter an order that:

(1) extends a refusal of disbursement; or

(2) provides for any other protective relief.



(f) After:

- (1) a broker-dealer or qualified individual provides notice under subsection (b); and
- (2) the refusal of disbursement has expired or a court or the commissioner has entered an order as described in subsection (d) or (e)(1);

the broker-dealer or qualified individual shall notify, in writing, the protective agencies of the expiration or the order, as applicable.

Sec. 8. Notwithstanding any other provision of law, a broker-dealer or a qualified individual who, in good faith, complies with section 6 or 7 of this chapter, is immune from any administrative or civil liability for actions taken in accordance with those sections. A broker-dealer or qualified individual who, in good faith, releases or does not release copies of records under section 9 of this chapter is immune from any civil liability for release of such records or failing to release such records. This chapter does not limit or otherwise impede the authority of the commissioner to access or examine books and records of broker-dealers as otherwise provided by law.

Sec. 9. (a) A broker-dealer may provide to protective agencies or law enforcement access to or copies of records that are relevant to the suspected financial exploitation of a financially endangered adult. The records may include records relating to:

- (1) disbursement of any funds from an account of the financially endangered adult; and
- (2) disbursements of funds that comprise the suspected financial exploitation of a financially endangered adult.

(b) All records made available to the protective agencies under this section are confidential under IC 5-14-3.

Sec. 10. Not later than September 1, 2017, the commissioner shall develop and make available on the secretary of state's Internet web site information that includes training resources to assist broker-dealers and qualified individuals in the prevention and detection of financial exploitation of financially endangered adults. The training resources must include information on:

- (1) indicators of financial exploitation of financially endangered adults; and
- (2) the potential steps broker-dealers and qualified individuals can take, under Indiana law, to prevent suspected financial exploitation of financially endangered adults.

Sec. 11. The commissioner may adopt rules under IC 23-19-6-5 to implement this chapter.



SECTION 2. IC 23-19-6-1, AS AMENDED BY P.L.160-2015, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: 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. 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

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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 ~~two~~ **four** million dollars ~~(\$2,000,000):~~ **(\$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 ~~two~~ **four** million dollars ~~(\$2,000,000):~~ **(\$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 ~~two~~ **four** million dollars ~~(\$2,000,000):~~ **(\$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) 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 23-2-5-7, 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.

SECTION 3. IC 34-30-2-96.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 96.1. IC 23-19-4.1-8 (Concerning acts by broker-dealers and qualified individuals regarding financially endangered adults).**



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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