

**IC 23-20**

**ARTICLE 20. VICTIMS OF SECURITIES VIOLATIONS**

**IC 23-20-1**

**Chapter 1. Restitution for Victims of Securities Violations**

**IC 23-20-1-1**

**"Claimant"**

Sec. 1. (a) As used in this chapter, "claimant" means a victim filing an application for restitution assistance under this chapter.

(b) The term includes:

- (1) a named party in an award;
- (2) the executor of a named party in an award; or
- (3) the heirs and assigns of a named party in an award.

*As added by P.L.114-2010, SEC.12.*

**IC 23-20-1-2**

**"Division"**

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

*As added by P.L.114-2010, SEC.12.*

**IC 23-20-1-3**

**"Fund"**

Sec. 3. As used in this chapter, "fund" refers to the securities restitution fund established by section 25 of this chapter.

*As added by P.L.114-2010, SEC.12.*

**IC 23-20-1-4**

**"Out-of-pocket loss"**

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

- (1) A final court order.
- (2) A final administrative order.

*As added by P.L.114-2010, SEC.12.*

**IC 23-20-1-5**

**"Person"**

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

*As added by P.L.114-2010, SEC.12.*

**IC 23-20-1-6**

**"Securities violation"**

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

- (1) The Securities Act of 1933, as amended, and any regulations

related to that act.

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

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

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

(5) The Indiana Uniform Securities Act (IC 23-19) and any rules related to that act.

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

*As added by P.L.114-2010, SEC.12. Amended by P.L.42-2011, SEC.47.*

### **IC 23-20-1-7**

#### **"Victim"**

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

*As added by P.L.114-2010, SEC.12.*

### **IC 23-20-1-8**

#### **Duties of division**

Sec. 8. The division shall do the following:

(1) Prescribe forms for processing applications for restitution assistance.

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

*As added by P.L.114-2010, SEC.12.*

### **IC 23-20-1-9**

#### **Order awarding restitution to claimant required**

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

(1) a court order; or

(2) an administrative order;

that demonstrates that restitution has been awarded to the claimant as described in section 16 of this chapter.

*As added by P.L.114-2010, SEC.12.*

### **IC 23-20-1-10**

#### **Confidentiality of claimant's personal information**

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

*As added by P.L.114-2010, SEC.12.*

### **IC 23-20-1-11**

#### **Persons eligible for restitution assistance**

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

(1) A resident of Indiana who is a victim of a securities violation

committed:

(A) in Indiana; or

(B) in a jurisdiction other than Indiana, including a foreign country, if the jurisdiction in which the securities violation occurred does not offer to Indiana residents who are victims of securities violations in that jurisdiction assistance that is substantially similar to the assistance offered under this chapter.

(2) A nonresident of Indiana who is a victim of a securities violation committed in Indiana if the jurisdiction in which the victim resides offers to Indiana residents who are victims of securities violations in that jurisdiction assistance that is substantially similar to the assistance offered under this chapter.

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

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

*As added by P.L.114-2010, SEC.12.*

#### **IC 23-20-1-12**

##### **Application for restitution assistance; filing with division**

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

(b) The application must be received by the division not more than one hundred eighty (180) days after the date of the order described in section 16 of this chapter. The division may grant an extension of time for good cause shown by the claimant. However, the division may not accept an application that is received more than two (2) years after the date of the order described in section 16 of this chapter.

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

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

*As added by P.L.114-2010, SEC.12.*

#### **IC 23-20-1-13**

##### **Division's review of applications; request for additional information**

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

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

(c) The claimant may, not more than thirty (30) days after receipt of the request for additional information, either supply the

information or appeal to the securities commissioner as to the completeness of the application.

(d) The decision of the securities commissioner as to the completeness of the application is final.

(e) The division shall deny the application if:

- (1) the applicant does not furnish additional information; or
- (2) additional time is not granted by the securities commissioner for good cause.

*As added by P.L.114-2010, SEC.12.*

#### **IC 23-20-1-14**

##### **Denial of assistance to victim participating in or profiting from securities violation**

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

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

(A) participating or assisting in; or

(B) attempting to commit or committing;

a securities violation; or

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

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

*As added by P.L.114-2010, SEC.12.*

#### **IC 23-20-1-15**

##### **Assistance limited to one claimant per victim**

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

*As added by P.L.114-2010, SEC.12.*

#### **IC 23-20-1-16**

##### **Adjudication of violation required; final order; failure of party to pay**

Sec. 16. (a) The division may not award restitution assistance under this chapter unless the securities violation was adjudicated in a state or federal court or a regulatory agency administrative proceeding.

(b) The division may not award restitution assistance under this chapter unless:

(1) a final order has been entered ordering restitution to the victim in a proceeding described in subsection (a); and

(2) the party ordered to pay restitution has not paid the full amount.

*As added by P.L.114-2010, SEC.12.*

#### **IC 23-20-1-17**

##### **Denial of assistance; order not containing restitution award**

Sec. 17. The division shall deny an award of restitution assistance under this chapter if a court or administrative order does not contain

an award of restitution to the victim.  
*As added by P.L.114-2010, SEC.12.*

#### **IC 23-20-1-18**

##### **Restitution award overturned on appeal; denial or forfeiture of assistance**

Sec. 18. (a) The division may not award restitution assistance under this chapter on behalf of a victim whose award of restitution under a court or administrative order is overturned on appeal.

(b) If:

- (1) restitution assistance is awarded under this chapter; and
- (2) after the award of restitution assistance under this chapter, the victim's award of restitution under a court or administrative order is overturned on appeal;

the claimant shall forfeit the restitution assistance received under this chapter.

*As added by P.L.114-2010, SEC.12.*

#### **IC 23-20-1-19**

##### **Subrogation rights of state**

Sec. 19. (a) The state is subrogated to the rights of the person awarded restitution under this chapter to the extent of the award.

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

*As added by P.L.114-2010, SEC.12.*

#### **IC 23-20-1-20**

##### **State's lien on victim's recovery; deduction of state's share of court expenses**

Sec. 20. (a) In addition to the subrogation rights under section 19 of this chapter, the state is entitled to a lien in the amount of the award on a recovery made by or on behalf of the victim.

(b) The state may:

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

(c) If a claimant brings an action described in subsection (b)(2), the claimant may deduct from the money owed to the state under the lien the state's pro rata share of the reasonable expenses for the court suit, including attorney's fees. The amount the claimant deducts under this subsection for the state's pro rata share of the expenses may not be more than fifteen percent (15%) of the money owed under the lien.

*As added by P.L.114-2010, SEC.12.*

#### **IC 23-20-1-21**

##### **Recovery by claimant receiving assistance; refund to state of overpayment**

Sec. 21. If:

- (1) an award is made under this chapter; and
- (2) a claimant receives a sum required to be deducted under

section 20(a) of this chapter;  
the claimant shall refund to the state the amount of overpayment.  
*As added by P.L.114-2010, SEC.12.*

#### **IC 23-20-1-22**

##### **Victim's contribution to monetary injury; consideration in amount of assistance; basis for denial**

Sec. 22. (a) In determining the amount of restitution assistance to award under this chapter, the division shall determine whether a victim contributed to the infliction of the victim's monetary injury.

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

*As added by P.L.114-2010, SEC.12.*

#### **IC 23-20-1-23**

##### **Limitations on award**

Sec. 23. An award under this chapter may not exceed the lesser of the following:

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

*As added by P.L.114-2010, SEC.12.*

#### **IC 23-20-1-24**

##### **Award not subject to execution, attachment, or garnishment**

Sec. 24. An award made by the division under this chapter is not subject to execution, attachment, garnishment, or other process.

*As added by P.L.114-2010, SEC.12.*

#### **IC 23-20-1-25**

##### **Securities restitution fund; establishment; funding sources**

Sec. 25. (a) The securities restitution fund is established.

(b) The fund consists of amounts:

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

*As added by P.L.114-2010, SEC.12.*

#### **IC 23-20-1-26**

##### **Securities restitution fund; funds continually appropriated; purposes**

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

- (1) awarding restitution assistance under this chapter;
- (2) paying expenses incurred in administering this chapter; and
- (3) making awards to informants under IC 23-19-7.

*As added by P.L.114-2010, SEC.12. Amended by P.L.85-2012, SEC.7.*

**IC 23-20-1-27****Securities restitution fund; funds and income nonreverting**

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.

*As added by P.L.114-2010, SEC.12.*

**IC 23-20-1-28****Securities restitution fund; threshold; suspension of payment of claims; proration of claims after suspension period**

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.

*As added by P.L.114-2010, SEC.12.*

**IC 23-20-1-29****State's liability for award; limited to availability of money in fund**

Sec. 29. The state is not liable for a written determination made by the division under this chapter except to the extent that money is available in the fund on the date the award is computed by the division under this chapter.

*As added by P.L.114-2010, SEC.12.*

**IC 23-20-1-30****Claimant convicted of forgery, fraud, or deception; forfeiture of award; civil action by division to recover funds**

Sec. 30. (a) A claimant convicted of forgery, fraud, or deception in connection with a claim under this chapter forfeits an award paid to the claimant under this chapter.

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

*As added by P.L.114-2010, SEC.12.*

**IC 23-20-1-31****False or misleading statements; Level 5 felony**

Sec. 31. A person commits a Level 5 felony if the person knowingly makes or causes to be made:

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

(2) in any proceeding, investigation, or examination;

under this chapter any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

*As added by P.L.114-2010, SEC.12. Amended by P.L.158-2013,*

*SEC.268.*

**IC 23-20-1-32**

**Division's authority to adopt rules**

Sec. 32. The division may adopt rules under IC 4-22-2 to implement this chapter.

*As added by P.L.114-2010, SEC.12.*