

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1704

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H.P. 1219

House of Representatives, May 8, 2019

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### **An Act To Establish the Securities Restitution Assistance Fund for Victims of Securities Violations**

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Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed.

A handwritten signature in black ink that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative HARNETT of Gardiner.  
Cosponsored by Senator CARPENTER of Aroostook and  
Representatives: CARDONE of Bangor, DOORE of Augusta, EVANGELOS of Friendship,  
McCREA of Fort Fairfield, RECKITT of South Portland, WARREN of Hallowell.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 32 MRSA c. 135, sub-c. 5-A** is enacted to read:

3 **SUBCHAPTER 5-A**

4 **SECURITIES RESTITUTION ASSISTANCE FUND**

5 **§16521. Definitions**

6 As used in this subchapter, unless the context otherwise indicates, the following  
7 terms have the following meanings.

8 **1. Claimant.** "Claimant" means a victim that files an application for restitution  
9 assistance under this subchapter. "Claimant" includes the named party in a restitution  
10 award in a final order, the executor of a named party in a restitution award in a final order  
11 and the heirs and assigns of a named party in a restitution award in a final order.

12 **2. Eligible adult.** "Eligible adult" means:

13 A. An individual 65 years of age or older; or

14 B. An individual protected under the Adult Protective Services Act.

15 **3. Final order.** "Final order" means a final order issued by the administrator under  
16 this chapter or a final order issued by the court in a legal action initiated by the  
17 administrator under this chapter.

18 **4. Fund.** "Fund" means the Securities Restitution Assistance Fund established under  
19 section 16522.

20 **5. Securities violation.** "Securities violation" means a violation of this chapter and  
21 any related rules.

22 **6. Victim.** "Victim" means a person that suffered monetary injury as a result of a  
23 securities violation and was awarded restitution in a final order.

24 **§16522. Securities Restitution Assistance Fund; established**

25 **1. Fund established.** The Securities Restitution Assistance Fund is established  
26 within the Department of Professional and Financial Regulation, Office of Securities to  
27 provide funds for restitution assistance for victims that were awarded restitution in a final  
28 order issued by the administrator under this chapter or were awarded restitution in a final  
29 order in a legal action initiated by the administrator under this chapter and have not  
30 received the full amount of restitution ordered before the application for restitution  
31 assistance is due.

32 **2. Funding.** The fund consists of amounts received by the administrator from:

1 A. Civil fines ordered or agreed to by the administrator pursuant to section 16412,  
2 subsection 3 or section 16604, subsection 4 unless those funds have been designated  
3 by the administrator for other purposes;

4 B. Civil fines agreed to by the administrator pursuant to Title 10, section 8003,  
5 subsection 5, paragraph B unless those funds have been designated by the  
6 administrator for other purposes;

7 C. Civil fines ordered by a court pursuant to section 16603, subsection 2, paragraph  
8 B, subparagraph (3) unless those funds have been designated by the court or the  
9 administrator for other purposes;

10 D. Five dollars of each broker-dealer agent renewal fee paid if the operating fund  
11 balance of the Office of Securities under section 16601, subsection 6 as of October  
12 1st of the previous calendar year exceeds 135% of the office's current annual budget;

13 E. Five dollars of each investment adviser representative renewal fee paid if the  
14 operating fund balance of the Office of Securities under section 16601, subsection 6  
15 as of October 1st of the previous calendar year exceeds 135% of the office's current  
16 annual budget;

17 F. All grants, donations and payments received or accepted by the administrator for  
18 victim restitution assistance; and

19 G. Any other amounts designated by the administrator for victim restitution  
20 assistance.

21 **3. Nonlapsing operating fund.** The amounts received for the fund may be used by  
22 the administrator only to pay awards of restitution assistance under this subchapter and to  
23 administer this subchapter and may not be placed in the General Fund. Any balance in the  
24 fund does not lapse but must be carried forward to be used for the same purposes.

25 **§16523. Claims**

26 **1. Eligible victims.** The following victims are eligible for restitution assistance:

27 A. A natural person who is a resident of the State; and

28 B. A person, other than a natural person, that is domiciled in the State.

29 **2. Application.** A person that is eligible for restitution assistance under this  
30 subchapter may submit an application in a manner and form prescribed by the  
31 administrator. The administrator may provide forms for the submission of applications.

32 **3. Deadline.** The application for restitution assistance under this subchapter must be  
33 received by the administrator not more than one year after the date of the final order  
34 awarding restitution to the victim.

35 **4. Extension.** Notwithstanding subsection 3, the administrator may grant an  
36 extension of time for submission of an application for restitution assistance for good  
37 cause shown by the claimant.

1            Restitution assistance awards may be made under this subchapter to victims awarded  
2 restitution in a final order issued on or after the effective date of this subchapter.

3            **§16524. Confidentiality of personal information**

4            Personal information contained in an application for restitution assistance under this  
5 subchapter is not subject to disclosure to the extent the information is designated as  
6 nonpublic by section 16607, subsection 2, paragraph E.

7            **§16525. Payment of restitution assistance; limits**

8            **1. Payment cap.** The administrator may award restitution assistance to a claimant  
9 that is:

10            A. The lesser of \$15,000 and 25% of the amount of unpaid restitution awarded in the  
11 final order; or

12            B. The lesser of \$30,000 and 50% of the amount of unpaid restitution awarded in the  
13 final order if the victim is an eligible adult.

14            **2. Award limited.** An award of restitution assistance under this subchapter may be  
15 made only to one claimant per victim.

16            **§16526. Conditions under which award of restitution assistance prohibited**

17            The administrator may not award restitution assistance if:

18            **1. Participating in or committing a securities violation.** The victim sustained the  
19 monetary injury primarily as a result of:

20            A. Participating or assisting in a securities violation; or

21            B. Attempting to commit or committing a securities violation;

22            **2. Profit from securities violation.** The victim profited or would have profited  
23 from a securities violation;

24            **3. Previous restitution assistance.** The victim has received restitution assistance  
25 under this subchapter in the previous 5 years; or

26            **4. Final order overturned.** An award of restitution in a final order is overturned on  
27 appeal.

28            **§16527. Award not subject to execution, attachment, garnishment or other process**

29            A restitution assistance award made by the administrator under this subchapter is not  
30 subject to execution, attachment, garnishment or other process.

31            **§16528. Claimant convicted of forgery, fraud, deception or falsification forfeits**  
32 **restitution assistance award; recovery**

33            **1. Conviction in connection with claim.** A claimant convicted of any crime  
34 including forgery, fraud, deception or falsification in connection with a claim made under

1 this subchapter forfeits any restitution assistance award paid to the claimant under the  
2 subchapter.

3 **2. Civil action for recovery.** The administrator may request that the Attorney  
4 General bring a civil action under section 16603 to recover funds awarded to a claimant  
5 convicted of any crime including forgery, fraud, deception or falsification in connection  
6 with a claim under this subchapter.

7 **§16529. Rights of State**

8 **1. Subrogation.** The State is subrogated to the rights of the claimant awarded  
9 restitution assistance under this subchapter to the extent of the restitution assistance  
10 award made. The subrogation rights are against the person ordered to pay restitution to  
11 the victim for the securities violation.

12 **2. Lien on recovery.** The State is entitled to a lien in the amount of the restitution  
13 assistance award on any recovery made by or on behalf of the victim. The State may  
14 assert its right to this amount in a separate action or intervene in an action brought by or  
15 on behalf of the victim.

16 **§16530. Suspension of payment**

17 If payment of restitution assistance would result in a fund balance below \$250,000,  
18 the administrator may suspend payment of claims or prorate payment of claims at the  
19 administrator's discretion until such time as the administrator determines a sufficient  
20 balance has been restored to the fund.

21 **§16531. Rulemaking**

22 The administrator may adopt rules pursuant to the Maine Administrative Procedure  
23 Act to carry out the purposes of this subchapter. Rules adopted under this section are  
24 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

25 **Sec. 2. Transfers from available fiscal year 2019-20 Office of Securities**  
26 **Other Special Revenue Funds balances to Securities Restitution Assistance**  
27 **Fund.** The State Controller shall transfer \$350,000 from the available balance in the  
28 Office of Securities Other Special Revenue Fund account to the Securities Restitution  
29 Assistance Fund under the Maine Revised Statutes, Title 32, section 16522.

30 **Sec. 3. Appropriations and allocations.** The following appropriations and  
31 allocations are made.

32 **PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF**  
33 **Securities Restitution Assistance Fund**

34 Initiative: Establishes an allocation to the Securities Restitution Assistance Fund.

35

1	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2019-20</b>	<b>2020-21</b>
2	All Other	\$45,000	\$45,000
3			
4	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$45,000</u>	<u>\$45,000</u>

5 **SUMMARY**

6       This bill establishes in the Department of Professional and Financial Regulation,  
7 Office of Securities the Securities Restitution Assistance Fund. The fund will be used to  
8 provide financial assistance to victims of securities violations that have been awarded  
9 restitution in a final order issued by the Securities Administrator or were awarded  
10 restitution in a final order in a legal action initiated by the administrator and that have not  
11 received the full amount of restitution ordered before the application for restitution  
12 assistance is due. The fund will be funded initially by a one-time transfer of \$350,000  
13 from the dedicated revenue of the Office of Securities. Thereafter, the fund will be  
14 funded by the civil fines ordered or agreed to by the administrator, a portion of broker-  
15 dealer agent and investment adviser representative renewal fees and any grants, donations  
16 or other money received by the administrator for victim restitution assistance.