

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

SECOND REGULAR SESSION-2022

Legislative Document

No. 1887

H.P. 1397

House of Representatives, January 5, 2022

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

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 203.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HARNETT of Gardiner.
Cosponsored by Senator BAILEY of York and
Representative: McCREA of Fort Fairfield.

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 terms
7 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 award
10 in a final order, the executor of a named party in a restitution award in a final order, the
11 heirs and assigns of a named party in a restitution award in a final order and any other
12 person with lawful authority to act for or on behalf of a named party in a restitution award
13 in a final order.

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

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

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

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

20 **4. Fund.** "Fund" means the Securities Restitution Assistance Fund established under
21 section 16522.

22 **5. Securities violation.** "Securities violation" means a violation of this chapter and
23 any rules adopted pursuant to this chapter.

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

26 **§16522. Securities Restitution Assistance Fund**

27 **1. Fund established.** The Securities Restitution Assistance Fund is established within
28 the Department of Professional and Financial Regulation, Office of Securities to provide
29 funds for restitution assistance for victims that were awarded restitution in a final order
30 issued by the administrator under this chapter or were awarded restitution in a final order
31 in a legal action initiated by the administrator under this chapter but did not receive the full
32 amount of restitution ordered before the application for restitution assistance under section
33 16523, subsection 2 was due.

34 **2. Funding.** The fund consists of the following amounts received by the administrator:

35 A. Five dollars of each annual agent renewal license fee paid if the operating fund
36 balance of the Office of Securities under section 16601, subsection 6 as of October 1st
37 of the previous calendar year exceeds 135% of the office's current annual budget;

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

5 C. All grants, donations and payments received or accepted by the administrator for
6 victim restitution assistance; and

7 D. Any other amounts designated by the administrator for victim restitution assistance.

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

12 **§16523. Claims**

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

14 A. A natural person who was a resident of the State at the time of the securities
15 violation; and

16 B. A person, other than a natural person, that was domiciled in the State at the time of
17 the securities violation.

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

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

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

27 **§16524. Confidentiality of personal information**

28 Personal information contained in an application for restitution assistance under this
29 subchapter is not subject to disclosure to the extent the information is designated as not a
30 public record by section 16607, subsection 2, paragraph E.

31 **§16525. Payment of restitution assistance; limits**

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

34 A. The lesser of \$15,000 and 25% of the amount of unpaid restitution awarded in the
35 final order if the victim is not an eligible adult; or

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

38 **2. Waiver.** The administrator may waive the payment caps in subsection 1 for good
39 cause shown.

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

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

5 **§16526. Conditions under which award of restitution assistance prohibited**

6 The administrator may not award restitution assistance if:

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

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

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

11 **2. Profit from securities violation.** The victim profited or would have profited from
12 a securities violation;

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

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

17 **§16527. Final order overturned; recovery of restitution assistance**

18 If an award of restitution in a final order is overturned on appeal after restitution
19 assistance under this subchapter has been paid, the administrator in the administrator's
20 discretion may recover the restitution assistance from the claimant by order or may request
21 that the Attorney General bring a civil action to recover the restitution assistance.

22 **§16528. Award not subject to execution, attachment, garnishment or other process**

23 A restitution assistance award made by the administrator under this subchapter is not
24 subject to execution, attachment, garnishment or other process, except an execution,
25 attachment, garnishment or other process brought by or on behalf of the State.

26 **§16529. Claimant convicted of forgery, fraud, deception or falsification forfeits**
27 **restitution assistance award; recovery**

28 **1. Conviction in connection with claim.** A claimant convicted of any crime involving
29 forgery, fraud, deception or falsification in connection with a claim made under this
30 subchapter forfeits any restitution assistance award paid to the claimant under this
31 subchapter.

32 **2. Civil action for recovery.** The administrator may request that the Attorney General
33 bring a civil action in accordance with section 16603 to recover funds awarded to a claimant
34 convicted of any crime involving forgery, fraud, deception or falsification in connection
35 with a claim made under this subchapter.

36 **§16530. Rights of State**

37 **1. Subrogation.** The State is subrogated to the rights of a claimant awarded restitution
38 assistance under this subchapter to the extent of the restitution assistance award made. The
39 subrogation rights are against the person ordered to pay restitution to a victim for a
40 securities violation.

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

5 **§16531. Refund of excess award**

6 A claimant shall refund to the administrator any amount of restitution received that
7 when combined with the restitution assistance under this subchapter exceeds the restitution
8 award in the final order.

9 **§16532. Return of recovered money to fund**

10 The administrator shall return to the fund any money recovered by the administrator
11 under this subchapter.

12 **§16533. Suspension of payment**

13 If payment of restitution assistance under this subchapter would result in a fund balance
14 below \$250,000, the administrator may suspend payment of claims or prorate payment of
15 claims at the administrator's discretion until such time as the administrator determines a
16 sufficient balance has been restored to the fund.

17 **§16534. Rulemaking**

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

21 **Sec. 2. 32 MRSA §16601, sub-§6,** as enacted by PL 2005, c. 65, Pt. A, §2, is
22 amended to read:

23 **6. Nonlapsing operating fund.** ~~There~~ Except as provided in section 16522,
24 subsection 2, there is established an operating fund to be used to carry out the purposes of
25 this chapter and any other statutory duties of the administrator. The operating fund consists
26 of all annual renewal license fees for agents and investment adviser representatives
27 received pursuant to this chapter. Any balance in the operating fund does not lapse, but
28 must be carried forward to be used for the same purposes.

29 **Sec. 3. Transfers from available fiscal year 2022-23 Office of Securities**
30 **Other Special Revenue Funds balances to Securities Restitution Assistance**
31 **Fund.** The State Controller shall transfer \$350,000 from the available balance in the
32 Department of Professional and Financial Regulation, Office of Securities Other Special
33 Revenue Funds account to the Securities Restitution Assistance Fund established in the
34 Maine Revised Statutes, Title 32, section 16522.

35 **SUMMARY**

36 This bill establishes in the Department of Professional and Financial Regulation, Office
37 of Securities the Securities Restitution Assistance Fund. The fund will be used to provide
38 financial assistance to victims of securities violations that were awarded restitution in a
39 final order issued by the Securities Administrator or were awarded restitution in a final
40 order in a legal action initiated by the administrator but did not receive the full amount of
41 restitution ordered before the application for restitution assistance was due. The fund is

1 funded initially by a one-time transfer of \$350,000 from the available balance of the
2 dedicated revenue of the Office of Securities. Thereafter, the fund will be funded by a
3 portion of agent and investment adviser representative renewal license fees and any grants,
4 donations or other money received by the administrator for victim restitution assistance.