

NASAA MODEL LEGISLATION TO CREATE A RESTITUTION ASSISTANCE FUND FOR VICTIMS OF SECURITIES VIOLATIONS

Adopted May 17, 2021

Prefatory Notes:

Jurisdictions considering this legislation may want to consider certain small changes or additions, including the following:

- Adding a confidentiality section for a victim's/claimant's personal information included in an application for restitution assistance, that is consistent with your jurisdiction's constitution, laws and/or rules.
- The process the jurisdiction would like to use for review of applications. For example, will an appointed committee receive and review applications and decide on an award or make a recommendation to the jurisdiction's Board / Commissioner / Administrator? Or will the jurisdiction have a less formal process for internal review and decision? The process to be used could be specified in the legislation or developed later during rulemaking.
- Funding sources for the restitution assistance fund have not been specifically prescribed in Section 4 and should be identified and considered by each jurisdiction. Possible sources of funding include:
 - civil fines or administrative penalties assessed by the jurisdiction (*see* Montana 30-10-1004(2)(a)(i), M.C.A.; Vermont 9 V.S.A. 5616(f));
 - a portion of licensing or registration fees (*see* Maine LD 1704 (2019-2020 legislative session); Montana 30-10-1004(2)(a)(iii), M.C.A.);
 - funds received for deposit into the jurisdiction's enforcement account (*see* Indiana Ind. Code Ann. § 23-20-1-25(b)(1));
 - appropriations by the legislature (*see* Indiana Ind. Code Ann. § 23-20-125(b)(2));
 - gifts, grants, bequests or other donations or voluntary contributions received by the jurisdiction (*see* Maine LD 1704 (2019-2020 legislative session); Montana 30-10-1004(2)(a)(ii), M.C.A.; Kansas HB 2558 (20192020 legislative session)); and,
 - transfers from an investor education and protection fund (*see* Kansas HB 2558 (2019-2020 legislative session)).
- If the jurisdiction does not have restitution as a specific remedy for violations of the securities laws, the jurisdiction's statute may need to be amended in other places to include it.

- Section 6 provides that restitution assistance is available to a natural person who was a resident of the jurisdiction at the time of the securities violation or to a person, other than a natural person, that was domiciled in the jurisdiction at the time of the securities violation. Section 6 as drafted would allow trusts, partnerships and other entities to apply for restitution assistance if they are the victim of a securities violation. Jurisdictions may wish to limit the eligibility criteria to only include natural persons.
- Section 9 allows the jurisdiction, in its discretion, to seek the return of restitution assistance if the relevant final order is overturned on appeal. However, Section 9 leaves the means for doing so, whether through administrative or civil action, up to the jurisdiction.
- A jurisdiction may consider deleting Section 9 and amending the definition of “final order” in Section 2 to mean “a final order issued by the [jurisdiction] under this chapter or a final order issued by the court in a legal action initiated by the [jurisdiction] under this chapter that is not subject to further judicial review or appeal.” (*see* Kansas HB 2558 (2019-2020 legislative session)). This change would delay the award of restitution assistance until a case is no longer subject to review or appeal, whereas retaining the definition of “final order” in Section 2 as drafted and including the permissive recovery provision in Section 9 would allow jurisdictions to provide restitution assistance to claimants sooner.

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*An Act to Create a Restitution Assistance Fund for
Victims of Securities Violations*

Section 1. Short Title. Sections 1 to 18 may be cited as “An Act to Create a Restitution Assistance Fund for Victims of Securities Violations” and in this subchapter as this act.

Section 2. Definitions.

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

1. **Claimant.** “Claimant” means a victim that files an application for restitution assistance under this subchapter. “Claimant” includes the named party in a restitution award in a final order, the executor of a named party in a restitution award in a final order, the heirs and assigns of a named party in a restitution award in a final order, or any other person with lawful authority to act for or on behalf of the named party in a restitution award in a final order.

2. **Final order.** “Final order” means a final order issued by the [jurisdiction] under this chapter or a final order issued by the court in a legal action initiated by the [jurisdiction] under this chapter.
3. **Fund.** “Fund” means the securities restitution assistance fund established by this subchapter.
4. **Securities violation.** “Securities violation” means a violation of this chapter and any related rules.
5. **Victim.** “Victim” means a person awarded restitution in a final order.
6. **Vulnerable person.** “Vulnerable person” means:
 - a. An individual [insert age] years of age or older; or
 - b. An individual protected under the [insert jurisdiction’s statute protecting vulnerable persons].

Section 3. Fund established. A securities restitution assistance fund is established within the [jurisdiction] [add specific location of fund if necessary] to provide funds for restitution assistance for victims that were awarded restitution in a final order issued by the [jurisdiction] under this chapter or were awarded restitution in a final order in a legal action initiated by the [jurisdiction] under this chapter and have not received the full amount of restitution ordered before the application for restitution assistance is due.

Section 4. Funding. The fund consists of amounts received by the [jurisdiction] from: [insert funding language].

Section 5. Funds do not lapse. The amounts received for the fund may be used by the [jurisdiction] only to pay awards of restitution assistance under this subchapter and to administer this subchapter and may not be placed in the General Fund. Any balance in the fund does not lapse but must be carried forward to be used for the same purposes.

Section 6. Application for restitution assistance.

1. **Eligibility.** The following victims are eligible for restitution assistance:
 - a. A natural person who was a resident of [state/commonwealth/district/territory] at the time of the securities violation; and
 - b. A person, other than a natural person, that was domiciled in the [state/commonwealth/district/territory] at the time of the securities violation.
2. **Deadline.** The application for restitution assistance under this subchapter must be received by [jurisdiction] not more than one year after the date of the final order awarding restitution to the victim.

3. **Extension.** Notwithstanding subsection 2, the [jurisdiction] may grant an extension of time for submission of an application for restitution assistance for good cause shown by the claimant.
4. **Form.** A person that is eligible to apply for restitution assistance under this subchapter may submit an application in a manner and form prescribed by the [jurisdiction]. The [jurisdiction] may provide forms for the submission of applications.

Section 7. Restitution assistance awards.

1. **Payment caps.** The [jurisdiction] may award restitution assistance to a claimant that is:
 - a. The lesser of \$25,000 or 25% of the amount of unpaid restitution awarded in the final order; or
 - b. The lesser of \$50,000 or 50% of the amount of unpaid restitution awarded in the final order if the victim is a vulnerable person.
2. **Waiver.** These payment caps may be waived by [the jurisdiction] for good cause shown.
3. **Limits.** An award of restitution assistance under this subchapter may be made only to one claimant per victim.

Section 8. Restitution prohibited. The [jurisdiction] may not award restitution assistance if:

1. **Participating in or committing a securities violation.** The victim sustained the monetary injury primarily as a result of:
 - a. Participating or assisting in a securities violation; or
 - b. Attempting to commit or committing a securities violation; or
2. **Profit from securities violation.** The victim profited or would have profited from a securities violation.

Section 9. Final order overturned. If an award of restitution in a final order is overturned on appeal after restitution assistance has been made, the [jurisdiction] at its discretion may recover the restitution assistance from the claimant by [insert jurisdiction's preferred means of recovery, whether by issuing an administrative order or filing a civil suit].

Section 10. Restitution forfeited.

1. **Conviction in connection with claim.** A claimant convicted of any crime including [insert appropriate crimes such as: forgery, fraud, deception or

falsification] in connection with a claim made under this subchapter forfeits any restitution assistance award paid to the claimant under the subchapter.

2. **Civil action for recovery.** The [jurisdiction] may [bring / request that the Attorney General bring] a civil action to recover funds awarded to a claimant convicted of any crime including [insert appropriate crimes such as: forgery, fraud, deception or falsification] in connection with a claim under this subchapter.

Section 11. Subrogation. The [jurisdiction] is subrogated to the rights of the claimant awarded restitution assistance under this subchapter to the extent of the restitution assistance award made. The subrogation rights are against the person ordered to pay restitution to the victim for the securities violation.

Section 12. Lien on recovery. The [jurisdiction] is entitled to a lien in the amount of the restitution assistance award on any recovery made by or on behalf of the victim. The [jurisdiction] may assert its right to this amount in a separate action or intervene in an action brought by or on behalf of the victim.

Section 13. Refund of excess award. A claimant must refund to the [jurisdiction] any amount of restitution received that when combined with the restitution assistance exceeds the restitution award in the final order.

Section 14. Return of recovered money to the fund. Any monies recovered by the [jurisdiction] pursuant to sections 9, 10(2), 11, 12 or 13 of this subchapter, must be returned to the fund.

Section 15. Suspension of claims. If payment of restitution assistance would result in a fund balance below \$250,000, the [jurisdiction] may suspend payment of claims or prorate payment of claims at the [jurisdiction's] discretion until such time as the [jurisdiction] determines a sufficient balance has been restored to the fund.

Section 16. Other process. A restitution assistance award made by the [jurisdiction] under this subchapter is not subject to execution, attachment, garnishment or other process, except those executions, attachments, garnishments or other processes brought by or on behalf of the [state/commonwealth/district/territory].

Section 17. Rulemaking. The [jurisdiction] may adopt rules pursuant to the [cite jurisdiction's Administrative Procedure Act and/or any other rulemaking authority] to carry out the purposes of this subchapter.

Section 18. Effective date. Restitution assistance awards may be made under this subchapter to victims awarded restitution in a final order issued on or after the effective date of this subchapter.