

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 576

By Senators Weld, Oliverio, Taylor, Plymale, Smith,

Jeffries, and Queen

[Originating in the Committee on the Judiciary;

reported on February 16, 2023]

1 A BILL to amend and reenact §32-4-406 and §32-4-407a of the Code of West Virginia, 1931, as
2 amended; and to amend said code by adding thereto a new article, designated §32-7-701,
3 §32-7-702, §32-7-703, §32-7-704, §32-7-705, §32-7-706, §32-7-707, §32-7-708, §32-7-
4 709, §32-7-710, §32-7-711, and §32-7-712, all relating generally to authorizing victim
5 restitution and creating a restitution assistance fund for victims of securities violations;
6 providing a short title; providing definitions; creating the Securities Restitution Assistance
7 Fund; permitting the Auditor to transfer three percent of securities fees collected to the
8 Securities Restitution Assistance Fund; authorizing the awarding of restitution in an
9 administrative assessment; providing for the manner and procedures for applications for
10 restitution assistance; providing the manner and procedures for the payment of restitution
11 assistance awards; detailing the situations in which restitution is prohibited; providing for
12 subrogation; providing for a lien on recovery and refunds of excessive restitution amounts;
13 providing for the suspension of claims; exempting the restitution awards from attachment
14 or intercept; authorizing the Auditor to promulgate rules regarding the restitution program;
15 and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS.

§32-4-406. Administration of chapter; operating fund for securities department.

1 (a) This chapter shall be administered by the Auditor of this state and he or she is hereby
2 designated, and shall be, the commissioner of securities of this state. He or she has the power and
3 authority to appoint or employ such assistants as are necessary for the administration of this
4 chapter.

5 (b) The Auditor shall set up a special operating fund for the securities division in his or her
6 office. The Auditor shall pay into the fund 20 percent of all fees collected as provided for in this
7 chapter. If, at the end of any fiscal year, the balance in the special operating fund exceeds 20
8 percent of the gross revenues from the special operating fund operations, the excess shall be

9 transferred to the General Revenue Fund. The special operating fund shall be used by the Auditor
10 to fund the operation of the securities division and the general operations of the Auditor's office.
11 The special operating fund shall be appropriated by line item by the Legislature.

12 (c) Moneys payable for assessments established by §32-4-407a of this code shall be
13 collected by the commissioner and deposited into the General Revenue Fund.

14 (d) In each given fiscal year, up to five percent of all collected gross assessments and fees
15 may be deposited to the Securities Restitution Assistance Fund created in §32-7-703 of this code.

16 ~~(d)~~ (e) It is unlawful for the commissioner or any of his or her officers or employees to use
17 for personal benefit any information which is filed with or obtained by the commissioner and which
18 is not made public. No provision of this chapter authorizes the commissioner or any of his or her
19 officers or employees to disclose any information except among themselves or when necessary or
20 appropriate in a proceeding or investigation under this chapter. No provision of the chapter either
21 creates or derogates from any privilege which exists at common law or otherwise when
22 documentary or other evidence is sought under a subpoena directed to the commissioner or any of
23 his or her officers or employees.

§32-4-407a. Administrative assessments.

1 (a) A registrant, applicant for registration, issuer, or other person upon whom the
2 commissioner has conducted an examination, audit, investigation, or prosecution and who has
3 been determined by the commissioner to have violated this article or rule or order of the
4 commissioner under this article shall pay for all the costs incurred in the conduct of such
5 examination, audit, investigation, or prosecution. These costs shall include, but not be limited to,
6 the salaries and other compensation paid to clerical, accounting, administrative, investigative,
7 examiner, and legal personnel, the actual amount of expenses reasonably incurred by such
8 personnel and the commissioner in the conduct of such examination, audit, investigation, or
9 prosecution, including a pro rata portion of the commissioner's administrative expense.

10 (b) After giving notice and opportunity for a hearing, the commissioner may issue an order

11 accompanied by written findings of fact and conclusions of law which imposes victim restitution
12 pursuant to the provisions of §32-7-701 et seq. of this code and may issue an order accompanied
13 by written findings of fact which imposes an administrative assessment in an amount provided in
14 subdivision (1) of this subsection against a broker-dealer, agent, investment adviser, or
15 investment adviser representative registered under ~~section two hundred one, article two of this~~
16 ~~chapter §32-2-201 of this code~~, or an affiliate of the broker-dealer or investment adviser where the
17 commissioner finds that the person either willfully has violated this article or a rule or order of the
18 commissioner under this article or has engaged in dishonest or unethical practices in the securities
19 business or has taken unfair advantage of a customer.

20 (1) The commissioner, in issuing an order under this subsection may impose an
21 administrative assessment of up to ~~10,000~~ \$10,000 for a single violation or of up to ~~50,000~~ \$50,000 for multiple
22 violations in a single proceeding or a series of related proceedings. Each act or omission that
23 provides a basis for issuing an order under this subsection ~~shall constitute~~ constitutes a separate
24 violation.

25 (2) For purposes of determining the amount of administrative assessment to be imposed in
26 an order issued under this subsection, the commissioner shall consider:

27 (i) The circumstances, nature, frequency, seriousness, magnitude, persistence, and
28 willfulness of the conduct constituting the violation;

29 (ii) The scope of the violation, including the number of persons in and out of this state
30 affected by the conduct constituting the violation;

31 (iii) The amount of restitution or compensation that the violator has made and the number
32 of persons in this state to whom the restitution or compensation has been made;

33 (iv) Past and concurrent conduct of the violator that has given rise to any sanctions or
34 judgment imposed by, or plea of guilty or nolo contendere or settlement with, the commissioner or
35 any securities administrator of any other state or other country, any court of competent jurisdiction,
36 the Securities and Exchange Commissioner, the Commodity Futures Trading Commission, any

37 other federal or state agency, or any national securities association or national securities
38 exchange as defined in the Securities Exchange Act of 1934 (48 Stat. 88a, 15 U.S.C. 78A *et seq.*);

39 (v) Any other factor that the commissioner finds appropriate in the public interest or for the
40 protection of investors and consistent with the purposes fairly intended by the policy and
41 provisions of this article.

42 (3) An administrative assessment imposed by an order issued under this subsection is not
43 mutually exclusive of any other remedy available under this article.

44 (4) The commissioner shall not impose an administrative assessment with respect to any
45 public proceeding which was instituted prior to the date of enactment of this section.

**ARTICLE 7. RESTITUTION ASSISTANCE FUND FOR VICTIMS OF SECURITIES
VIOLATIONS.**

§32-7-701. Short Title.

1 This article may be cited as the "Securities Violations Restitution Assistance Act".

§32-7-702. Definitions.

1 As used in this article, unless context demands otherwise, the following terms have the
2 following meanings:

3 (a) "Claimant" means a natural person who is a victim that files an application for restitution
4 assistance under this article. "Claimant" includes the named party in a restitution award in a final
5 order, the executor of a named party in a restitution award in a final order, the heirs and assigns of
6 a named party in a restitution award in a final order, or any other person with lawful authority to act
7 for or on behalf of the named party in a restitution award in a final order.

8 (b) "Final order" means a final order issued by the West Virginia securities commissioner
9 under this chapter which is no longer subject to appeal pursuant to the provisions of §32-4-411 of
10 this code or a final order issued by a court of competent jurisdiction that is not subject to further
11 judicial review or appeal.

- 12 (c) "Fund" means the Securities Restitution Assistance Fund established by this article.
13 (d) "Securities violation" means a violation of this chapter and any related rules or orders.
14 (e) "Victim" means a person awarded restitution in a final order.
15 (f) "Vulnerable person" means an individual 65 years of age or older or a person subject to
16 §9-6-1 et seq. of this code.

§32-7-703. Operating fund for restitution program.

1 There is created in the State Treasury the Securities Restitution Assistance Fund.
2 Expenditures from that fund shall be for the purposes set forth in §32-7-701 et seq., namely, to
3 provide restitution assistance to victims who have been awarded restitution a final order issued by
4 the commissioner of securities or who were awarded restitution in a final order of a court of
5 competent jurisdiction for a violation of this chapter, and who have not received the full amount of
6 restitution ordered before the application for restitution assistance is due. Money shall be
7 deposited into this fund as provided for in §32-4-406(d). The Auditor may use the Securities
8 Restitution Assistance Fund for the administration and operation of the restitution program created
9 by this article.

§32-7-704. Application for restitution assistance.

1 (a) Only victims who are natural persons and residents of the State of West Virginia at the
2 time of the securities violation are eligible for restitution assistance:

3 (b) The application for restitution assistance under this article must be received by the
4 commissioner not more than one year after the date of the final order awarding restitution to the
5 victim.

6 (c) Notwithstanding subsection (b), the commissioner may grant an extension of time for
7 submission of an application for restitution assistance for good cause shown by the claimant.

8 (d) A person that is eligible to apply for restitution assistance under this article may submit
9 an application in a manner and form prescribed by the commissioner.

§32-7-705. Restitution assistance awards.

1 (a) The commissioner may award restitution assistance to a claimant in an amount that is:

2 (1) Either a total of up to \$25,000 or 25 percent of the amount of unpaid restitution awarded
3 in a final order, whichever is greater; or

4 (2) Either a total of up to \$50,000 or 50 percent of the amount of unpaid restitution awarded
5 in a final order, whichever is greater, if the victim is a vulnerable person.

6 (b) An award of restitution assistance under this article may be made only to one claimant
7 per victim.

§32-7-706. Restitution prohibited.

1 The commissioner may not award restitution assistance to a victim who participated in or
2 committed a securities violation, including, but not limited to:

3 (1) Participating or assisting in the securities violation;

4 (2) Attempting to commit or committing the securities violation; or

5 (3) The victim profited or would have profited from the securities violation.

§32-7-707. Subrogation.

1 The commissioner is subrogated to the rights of a claimant awarded restitution assistance
2 under this article to the extent of the restitution assistance award made. The subrogation rights are
3 against the person or other entity ordered to pay restitution to a claimant for the securities
4 violation.

§32-7-708. Lien on recovery and refund of excess amount.

1 The commissioner is entitled to a lien in the amount of the restitution assistance award on
2 any recovery made by or on behalf of the victim in a separate action or settlement. A claimant shall
3 refund to the commissioner any amount of restitution received that when combined with the
4 restitution assistance exceeds the restitution award in the final order and such amounts shall be
5 deposited in the fund created by §32-7-703 of this code.

§32-7-709. Suspension of claims.

1 If payment of restitution assistance would result in the Securities Restitution Assistance

2 Fund balance falling below \$250,000, the commissioner may suspend payment of claims or
3 prorate payment of claims at the commissioner's discretion until such time as the commissioner
4 determines a sufficient balance has been restored to the fund.

§32-7-710. Other process.

1 A restitution assistance award made by the commissioner under this article is not subject
2 to execution, attachment, garnishment, or other legal recovery process, except those executions,
3 attachments, garnishments, or other legal recovery processes brought by or on behalf of the State
4 of West Virginia.

§32-7-711. Rulemaking.

1 To facilitate the implementation and administration of this article, the commissioner may
2 propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this
3 code.

§32-7-712. Effective date.

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

NOTE: The purpose of this bill is to authorize restitution to victims of securities fraud and to create a fund for that purpose.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.