

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 4985

FISCAL
NOTE

By Delegates Householder, Barnhart, Westfall, Hardy,
Linville, Fehrenbacher, Mazzocchi, Criss, Hornbuckle,
and Kump

[Introduced January 22, 2024; Referred to the
Committee on the Judiciary then Finance]

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

Be it enacted by the Legislature of West Virginia:

ARTICLE	4.	GENERAL	PROVISIONS.
§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.

6 These costs shall include, but not be limited to, the salaries and other compensation paid
 7 to clerical, accounting, administrative, investigative, examiner, and legal personnel, the actual
 8 amount of expenses reasonably incurred by such personnel and the commissioner in the conduct
 9 of such examination, audit, investigation, or prosecution, including a pro rata portion of the
 10 commissioner's administrative expense.

11 (b) After giving notice and opportunity for a hearing, the commissioner may issue an order
12 accompanied by written findings of fact and conclusions of law which imposes victim restitution,
13 pursuant to the provisions of §32-7-701 et seq. of this code, and may issue an order accompanied
14 by written findings of fact which imposes an administrative assessment in an amount provided in
15 subdivision (1) of this subsection against a broker-dealer, agent, investment adviser, or investment
16 adviser representative registered under §32-2-201 of this code, or an affiliate of the broker-dealer
17 or investment adviser where the commissioner finds that the person either willfully has violated
18 this article or a rule or order of the commissioner under this article or has engaged in dishonest or
19 unethical practices in the securities 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 for a single violation or of up to f\$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. of this code,
3 namely, to provide restitution assistance to victims who have been awarded restitution a final order
4 issued by the commissioner of securities or who were awarded restitution in a final order of a court
5 of competent jurisdiction for a violation of this chapter, and who have not received the full amount
6 of restitution ordered before the application for restitution assistance is due.

7 Money shall be deposited into this fund as provided for in §32-4-406(d) of this code. The
8 Auditor may use the Securities Restitution Assistance Fund for the administration and operation of
9 the restitution program created 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) of this section, the commissioner may grant an
7 extension of time for submission of an application for restitution assistance for good cause shown
8 by the claimant.

9 (d) A person that is eligible to apply for restitution assistance under this article may submit
10 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.

NOTE: The purpose of this bill is to authorize victim restitution and creating a restitution assistance fund for victims of securities violations; create the Securities Restitution Assistance Fund; authorize the awarding of restitution in an administrative assessment; provide for the manner and procedures for applications for restitution assistance; provide the manner and procedures for the payment of restitution assistance awards; detail the situations in which restitution is prohibited; provide for subrogation; provide for a lien on recovery and refunds of excessive restitution amounts; provide for the suspension of claims; exempt the restitution awards from attachment or intercept; and authorize the Auditor to promulgate rules regarding the restitution program.

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