



NASAA Model Act to Create A Restitution Assistance Fund for Victims of Securities Violations

Legislative Text & Commentary

North American Securities Administrators Association

About NASAA

The oldest international organization devoted to investor protection, the North American Securities Administrators, Inc. (“NASAA”) was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, Canada, and Mexico. NASAA is the voice of securities agencies responsible for grass-roots investor protection and responsible capital formation.

You can learn more about NASAA and the activities of its members at www.nasaa.org.

Table of Contents

Last Updated July 2023

Background	1
Rationale	1
Existing Securities Victims Assistance and Restitution Funds.....	1
Development and Approval of the NASAA Model Act	2
NASAA Model Act to Create a Restitution Assistance Fund for Victims of Securities Violations	3
Text of the Model Act and Commentary	3
Endnotes	10

Background

Rationale

The NASAA Model Act to Create a Restitution Assistance Fund for Victims of Securities Violations (“Restitution Act” or “Model Act”) is designed to provide monetary relief to victims of securities violations where restitution from the wrongdoer does not cover the full loss. The Model Act establishes eligibility requirements, caps recovery, and prohibits or forfeits recovery in certain circumstances. The Model Act also provides state securities regulators with an additional recovery mechanism for the benefit of harmed investors.

Jurisdictions that enact a restitution fund may opt to utilize funds from securities civil fines or registration fees. Repurposing these funds to essentially repay a portion of what amounts to some victims’ hard earned retirement savings benefits individuals who qualify as “vulnerable” under the law. In states where this legislation has been enacted, the funds have provided immediate relief to those impacted by securities fraud. Aiding victims of securities fraud promotes victim cooperation with securities regulators as well.

Existing Securities Victims Assistance and Restitution Funds

Prior to the promulgation of the Model Act, three states had securities victims’ assistance and restitution funds in place. These states were Indiana, Montana, and Vermont.ⁱ

Since the adoption of the Restitution Act, three states have enacted legislation inspired by it. In 2021, Ohio became the first state to use the Model Act.ⁱⁱ In 2022, Maine became the second state.ⁱⁱⁱ In 2023, North Dakota became the third state.^{iv}

Since the inception of their funds, states have issued awards to victims of securities violations as follows:

- Indiana has issued approximately \$1.5 million in restitution assistance awards to 140 claimants following the establishment of its fund in 2010.
- Montana has awarded approximately \$2.1 million to 153 claimants following the establishment of its fund in 2011.
- Vermont has awarded approximately \$5,300 to one claimant following the establishment of its fund in 2019.

Other options for recovery are limited. Depending on the facts and circumstances, victims of securities fraud may be eligible to seek restitution from the Securities Investor Protection Company Program.^v

Development and Approval of the NASAA Model Act

The Model Act originated as a project of the NASAA State Legislation Committee (“Committee”).^{vi} The Committee used a robust stakeholder engagement and public comment process to develop the Model Act. On July 1, 2020, the Committee circulated a draft of the Model Act for internal comments from NASAA member jurisdictions. NASAA then released a draft of the Model Act for a 30-day public comment period.^{vii} When preparing the final version of the Model Act, the Committee received and considered comments from state securities regulators, investor protection advocacy organizations, and private financial services organizations.^{viii} The Committee also considered the experiences that Indiana and Montana have had since 2010 and 2011, respectively, operating their own securities victim restitution funds.

On April 20, 2021, the NASAA Board of Directors approved the Committee’s request to submit the proposed Model Act to the NASAA membership for a vote. NASAA members subsequently voted to approve it on May 17, 2021.

NASAA Model Act to Create a Restitution Assistance Fund for Victims of Securities Violations

Text of the Model Act and Commentary

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 32 M.R.S. § 16522(2)(A) & (B)); 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 32 M.R.S. § 16522(2)(C); Montana M.C.A § 30-10-1004(2)(a)(ii); Kansas HB 2558 (2019-2020 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.

Commentary: The prefatory notes list several considerations that the adopting jurisdiction should consider. These considerations consist of claimant confidentiality, the procedural process for reviewing applications, funding the fund, ensuring relevant provisions of state law allows restitution as a remedy, limiting recovery to individuals rather than entities, and how the fund interacts with victims in the event of an appeal.

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].

Commentary: Section 2 defines key terms used throughout the Model Act. The Model Act only defines terms necessary to its operation. The statutes in Indiana, Maine, Montana, Ohio, and Vermont include additional defined terms.^{ix} Several commenters suggested that the definitions of “claimant” and “victim” should be expanded to include entities like partnerships, LLCs and other forms of small business organizations. The drafters addressed these comments in the prefatory notes suggesting that a jurisdiction may choose to limit the awards to individuals or expand the award to include entities.

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.

Commentary: Section 3 authorizes the securities administrator to issue monetary awards to qualifying victims if the victim has not received the full amount of restitution ordered after the restitution is due.

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

Commentary: Section 4 provides the source of funding for the fund. Several commenters suggested requiring that the primary funding source for the fund should be civil fines or administrative

penalties assessed by the jurisdiction. These commenters prefer to limit the use of licensing or filing fees as a funding source because these fees are not derived from securities violations. The drafters included a variety of funding options for jurisdictions to consider with no preference to a jurisdiction's decision to funding sources in the prefatory notes.

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.

Commentary: Section 5 requires that the funds in the restitution fund do not lapse or otherwise revert to a jurisdiction's general fund.

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.

Commentary: Section 6 allows individuals and entities to recover money from the fund. The drafters noted in the prefatory note that a jurisdiction may choose to limit recovery to natural persons, prohibiting recovery by entities. Several commenters felt that the expansion of recovery to entities better reflected industry habits in investing like utilizing a trust, partnership, or other small business entity to invest.

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.

Commentary: Section 7 caps restitution at different sums or rates for vulnerable and nonvulnerable victims. Commenters noted that these caps may be insufficient for victims of securities fraud. The drafters indicated that it would likely not be feasible for a state to provide a fund with sufficient money to make every victim of securities law violations whole. The drafters did not want to incentivize investors to disregard risk if the recovery caps are large enough to act as investment insurance.

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.

Commentary: Section 8 prevents the recovery of funds for persons who participated in a securities violation related to the award they are seeking.

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].

Commentary: Section 9 provides jurisdictions with the discretion to recover an award paid to a victim if an award is overturned on appeal. Several commenters suggested that awarding funds

prior to the conclusion of all appeals would create substantive logistical issues including: recipients not having certainty with regard to the restitution award; recipients not having the financial resources to reimburse restitution awards overturned on appeal; and the cost for a jurisdiction to recoup a restitution award from a recipient that is later overturned on appeal could potentially exceed the award caps set in the Model Act. Kansas introduced a bill that established a restitution fund but required that restitution is awarded only when a final order is not subject to further judicial review or appeal.^x In the prefatory notes, the drafters included a reference to this discretion and methods for which jurisdictions may choose to obtain recovery in the event of an appeal.

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.

Commentary: Section 10 allows a jurisdiction to recover the claims from victims if they are convicted of any crime in connection with a claim in this act.

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.

Commentary: Section 11 requires that the jurisdiction is subrogated to the rights of the claimant regarding restitution payments.

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.

Commentary: Section 12 allows the jurisdiction to place a lien on the amount of any restitution assistance award if the victim later receives a recovery of funds from the securities violation.

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.

Commentary: Section 13 requires the victim to refund the jurisdiction any amount of funds that are in excess of 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.

Commentary: Section 14 allows jurisdictions to recover previously paid awards to the fund in the appropriate event of: the final order being overturned, through civil action against the victim, subrogation of the jurisdiction's rights to restitution, lien on recovery, or in the event the victim is paid excess restitution.

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.

Commentary: Section 15 allows a securities administrator discretion to suspend payment of claims in the event the fund balance is below \$250,000 until the balance has been restored to a sufficient balance.

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].

Commentary: Section 16 prohibits other territories or states from garnishing or attaching the funds paid to victims of securities fraud.

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.

Commentary: Section 17 includes rulemaking authority for securities administrators. One commenter suggested that the model act should include standard regulations requiring applicants to attest their claim or other proofs of claim similar to an affidavit. The drafters considered the differences between securities regulators and their approval process for regulations across the United States and decided a uniform regulation would be impractical, leaving the decision up to individual jurisdictions.

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.

Endnotes

ⁱ See Indiana Code § 23-20 (2010); Montana Code § 30-10 (2011); Vermont Code § 9-150-5616 (2019).

ⁱⁱ See Ohio Code § 17-1707-47 (2021).

ⁱⁱⁱ See generally 32 M.R.S. §§ 16521 – 16534 (2022).

^{iv} See North Dakota Code § 10-04-03 (2023).

^v SIPC, About SIPC, available at <https://www.sipc.org/about-sipc/>.

^{vi} In 2019-2020, when NASAA developed the Model Act, state securities regulators from the District of Columbia, Indiana, Maine, Massachusetts, Minnesota, Montana, Ohio, Texas, Washington, West Virginia, and Wyoming served on the Committee.

^{vii} Notice of Request for Public Comment, NASAA's Proposed Model Act to Create a Restitution Assistance Fund for Victims of Securities Violations. (July 1, 2020), available at [Model-Restitution-Assistance-Legislation-Request-for-Public-Comment.pdf](#).

^{viii} See <https://www.nasaa.org/nasaa-proposals>.

^{ix} See Indiana Code § 23-20-1 (2010); Montana Code § 30-10-1003 (2011); Vermont Code § 9-150-5616 (2019); 32 M.R.S. § 16521 (2022); and Ohio Code § 17-1707-47 (2021).

^x Kansas HB 2558 (2020), available at http://www.kslegislature.org/li_2020/b2019_20/measures/hb2558/.