

Introduced by

Senators Lee, Barta, J. Roers

Representatives Beltz, Boschee, Schreiber-Beck

1 A BILL for an Act to create and enact a new section to chapter 10-04 of the North Dakota  
2 Century Code, relating to the restitution assistance fund for victims of securities violations; to  
3 provide a continuing appropriation; and to provide for application.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 10-04 of the North Dakota Century Code is created  
6 and enacted as follows:

7 **Restitution assistance fund - Continuing appropriation.**

8 1. As used in this section:

9 a. "Claimant" means an individual <sup>that</sup> ~~who meets the definition of eligible adult under~~  
10 ~~section 10-04-08.5 and files an application for restitution assistance under this~~  
11 section. The term includes the named party, the executor of a named party, the  
12 heirs and assignees of a named party, or any other individual with lawful authority  
13 to act for or on behalf of the named party in a restitution award in a final order.

14 b. "Final order" means an order issued by the commissioner under this chapter or a  
15 final order issued by the court in a legal action initiated by the commissioner  
16 under this chapter.

17 c. "Securities violation" means a violation of any provision of this chapter, or any  
18 rule or order issued by the commissioner under this chapter.

19 ~~d. "Victim" means an individual who meets the definition of an eligible adult under~~  
20 ~~section 10-04-08.5 and is awarded restitution in a final order.~~

21 2. A special fund is established in the state treasury and is designated as the restitution  
22 assistance fund for <sup>individuals eligible for restitution</sup> ~~eligible adult victims~~. The commissioner shall deposit up to one  
23 million dollars per biennium from the department's revenue into the fund. The moneys  
24 in the fund are appropriated on a continuing basis to the commissioner to provide

- 1            restitution assistance for <sup>individuals</sup> ~~victims~~ who have not received full restitution from a final  
2            order before the application for restitution assistance is due.
- 3            3. An individual is eligible for restitution assistance if the individual:
- 4            a. Is a resident of the state who is a victim of a securities violation committed in this  
5            state or other jurisdiction, including a foreign country, if the jurisdiction does not  
6            offer assistance substantially similar to the assistance offered under this section.
- 7            b. Is a nonresident who is a victim of a securities violation committed in this state if  
8            the nonresident's home state offers residents of this state substantially similar  
9            assistance as offered under this section.
- 10           c. Submits an application, in the manner prescribed by the commissioner, for  
11           restitution assistance within two years of the date of the final order, except the  
12           commissioner may grant an extension of time for submission of an application for  
13           restitution assistance upon a showing of good cause by the claimant.
- 14           4. The commissioner may award the lesser of fifty thousand dollars or fifty percent of the  
15           amount of unpaid restitution awarded in the final order to a claimant. An award of  
16           restitution assistance may be made only to one claimant per victim. The commissioner  
17           may waive any limitations on payment upon a showing of good cause.
- 18           5. The commissioner may not award restitution assistance if:
- 19           a. The <sup>individual</sup> ~~victim~~ sustained the monetary injury as a result of:
- 20                  (1) Participating or assisting in a securities violation; or
- 21                  (2) Attempting or committing a securities violation; or
- 22           b. The <sup>individual</sup> ~~victim~~ profited or would have profited from a securities violation.
- 23           6. A claimant convicted of any crime deemed relevant by the commissioner in connection  
24           to a claim made under this section shall forfeit any restitution assistance awarded to  
25           the claimant.
- 26           7. The commissioner may bring a civil action to recover funds awarded to a claimant  
27           convicted of any crime deemed relevant by the commissioner in connection with a  
28           claim under this section.
- 29           8. If the commissioner overturns a final order or a final order is overturned on appeal  
30           after restitution assistance has been made to a claimant, the commissioner may issue  
31           an order to recover the restitution assistance.

1       9. The department is subrogated to the rights of the claimant awarded restitution  
2       assistance. The subrogation rights are against the individual ordered to pay restitution  
3       to the <sup>claimant</sup> ~~victim~~ for the securities violation. In addition, the commissioner is entitled to a  
4       lien in the amount of the award on a recovery made by or on behalf of the <sup>claimant</sup> ~~victim~~. The  
5       commissioner may recover the amount in a separate action or intervene in an action  
6       brought by or on behalf of the <sup>claimant</sup> ~~victim~~.

7       10. A claimant shall refund to the commissioner any amount of restitution received if the  
8       combined total of the restitution assistance exceeds the restitution awarded in the final  
9       order. Any moneys recovered by the commissioner under subsections 7, 8, and 9 must  
10      be returned to the fund.

11      11. The commissioner may suspend payment of claims or prorate payment of claims until  
12      such a time the commissioner determines a sufficient balance has been restored to  
13      the fund if payment of restitution assistance would result in a fund balance below one  
14      hundred thousand dollars.

15      12. Restitution assistance awarded by the commissioner under this section is not subject  
16      to execution, attachment, garnishment, or other process, except those executions,  
17      attachments, garnishments, or other processes brought by or on behalf of the state.

18      13. The commissioner may adopt rules pursuant to chapter 28-32 to carry out this section.

19      **SECTION 2. APPLICATION.** Restitution assistance awards may be made under this Act  
20      only to victims awarded restitution in a final order issued on or after the effective date of this Act.