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STATE OF MAINE
ONE HUNDRED AND THIRTIETH LEGISLATURE
COMMITTEE ON HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES

TO: Sen. Anne Carney, Senate Chair
Rep. Thomas Harnett, House Chair
Joint Standing Committee on Judiciary

FROM: Sen. Heather B. Sanborn, Senate Chair
Rep. Denise A. Tepler, House Chair *DMT*
Joint Standing Committee on Health Coverage, Insurance and Financial Services

DATE: February 22, 2022

RE: Public Records Exception Review of LD 1887

We are writing to request review of LD 1887, An Act To Establish the Securities Restitution Assistance Fund for Victims of Securities Violations, pursuant to Title 1, section 434, subsection 2. This bill was submitted by the Bureau of Insurance. The committee held a public hearing on the bill in compliance with the public hearing requirement of Title 1, section 434, subsection 1. The committee voted unanimously OTP; a copy of the bill is attached.

During the 129th Legislature's First Regular Session a substantially similar bill was considered as LD 1704, An Act to Establish the Securities Restitution Assistance Fund for Victims of Securities Violation. LD 1704 was carrier over on the Special Appropriations Table to the Second Regular Session, but not was not finally acted upon by the Legislature due to the pandemic. As part of the committee process for LD 1704, the Judiciary Committee had the opportunity to review the proposed public records exception in LD 1704 and recommended no changes in the language. See attached memo. When the bill was introduced in the 130th Legislature as LD 1887, it included the same proposed public records exception from LD 1704.

The proposed public records exception in LD 1887 protects the confidentiality of personal information of an applicant for restitution assistance. By reference to an existing provision in the Maine Uniform Securities Act, LD 1887 would shield from public disclosure the social security number, residential address and residential telephone number of an applicant. See proposed section §16524 in Section 1 of LD 1887 (page 2, lines 27 to 30) and 32 MRSA §16607, subsection 2, paragraph E attached.

*see
p. 16,
then
p. 10*

We have reviewed the statutory criteria in Title 1, section 434, subsection 2 and we offer the following comments on LD 1887:

①

A. Whether the record protected by the proposed exception needs to be collected and maintained.

B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception.

A & B. It is necessary for the Office of Securities to collect this personal information from applicants for restitution assistance. The information is needed to be able to review and process applications.

C. Whether federal law requires a record covered by the proposed exception to be confidential.

C. We are not aware of any federal law that applies here.

D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records.

D. We believe that the confidentiality of this information is important to protect the privacy of applicants and that there is no public interest in disclosing their social security number and contact information.

E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records.

E. We do not believe paragraph E is applicable.

F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records.

F. We do not believe paragraph F is applicable.

G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records.

G. We do believe that there is potential for the safety of an applicant to be jeopardized and that any safety interest outweighs any public interest in disclosure.

G-1. Whether public access to the record ensures or would ensure that members of the public are able to make informed health and safety decisions.

G-1. We do not believe paragraph G-1 is applicable.

H. Whether the proposed exception is as narrowly tailored as possible.

H. Yes, we believe the language is crafted in this manner. The provision is focused on the confidentiality of an applicant's social security number, residential address and residential telephone number. Other information is not protected from public disclosure.

I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.

I. We do not offer any further comments.

Thank you for your consideration of our comments. Please contact us or our legislative analyst, Colleen McCarthy Reid, if you have any questions or need additional information. We look forward to discussing this with your committee in work session.

Enclosure: LD 1887, 32 MRSA §16607 and JUD memo on LD 1704

cc: Members, Joint Standing Committee on Health Coverage, Insurance and Financial Services



130th MAINE LEGISLATURE

SECOND REGULAR SESSION-2022

Legislative Document

No. 1887

H.P. 1397

House of Representatives, January 5, 2022

An Act To Establish the Securities Restitution Assistance Fund for Victims of Securities Violations

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 203.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HARNETT of Gardiner.
Cosponsored by Senator BAILEY of York and
Representative: McCREA of Fort Fairfield.

1 Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 32 MRSA c. 135, sub-c. 5-A is enacted to read:

3 SUBCHAPTER 5-A

4 SECURITIES RESTITUTION ASSISTANCE FUND

5 §16521. Definitions

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

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

14 2. Eligible adult. "Eligible adult" means:

15 A. An individual 65 years of age or older; or

16 B. An individual protected under the Adult Protective Services Act.

17 3. Final order. "Final order" means a final order issued by the administrator under
18 this chapter or a final order issued by a court in a legal action initiated by the administrator
19 under this chapter.

20 4. Fund. "Fund" means the Securities Restitution Assistance Fund established under
21 section 16522.

22 5. Securities violation. "Securities violation" means a violation of this chapter and
23 any rules adopted pursuant to this chapter.

24 6. Victim. "Victim" means a person that suffered monetary injury as a result of a
25 securities violation and was awarded restitution in a final order.

26 §16522. Securities Restitution Assistance Fund

27 1. Fund established. The Securities Restitution Assistance Fund is established within
28 the Department of Professional and Financial Regulation, Office of Securities to provide
29 funds for restitution assistance for victims that were awarded restitution in a final order
30 issued by the administrator under this chapter or were awarded restitution in a final order
31 in a legal action initiated by the administrator under this chapter but did not receive the full
32 amount of restitution ordered before the application for restitution assistance under section
33 16523, subsection 2 was due.

34 2. Funding. The fund consists of the following amounts received by the administrator:

35 A. Five dollars of each annual agent renewal license fee paid if the operating fund
36 balance of the Office of Securities under section 16601, subsection 6 as of October 1st
37 of the previous calendar year exceeds 135% of the office's current annual budget;

1 B. Five dollars of each annual investment adviser representative renewal license fee
2 paid if the operating fund balance of the Office of Securities under section 16601,
3 subsection 6 as of October 1st of the previous calendar year exceeds 135% of the
4 office's current annual budget;

5 C. All grants, donations and payments received or accepted by the administrator for
6 victim restitution assistance; and

7 D. Any other amounts designated by the administrator for victim restitution assistance.

8 3. Nonlapsing fund. The amounts received for the fund may be used by the
9 administrator only to pay awards of restitution assistance under this subchapter and to
10 administer this subchapter and may not be placed in the General Fund. Any balance in the
11 fund does not lapse but must be carried forward to be used for the same purposes.

12 **§16523. Claims**

13 1. Eligible victims. The following victims are eligible for restitution assistance:

14 A. A natural person who was a resident of the State at the time of the securities
15 violation; and

16 B. A person, other than a natural person, that was domiciled in the State at the time of
17 the securities violation.

18 2. Application. A person that is eligible for restitution assistance under this subchapter
19 may submit an application in a manner and form prescribed by the administrator. The
20 administrator may provide forms for the submission of applications.

21 3. Deadline. The application for restitution assistance under this subchapter must be
22 received by the administrator not more than one year after the date of the final order
23 awarding restitution to the victim.

24 4. Extension. Notwithstanding subsection 3, the administrator may grant an extension
25 of time for submission of an application for restitution assistance for good cause shown by
26 the claimant.

27 **§16524. Confidentiality of personal information**

28 Personal information contained in an application for restitution assistance under this
29 subchapter is not subject to disclosure to the extent the information is designated as not a
30 public record by section 16607, subsection 2, paragraph E.

31 **§16525. Payment of restitution assistance; limits**

32 1. Payment cap. The administrator may award to a claimant restitution assistance that
33 is:

34 A. The lesser of \$15,000 and 25% of the amount of unpaid restitution awarded in the
35 final order if the victim is not an eligible adult; or

36 B. The lesser of \$30,000 and 50% of the amount of unpaid restitution awarded in the
37 final order if the victim is an eligible adult.

38 2. Waiver. The administrator may waive the payment caps in subsection 1 for good
39 cause shown.

see
p. 10

1 **3. Award limited.** An award of restitution assistance under this subchapter may be
2 made to only one claimant per victim.

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

5 **§16526. Conditions under which award of restitution assistance prohibited**

6 The administrator may not award restitution assistance if:

7 **1. Participating in or committing securities violation.** The victim sustained the
8 monetary injury primarily as a result of:

9 A. Participating or assisting in a securities violation; or

10 B. Attempting to commit or committing a securities violation;

11 **2. Profit from securities violation.** The victim profited or would have profited from
12 a securities violation;

13 **3. Previous restitution assistance.** The victim has received restitution assistance
14 under this subchapter in the previous 5 years; or

15 **4. Final order overturned.** An award of restitution in a final order is overturned on
16 appeal.

17 **§16527. Final order overturned; recovery of restitution assistance**

18 If an award of restitution in a final order is overturned on appeal after restitution
19 assistance under this subchapter has been paid, the administrator in the administrator's
20 discretion may recover the restitution assistance from the claimant by order or may request
21 that the Attorney General bring a civil action to recover the restitution assistance.

22 **§16528. Award not subject to execution, attachment, garnishment or other process**

23 A restitution assistance award made by the administrator under this subchapter is not
24 subject to execution, attachment, garnishment or other process, except an execution,
25 attachment, garnishment or other process brought by or on behalf of the State.

26 **§16529. Claimant convicted of forgery, fraud, deception or falsification forfeits**
27 **restitution assistance award; recovery**

28 **1. Conviction in connection with claim.** A claimant convicted of any crime involving
29 forgery, fraud, deception or falsification in connection with a claim made under this
30 subchapter forfeits any restitution assistance award paid to the claimant under this
31 subchapter.

32 **2. Civil action for recovery.** The administrator may request that the Attorney General
33 bring a civil action in accordance with section 16603 to recover funds awarded to a claimant
34 convicted of any crime involving forgery, fraud, deception or falsification in connection
35 with a claim made under this subchapter.

36 **§16530. Rights of State**

37 **1. Subrogation.** The State is subrogated to the rights of a claimant awarded restitution
38 assistance under this subchapter to the extent of the restitution assistance award made. The
39 subrogation rights are against the person ordered to pay restitution to a victim for a
40 securities violation.

1 2. Lien on recovery. The State is entitled to a lien in the amount of the restitution
2 assistance award on any recovery made by or on behalf of a victim. The State may assert
3 its right to this amount in a separate action or intervene in an action brought by or on behalf
4 of the victim.

5 **§16531. Refund of excess award**

6 A claimant shall refund to the administrator any amount of restitution received that
7 when combined with the restitution assistance under this subchapter exceeds the restitution
8 award in the final order.

9 **§16532. Return of recovered money to fund**

10 The administrator shall return to the fund any money recovered by the administrator
11 under this subchapter.

12 **§16533. Suspension of payment**

13 If payment of restitution assistance under this subchapter would result in a fund balance
14 below \$250,000, the administrator may suspend payment of claims or prorate payment of
15 claims at the administrator's discretion until such time as the administrator determines a
16 sufficient balance has been restored to the fund.

17 **§16534. Rulemaking**

18 The administrator may adopt rules pursuant to the Maine Administrative Procedure Act
19 to carry out the purposes of this subchapter. Rules adopted under this section are routine
20 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

21 **Sec. 2. 32 MRSA §16601, sub-§6**, as enacted by PL 2005, c. 65, Pt. A, §2, is
22 amended to read:

23 **6. Nonlapsing operating fund.** ~~There~~ Except as provided in section 16522,
24 subsection 2, there is established an operating fund to be used to carry out the purposes of
25 this chapter and any other statutory duties of the administrator. The operating fund consists
26 of all annual renewal license fees for agents and investment adviser representatives
27 received pursuant to this chapter. Any balance in the operating fund does not lapse, but
28 must be carried forward to be used for the same purposes.

29 **Sec. 3. Transfers from available fiscal year 2022-23 Office of Securities**
30 **Other Special Revenue Funds balances to Securities Restitution Assistance**
31 **Fund.** The State Controller shall transfer \$350,000 from the available balance in the
32 Department of Professional and Financial Regulation, Office of Securities Other Special
33 Revenue Funds account to the Securities Restitution Assistance Fund established in the
34 Maine Revised Statutes, Title 32, section 16522.

35 **SUMMARY**

36 This bill establishes in the Department of Professional and Financial Regulation, Office
37 of Securities the Securities Restitution Assistance Fund. The fund will be used to provide
38 financial assistance to victims of securities violations that were awarded restitution in a
39 final order issued by the Securities Administrator or were awarded restitution in a final
40 order in a legal action initiated by the administrator but did not receive the full amount of
41 restitution ordered before the application for restitution assistance was due. The fund is

8

1 funded initially by a one-time transfer of \$350,000 from the available balance of the
2 dedicated revenue of the Office of Securities. Thereafter, the fund will be funded by a
3 portion of agent and investment adviser representative renewal license fees and any grants,
4 donations or other money received by the administrator for victim restitution assistance.

9

§16607. Public records; confidentiality

1. Presumption of public records. Except as otherwise provided in subsection 2, records obtained by the administrator or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing or report, are public records and are available for public examination in accordance with Title 1, chapter 13, subchapter 1. [PL 2005, c. 65, Pt. A, §2 (NEW).]

2. Nonpublic records. The following records are not public records and are not available for public examination under subsection 1:

A. A record obtained by the administrator in connection with an audit or inspection under section 16411, subsection 4 or an investigation under section 16602; [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. A part of a record filed in connection with a registration statement under section 16301 and sections 16303 to 16305 or a record under section 16411, subsection 4 that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law; [PL 2005, c. 65, Pt. A, §2 (NEW).]

C. A record that is not required to be provided to the administrator or filed under this chapter and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure; [PL 2005, c. 65, Pt. A, §2 (NEW).]

D. A record received from a person specified in section 16608, subsection 1 that has been designated as confidential by the agency furnishing the record; [PL 2005, c. 65, Pt. A, §2 (NEW).]

E. Any social security number, residential address unless used as a business address and residential telephone number unless used as a business telephone number contained in a record that is filed; [PL 2005, c. 65, Pt. A, §2 (NEW).]

F. A record obtained by the administrator through a designee of the administrator that, pursuant to a routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A, or an order under this chapter, has been:

(1) Expunged from the administrator's records by the designee; or

(2) Determined to be nonpublic or nondisclosable by that designee if the administrator finds the determination to be in the public interest and for the protection of investors; [PL 2005, c. 65, Pt. A, §2 (NEW).]

G. Records to the extent that they relate solely to the administrator's internal personnel rules and practices, including, but not limited to, protocols, guidelines, manuals and memoranda of procedure for employees of the Office of Securities; [PL 2005, c. 65, Pt. A, §2 (NEW).]

H. Interagency or intra-agency memoranda or letters, including generally records that reflect discussions between or consideration by the administrator and employees of the Office of Securities of any action taken or proposed to be taken by the administrator or employees of the Office of Securities, including, but not limited to, reports, summaries, analyses, conclusions or other work product of the administrator or employees of the Office of Securities, except those that by law would routinely be discoverable in litigation; and [PL 2005, c. 65, Pt. A, §2 (NEW).]

I. Records to the extent that disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. [PL 2005, c. 65, Pt. A, §2 (NEW).]
[PL 2005, c. 65, Pt. A, §2 (NEW).]

3. Administrator discretion to disclose. If disclosure is for the purpose of a civil, administrative or criminal investigation, action or proceeding or to a person specified in section 16608, subsection 1, the administrator may disclose a record obtained in connection with an audit or inspection under section

16411, subsection 4 or a record obtained in connection with an investigation under section 16602. Prior to disclosure to a person specified in section 16608, subsection 1, the administrator may require the requesting agency to certify that under applicable law reasonable protections exist to preserve the integrity, confidentiality and security of the information comparable to the protections existing under the laws of this State.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

4. Public disclosure for enforcement purposes. The administrator may disclose to the public any information obtained in connection with an investigation that would otherwise be nonpublic information, but only if the administrator determines that disclosure is necessary for the protection of investors or the public.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 65, §A2 (NEW).

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STATE OF MAINE
ONE HUNDRED AND TWENTY-NINTH LEGISLATURE
COMMITTEE ON JUDICIARY

June 5, 2019

TO: Senator Heather B. Sanborn, Senate Chair
Representative Denise A. Tepler, House Chair
Joint Standing Committee on Health Coverage, Insurance and Financial Services

FROM: Senator Michael Carpenter, Senate Chair *MC*
Representative Donna Bailey, House Chair *DB*
Joint Standing Committee on Judiciary

Re: LD 1704, An Act To Establish the Securities Restitution
Assistance Fund for Victims of Securities Violations

This memo memorializes the recommendations of the Joint Standing Committee on Judiciary pursuant to Title 1, section 434 on the proposed committee amendment to *LD 1704, An Act To Establish the Securities Restitution Assistance Fund for Victims of Securities Violations*. Please let us know if you would like a more detailed report of our evaluation and review.

The Committee reviewed the draft attached to the May 30th memo, and recommends no changes concerning freedom of access issues in the proposed language.

We would like to thank Senator Sanborn for spending the time to explain the background for the public records exception as well as the committee's support for the new confidentiality provisions. We are also appreciative of the work that went into the memo transmitting the amended bill to our committee for review and evaluation.

Thank you for your serious consideration of the Freedom of Access issues, and for your cooperation in this process.

Please contact us if you have any questions.

LD 1887
HCLPS

PUBLIC RECORDS EXCEPTION REVIEW CHECKLIST

Revised 11/16/21

A. Whether the record protected needs to be collected (Conclusion of committee of jurisdiction?)	
B. The value to the agency or official or to the public in maintaining the record (Conclusion of committee of jurisdiction?)	
C. Whether federal law requires the record to be confidential	
Does the proposed exception meet one or more of the following (D, E, F, G or I)	
D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in disclosure	
E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records	
F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records	
G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records	
H. Whether the proposed exception is as narrowly tailored as possible (<i>applies in all reviews</i>)	
I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception	
NOTE: 5 MRSA §95-C, sub-§1, ¶C provides that records of archival value that are transferred to the Maine State Archives for permanent retention lose their confidential status, even if the statute designates such records as confidential, when they have been in existence for 75 years.	
If the proposed exception creates broad confidentiality for an entity: 2-A. Accountability review of agency or official. In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public	
2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.	