

1 S.131

2 Representative Jerome of Brandon moves that the bill be amended by
3 striking out Sec. 17 and the accompanying reader assistance in their entireties
4 and by inserting in lieu thereof a new Sec. 17 and a Sec. 17a and an
5 accompanying reader assistance to read as follows:

6 * * * Financial Services Education and Victim Restitution
7 Special Fund * * *

8 Sec. 17. REPEAL; FINANCIAL SERVICES EDUCATION AND
9 TRAINING SPECIAL FUND

10 9 V.S.A. § 5601(e), establishing the Financial Services Education and
11 Training Special Fund, is repealed.

12 Sec. 17a. 9 V.S.A. § 5616 is added to read:

13 § 5616. VERMONT FINANCIAL SERVICES EDUCATION AND VICTIM
14 RESTITUTION SPECIAL FUND

15 (a) Purpose. The purpose of this section is to provide:

16 (1) funds for the purposes specified in subsection 5601(d) of this title;

17 and

18 (2) restitution assistance to victims of securities violations who:

19 (A) were awarded restitution in a final order issued by the

20 Commissioner or were awarded restitution in the final order in a legal action

21 initiated by the Commissioner;

1 (B) have not received the full amount of restitution ordered before
2 the application for restitution assistance is due; and

3 (C) demonstrate to the Commissioner’s satisfaction that there is no
4 reasonable likelihood that they will receive the full amount of restitution in the
5 future.

6 (b) Definitions. As used in this section,

7 (1) “Claimant” means a person who files an application for restitution
8 assistance under this section on behalf of a victim. The claimant and the
9 victim may be the same but do not have to be the same. The term includes the
10 named party in a restitution award in a final order, the executor of a named
11 party in a restitution award in a final order, and the heirs and assigns of a
12 named party in a restitution award in a final order.

13 (2) “Final order” means a final order issued by the Commissioner or a
14 final order in a legal action initiated by the Commissioner.

15 (3) “Fund” means the Vermont Financial Services Education and Victim
16 Restitution Special Fund created by this section.

17 (4) “Securities violation” means a violation of this chapter and any
18 related administrative rules.

19 (5) “Victim” means a person who was awarded restitution in a final
20 order.

1 (6) “Vulnerable person” means:

2 (A) a person who meets the definition of vulnerable person under
3 33 V.S.A. § 6902(14); or

4 (B) a person who is at least 60 years of age.

5 (c) Eligibility.

6 (1) A natural person who was a resident of Vermont at the time of the
7 alleged fraud is eligible for restitution assistance.

8 (2) The Commissioner shall not award securities restitution assistance
9 under this section:

10 (A) to more than one claimant per victim;

11 (B) unless the person ordered to pay restitution has not paid the full
12 amount of restitution owed to the victim before the application for restitution
13 assistance from the fund is due;

14 (C) if there was no award of restitution in the final order; or

15 (D) to a claimant who has not exhausted his or her appeal rights.

16 (d) Denial of assistance. The Commissioner shall not award restitution
17 assistance if the victim:

18 (1) sustained the monetary injury as a result of:

19 (A) participating or assisting in the securities violation; or

20 (B) attempting to commit or committing the securities violation;

21 (2) profited or would have profited from the securities violation; or

1 (3) is an immediate family member of the person who committed the
2 securities violation.

3 (e) Application for restitution assistance and maximum amount of
4 restitution assistance award.

5 (1) The Commissioner may adopt procedures and forms for application
6 for restitution assistance under this section.

7 (2) An application must be received by the Commissioner within two
8 years after the deadline for payment of restitution established in the final order.

9 (3) Except as provided in subdivision (4) of this subsection, the
10 maximum award from the Fund for each claimant shall be the lesser of
11 \$25,000.00 or 25 percent of the amount of unpaid restitution awarded in a final
12 order.

13 (4) If the claimant is a vulnerable person, the maximum award from the
14 Fund shall be the lesser of \$50,000.00 or 50 percent of the amount of unpaid
15 restitution awarded in the final order.

16 (f) Vermont Financial Services Education and Victim Restitution Special
17 Fund. The Vermont Financial Services Education and Victim Restitution
18 Special Fund, pursuant to 32 V.S.A. chapter 7, subchapter 5, is created to
19 provide funds for the purposes specified in this section and in subsection
20 5601(d) of this title. All monies received by the State for use in financial
21 services education initiatives pursuant to subsection 5601(d) of this title or in

1 providing uncompensated victims restitution pursuant to this section shall be
2 deposited into the Fund. The Commissioner may direct a party to deposit a
3 sum not to exceed 15 percent of the total settlement amount into the Fund in
4 conjunction with settling a State securities law enforcement matter. Interest
5 earned on the Fund shall be retained in the Fund.

6 (g) Award not subject to execution, attachment, or garnishment. An award
7 made by the Commissioner under this section is not subject to execution,
8 attachment, garnishment, or other process.

9 (h) State’s liability for award. The Commissioner shall have the discretion
10 to suspend applications and awards based on the solvency of the Fund. The
11 State shall not be liable for any determination made under this section.

12 (i) Subrogation of rights of State.

13 (1) The State is subrogated to the rights of the person awarded
14 restitution under this chapter to the extent of the award.

15 (2) The subrogation rights are against the person who committed the
16 securities violation or a person liable for the pecuniary loss.

17 (j) Rulemaking authority. The Commissioner may adopt rules to
18 implement this section.

19 (k) Bulletin. The Commissioner shall publish a bulletin defining the term
20 “immediate family member” for purposes of this section.