

SB 180-FN-A – AS AMENDED BY THE SENATE

03/14/13 0772s  
03/28/13 1083s

2013 SESSION

13-0916  
01/10

SENATE BILL ***180-FN-A***

AN ACT establishing a recovery fund for victims of the Financial Resources Mortgage (FRM) fraud and continually appropriating a special fund.

SPONSORS: Sen. D'Allesandro, Dist 20; Sen. Bragdon, Dist 11

COMMITTEE: Executive Departments and Administration

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AMENDED ANALYSIS

This bill establishes a process for restitution assistance for victims of the Financial Resources Mortgage (FRM) fraud. Under this bill, the FRM recovery fund committee shall award assistance from the FRM recovery fund for such victims.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struck through~~].  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Thirteen*

AN ACT establishing a recovery fund for victims of the Financial Resources Mortgage (FRM) fraud and continually appropriating a special fund.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Chapter; FRM Recovery Fund. Amend RSA by inserting after chapter 359-L the  
2 following new chapter:

3 CHAPTER 359-M

4 FRM RECOVERY FUND

5 359-M:1 Definitions. In this chapter:

6 I. "Claimant" means a person who is a victim of the Financial Resources Mortgage fraud and  
7 who has filed a complete application for recovery assistance under this chapter.

8 II. "Committee" means the FRM recovery fund committee established in RSA 359-M:4.

9 III. "Financial Resources Mortgage" means Financial Resources Mortgage, Inc., C L and M,  
10 Inc., and any predecessor, successor, or affiliated entities, and any entities established by, through or  
11 with Scott Farah or Donald Dodge, through which moneys of Financial Resources Mortgage, Inc., C  
12 L and M, Inc., and any predecessor, successor, or affiliated entities passed.

13 IV. "Financial Resources Mortgage fraud" means fraudulent acts committed by Financial  
14 Resources Mortgage or its principals where loans brokered by or serviced by Financial Resources  
15 Mortgage were used for purposes other than the funding of commercial loans.

16 V. "Fund" means the FRM recovery fund established in RSA 359-M:2.

17 VI. "Person" means an individual, corporation, partnership, association, joint stock  
18 company, unincorporated organization, or any other entity.

19 VII. "Qualifying claimant" means a person who suffered financial losses as a result of the  
20 Financial Resources Mortgage fraud and is a claimant eligible for recovery assistance under this  
21 chapter.

22 VIII. "Recovery assistance" means payments from the fund to persons who suffered financial  
23 losses as a result of the Financial Resources Mortgage fraud.

24 IX. "Victim" means a person who suffered monetary injury as a result of the Financial  
25 Resources Mortgage fraud.

26 359-M:2 FRM Recovery Fund Established.

27 I. There is hereby established the FRM recovery fund. The fund shall be nonlapsing and  
28 continually appropriated to the committee.

1 II. The fund shall consist of the following amounts:

2 (a) Moneys contributed by the bureau of securities regulation which amount to 50  
3 percent of all income collected by such agency in excess of what is necessary for it to meet its budget,  
4 and 50 percent of the income from any undesignated funds received from settlements obtained by the  
5 department of justice; and

6 (b) Moneys appropriated by the general court.

7 III. After deducting administrative costs, the fund shall be used for awarding recovery  
8 assistance pursuant to this chapter.

9 IV. On the last day of each fiscal year, each agency listed in subparagraph II(a) shall remit  
10 to the treasurer the amount designated in subparagraph II(a) for deposit into the fund.

11 V. The total amount in the fund less costs of administration shall be distributed on a pro  
12 rata basis to qualifying claimants annually on December 31 until all such claims are satisfied.

13 359-M:3 Eligibility for Recovery Assistance.

14 I. Except as otherwise provided in this chapter, a claimant shall be eligible for recovery  
15 assistance under this chapter if the claimant:

16 (a) Submits all supplemental documents as requested by the committee.

17 (b) Can demonstrate loss, to the committee's satisfaction, due to the Financial Resources  
18 Mortgage fraud.

19 (c) Meets all other requirements of this chapter, as determined by the committee.

20 II. In addition to a qualifying claimant and except as otherwise provided in this chapter, a  
21 surviving spouse or surviving child of a qualifying claimant shall be eligible for recovery assistance  
22 under this chapter.

23 359-M:4 Committee Established.

24 I. There is established the FRM recovery fund committee. The committee shall consist of  
25 the following members:

26 (a) The commissioner of the banking department, or designee.

27 (b) The commissioner of the insurance department, or designee.

28 (c) The attorney general, or designee.

29 (d) The secretary of state, or designee.

30 II. The first meeting of the committee shall be held within 45 days of the effective date of  
31 this section and shall be called by the secretary of state or designee. The committee chairperson  
32 shall be chosen from among the members.

33 III. The committee shall review applications for assistance submitted pursuant to this  
34 chapter and make awards of assistance in accordance with the procedures of this chapter.

35 IV. In the event of a tie vote on any matter, the chairperson's vote shall break the tie.

36 V. The committee shall make an annual report, beginning on November 1, 2013, relative to  
37 its work to the governor, the president of the senate, and the speaker of the house of representatives.

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1 359-M:5 Recovery Assistance.

2 I. A victim eligible for recovery assistance under RSA 359-M:3 may file an application for  
3 recovery assistance with the committee on the following form:

4 Financial Resources Mortgage, Inc and CL&M, Inc. Victims Indemnification Application

5 Name \_\_\_\_\_

6 Address \_\_\_\_\_

7 \_\_\_\_\_

8 Phone \_\_\_\_\_

9 E-mail \_\_\_\_\_

10 Social Security No. \_\_\_\_\_

11 I.) Proof of Claim Federal Bankruptcy Court Case 09-14565-JMD and 09-14566-JMD date filed

12 \_\_\_\_\_

13 Loans or Mortgages claimed (copy attached)

14 1. \_\_\_\_\_ Amount \$ \_\_\_\_\_

15 2. \_\_\_\_\_ Amount \$ \_\_\_\_\_

16 3. \_\_\_\_\_ Amount \$ \_\_\_\_\_

17 4. \_\_\_\_\_ Amount \$ \_\_\_\_\_

18 5. \_\_\_\_\_ Amount \$ \_\_\_\_\_

19 6. \_\_\_\_\_ Amount \$ \_\_\_\_\_

20 7. \_\_\_\_\_ Amount \$ \_\_\_\_\_

21 8. \_\_\_\_\_ Amount \$ \_\_\_\_\_

22 9. \_\_\_\_\_ Amount \$ \_\_\_\_\_

23 10. \_\_\_\_\_ Amount \$ \_\_\_\_\_

24 Total Proof of Claim Amount \$ \_\_\_\_\_

25 II.) Were you a defendant in case no. 09-1184-JMD? Yes No

26 Were you dismissed from the case? Yes No

27 III.) Did you settle with the Trustee? Yes No

28 Did you make a payment to the Trustee for the benefit of the bankruptcy estates to settle with  
29 the Trustee? Yes No Amount \$ \_\_\_\_\_

30 IV.) List any additional payments to the trustee as a result of any mortgage foreclosed, sold, or  
31 repaid as a condition of your settlement. Example: Agreed to split proceed 80/20 with Trustee.

32 1. \_\_\_\_\_ Amount \$ \_\_\_\_\_

33 2. \_\_\_\_\_ Amount \$ \_\_\_\_\_

34 3. \_\_\_\_\_ Amount \$ \_\_\_\_\_

35 4. \_\_\_\_\_ Amount \$ \_\_\_\_\_

36 5. \_\_\_\_\_ Amount \$ \_\_\_\_\_

37 Post settlement payments to Trustee Amount \$ \_\_\_\_\_

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1 V.) Did you retain 100% ownership of any mortgages as a result of settlement? Yes (list below) No

2 1. \_\_\_\_\_ Amount \$ \_\_\_\_\_

3 2. \_\_\_\_\_ Amount \$ \_\_\_\_\_

4 3. \_\_\_\_\_ Amount \$ \_\_\_\_\_

5 4. \_\_\_\_\_ Amount \$ \_\_\_\_\_

6 5. \_\_\_\_\_ Amount \$ \_\_\_\_\_

7 Total Retained 100% ownership \$ \_\_\_\_\_

8 VI.) List any payment from the Trustee on any mortgage he or she foreclosed on, sold, or received  
9 repayment of principle and from which proceeds were agreed to be split with you as a result of  
10 settlement.

11 1. \_\_\_\_\_ Amount \$ \_\_\_\_\_

12 2. \_\_\_\_\_ Amount \$ \_\_\_\_\_

13 3. \_\_\_\_\_ Amount \$ \_\_\_\_\_

14 4. \_\_\_\_\_ Amount \$ \_\_\_\_\_

15 5. \_\_\_\_\_ Amount \$ \_\_\_\_\_

16 Total Split Proceeds received from Trustee post settlement \$ \_\_\_\_\_

17 VII.) Final Distribution of Bankruptcy Estate by Trustee received by you \$ \_\_\_\_\_

18 VIII.) Total Interest received from FRM or CL&M January 2006

19 through November 2009 \$ \_\_\_\_\_

20 (attach form 1040 and Schedule B, Interest and Dividends, for 2006-2009)

21 Calculate Loss:

22 A. Total Section I. Proof of Claim \$ \_\_\_\_\_

23 Total Section III Settlement Payment \$ \_\_\_\_\_

24 Total Section IV. Proceed split payment to Trustee \$ \_\_\_\_\_

25 Total A. \$ \_\_\_\_\_

26 B. Total Section V. 100% Retained Mortgages \$ \_\_\_\_\_

27 Total Section VI. Proceed Split receipt from Trustee \$ \_\_\_\_\_

28 Total Section VII. Final Distribution from Trustee \$ \_\_\_\_\_

29 Total Section VIII. Interest Received \$ \_\_\_\_\_

30 Total of any other awards not otherwise accounted for \$ \_\_\_\_\_

31 Total B. \$ \_\_\_\_\_

32 C. Total A minus Total B.

33 Allowable Loss \$ \_\_\_\_\_

34 Signature \_\_\_\_\_

35 Date \_\_\_\_\_

36 Signed under penalty of perjury

37

1 For administration purposes only  
2 Grand Total All Losses submitted \$ \_\_\_\_\_  
3 (name)\_\_\_\_\_ allowable loss submitted \$ \_\_\_\_\_  
4 Percent of Grand Total submitted \_\_\_\_\_%

5 II. The complete application shall be received not more than 180 days after the effective date  
6 of this section. An extension of time may be granted for good cause shown by the claimant. However,  
7 an application that is received more than 270 days after the effective date of this section shall not be  
8 accepted. The committee shall send a notice regarding the process for recovery under this chapter to  
9 the last known address of potential claimants.

10 III. All applications filed in compliance with this chapter shall be accepted. Processing of an  
11 application shall begin upon receipt of a complete application. All applications shall be reviewed by  
12 the committee to ensure that the applications are complete. If an application is not complete, it shall  
13 be returned to the claimant with a brief statement of the additional information required. The  
14 application shall be denied if the applicant does not furnish additional information or additional time  
15 is not granted for good cause.

16 IV. The committee shall determine the amount of loss of original investments, if any, of each  
17 claimant and the pro rata share to be distributed to a claim demonstrating loss.

18 V. Recovery assistance shall be limited to the amount of the claimant's original investment.

19 VI. The committee may consider individual claims filed by persons owning a joint interest  
20 that was subject to loss due to the Financial Resources Mortgage fraud, but any recovery awarded  
21 shall only be to the extent of each individual claimant's original investment.

22 359-M:6 Awards Under This Chapter Set Off Against Any Other Recovery.

23 I. The amount of any award made under this chapter shall be set off against any other  
24 recovery sources, including, but not limited to awards from private suits, arbitration, bankruptcy  
25 court awards or settlements, or other sources of recovery.

26 II. In the event a qualifying claimant receives an award from a recovery source listed in  
27 paragraph I subsequent to the filing of a claim under this chapter, the claimant shall immediately  
28 notify the committee of the award. The committee shall then modify the claimant's award and pro  
29 rata share by offsetting such award against the claimant's award under this chapter.

30 359-M:7 Recovery Assistance Prohibited. Recovery assistance shall not be awarded if the  
31 committee determines the claimant:

32 I. Sustained the monetary injury as a result of participating or assisting in or attempting to  
33 commit or committing financial fraud with Financial Resources Mortgage; or

34 II. Profited or would have profited from the financial fraud of Financial Resources Mortgage.

35 359-M:8 Award Not Subject to Other Processes. An award made under this chapter shall not be  
36 subject to execution, attachment, garnishment, or other process. A claimant convicted of forgery,  
37 fraud, or deception in connection with a claim under this chapter shall forfeit an award paid to the

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1 claimant under this chapter. The attorney general may file a civil action to recover funds against  
2 such a claimant.

3 359-M:9 Liability of State. The state shall not be liable for any written determination made  
4 under this chapter except to the extent that money is available in the fund on the date the award is  
5 computed.

6 359-M:10 Claims Prior to January 1, 2006. Claims for restitution assistance shall not be  
7 accepted for any losses that occurred prior to January 1, 2006 due to financial fraud.

8 2 New Subparagraph; FRM Recovery Fund. Amend RSA 6:12, I(b) by inserting after  
9 subparagraph (310) the following new subparagraph:

10 (311) Moneys deposited under the FRM recovery fund, established in RSA 359-M:2.

11 3 Repeal. The following are repealed:

12 I. RSA 359-M, relative to a recovery fund for victims of the Financial Resources Mortgage  
13 (FRM) fraud.

14 II. RSA 6:12, I(b)(311), relative to the FRM recovery fund.

15 4 Contingent Repeal. Section 3 of this act shall take effect on the date the FRM recovery fund  
16 committee certifies to the secretary of state that the last payment was made in accordance with RSA  
17 359-M as inserted by section 1 of this act. Any moneys in the FRM recovery fund established in RSA  
18 359-M:2 as inserted by section 1 of this act shall be returned to the general fund.

19 5 Effective Date.

20 I. Section 3 of this act shall take effect as provided in section 4 of this act.

21 II. The remainder of this act shall take effect 60 days after its passage.

LBAO  
13-0916  
Amended 03/29/13  
Revised 09/10/13

## SB 180 FISCAL NOTE

AN ACT                    establishing a recovery fund for victims of the Financial Resources Mortgage (FRM) fraud and continually appropriating a special fund.

### FISCAL IMPACT:

The Departments of Justice and State state this bill, **as amended by the Senate (Amendment #2013-1083s)**, will decrease state general fund revenue and increase state restricted revenue and expenditures by an indeterminable amount in FY 2015 and each year thereafter. There will be no impact on county and local revenue and expenditures.

### METHODOLOGY:

The Department of State, Bureau of Securities Regulation states this bill establishes a process for restitution for assistance for victims of the Financial Resources Mortgage (FRM) fraud. The bill creates an FRM recovery fund, funded by: (1) 50 percent of all income collected by the Bureau of Security Regulation in excess of the amount necessary to meet the agency's budget; (2) 50 percent of the income from undesignated funds received from settlements obtained by the Department of Justice; and (3) funds appropriated by the General Court. The funds will be dispensed as determined by a recovery fund committee established by the bill. The Bureau states that in the last few years, it has taken in an average of approximately \$2 million per year in fine and penalty income. Depending on enforcement actions taken by the Bureau, this number can vary significantly from year to year. The Bureau's administrative expenses are deducted from this income and, though variable, average approximately \$800,000 per year. Of the roughly \$1,200,000 remaining, 50%, or \$600,000, would be deposited in the FRM recovery fund instead of the state general fund as under current law.

The Department of Justice states it has no way to estimate the amount of settlement funds it will receive in any particular time period, and hence is unable to determine the fiscal impact of the bill. The Department states that, in general, it receives settlement funds through multi-state litigation in the areas of consumer protection and Medicaid fraud. Settlement funds received through consumer protection litigation are typically designated by the terms of the settlement agreements for use for consumer protection purposes. Funds received from Medicaid settlements, though not designated by settlement agreements for a particular use, are partially used to support the Department's activities. The remainder is deposited in the state general fund. The Department states that to the extent Medicaid settlement funds are used to support

the proposed recovery fund, it may need to request additional general funds to support Department operations.