

# STATE OF NEW YORK

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4954--A

2021-2022 Regular Sessions

## IN SENATE

February 19, 2021

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Introduced by Sens. MYRIE, BROUK, KRUEGER, REICHLIN-MELNICK, SALAZAR, SKOUFIS, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law and the financial services law, in relation to fraud in connection with an abnormal disruption of the market

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions (b) and (c) of section 349 of the general  
2 business law, as added by chapter 43 of the laws of 1970, are amended to  
3 read as follows:

4 (b) Whenever the attorney general shall believe from evidence satis-  
5 factory to him or her that any person, firm, corporation or association  
6 or agent or employee thereof has engaged in or is about to engage in any  
7 of the acts or practices stated to be unlawful he or she may bring an  
8 action in the name and on behalf of the people of the state of New York  
9 to enjoin such unlawful acts or practices and to obtain restitution of  
10 any moneys or property obtained directly or indirectly by any such  
11 unlawful acts or practices. In such action preliminary relief may be  
12 granted under article sixty-three of the civil practice law and rules.

13 Provided further that, whenever the attorney general shall believe from  
14 evidence satisfactory to him or her that a firm, corporation or associ-  
15 ation or agent or employee thereof has engaged in any of the acts or  
16 practices stated to be unlawful in connection with and with the intent  
17 to unlawfully gain from an abnormal disruption of the market as defined  
18 in section three hundred ninety-six-r of this chapter, he or she may  
19 bring an action on behalf of the people of the state of New York to

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 recover three times the actual damages proved or twenty-five thousand  
2 dollars, whichever is greater.

3 (c) Before any violation of this section is sought to be enjoined, the  
4 attorney general shall be required to give the person against whom such  
5 proceeding is contemplated notice by certified mail and an opportunity  
6 to show in writing within five business days after receipt of notice why  
7 proceedings should not be instituted against him or her, unless the  
8 attorney general shall find, in any case in which he or she seeks  
9 preliminary relief, that to give such notice and opportunity is not in  
10 the public interest.

11 § 2. Section 408 of the financial services law is amended to read as  
12 follows:

13 § 408. Civil penalty. (a) In addition to any civil or criminal liabil-  
14 ity provided by law, the superintendent may, after notice and hearing,  
15 levy a civil penalty:

16 (1) not to exceed five thousand dollars per offense, for:

17 (A) any intentional fraud or intentional misrepresentation of a mate-  
18 rial fact with respect to a financial product or service or involving  
19 any person offering to provide or providing financial products or  
20 services; ~~[or]~~

21 (B) any violation of state or federal fair debt collection practices  
22 or federal or state fair lending laws; ~~[and]~~ or

23 (C) a firm, corporation or association or agent or employee thereof  
24 intentionally engaging in fraud or misconduct with respect to the bank-  
25 ing law, the insurance law, the provisions of this chapter or other laws  
26 or any final or temporary order issued pursuant to which the superinten-  
27 dent has investigatory or enforcement powers, in connection with and  
28 with the intent to unlawfully gain from an abnormal disruption of the  
29 market as defined in section three hundred ninety-six-r of the general  
30 business law; and

31 (2) not to exceed one thousand dollars for any other violation of this  
32 chapter or the regulations issued thereunder, provided that there shall  
33 be no civil penalty under this section for violations of article five of  
34 this chapter or the regulations issued thereunder; and

35 (3) provided, however, that, with the exception of subparagraph (C) of  
36 paragraph one of this subsection:

37 (A) penalties for regulated persons under the banking law shall be as  
38 provided for in the banking law and penalties for regulated persons  
39 under the insurance law shall be as provided for in the insurance law;  
40 and

41 (B) the superintendent shall not impose or collect any penalty under  
42 this section in addition to any penalty or fine for the same act or  
43 omission that is imposed under the insurance law or banking law; and

44 (C) nothing in this section shall affect the construction or interpre-  
45 tation of the term "fraud" as it is used in any other provision of the  
46 consolidated or unconsolidated law.

47 (b) Civil penalties received by the superintendent pursuant to this  
48 section shall be applied on an annual basis as follows: funds shall be  
49 applied first to reduce the assessments charged on persons regulated  
50 under the insurance law and the banking law pursuant to section two  
51 hundred six of this chapter up to the full amount paid by persons regu-  
52 lated under the insurance law and banking law for the operating expenses  
53 of the financial frauds and consumer protection unit not attributable to  
54 regulation under the insurance or banking law for the fiscal year in  
55 which such penalties are received, such amount shall be applied to any  
56 assessment in the following year, and any remaining funds shall be paid

1 to the general fund. The superintendent shall have discretion to deter-  
2 mine how operating expenses which are not solely attributable to regu-  
3 lating persons under either the insurance law or the banking law shall  
4 be allocated.

5 (c) (1) Prior to levying a civil penalty pursuant to subparagraph (C)  
6 of paragraph one of subsection (a) of this section, the superintendent  
7 shall consider, in addition to other appropriate factors:

8 (A) Whether the subject of the investigation knew that their conduct  
9 was made in connection with an abnormal disruption of the market with an  
10 intent to unlawfully gain from such disruption or whether the defend-  
11 ant's conduct was in willful disregard to an abnormal disruption of the  
12 market with an intent to unlawfully gain from such disruption;

13 (B) Whether the conduct of the subject of the investigation caused a  
14 person or persons to suffer loss or encumbrance of a primary residence,  
15 principal employment or source of income, payments received under a  
16 pension or retirement plan or a government benefits program, or assets  
17 essential to health or welfare;

18 (C) Any other substantial economic damage resulting from the conduct  
19 of the subject of the investigation; and

20 (D) The net worth and annual business volume of the subject of the  
21 investigation.

22 (2) In determining the amount of any supplemental civil penalty  
23 imposed pursuant subparagraph (C) of paragraph one of subsection (a) of  
24 this section, the superintendent shall make a finding, after notice and  
25 hearing is provided, as to the amount of the unlawful gain made in  
26 connection with the abnormal disruption of the market by the subject of  
27 the investigation.

28 § 3. This act shall take effect on the thirtieth day after it shall  
29 have become a law. Effective immediately, the superintendent of finan-  
30 cial services and the attorney general may make regulations and take  
31 other actions reasonably necessary to implement this act on such effec-  
32 tive date.