S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

March 3, 2009

Introduced by M. of A. COOK, GREENE, ZEBROWSKI -- Multi-Sponsored by -- M. of A. GOTTFRIED, PHEFFER, TOWNS -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry

AN ACT to amend the general business law, in relation to the subpoena powers of the attorney general in security and commodity fraud investigations

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings and declaration of policy. The legislature hereby finds that effective enforcement of the securities and commodities laws will be promoted by the cooperation among this state and other states and jurisdictions in the enforcement of these laws. The legislature hereby declares it to be the policy of this state to encourage cooperation among the attorney general of this state and the securities and commodities administrators of other states, territories and possessions of the United States in the enforcement of securities and commodities laws.

S 2. Section 352 of the general business law is amended by adding a new subdivision 6 to read as follows:

6. (A) AS USED IN THIS SUBDIVISION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(1) "SECURITIES ADMINISTRATOR" MEANS THAT STATE OFFICIAL WHO, BY LAW, IS CHARGED WITH THE DUTY OF ADMINISTERING OR ENFORCING A STATE'S LAWS REGULATING THE OFFER AND SALE OF SECURITIES;

(2) "COMMODITIES ADMINISTRATOR" MEANS THAT STATE OFFICIAL WHO, BY LAW, IS CHARGED WITH THE DUTY OF ADMINISTERING OR ENFORCING A STATE'S LAWS REGULATING THE OFFER AND SALE OF COMMODITIES AND COMMODITY FUTURES;

(3) "STATE" MEANS ANY STATE, TERRITORY OR POSSESSION OF THE UNITED STATES, THE DISTRICT OF COLUMBIA AND PUERTO RICO.

(B) IF THE SECURITIES OR COMMODITIES ADMINISTRATOR OF ANOTHER STATE, WHICH BY ITS LAWS HAS MADE PROVISION FOR COMMANDING PERSONS WITHIN THAT

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

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STATE TO ATTEND TO TESTIFY OR PRODUCE DOCUMENTS AND RECORDS IN THAT STATE UPON AN INVESTIGATION PENDING IN THIS STATE UNDER THIS ARTICLE, PRESENTS TO THE ATTORNEY GENERAL OF THIS STATE A CERTIFICATE UNDER THE SEAL OF SUCH OFFICE STATING THAT THERE IS AN INVESTIGATION PENDING IN SUCH STATE UNDER THE SECURITIES OR COMMODITIES LAWS OF SUCH STATE AND THAT A PERSON BEING WITHIN THIS STATE IS A MATERIAL WITNESS IN SUCH INVESTIGATION OR THAT DOCUMENTS AND RECORDS BEING WITHIN THIS STATE ARE MATERIAL TO SUCH INVESTIGATION, OR BOTH, THE ATTORNEY GENERAL MAY ISSUE A SUBPOENA, WITH A COPY OF THE CERTIFICATE ATTACHED, DIRECTING THE WITNESS TO ATTEND TO TESTIFY AND PRODUCE DOCUMENTS AND RECORDS BEFORE THE ATTORNEY GENERAL AT A TIME AND PLACE SPECIFIED IN THE SUBPOENA, UNLESS THE ATTORNEY GENERAL DETERMINES THAT TO DO SO WOULD CAUSE THE WITNESS UNDUE HARDSHIP.

THE EVIDENCE, DOCUMENTS, RECORDS AND TESTIMONY ADDUCED PURSUANT TO THE SUBPOENA SHALL BE MADE AVAILABLE TO THE SECURITIES OR COMMODITIES ADMINISTRATOR ISSUING THE CERTIFICATE REFERRED TO HEREIN, AND SUCH SECURITIES OR COMMODITIES ADMINISTRATOR MAY ALSO ATTEND AND PARTICIPATE IN THE EXAMINATION CONDUCTED PURSUANT TO THE SUBPOENA.

IF A WITNESS, WHO IS SUBPOENAED AS ABOVE PROVIDED, AFTER BEING PAID OR TENDERED THE SUM OF TWENTY CENTS A MILE FOR EACH MILE AND FIVE DOLLARS FOR EACH DAY THAT THE WITNESS IS REQUIRED TO TRAVEL AND ATTEND AS A WITNESS, FAILS WITHOUT GOOD CAUSE TO ATTEND, TESTIFY OR PRODUCE DOCUMENTS AND RECORDS AS DIRECTED IN THE SUBPOENA, THE WITNESS SHALL BE PUNISHED IN THE MANNER PROVIDED FOR THE PUNISHMENT OF ANY WITNESS WHO DISOBEYS A SUBPOENA ISSUED PURSUANT TO THIS ARTICLE.

ANY WITNESS REQUIRED TO SUPPLY REPRODUCED COPIES OF DOCUMENTS IN ACCORDANCE WITH A SUBPOENA ISSUED UNDER THIS SUBDIVISION SHALL BE PAID A FEE PURSUANT TO THE PROVISIONS OF SUBDIVISION (C) OF SECTION EIGHT THOUSAND ONE OF THE CIVIL PRACTICE LAW AND RULES.

ANY SUBPOENA ISSUED PURSUANT TO THIS SUBDIVISION MAY BE THE SUBJECT OF A MOTION PURSUANT TO SECTION TWENTY-THREE HUNDRED FOUR OF THE CIVIL PRACTICE LAW AND RULES. ON ANY SUCH MOTION, THE CERTIFICATE REFERRED TO HEREIN SHALL BE PRIMA FACIE EVIDENCE OF ALL THE FACTS STATED THEREIN.

(C) IF A PERSON IN ANY STATE, WHICH BY ITS LAWS HAS MADE PROVISION FOR COMMANDING PERSONS WITHIN THAT STATE TO ATTEND AND TESTIFY OR PRODUCE DOCUMENTS AND RECORDS IN THAT STATE UPON AN INVESTIGATION PENDING IN THIS STATE UNDER THIS ARTICLE, IS A MATERIAL WITNESS IN AN INVESTIGATION PENDING IN THIS STATE UNDER THIS ARTICLE; OR IF DOCUMENTS AND RECORDS WHICH ARE MATERIAL TO AN INVESTIGATION PENDING IN THIS STATE UNDER THIS ARTICLE ARE LOCATED IN SUCH OTHER STATE, THE ATTORNEY GENERAL OF THIS STATE MAY PRESENT A CERTIFICATE UNDER THE SEAL OF THE DEPARTMENT OF LAW STATING THESE FACTS TO THE APPROPRIATE OFFICIAL IN THE STATE IN WHICH THE WITNESS, DOCUMENTS OR RECORDS ARE FOUND. THE ATTORNEY GENERAL, OR HIS DEPUTY, MAY ATTEND AND PARTICIPATE IN ANY EXAMINATION CONDUCTED IN SUCH OTHER STATE TO THE EXTENT PERMITTED BY THE LAWS OF SUCH STATE.

IF A WITNESS IS SUBPOENAED TO ATTEND AND TESTIFY OR PRODUCE DOCUMENTS AND RECORDS PURSUANT TO THIS SUBDIVISION, THE WITNESS SHALL BE PAID OR TENDERED SUCH SUMS OF MONEY AS MAY BE SPECIFIED BY THE LAWS OF THE STATE ISSUING THE SUBPOENA.

ANY WITNESS REQUIRED TO SUPPLY REPRODUCED COPIES OF DOCUMENTS IN ACCORDANCE WITH THIS SUBDIVISION SHALL BE PAID SUCH SUMS OF MONEY AS MAY BE SPECIFIED BY THE LAWS OF THE STATE ISSUING THE SUBPOENA.

S 3. This act shall take effect on the thirtieth day after it shall have become a law.