

4264

2009-2010 Regular Sessions

I N S E N A T E

April 20, 2009

Introduced by Sen. KRUGER -- (at request of the State Commission on Public Integrity) -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to imposing a penalty for obstruction of a commission investigation

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

1 Section 1. Paragraphs (a) and (b) of subdivision 12 of section 94 of
2 the executive law, as amended by chapter 14 of the laws of 2007, are
3 amended to read as follows:
4 (a) If the commission receives a sworn complaint alleging a violation
5 of section seventy-three, seventy-three-a or seventy-four of the public
6 officers law, section one hundred seven of the civil service law or
7 article one-A of the legislative law by a person or entity subject to
8 the jurisdiction of the commission, or if a reporting individual has
9 filed a statement which reveals a possible violation of these
10 provisions, or if the commission determines on its own initiative to
11 investigate a possible violation, the commission shall notify the indi-
12 vidual OR ENTITY in writing, describe the possible or alleged violation
13 of such laws and provide the [person] INDIVIDUAL OR ENTITY with a
14 fifteen day period in which to submit a written response setting forth
15 information relating to the activities cited as a possible or alleged
16 violation of law. If the commission thereafter makes a determination
17 that further inquiry is justified, it shall give the individual OR ENTI-
18 TY an opportunity to be heard. The commission shall also inform the
19 individual OR ENTITY of its rules regarding the conduct of adjudicatory
20 proceedings and appeals and the due process procedural mechanisms avail-
21 able to such individual OR ENTITY. If the commission determines at any
22 stage of the proceeding, that there is no violation or that any poten-
23 tial conflict of interest violation has been rectified, it shall so
24 advise the individual OR ENTITY and the complainant, if any. All of the
25 foregoing proceedings shall be confidential.
26 (b) If the commission determines that there is reasonable cause to
27 believe that a violation has occurred, it shall send a notice of reason-

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

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1 able cause: (i) to the reporting person OR ENTITY; (ii) to the complain-
2 ant if any; (iii) in the case of a statewide elected official, to the
3 temporary president of the senate and the speaker of the assembly; and
4 (iv) in the case of a state officer or employee, to the appointing
5 authority for such person.

6 S 2. Paragraph (c) of subdivision 12 of section 94 of the executive
7 law is relettered paragraph (d) and a new paragraph (c) is added to read
8 as follows:

9 (C) IF THE COMMISSION DETERMINES DURING THE COURSE OF ITS INVESTI-
10 GATION THAT ANY INDIVIDUAL OR ENTITY HAS ACTED WITH INTENT TO OBSTRUCT
11 SUCH INVESTIGATION AND THAT IMPOSITION OF A CIVIL PENALTY AGAINST SUCH
12 INDIVIDUAL OR ENTITY IS APPROPRIATE, THE COMMISSION SHALL NOTIFY THE
13 INDIVIDUAL OR ENTITY IN WRITING THAT IT WILL SEEK A CIVIL PENALTY
14 AGAINST SUCH INDIVIDUAL OR ENTITY, INCLUDING ANY INFORMATION OR EVIDENCE
15 PERTAINING TO THE ALLEGATION. A COPY OF THE NOTIFICATION SHALL BE
16 FORWARDED TO THE HEARING OFFICER FOR REVIEW AND RECOMMENDATION. THE
17 INDIVIDUAL OR ENTITY MAY RESPOND TO THE ALLEGATIONS DIRECTLY TO THE
18 HEARING OFFICER WITHIN FIVE DAYS OF THE DATE OF NOTIFICATION. WITHIN TEN
19 DAYS OF THE DATE OF NOTIFICATION, THE HEARING OFFICER SHALL TRANSMIT A
20 RECOMMENDATION TO THE COMMISSIONER CONCERNING THE APPROPRIATE PENALTY TO
21 BE ASSESSED, IF ANY. A COPY OF THE RECOMMENDATION SHALL BE TRANSMITTED
22 TO THE INDIVIDUAL OR ENTITY. AS SOON AS IS PRACTICAL, THE COMMISSION
23 SHALL ISSUE A FINAL DECISION. THE COMMISSION MAY ADOPT THE RECOMMENDA-
24 TION OF THE HEARING OFFICER IN WHOLE OR IN PART OR IT MAY REVERSE,
25 REMAND OR DISMISS THE HEARING OFFICER'S RECOMMENDATION. THE COMMISSION'S
26 ASSESSMENT OF A CIVIL PENALTY MADE PURSUANT TO THIS SECTION SHALL NOT
27 PRECLUDE ITS REFERRAL TO THE EXTENT AUTHORIZED BY LAW OF OTHER
28 VIOLATIONS OF LAW TO A PROSECUTOR OR APPROPRIATE AUTHORITY FOR ACTION.

29 S 3. Subdivision 13 of section 94 of the executive law, as amended by
30 chapter 14 of the laws of 2007, is amended to read as follows:

31 13. An individual subject to the jurisdiction of the commission who
32 knowingly and intentionally violates the provisions of subdivisions two
33 through five, seven, eight, twelve or fourteen through seventeen of
34 section seventy-three of the public officers law, section one hundred
35 seven of the civil service law, or a reporting individual who knowingly
36 and wilfully fails to file an annual statement of financial disclosure
37 or who knowingly and wilfully with intent to deceive makes a false
38 statement or fraudulent omission or gives information which such indi-
39 vidual knows to be false on such statement of financial disclosure filed
40 pursuant to section seventy-three-a of the public officers law shall be
41 subject to a civil penalty in an amount not to exceed forty thousand
42 dollars and the value of any gift, compensation or benefit received as a
43 result of such violation. An individual who knowingly and intentionally
44 violates the provisions of paragraph b, c, d or i of subdivision three
45 of section seventy-four of the public officers law shall be subject to a
46 civil penalty in an amount not to exceed ten thousand dollars and the
47 value of any gift, compensation or benefit received as a result of such
48 violation. An individual who knowingly and intentionally violates the
49 provisions of paragraph a, e or g of subdivision three of section seven-
50 ty-four of the public officers law shall be subject to a civil penalty
51 in an amount not to exceed the value of any gift, compensation or bene-
52 fit received as a result of such violation. An individual subject to the
53 jurisdiction of the commission who knowingly and willfully violates
54 article one-A of the legislative law shall be subject to civil penalty
55 as provided for in that article. ANY INDIVIDUAL OR ENTITY ACTING WITH
56 INTENT TO OBSTRUCT A COMMISSION INVESTIGATION SHALL BE SUBJECT TO A

1 CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED TEN THOUSAND DOLLARS. Assess-
2 ment of a civil penalty hereunder shall be made by the commission with
3 respect to persons subject to its jurisdiction. In assessing the amount
4 of the civil penalties to be imposed, the commission shall consider the
5 seriousness of the violation, the amount of gain to the individual and
6 whether the individual previously had any civil or criminal penalties
7 imposed pursuant to this section, and any other factors the commission
8 deems appropriate. For a violation of this subdivision, other than for
9 conduct which constitutes a violation of section one hundred seven of
10 the civil service law, subdivisions twelve or fourteen through seventeen
11 of section seventy-three or section seventy-four of the public officers
12 law or article one-A of the legislative law, the commission may, in lieu
13 of a civil penalty, refer a violation to the appropriate prosecutor and
14 upon such conviction, such violation shall be punishable as a class A
15 misdemeanor. A civil penalty for false filing may not be imposed here-
16 under in the event a category of "value" or "amount" reported hereunder
17 is incorrect unless such reported information is falsely understated.
18 Notwithstanding any other provision of law to the contrary, no other
19 penalty, civil or criminal may be imposed for a failure to file, or for
20 a false filing, of such statement, or a violation of section seventy-
21 three of the public officers law, except that the appointing authority
22 may impose disciplinary action as otherwise provided by law. The commis-
23 sion may refer violations of this subdivision to the appointing authori-
24 ty for disciplinary action as otherwise provided by law. The commission
25 shall be deemed to be an agency within the meaning of article three of
26 the state administrative procedure act and shall adopt rules governing
27 the conduct of adjudicatory proceedings and appeals taken pursuant to a
28 proceeding commenced under article seventy-eight of the civil practice
29 law and rules relating to the assessment of the civil penalties herein
30 authorized and commission denials of requests for certain deletions or
31 exemptions to be made from a financial disclosure statement as author-
32 ized in paragraph (h) or paragraph (i) of subdivision nine of this
33 section. Such rules, which shall not be subject to the approval require-
34 ments of the state administrative procedure act, shall provide for due
35 process procedural mechanisms substantially similar to those set forth
36 in article three of the state administrative procedure act but such
37 mechanisms need not be identical in terms or scope. Assessment of a
38 civil penalty or commission denial of such a request shall be final
39 unless modified, suspended or vacated within thirty days of imposition,
40 with respect to the assessment of such penalty, or unless such denial of
41 request is reversed within such time period, and upon becoming final
42 shall be subject to review at the instance of the affected reporting
43 individuals in a proceeding commenced against the commission, pursuant
44 to article seventy-eight of the civil practice law and rules.

45 S 4. Paragraph (d) of subdivision 16 of section 94 of the executive
46 law, as amended by chapter 14 of the laws of 2007, is amended to read as
47 follows:

48 (d) Conduct any investigation necessary to carry out the provisions of
49 this section. Pursuant to this power and duty, the commission may admin-
50 ister oaths or affirmations, subpoena witnesses, compel their attendance
51 and require the production of any books or records which it may deem
52 relevant or material. ANY INDIVIDUAL OR ENTITY ACTING WITH INTENT TO
53 OBSTRUCT A COMMISSION INVESTIGATION SHALL BE SUBJECT TO A CIVIL PENALTY
54 IN AN AMOUNT NOT TO EXCEED TEN THOUSAND DOLLARS;

55 S 5. This act shall take effect immediately.